107TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 107–382 Part 1

EMPLOYEE RETIREMENT SAVINGS BILL OF RIGHTS

MARCH 20, 2002.—Ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3669]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3669) to amend the Internal Revenue Code of 1986 to empower employees to control their retirement savings accounts through new diversification rights, new disclosure requirements, and new tax incentives for retirement education, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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99–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Employee Retirement Savings Bill of Rights”.

(b) TABLE OF CONTENTS.—

TITLE I—DEFINED CONTRIBUTION PLAN PROTECTIONS

SEC. 101. EXCISE TAX ON FAILURE OF PENSION PLANS TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS.

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

"SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS.

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

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

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

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

"(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

"(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

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

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

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

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

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

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

"(e) NOTICE REGARDING INVESTMENT EDUCATION.—

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

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

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

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

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

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

"(f) DEFINITIONS.—For purposes of this section—

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

"(A) any participant in the applicable pension plan,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Sec. 4980G. Failure of applicable plans to provide investment education notices to participants.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2002.

(2) MODEL INVESTMENT PRINCIPLES.—Not later than the earlier of January 1, 2003, or 120 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue guidance and model notices which meet the requirements of section 4980G of the Internal Revenue Code of 1986 (as added by this section).

SEC. 102. EXCISE TAX ON FAILURE OF PENSION PLANS TO PROVIDE NOTICE OF TRANSACTION RESTRICTION PERIODS.

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

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

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

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

"(c) LIMITATIONS ON AMOUNT OF TAX.—

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

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

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

"(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

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

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

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

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

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

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

"(e) NOTICE OF TRANSACTION RESTRICTION PERIOD.—

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

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

"(3) TIMING OF NOTICE.—

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

"(B) DISPOSITION OF STOCK OR ASSETS.—

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

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

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

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

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

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

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

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

"(C) EXCEPTION FOR UNFORESEEABLE EVENTS.—In the case of a transaction restriction period resulting from the occurrence of an unforeseeable event, such notice shall be provided as soon as reasonably practicable after the occurrence of such event.

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

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

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

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

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

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

"(2) APPLICABLE PENSION PLAN.—

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

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

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

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

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

"(3) TRANSACTION RESTRICTION PERIOD.—

"(A) IN GENERAL.—The term 'transaction restriction period' means a temporary or indefinite period of at least 3 consecutive days during which rights otherwise provided under the plan to 1 or more applicable individuals to direct investments in the applicable pension plan, obtain loans from such plan, or obtain distributions from such plan are substantially reduced (other than by reason of the application of securities laws or other circumstances specified by the Secretary in regulations). In determining consecutive days, days on which such rights are not normally available shall be disregarded.

"(B) SPECIAL RULE FOR EMPLOYER SECURITIES.—

"(i) IN GENERAL.—For purposes of subparagraph (A), rights shall be treated as substantially reduced with respect to directing investments out of employer securities if rights in effect are significantly restricted for at least 3 consecutive business days.

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

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

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

"(4) EMPLOYER SECURITIES.—The term 'employer securities' shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.".

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

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

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2002.

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

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

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

SEC. 103. DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.

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

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

"(A) IN GENERAL.—In the case of a defined contribution plan described in this subsection that includes a trust which is exempt from tax under section 501(a) and which holds employer securities that are readily tradable on an established securities market, such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B), (C), and (D).

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

"(C) MATCHING AND CERTAIN OTHER CONTRIBUTIONS.—

"(i) IN GENERAL.—In the case of the portion of the account attributable to contributions to which this subparagraph applies and which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable 3-year individual in the plan may elect to direct the plan to divest up to the applicable percentage of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (E).

"(ii) CONTRIBUTIONS TO WHICH THIS SUBPARAGRAPH APPLIES.—This subparagraph shall apply to—

"(I) matching contributions (as defined in subsection (m)(4)(A)),

"(II) qualified nonelective contributions (as defined in subsection (m)(4)(C)), and

"(III) contributions made in order to meet the requirements of subsection (k)(12)(C).

"(iii) APPLICABLE 3-YEAR INDIVIDUAL.—For purposes of clause (i), the term 'applicable 3-year individual' means any individual who would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were taken into account under subparagraph (G)(i)(I).

"(D) OTHER EMPLOYER CONTRIBUTIONS.—

"(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than contributions to which subparagraph (B) or (C) applies) which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable 5-year individual described in clause (ii) may elect to direct the plan to divest up to the applicable percentage of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (E).

"(ii) APPLICABLE 5-YEAR INDIVIDUAL.—For purposes of clause (i), the term '5-year individual' means any individual who would be an applicable individual if only participants in the plan who have completed at least 5 years of service (as determined under section 411(a)) were taken into account under subparagraph (G)(i)(I).

"(E) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options (not inconsistent with regulations prescribed by the Secretary) other than employer securities.

"(F) ELECTION.—Elections under this paragraph may be made not less frequently than quarterly.

"(G) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

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

"(I) any participant in the plan,

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

"(III) any beneficiary of a deceased participant or alternate payee.

"(ii) ELECTIVE DEFERRALS.—The term 'elective deferrals' means an employer contribution described in section 402(g)(3)(A).

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

"(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7).

"(v) APPLICABLE PERCENTAGE.—

"(I) IN GENERAL.—The applicable percentage shall be as follows:

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

"(II) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—In the case of elective deferrals and employee contributions (and any earnings allocable thereto) held within a plan treated as a separate plan as of the date of the enactment of this paragraph under section 407(b)(2) of the Employee Retirement Income Security Act of 1974, for purposes of subparagraph (B) the applicable percentage shall be 100 percent.

"(III) CONTRIBUTIONS HELD WITHIN AN ESOP.—In the case of contributions (other than elective deferrals and employee contributions) held within an employee stock ownership plan, in the case of years 2003 and 2004, the applicable percentage shall be the greater of the amount determined under subclause (I) or the percentage determined under paragraph (28) (determined as if paragraph (28) applied to a plan described in this paragraph).

"(vi) COORDINATION WITH PARAGRAPH (28).—Subparagraphs (B), (C), and (D) shall apply to the extent that the amount attributable to the applicable percentage under such subparagraph exceeds the amount to which a prior election under such subparagraph or paragraph (28) applies.

"(H) EXCEPTION FOR CERTAIN ESOPS.—This paragraph shall apply to an employee stock ownership plan only if the plan holds amounts attributable to deferrals or contributions to which subparagraph (B) or (C) apply.".

(b) CONFORMING AMENDMENTS.—

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

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

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

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

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2002.

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

SEC. 104. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

SEC. 105. SPECIAL RULES.

(a) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, the amendments made by this title shall not apply to plan years beginning before the earlier of—

(1) the later of—

(A) January 1, 2004, or

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

(2) January 1, 2005.

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

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

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

TITLE II—OTHER TAX PROVISIONS RELATING TO PENSIONS

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

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

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

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

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

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

"(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

"(B) For purposes of section 412(m) of the Internal Revenue Code of 1986, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.".

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

SEC. 202. REPORTING SIMPLIFICATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) NONDISCRIMINATION.—

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

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

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

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

(2) EFFECTIVE DATES.—

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

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

(b) COVERAGE TEST.—

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

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

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

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

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

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

(2) EFFECTIVE DATES.—

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

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

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

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

(a) IN GENERAL.—

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

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

SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

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

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

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

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

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

(2) EFFECTIVE DATE.—

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

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

SEC. 207. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

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

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

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

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

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

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

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

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

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

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

SEC. 208. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

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

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

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

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

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

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

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

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

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 207(b), is amended—

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

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

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

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

(c) EFFECTIVE DATES.—

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

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

SEC. 209. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

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

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

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

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

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

SEC. 210. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

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

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

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

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

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

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

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

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

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

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

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

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

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

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

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

(c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

(d) EFFECTIVE DATES.—

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

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

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

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

SEC. 211. STUDIES.

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

(1) the most appropriate form or forms of—

(A) employee pension benefit plans which would—

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

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

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

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

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

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

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

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

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

(2) the levels of pension plan benefits generally,

(3) the quality of pension plan coverage generally,

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

(5) retirement security.

SEC. 212. INTEREST RATE RANGE FOR ADDITIONAL FUNDING REQUIREMENTS.

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

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

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

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

SEC. 213. PROVISIONS RELATING TO PLAN AMENDMENTS.

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

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan for purposes of the Internal Revenue Code of 1986 during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

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

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

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

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

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

(A) during the period—

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

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

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

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

TITLE III—STOCK OPTIONS

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

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

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

"(22) remuneration on account of—

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

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

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

"(19) Remuneration on account of—

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

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

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

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

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

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

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

“(18) remuneration on account of—

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

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

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

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

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

TITLE IV—SOCIAL SECURITY AND MEDICARE HELD HARMLESS

SEC. 401. PROTECTION OF SOCIAL SECURITY AND MEDICARE.

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

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 3669, as amended (the “Employee Retirement Savings Bill of Rights”), provides for (1) new protections for participants in retirement plans and new tax incentives for retirement education (Title I), (2) reducing regulatory burdens with respect to retirement plans (Title II), (3) exclusions from wages with respect to incentive stock options and employee stock purchase plans (Title III), and (4) holding social security trust funds harmless (Title IV).

The bill provides net tax reductions of over $10 billion over fiscal years 2002–2007. The bill will provide strengthened retirement income security and certainty in the employment tax treatment of incentive stock options and employee stock purchase plans.

SUMMARY

I. Defined contribution plan protections

Excise tax on failure to provide investment education notice.—In the case of a plan that permits a participant to direct the investment of his or her account, or a plan under which a participant’s accrued benefit depends on hypothetical investments directed by the participant, the bill requires that participants and certain beneficiaries be provided with investment education notices on a quarterly basis and on enrollment in the plan. An excise tax of

$100 per individual applies in the case of a failure to provide the required notice.

Excise tax on failure to provide notice of transaction restriction periods.—In the case of a plan that maintains accounts for participants, or a plan under which a participant's accrued benefit depends on hypothetical investments directed by the participant, the bill requires that participants and certain beneficiaries be provided with 30 days advance notice of a transaction restriction period. A transaction restriction period generally means a temporary or indefinite period of at least three consecutive days during which the rights otherwise provided under the plan to direct investments, or obtain loans or distributions from the plan, are substantially reduced. An excise tax of $100 per individual applies in the case of a failure to provide the required notice.

Diversification requirements for defined contribution plans holding employer securities.—The bill requires a defined contribution plan that holds publicly-traded employer securities to permit certain participants and beneficiaries at least quarterly to direct that the applicable percentage of employer securities in their accounts be invested in alternative investments. The participants and beneficiaries who must be permitted to diversify and the applicable percentage depend on the type of contribution involved. The diversification requirement does not apply to an ESOP unless the ESOP holds elective deferrals, employee after-tax contributions, matching contributions, or other contributions used to satisfy the special nondiscrimination tests for elective deferrals (i.e., qualified nonelective contributions and nonelective contributions under safe harbor plans).

Treatment of qualified retirement planning services.—The bill permits employers to offer employees a choice between cash compensation and qualified retirement planning services provided by a qualified investment advisor. As a result, such qualified retirement planning services may be provided on a salary-reduction basis.

Special rules.—The bill provides a delayed effective date for collectively bargained plans for the provisions of the bill relating to notices and diversification. In addition, if an employer-sponsored retirement plan must be amended as a result of the bill, the amendment is not required to be made before the first plan year beginning on or after January 1, 2005, provided certain requirements are met.

II. Other tax provisions relating to pensions

Amendments to Retirement Protection Act of 1994.—The bill modifies the special funding rule under the Retirement Protection Act of 1994 for plans sponsored by a company engaged primarily in interurban or interstate passenger bus service by making the rule permanent and treating the plan as meeting certain levels of funded.

Pension plan reporting simplification.—The bill directs the Secretary of the Treasury to provide an exemption from the annual return requirement for a plan that covers only the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), if the total value of the plan assets as of the end of the plan year does not exceed $250,000 and the plan meets certain other requirements. In addition, the Secretary of the Treasury and the Secretary of Labor are directed to provide simplified reporting requirements for plans with fewer than 25 employees.

Improvement of Employee Plans Compliance Resolution System.—The bill directs the Secretary of the Treasury to continue to update and improve EPCRS, giving special attention to (1) increasing the awareness and knowledge of small employers concerning the availability and use of EPCRS, (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures, (3) extending the duration of the self-correction period under SCP for significant compliance failures, (4) expanding the availability to correct insignificant compliance failures under SCP during audit, and (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure. The bill also clarifies the scope of the Secretary's authority with respect to EPCRS.

Flexibility in nondiscrimination, coverage, and line of business rules.—The bill directs the Secretary of the Treasury to modify the regulations dealing with line of business, nondiscrimination, and minimum coverage, so that plans may use facts and circumstances and prior-law tests to satisfy these rules.

Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans.—Under the bill, a plan maintained by any governmental entity is exempt from the nondiscrimination and minimum participation rules.

Notice and consent period regarding distributions.—Under the bill, a qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180 days before the date distribution commences. The Secretary of the Treasury is directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

Reduced PBGC premiums for small and new plans.—Under the bill the flat-rate PBGC premium is $5 per plan participant for the first five years of a new single-employer plan of an employer with 100 or fewer employees. The bill also provides that, for a new defined benefit plan, the variable-rate premium is phased in over a six-year period and, for a plan maintained by an employer with 25 or fewer employees, the variable-rate premium is no more than $5 multiplied by the number of plan participants at the end of the preceding year.

Authorization for PBGC to pay interest on premium overpayment refunds.—The bill allows the PBGC to pay interest on overpayments made by premium payors.

Rules for substantial owner benefits in terminated plans.—The bill reduces the phase-in periods for guaranteed benefits for a 10-percent or more owner ("substantial owner") in the case of plan termination. The bill also applies the allocation of asset rules to a substantial owner with less than 50 percent ownership in the same manner as other participants.

Studies.—The bill directs the Secretary of Labor to conduct studies regarding (1) possible new pension plan structures (and changes to existing structures) to improve pension plan coverage and (2) the effect of the bill and title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 on pension coverage.

Interest rate range for additional funding requirements.—The bill expands the special interest rate rule for determining additional plan contributions for 2002 and 2003 under section 405 of the Job Creation and Worker Assistance Act of 2002. Under the bill, the special rule applies in determining the amount of additional contributions for plan years beginning in 2001 to the extent of contributions that are required to be made within 8½ months after the end of the plan year.

Provisions relating to plan amendments.—Plan amendments required to be made as a result of the bill or title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 are not required to be made before the last day of the first plan year beginning on or after January 1, 2005 (January 1, 2007 in the case of a governmental plan), provided certain requirements are met. The bill also authorizes the Secretary of Treasury to provide appropriate exceptions to the relief from the prohibition on reductions in accrued benefits.

III. Stock options

Exclusion of incentive stock options and employee stock purchase plan stock options from wages.—The bill provides exclusions from wages for purposes of the Federal Insurance Contribution Act and the Federal Unemployment Tax Act for remuneration on account of the transfer of stock pursuant to the exercise of an incentive stock option or under an employee stock purchase plan, or any disposition of such stock. The bill also provides that Federal income tax withholding is not required on a disposition of stock acquired pursuant to the exercise of an incentive stock option or under an employee stock purchase plan.

IV. Social Security held harmless

No impact on Social Security trust funds.—The bill contains a provision to ensure that the income and balances of the Social Security trust funds are not reduced as a result of the bill.

B. Background and Need for Legislation

The provisions approved by the Committee will strengthen retirement income security by providing new protections for participants, facilitating the provision of retirement education, reducing regulatory burdens with respect to retirement plans, and providing certainty in the employment tax treatment of incentive stock options and employee stock purchase plans.

C. Legislative History

committee action

The Committee on Ways and Means marked up the provisions of the bill on March 14, 2002, and ordered the bill reported, as amended, on March 14, 2002, by a roll call vote of 36 yeas and 2 nays, with a quorum present.

II. EXPLANATION OF THE BILL

TITLE I: DEFINED CONTRIBUTION PLAN PROTECTIONS

A. EXCISE TAX ON FAILURE TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS

(Sec. 101 of the bill and new Code sec. 4980G)

PRESENT LAW

Present law does not require that participants be given specific information relating to investment education.

REASONS FOR CHANGE

Under some employer-sponsored retirement plans, participants are responsible for directing the investment of the assets in their accounts under the plan. Awareness of investment principles, including the need for diversification, is fundamental to making investment decisions consistent with long-term retirement income security. The Committee believes participants should be provided with investment education to enable them to make sound investment decisions.

EXPLANATION OF PROVISION

Under the provision, in the case of a plan that permits a participant to direct the investment of his or her account, or a plan (including a qualified defined benefit plan) under which a participant's accrued benefit depends on hypothetical investments directed by the participant, applicable individuals generally have to be provided with investment education notices on at least a quarterly basis and on enrollment in the plan.[1] Applicable individuals include plan participants, alternate payees under a qualified domestic relations order, and beneficiaries of a deceased participant or alternate payee. The notice requirement does not apply to one-person plans.[2]

The investment education notice is required to contain an explanation, for the long-term retirement security of participants and beneficiaries, of generally accepted investment principles, including risk management and diversification, and a discussion of the risk of holding substantial portions of a portfolio in securities of any one entity, such as employer securities.

The notice has to be written in a manner calculated to be understood by the average plan participant and provide sufficient information (as determined under Treasury guidance) to allow recipients to understand the notice. The notice is required to be in writ-

[1] The right to direct investments includes the right of an applicable individual in an employee stock ownership plan to direct the investment of a portion of his or her account under present law and the right of an applicable individual to direct the plan to divest the individual's account of employer securities as provided under another provision of the bill.

[2] A one-person plan is a plan that (1) on the first day of the plan year, covers only the employer (and the employer's spouse) and the employer owns the entire business (whether or not incorporated) or covers only one or more partners (and their spouses) in a business partnership, (2) meets the minimum coverage requirements without being combined with any other plan that covers employees of the business, (3) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses), (4) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of corporations under common control, and (5) does not cover a business that leases employees.

ing and can be provided in electronic or other form to the extent that such form is reasonably accessible to the applicable individual.

In the case of a failure to comply with the notice requirement, an excise tax of $100 for each applicable individual with respect to whom the failure occurred is generally imposed on the employer.[3] If the employer exercises reasonable diligence to meet the notice requirements, the total excise tax imposed during a taxable year will not exceed $500,000. No tax is imposed with respect to a failure if the employer exercises reasonable diligence to comply and the failure is corrected within 30 days. In the case of a failure due to reasonable cause and not to willful neglect, the Secretary of the Treasury is authorized to waive the excise tax to the extent that the payment of the tax would be excessive or otherwise inequitable relative to the failure involved.

EFFECTIVE DATE

The proposal is effective for plan years beginning after December 31, 2002. Within 120 days after the date of enactment (or by January 1, 2003, if earlier), the Secretary of the Treasury, in consultation with the Secretary of Labor, is required to issue guidance and model notices that comply with the new requirements.

B. EXCISE TAX ON FAILURE TO PROVIDE NOTICE TO PARTICIPANTS OF TRANSACTION RESTRICTION PERIODS

(Sec. 102 of the bill and new sec. 4980H of the Code)

PRESENT LAW

Present law does not require that participants be given advance notice of temporary periods during which the ability to direct investments or to obtain loans or distributions from the plan is restricted.

REASONS FOR CHANGE

In the course of normal plan operation, periods may occur during which a plan participant's ability to direct the investment of his or her account or obtain loans or distributions from the plan is restricted (a so-called "blackout" period). These periods usually occur in connection with administrative changes, such as a change in recordkeepers or in the investment options offered under a plan. Such a period may result also from changes in the plan in connection with a corporate transaction, such as a sale or merger. The Committee believes that plan participants should be given advance notice of such a period, before the period begins, in order to give participants the opportunity to prepare for any restrictions that will occur. For example, if the ability to direct investments will be restricted, a participant may wish to make investment changes before the restriction period begins.

EXPLANATION OF PROVISION

In general

Under the provision, a qualified retirement plan or annuity, a tax-sheltered annuity plan, or an eligible deferred compensation

[3] In the case of a multiemployer plan, the excise tax is imposed on the plan.

plan of a governmental employer is required to provide advance notice of a transaction restriction period to applicable individuals to whom the transaction restriction period applies. The notice must be provided to such individuals at least 30 days before the beginning of the transaction restriction period. Applicable individuals include plan participants, alternate payees under a qualified domestic relations order, and beneficiaries of a deceased participant or alternate payee.

The notice requirement applies to a plan that maintains accounts for participants or a plan (including a defined benefit plan) under which a participant's accrued benefit depends in whole or in part on hypothetical investments directed by the participant. The notice requirement does not apply to one-person plans.[4]

Definition of transaction restriction period

A transaction restriction period means a temporary or indefinite period of at least three consecutive days during which the rights otherwise provided under the plan to one or more applicable individuals to direct investments, or obtain loans or distributions from the plan, are substantially reduced (other than because of the application of securities laws or other circumstances specified in regulations). For this purpose, rights are treated as substantially reduced with respect to directing investments out of employer securities if rights are significantly restricted for at least three consecutive business days. In the case of a publicly-traded security, "business day" means any day on which the security may be traded on its principal market, and, in the case of a security that is not publicly traded, "business day" means any calendar day.

Whether an individual's right to direct investments or obtain loans or distributions from the plan is substantially reduced, or whether the right to direct investments out of employer securities is significantly restricted, is generally determined by reference to the normal rights and procedures provided under the plan. A variety of factors may be relevant in making this determination. For example, if, in connection with a change in plan recordkeepers, no investment directions, loans, or distributions can be executed over a three-day weekend (i.e., a Saturday, a Sunday, and a Monday that is a Federal holiday), then no transaction restriction period results if the participants would not, under the terms of the plan, have been able to engage in such transactions during that period in any event. In addition, if a plan provides that a participant's ability to make investment changes, or obtain a loan or a distribution, is limited for a certain period in connection with a qualified domestic relations order with respect to the participant's account, that limitation generally does not result in a transaction restriction period. Factors in addition to the time period involved may also be relevant. For example, suppose a plan offers a variety of investment options, including three options that have similar characteristics (e.g., similar risk and return characteristics). If the ability to transfer funds into only one of these options is restricted, this may not result in a transaction restriction period for purposes of the

[4] The term "one-person plan" is defined as under the provision of the bill relating to investment education notices (sec. 101 of the bill).

provision, because participants have the right to transfer funds into similar investment options.

Timing of notice

Notice of a transaction restriction period generally has to be provided at least 30 days before the beginning of the period. In the case of a transaction restriction period resulting from an unforeseeable event, the notice has to be provided as soon as reasonably practicable after the event.

If there is the possibility of a transaction restriction period in connection with a major corporate disposition by a corporation maintaining the plan, the notice must be provided at least 30 days before the date of the disposition unless the plan administrator has a substantial basis to believe that no transaction restriction period will occur. If notice is provided at least 30 days before the disposition, no other notice is required if the transaction restriction period begins within 30 days after the disposition. A "major corporate disposition" means the disposition of substantially all of the stock of the corporation, or a subsidiary thereof, or the disposition of substantially all of the assets used in a trade or business of the corporation or subsidiary. Similar rules apply in the case of an entity that is not a corporation.

It is intended that participants will be given the opportunity to execute investment changes with respect to their accounts, or obtain loans or distributions otherwise permitted under the plan, before the transaction restriction period begins.

Form of notice

Notice of a transaction restriction period has to be written in a manner calculated to be understood by the average plan participant and provide sufficient information (as determined under Treasury guidance) to allow the recipients to understand the timing and effect of the transaction restriction period. The notice is required to be provided in writing and can be provided in electronic or other form to the extent that such form is reasonably accessible to the applicable individual.

Excise tax

In the case of a failure to comply with the notice requirement, an excise tax of $100 for each applicable individual with respect to whom the failure occurred is generally imposed on the employer.[5] If the employer exercises reasonable diligence to meet the notice requirements, the total excise tax imposed during a taxable year will not exceed $500,000. No tax is imposed with respect to a failure if the employer exercises reasonable diligence to comply and the failure is corrected within 30 days (and before the beginning of the transaction restriction period). In the case of a failure due to reasonable cause and not to willful neglect, the Secretary of the Treasury is authorized to waive the excise tax to the extent that the payment of the tax would be excessive or otherwise inequitable relative to the failure involved.

[5] In the case of a multiemployer plan, the excise tax is imposed on the plan.

EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2002. The Secretary of the Treasury, in consultation with the Secretary of Labor, is required to issue guidance for carrying out the new notice requirements within 120 days after the date of enactment. Guidance concerning a reduction of rights relating to the direction of investments out of employer securities is required to be issued by November 1, 2002 (or within 60 days after the date of enactment, if later).

C. Diversification Requirements for Defined Contribution Plans that Hold Employer Securities

(Sec. 103 of the bill and new sec. 401(a)(35) of the Code)

PRESENT LAW

In general

Whether and the extent to which present law places limits on defined contribution plan investment in employer securities depends on the type of plan.

Diversification requirements applicable to employee stock ownership plans ("ESOPs")

Under the Internal Revenue Code, ESOPs are subject to a requirement that a participant who has attained age 55 and who has at least 10 years of participation in the plan must be permitted to diversify the investment of the participant's account in assets other than employer securities. The diversification requirement applies to a participant for six years, starting with the year in which the individual first meets the eligibility requirements (i.e., age 55 and 10 years of participation). The participant must be allowed to elect to diversify up to 25 percent of the participant's account (50 percent in the sixth year), reduced by the portion of the account diversified in prior years.

The participant must be given 90 days after the end of each plan year in the election period to make the election to diversify. In the case of participants who elect to diversify, the plan satisfies the diversification requirement if (1) the plan distributes the applicable amount to the participant within 90 days after the election period, (2) the plan offers at least three investment options (not inconsistent with Treasury regulations) and, within 90 days of the election period, invests the applicable amount in accordance with the participant's election, or (3) the applicable amount is transferred within 90 days of the election period to another qualified defined contribution plan of the employer providing investment options in accordance with (2).[6]

10-percent limit on the acquisition of employer securities

ERISA prohibits money purchase pension plans (other than certain plans in existence before the enactment of ERISA) from acquiring employer securities if, after the acquisition, more than 10 percent of the assets of the plan would be invested in employer

[6] Code sec. 401(a)(28); IRS Notice 88–56, 1988–1 CB 540, Q&A 16.

stock.[7] This 10-percent limitation does not apply to other types of defined contribution plans. Thus, most defined contribution plans, such as profit-sharing plans, stock bonus plans, and ESOPs, are not subject to any limit on the amount of employer securities that can be invested in employer securities. In addition, a fiduciary generally is deemed not to violate the requirement that plan assets be diversified with respect to the acquisition or holding of employer securities in such plans.[8]

Under ERISA, the 10-percent limitation on the acquisition of employer securities, described above, applies separately to the portion of a plan consisting of elective deferrals (and earnings thereon) if any portion of an individual's elective deferrals (or earnings thereon) are required to be invested in employer securities pursuant to plan terms or the direction of a person other than the participant. This restriction does not apply if (1) the amount of elective deferrals required to be invested in employer securities does not exceed more than one percent of any employee's compensation, (2) the fair market value of all defined contribution plans maintained by the employer is no more than 10-percent of the fair market value of all retirement plans of the employer, or (3) the plan is an ESOP.

REASONS FOR CHANGE

The Committee understands that employer securities are one possible investment for defined contribution plans. In some cases, the plan may offer employer securities as one of several investment options made available to plan participants. In other cases, the plan may provide that certain contributions are invested in employer securities. For example, many plans provide that employer matching contributions with respect to employee elective deferrals under a qualified cash or deferred arrangement are to be invested in employer securities.

Present law has facilitated and encouraged the acquisition of employer securities by qualified plans, particularly in the case of ESOPs. Thus, for example, present law provides that the dividends paid on employer securities held by an ESOP are deductible under certain circumstances and also allows an ESOP to borrow to acquire the employer securities. Present law recognizes that employer securities can be a profitable investment for employees as well as a corporate financing tool for employers. Employees who hold employer securities through a defined contribution plan often feel that they have a stake in the business, leading to increased profitability.

On the other hand, the Committee recognizes that diversification of assets is a basic principle of sound investment policy and that requiring that certain contributions be invested in employer securities may create tension with the objectives of diversification. Failure to appropriately diversify defined contribution plan investments may jeopardize retirement security.

The Committee believes that allowing participants greater opportunity to diversify plan investments in employer stock will help participants achieve their retirement security goals, while continuing to allow employers and employees the freedom to choose their own investments. Thus, the Committee bill requires defined

[7] This 10-percent limitation also applies to defined benefit plans.
[8] Under ERISA, plans that are not subject to the 10-percent limitation on the acquisition of employer securities are referred to as "eligible individual account plans."

contribution plans that hold employer securities that are publicly traded to permit qualified plan participants to direct the plan to reinvest employer securities in other assets. The Committee bill generally requires diversification in accordance with the present-law rules regarding vesting.

The Committee believes that the current role of ESOPs should be preserved; thus, the bill does not apply additional diversification requirements to "stand alone" ESOPs, meaning ESOPs that do not hold elective deferrals and related contributions. Again, the Committee believes this strikes an appropriate balance between the principle of diversification and the goals served by ESOPs. For example, some ESOPs hold a controlling interest in the employer.

EXPLANATION OF PROVISION

In general

Under the bill, defined contribution plans that hold employer securities that are readily tradable on an established securities market are required to permit applicable individuals to direct that the applicable percentage of employer securities in the individual's account be invested in alternative investments. In order to satisfy this diversification requirement, applicable individuals must be given a choice of at least three investment options (not inconsistent with regulations prescribed by the Secretary) other than employer securities. In addition, applicable individuals must be given the right to direct the reinvestment of employer securities in alternative investments not less frequently than quarterly. The definition of applicable individual and applicable percentage depends on the type of contribution involved. In all cases, the election applies only to the extent that the amount attributable to the applicable percentage exceeds the amount to which a prior election under the ESOP diversification rules or under the provision applies.[9]

The diversification requirement does not apply to an ESOP unless the ESOP holds elective deferrals, employee after-tax contributions, matching contributions, or other contributions used to satisfy the special nondiscrimination tests for elective deferrals (i.e., qualified nonelective contributions and nonelective contributions under safe harbor plans). The present-law ESOP diversification rules do not apply to employer securities which are readily tradable on an established securities market and subject to the requirements of the bill.

Elective deferrals and other employee contributions

In the case of elective deferrals under a qualified cash or deferred arrangement and employee after-tax contributions, an applicable individual means (1) any plan participant, (2) any beneficiary who is an alternate payee under a qualified domestic relations order, and (3) any beneficiary of a deceased participant or alternate payee.

With respect to elective deferrals (and earnings thereon) treated as a separate plan for purposes of the ERISA 10-percent limitation

[9] As under the present-law ESOP diversification rules, it is intended that the portion of a plan that is diversified pursuant to the provision would not be considered to be part of the ESOP and therefore generally would not be subject to the rules applicable to ESOPs. This same principle applies to the extent the employer provides for more diversification than required under the bill.

on the acquisition of employer securities, the applicable percentage is 100 percent.[10] With respect to other elective deferrals and employee contributions (and earnings thereon), the applicable percentage is as follows:

TABLE 1.—APPLICABLE PERCENTAGE FOR ELECTIVE DEFERRALS NOT TREATED AS SEPARATE PLAN UNDER ERISA

Plan years beginning in	Applicable percentage
2003	Greater of amount that would be required under present-law ESOP diversification rule or 20 percent.
2004	Greater of amount that would be required under present-law ESOP diversification rule or 40 percent.
2005	60 percent.
2006	80 percent.
2007 or thereafter	100 percent.

Matching and other contributions taken into account in applying nondiscrimination rules applicable to elective deferrals

In the case of matching contributions and employer contributions used to satisfy the special nondiscrimination test applicable to elective deferrals (i.e., qualified nonelective contributions and nonelective contributions under the section 401(k) safe harbor rules), an applicable individual is (1) any plan participant with three years of service,[11] (2) any beneficiary with respect to a participant described in (1) who is an alternate payee under a qualified domestic relations order, and (3) any beneficiary of a deceased participant described in (1) or alternate payee described in (2).

With respect to such matching contributions and contributions used to satisfy the special nondiscrimination test applicable to elective deferrals that are not part of an ESOP, the applicable percentage is as follows:

TABLE 2.—APPLICABLE PERCENTAGE FOR MATCHING AND OTHER CONTRIBUTIONS USED TO SATISFY 401(k) NONDISCRIMINATION RULES THAT ARE NOT PART OF AN ESOP

Plan years beginning in	Applicable percentage
2003	20
2004	40
2005	60
2006	80
2007 and thereafter	100

In the case of matching contributions and other contributions used to satisfy the special section 401(k) nondiscrimination rules that are part of an ESOP, the applicable percentage is the same as in Table 2 above, except that for plan years beginning in 2003 and 2004, the applicable percentage is not less than the amount required under the present-law ESOP diversification requirement.

[10] The determination of whether elective deferrals are treated as a separate plan and thus are subject to the 100 percent diversification rule (rather than the phase-in) is made on the date of enactment, and applies to all employer securities held by the plan, whether acquired on or after the date of enactment.

[11] Years of service are defined as under the rules relating to vesting (sec. 411(a)).

Other employer contributions

In the case of employer contributions other than those described above (i.e., contributions unrelated to employee elective deferrals or employee contributions) an applicable individual is (1) any plan participant with five years of service,[12] (2) any beneficiary with respect to a participant described in (1) who is an alternate payee under a qualified domestic relations order, and (3) any beneficiary of a deceased participant described in (1) or alternate payee described in (2).

The applicable percentage for such contributions is the same as for matching contributions. Thus, in the case of contributions that are not part of an ESOP, the applicable percentage is as described in Table 2. In addition, in the case of such contributions that are part of an ESOP, the applicable percentage would be as described in Table 2, except that for plan years beginning in 2003 and 2004, the applicable percentage is not less than the amount required under the present-law ESOP diversification requirement.

EFFECTIVE DATE

The provision generally is effective with respect to plan years beginning after December 31, 2002. The provision does not apply to employer securities held by an ESOP that are not subject to the present-law diversification requirement, i.e., the provision does not apply to stock acquired before January 1, 1987.

D. EMPLOYER-PROVIDED QUALIFIED RETIREMENT PLANNING SERVICES

(Sec. 104 of the bill and sec. 132 of the Code)

PRESENT LAW

Under present law, certain employer-provided fringe benefits are excludable from gross income and wages for employment tax purposes.[13] These excludable fringe benefits include qualified retirement planning services provided to an employee and his or her spouse by an employer maintaining a qualified employer plan. A qualified employer plan includes a qualified retirement plan or annuity, a tax-sheltered annuity, a simplified employee pension, a SIMPLE retirement account, or a governmental plan, including an eligible deferred compensation plan maintained by a governmental employer.

Qualified retirement planning services are retirement planning advice and information. The exclusion is not limited to information regarding the qualified employer plan, and, thus, for example, applies to advice and information regarding retirement income planning for an individual and his or her spouse and how the employer's plan fits into the individual's overall retirement income plan. On the other hand, the exclusion does not apply to services that may be related to retirement planning, such as tax preparation, accounting, legal or brokerage services.

The exclusion does not apply with respect to highly compensated employees unless the services are available on substantially the

[12] Years of service are defined as under the rules relating to vesting (sec. 411(a)).
[13] Secs. 132 and 3121(a)(20).

same terms to each member of the group of employees normally provided education and information regarding the employer's qualified plan.

REASONS FOR CHANGE

The Committee believes that it is important for all employees to have access to retirement planning advice and information. In order to plan adequately for retirement, individuals must anticipate retirement income needs and understand how their retirement income goals can be achieved. The Committee believes that allowing employees to purchase qualified retirement planning services on a salary-reduction basis will help many more employees obtain advice and assistance when making retirement decisions.

EXPLANATION OF PROVISION

The provision permits employers to offer employees a choice between cash compensation and eligible qualified retirement planning services. The provision only applies to qualified retirement planning services provided by a qualified investment advisor. It is intended that qualified investment advisors will be certified and regulated under applicable laws and regulations. In addition, qualified investment advisors also include investment advisors within a financial institution's trust or custody department chartered under the National Bank Act.[14] As under present law, the provision applies only to amounts for retirement planning advice and information and does not apply to services that may be related to retirement planning, such as tax preparation, accounting, legal or brokerage services.

Under the provision, no amount is includible in gross income or wages merely because the employee is offered the choice of cash in lieu of eligible qualified retirement planning services. Also, no amount is includible in income or wages merely because the employee is offered a choice among eligible qualified retirement planning services. The amount of cash offered is includible in income and wages only to the extent the employee elects cash. The exclusion does not apply to highly compensated employees unless the salary reduction option is available on substantially the same terms to all employees normally provided education and information about the plan.

Under the provision, salary reduction amounts used to provide eligible qualified retirement planning services are generally treated for pension plan purposes the same as other salary reduction contributions. Thus, such amounts are included for purposes of applying the limits on contributions and benefits, and an employer is able to elect whether or not to include such amounts in compensation for nondiscrimination testing.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2002.

[14] 14 12 U.S.C. 92(a).

E. Special Rules

(Sec. 105 of the bill)

PRESENT LAW

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

REASONS FOR CHANGE

The Committee believes it appropriate to delay the effective date of certain provisions of the bill for collectively bargained plans in order to accommodate the collective bargaining process. In addition, the Committee believes it is appropriate to allow additional time for the making of plan amendments, provided the plan complies with applicable provisions.

EXPLANATION OF PROVISION

Delayed effective date for collectively bargained plans

The provision provides a delayed effective date for collectively bargained plans for certain provisions relating to retirement savings. Under the provision, in the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of enactment, the amendments made by provisions relating to notices and diversification are applied beginning with the first plan year beginning on or after the earlier of:

(1) The later of: (a) January 1, 2004, or (b) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of enactment), or

(2) January 1, 2005.

Time for making plan amendments

If any of the provisions of the bill relating to defined contribution plan protections require an amendment to the plan, such plan amendment is not required to be made before the first plan year beginning on or after January 1, 2005, if, during the period after the provisions of the proposal take effect and before such first plan year, the plan is operated in accordance with the provisions of the bill and the plan amendment applies retroactively.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE II: OTHER TAX PROVISIONS RELATING TO PENSIONS

A. Amendments to Retirement Protection Act of 1994

(Sec. 201 of the bill and sec. 412 of the Code)

PRESENT LAW

Under present law, defined benefit pension plans are required to meet certain minimum funding rules. In some cases, additional contributions are required if a defined benefit pension plan is underfunded. Additional contributions generally are not required in the case of a plan with a funded current liability percentage of at least 90 percent. A plan's funded current liability percentage is the value of plan assets as a percentage of current liability. In general, a plan's current liability means all liabilities to employees and their beneficiaries under the plan. Quarterly minimum funding contributions are required in the case of certain underfunded plans.

The Pension Benefit Guaranty Corporation ("PBGC") insures benefits under most defined benefit pension plans in the event the plan is terminated with insufficient assets to pay for plan benefits. The PBGC is funded in part by a flat-rate premium per plan participant, and a variable rate premium based on plan underfunding.

Under present law, a special rule modifies the minimum funding requirements in the case of certain plans. The special rule applies in the case of plans that (1) were not required to pay a variable rate PBGC premium for the plan year beginning in 1996, (2) do not, in plan years beginning after 1995 and before 2009, merge with another plan (other than a plan sponsored by an employer that was a member of the controlled group of the employer in 1996), and (3) are sponsored by a company that is engaged primarily in interurban or interstate passenger bus service.

The special rule treats a plan to which it applies as having a funded current liability percentage of at least 90 percent for plan years beginning after 1996 and before 2005 if for such plan year the funded current liability percentage is at least 85 percent. If the funded current liability of the plan is less than 85 percent for any plan year beginning after 1996 and before 2005, the relief from the minimum funding requirements applies only if certain specified contributions are made.

For plan years beginning after 2004 and before 2010, the funded current liability percentage will be deemed to be at least 90 percent if the actual funded current liability percentage is at least at certain specified levels.

The relief from the minimum funding requirements applies for the plan year beginning in 2005, 2006, 2007, and 2008 only if contributions to the plan equal at least the expected increase in current liability due to benefits accruing during the plan year.

REASONS FOR CHANGE

The present-law funding rules for plans maintained by certain interstate bus companies were enacted because the generally applicable funding rules required greater contributions for such plans than were warranted give the special characteristics of such plans. In particular, these plans are closed to new participants and have demonstrated mortality significantly greater than that predicted under mortality tables that the plans would otherwise be required to use for minimum funding purposes. The Committee believes that further changes to the special minimum funding rules for such plans are appropriate to ensure that a suitable level of funding for such plans is maintained.

EXPLANATION OF PROVISION

The provision modifies the special funding rule for plans sponsored by a company engaged primarily in interurban or interstate passenger bus service by making the rule permanent.

In addition, the provision modifies the rule by providing that (1) the funded current liability percentage of a plan to which the rule applies is treated as not less than 90 percent for purposes of the minimum funding rules applicable to underfunded plans, and (2) the funded current liability percentage of a plan to which the rule applies is treated as not less than 100 percent for purposes of the quarterly contribution requirement.

EFFECTIVE DATE

The provision is effective with respect to plan years beginning after December 31, 2001.

B. Pension Plan Reporting Simplification

(Sec. 202 of the bill)

PRESENT LAW

A plan administrator of a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation generally must file with the Secretary of the Treasury an annual return for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. Title I of ERISA also may require the plan administrator to file annual reports concerning the plan with the Department of Labor and the Pension Benefit Guaranty Corporation ("PBGC"). The plan administrator must use the Form 5500 series as the format for the required annual return.[15] The Form 5500 series annual return/report, which consists of a primary form and various schedules, includes the information required to be filed with all three agencies. The plan administrator satisfies the reporting requirement with respect to each agency by filing the Form 5500 series annual return/report with the Department of Labor, which forwards the form to the Internal Revenue Service and the PBGC.

The Form 5500 series consists of 2 different forms: Form 5500 and Form 5500–EZ. Form 5500 is the more comprehensive of the forms and requires the most detailed financial information. A plan administrator generally may file Form 5500–EZ, which consists of only one page, if (1) the only participants in the plan are the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), (2) the plan is not aggregated with another plan in order to satisfy the minimum coverage requirements of section 410(b), (3) the employer is not a member of a related group of employers, and (4) the employer does not receive the services of leased employees. If the plan satisfies the eligibility requirements for Form 5500–EZ and the total value of the plan assets as of the end of the plan year and all prior plan years beginning on or after January 1, 1994, does not exceed $100,000, the plan administrator is not required to file a return.

With respect to a plan that does not satisfy the eligibility requirements for Form 5500–EZ, the characteristics and the size of the plan determine the amount of detailed financial information that the plan administrator must provide on Form 5500. If the plan

[15] Treas. Reg. sec. 301.6058–1(a).

has more than 100 participants at the beginning of the plan year, the plan administrator generally must provide more information.

REASONS FOR CHANGE

The Committee believes that simplification of the reporting requirements applicable to plans of small employers will encourage such employers to provide retirement benefits for their employees.

EXPLANATION OF PROVISION

The Secretary of the Treasury and the Secretary of Labor are directed to modify the annual return filing requirements with respect to plans that satisfy the eligibility requirements for Form 5500–EZ (referred to as a "one-participant plan") to provide that if the total value of the plan assets of such a plan as of the end of the plan year does not exceed $250,000, the plan administrator is not required to file a return. In addition, the provision directs the Secretary of the Treasury and the Secretary of Labor to provide simplified reporting requirements for plan years beginning after December 31, 2003, for certain plans with fewer than 25 employees.

EFFECTIVE DATE

The provision relating to one-participant plans is effective for plans beginning on or after January 1, 2002. The provision relating to simplified reporting for plans with fewer than 25 employees is effective on the date of enactment.

C. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM

(Sec. 203 of the bill)

PRESENT LAW

A retirement plan that is intended to be a tax-qualified plan provides retirement benefits on a tax-favored basis if the plan satisfies all of the requirements of section 401(a). Similarly, an annuity that is intended to be a tax-sheltered annuity provides retirement benefits on a tax-favored basis if the program satisfies all of the requirements of section 403(b). Failure to satisfy all of the applicable requirements of section 401(a) or section 403(b) may disqualify a plan or annuity for the intended tax-favored treatment.

The Internal Revenue Service ("IRS") has established the Employee Plans Compliance Resolution System ("EPCRS"), which is a comprehensive system of correction programs for sponsors of retirement plans and annuities that are intended, but have failed, to satisfy the requirements of section 401(a), section 403(a), or section 403(b), as applicable.[16] EPCRS permits employers to correct compliance failures and continue to provide their employees with retirement benefits on a tax-favored basis.

The IRS has designed EPCRS to (1) encourage operational and formal compliance, (2) promote voluntary and timely correction of compliance failures, (3) provide sanctions for compliance failures identified on audit that are reasonable in light of the nature, extent, and severity of the violation, (4) provide consistent and uni-

[16] Rev. Proc. 2001–17, 2001–7 I.R.B. 589.

form administration of the correction programs, and (5) permit employers to rely on the availability of EPCRS in taking corrective actions to maintain the tax-favored status of their retirement plans and annuities.

The basic elements of the programs that comprise EPCRS are self-correction, voluntary correction with IRS approval, and correction on audit. The Self-Correction Program ("SCP") generally permits a plan sponsor that has established compliance practices to correct certain insignificant failures at any time (including during an audit), and certain significant failures within a 2-year period, without payment of any fee or sanction. The Voluntary Correction Program ("VCP") program permits an employer, at any time before an audit, to pay a limited fee and receive IRS approval of a correction. For a failure that is discovered on audit and corrected, the Audit Closing Agreement Program ("Audit CAP") provides for a sanction that bears a reasonable relationship to the nature, extent, and severity of the failure and that takes into account the extent to which correction occurred before audit.

The IRS has expressed its intent that EPCRS will be updated and improved periodically in light of experience and comments from those who use it.

REASONS FOR CHANGE

The Committee commends the IRS for the establishment of EPCRS and agrees with the IRS that EPCRS should be updated and improved periodically. The Committee believes that future improvements should facilitate use of the compliance and correction programs by small employers and expand the flexibility of the programs.

EXPLANATION OF PROVISION

The Secretary of the Treasury is directed to continue to update and improve EPCRS, giving special attention to (1) increasing the awareness and knowledge of small employers concerning the availability and use of EPCRS, (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures, (3) extending the duration of the self-correction period under SCP for significant compliance failures, (4) expanding the availability to correct insignificant compliance failures under SCP during audit, and (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

The provision clarifies that the Secretary has the full authority to effectuate the foregoing with respect to EPCRS (or similar program or policies), including the authority to waive income, excise or other taxes to ensure that any tax, penalty or sanction is not excessive and bears a reasonable relationship to the nature, extent and severity of the failure.

EFFECTIVE DATE

The provision is effective on the date of enactment.

D. Flexibility in Nondiscrimination, Coverage, and Line of Business Rules

(Sec. 204 of the bill and secs. 401(a)(4), 410(b) and 414(r) of the Code)

PRESENT LAW

A plan is not a qualified retirement plan if the contributions or benefits provided under the plan discriminate in favor of highly compensated employees (sec. 401(a)(4)). The applicable Treasury regulations set forth the exclusive rules for determining whether a plan satisfies the nondiscrimination requirement. These regulations state that the form of the plan and the effect of the plan in operation determine whether the plan is nondiscriminatory and that intent is irrelevant.

Similarly, a plan is not a qualified retirement plan if the plan does not benefit a minimum number of employees (sec. 410(b)). A plan satisfies this minimum coverage requirement if and only if it satisfies one of the tests specified in the applicable Treasury regulations. If an employer is treated as operating separate lines of business, the employer may apply the minimum coverage requirements to a plan separately with respect to the employees in each separate line of business (sec. 414(r)). Under a so-called "gateway" requirement, however, the plan must benefit a classification of employees that does not discriminate in favor of highly compensated employees in order for the employer to apply the minimum coverage requirements separately for the employees in each separate line of business. A plan satisfies this gateway requirement only if it satisfies one of the tests specified in the applicable Treasury regulations.

REASONS FOR CHANGE

It has been brought to the attention of the Committee that some plans are unable to satisfy the mechanical tests used to determine compliance with the nondiscrimination and line of business requirements solely as a result of relatively minor plan provisions. The Committee believes that, in such cases, it may be appropriate to expand the consideration of facts and circumstances in the application of the mechanical tests.

EXPLANATION OF PROVISION

The Secretary of the Treasury is directed to modify, on or before December 31, 2003, the existing regulations issued under section 414(r) in order to expand (to the extent that the Secretary may determine to be appropriate) the ability of a plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

The Secretary of the Treasury is directed to provide by regulation applicable to years beginning after December 31, 2003, that a plan is deemed to satisfy the nondiscrimination requirements of section 401(a)(4) if the plan satisfied the pre-1994 facts and circumstances test, satisfied the conditions prescribed by the Secretary to appropriately limit the availability of such test, and is submitted to the

Secretary for a determination of whether it satisfies such test (to the extent provided by the Secretary).

Similarly, a plan will comply with the minimum coverage requirement of section 410(b) if the plan satisfied the pre-1989 coverage rules, is submitted to the Secretary for a determination of whether it satisfied the pre-1989 coverage rules (to the extent provided by the Secretary), and satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of the pre-1989 coverage rules.

EFFECTIVE DATE

The provision relating to the line of business requirements under section 414(r) is effective on the date of enactment. The provision relating to the nondiscrimination requirements under section 401(a)(4) is effective on the date of enactment, except that any condition of availability prescribed by the Secretary will not be effective before the first year beginning not less than 120 days after the date on which such condition is prescribed. The provision relating to the minimum coverage requirements under section 410(b) is effective for years beginning after December 31, 2003, except that any condition of availability prescribed by the Secretary by regulation will not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

E. Extension to All Governmental Plans of Moratorium on Application of Certain Nondiscrimination Rules Applicable to State and Local Government Plans

(Sec. 205 of the bill, sec. 1505 of the Taxpayer Relief Act of 1997, and secs. 401(a) and 401(k) of the Code)

PRESENT LAW

A qualified retirement plan maintained by a State or local government is exempt from the rules concerning nondiscrimination (sec. 401(a)(4)) and minimum participation (sec. 401(a)(26)). All other governmental plans are not exempt from the nondiscrimination and minimum participation rules.

REASONS FOR CHANGE

The Committee believes that application of the nondiscrimination and minimum participation rules to governmental plans is unnecessary and inappropriate in light of the unique circumstances under which such plans and organizations operate. Further, the Committee believes that it is appropriate to provide for consistent application of the minimum coverage, nondiscrimination, and minimum participation rules for governmental plans.

EXPLANATION OF PROVISION

The provision exempts all governmental plans (as defined in sec. 414(d)) from the nondiscrimination and minimum participation rules.

EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2002.

F. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS

(SEC. 206 OF THE BILL AND SEC. 417 OF THE CODE)

PRESENT LAW

Notice and consent requirements apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution, and to whether the plan must obtain the participant's consent to the distribution. The nature and extent of the notice and consent requirements applicable to a distribution depend upon the value of the participant's vested accrued benefit and whether the joint and survivor annuity requirements (sec. 417) apply to the participant.

If the present value of the participant's vested accrued benefit exceeds $5,000, the plan may not distribute the participant's benefit without the written consent of the participant. The participant's consent to a distribution is not valid unless the participant has received from the plan a notice that contains a written explanation of (1) the material features and the relative values of the optional forms of benefit available under the plan, (2) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (3) the rules concerning the taxation of a distribution. If the joint and survivor annuity requirements apply to the participant, this notice also must contain a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity ("QJSA"), (2) the participant's right to make, and the effect of, an election to waive the QJSA, (3) the rights of the participant's spouse with respect to a participant's waiver of the QJSA, and (4) the right to make, and the effect of, a revocation of a waiver of the QJSA. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

If the participant's vested accrued benefit does not exceed $5,000, the terms of the plan may provide for distribution without the participant's consent. The plan generally is required, however, to provide to the participant a notice that contains a written explanation of (1) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (2) the rules concerning the taxation of a distribution. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

REASONS FOR CHANGE

The Committee understands that an employee is not always able to evaluate distribution alternatives, select the most appropriate alternative, and notify the plan of the selection within a 90-day period. The Committee believes that requiring a plan to furnish multiple distribution notices to an employee who does not make a distribution election within 90 days is administratively burdensome. In addition, the Committee believes that participants who are entitled to defer distributions should be informed of the impact of a decision not to defer distribution on the taxation and accumulation of their retirement benefits.

EXPLANATION OF PROVISION

Under the provision, a qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180 days before the date distribution commences. The Secretary of the Treasury is directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt. In the case of a description of such consequences that is made before the date 90 days after the date on which the Secretary of the Treasury issues a safe harbor description, the plan administrator will be required to make a reasonable attempt to comply with the requirements of the provision.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2002.

G. Reduced PBGC Premiums for Small and New Plans

(Secs. 207–208 of the bill and sec. 4006 of ERISA)

PRESENT LAW

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premium payments from employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable-rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets, reduced by any credit balance in the funding standard account. No variable-rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than five years, and with respect to benefit increases from a plan amendment that was in effect for less than five years before termination of the plan.

REASONS FOR CHANGE

The Committee believes that reducing the PBGC premiums for new plans and small plans will help encourage the establishment of defined benefit pension plans, particularly by small employers.

EXPLANATION OF PROVISION

Reduced flat-rate premiums for new plans of small employers

Under the provision, for the first five plan years of a new single-employer plan of a small employer, the flat-rate PBGC premium is $5 per plan participant.

A small employer would be a contributing sponsor that, on the first day of the plan year, has 100 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor are to be taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are to be taken into account in determining whether the plan was a plan of a small employer.

A new plan means a defined benefit plan maintained by a contributing sponsor if, during the 36-month period ending on the date of adoption of the plan, such contributing sponsor (or controlled group member or a predecessor of either) has not established or maintained a plan subject to PBGC coverage with respect to which benefits were accrued for substantially the same employees as in the new plan.

Reduced variable-rate PBGC premium for new plans

The provision provides that the variable-rate premium is phased in for new defined benefit plans over a six-year period starting with the plan's first plan year. The amount of the variable-rate premium is a percentage of the variable premium otherwise due, as follows: zero percent of the otherwise applicable variable-rate premium in the first plan year; 20 percent in the second plan year; 40 percent in the third plan year; 60 percent in the fourth plan year; 80 percent in the fifth plan year; and 100 percent in the sixth plan year (and thereafter).

A new defined benefit plan is defined as described above under the flat-rate premium provision of the provision relating to new small employer plans.

Reduced variable-rate PBGC premium for small plans

In the case of a plan of a small employer, the variable-rate premium is no more than $5 multiplied by the number of plan participants in the plan at the end of the preceding plan year. For purposes of the provision, a small employer is a contributing sponsor that, on the first day of the plan year, has 25 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor are to be taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributed, employees of all contributing sponsors (and their controlled group members) are to be taken into account in determining whether the plan was a plan of a small employer.

EFFECTIVE DATE

The reduction of the flat-rate premium for new plans of small employers and the reduction of the variable-rate premium for new plans is effective with respect to plans established after December 31, 2001. The reduction of the variable-rate premium for small plans is effective with respect to plan years beginning after December 31, 2002.

H. Authorization for PBGC To Pay Interest on Premium Overpayment Refunds

(Sec. 209 of the bill and sec. 4007(b) of ERISA)

PRESENT LAW

The PBGC charges interest on underpayments of premiums, but is not authorized to pay interest on overpayments.

REASONS FOR CHANGE

The Committee believes that an employer or other person who overpays PBGC premiums should receive interest on a refund of the overpayment.

EXPLANATION OF PROVISION

The provision allows the PBGC to pay interest on overpayments made by premium payors. Interest paid on overpayments is to be calculated at the same rate and in the same manner as interest charged on premium underpayments.

EFFECTIVE DATE

The provision is effective with respect to interest accruing for periods beginning not earlier than the date of enactment.

I. Rules for Substantial Owner Benefits in Terminated Plans

(Sec. 210 of the bill and secs. 4021, 4022, 4043 and 4044 of ERISA)

PRESENT LAW

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides participants and beneficiaries in a defined benefit pension plan with certain minimal guarantees as to the receipt of benefits under the plan in case of plan termination. The employer sponsoring the defined benefit pension plan is required to pay premiums to the PBGC to provide insurance for the guaranteed benefits. In general, the PBGC will guarantee all basic benefits which are payable in periodic installments for the life (or lives) of the participant and his or her beneficiaries and are non-forfeitable at the time of plan termination. The amount of the guaranteed benefit is subject to certain limitations. One limitation is that the plan (or an amendment to the plan which increases benefits) must be in effect for 60 months before termination for the PBGC to guarantee the full amount of basic benefits for a plan participant, other than a substantial owner. In the case of a substantial owner, the guaranteed basic benefit is phased in over 30 years beginning with participation in the plan. A substantial owner is one who owns, directly or indirectly, more than 10 percent of the voting stock of a corporation or all the stock of a corporation. Special rules restricting the amount of benefit guaranteed and the allocation of assets also apply to substantial owners.

REASONS FOR CHANGE

The Committee believes that the present-law rules concerning limitations on guaranteed benefits for substantial owners are overly complicated and restrictive and thus may discourage some small business owners from establishing defined benefit pension plans.

EXPLANATION OF PROVISION

The provision provides that the 60-month phase-in of guaranteed benefits applies to a substantial owner with less than 50 percent ownership interest. For a substantial owner with a 50 percent or more ownership interest ("majority owner"), the phase-in occurs over a 10-year period and depends on the number of years the plan has been in effect. The majority owner's guaranteed benefit is limited so that it cannot be more than the amount phased in over 60 months for other participants. The rules regarding allocation of assets applies to substantial owners, other than majority owners, in the same manner as other participants.

EFFECTIVE DATE

The provision is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2002.

J. STUDIES

(Sec. 211 of the bill)

PRESENT LAW

No provision.

REASONS FOR CHANGE

The Committee believes it is appropriate to conduct a study of new arrangements that might encourage small employers to adopt pension plans and a study of the effect of recent legislation on coverage.

EXPLANATION OF PROVISION

Study on small employer group plans

The provision directs the Secretary of Labor, in consultation with the Secretary of the Treasury, to conduct a study to determine (1) the most appropriate form(s) of pension plans that would be simple to create and easy to maintain by multiple small employers, while providing ready portability of benefits for all participants and beneficiaries, (2) how such arrangements could be established by employer or employee associations, (3) how such arrangements could provide for employees to contribute independent of employer sponsorship, and (4) appropriate methods and strategies for making such pension plan coverage more widely available to American workers.

The Secretary of Labor is required to consider the adequacy and availability of existing pension plans and the extent to which existing models may be modified to be more accessible to both employees and employers. The Secretary of Labor is required to issue a report within 18 months, including recommendations for one or more model plans or arrangements as described above which may serve as the basis for appropriate administrative or legislative action.

Study on effect of legislation

The provision also directs the Secretary of Labor to report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate regarding the effect of the bill and title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("the 2001 Act") on pension coverage, including any change in the extent of pension plan coverage for low and middle-income workers, the levels of pension plan benefits generally, the quality of pension plan coverage generally, workers' access to and participation in pension plans, and retirement security. This report is required to be submitted no later than five years after the date of enactment.

EFFECTIVE DATE

The provision is effective on the date of enactment.

K. INTEREST RATE RANGE FOR ADDITIONAL FUNDING REQUIREMENTS

(Sec. 212 of the bill and sec. 412(l) of the Code)

PRESENT LAW

In general

ERISA and the Code impose both minimum and maximum [17] funding requirements with respect to defined benefit pension plans. The minimum funding requirements are designed to provide at least a certain level of benefit security by requiring the employer to make certain minimum contributions to the plan. The amount of contributions required for a plan year is generally the amount needed to fund benefits earned during that year plus that year's portion of other liabilities that are amortized over a period of years, such as benefits resulting from a grant of past service credit.

Additional contributions for underfunded plans

Additional contributions are required under a special funding rule if a single-employer defined benefit pension plan is underfunded.[18] Under the special rule, a plan is considered underfunded for a plan year if the value of the plan assets is less than 90 percent of the plan's current liability.[19] The value of plan assets as a percentage of current liability is the plan's "funded current liability percentage."

[17] The maximum funding requirement for a defined benefit plan is referred to as the full funding limitation. Additional contributions are not required if a plan has reached the full funding limitation.

[18] Plans with no more than 100 participants on any day in the preceding plan year are not subject to the special funding rule. Plans with more than 100 but not more than 150 participants are generally subject to lower contribution requirements under the special funding rule.

[19] Under an alternative test, a plan is not considered underfunded if (1) the value of the plan assets is at least 80 percent of current liability and (2) the value of the plan assets was at least 90 percent of current liability for each of the two immediately preceding years or each of the second and third immediately preceding years.

If a plan is underfunded, the amount of additional required contributions is based on certain elements, including whether the plan has an unfunded liability related to benefits accrued before 1988 or 1995 or to changes in the mortality table used to determine contributions, and whether the plan provides for unpredictable contingent event benefits (that is, benefits that depend on contingencies that are not reliably and reasonably predictable, such as facility shutdowns or reductions in workforce). However, the amount of additional contributions cannot exceed the amount needed to increase the plan's funded current liability percentage to 100 percent.

Required interest rate

In general, a plan's current liability means all liabilities to employees and their beneficiaries under the plan. The interest rate used to determine a plan's current liability must be within a permissible range of the weighted average of the interest rates on 30-year Treasury securities for the four-year period ending on the last day before the plan year begins.[20] The permissible range is from 90 percent to 105 percent. As a result of debt reduction, the Department of the Treasury does not currently issue 30-year Treasury securities.

Timing of plan contributions

In general, plan contributions required to satisfy the funding rules must be made within 8½ months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year.

In the case of a plan with a funded current liability percentage of less than 100 percent for the preceding plan year, estimated contributions for the current plan year must be made in quarterly installments during the current plan year. The amount of each required installment is 25 percent of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year.[21]

PBGC premiums

Because benefits under a defined benefit pension plan may be funded over a period of years, plan assets may not be sufficient to provide the benefits owed under the plan to employees and their beneficiaries if the plan terminates before all benefits are paid. In order to protect employees and their beneficiaries, the Pension Benefit Guaranty Corporation ("PBGC") generally insures the benefits owed under defined benefit pension plans. Employers pay premiums to the PBGC for this insurance coverage.

In the case of an underfunded plan, additional PBGC premiums are required based on the amount of unfunded vested benefits. These premiums are referred to as "variable rate premiums." In determining the amount of unfunded vested benefits, the interest rate used is 85 percent of the interest rate on 30-year Treasury securi-

[20] The interest rate used under the plan must be consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan (section 412(b)(5)(B)(iii)(II)).

[21] No additional quarterly contributions are due once the plan's funded current liability percentage for the plan year reaches 100 percent.

ties for the month preceding the month in which the plan year begins.

Special interest rate for 2002 and 2003

Section 405 of the Job Creation and Worker Assistance Act of 2002,[22] enacted March 9, 2002, provides a special interest rate rule applicable in determining the amount of additional contributions for plan years beginning after December 31, 2001, and before January 1, 2004 (the "applicable plan years").[23]

The special rule expands the permissible range of the statutory interest rate used in calculating a plan's current liability for purposes of applying the additional contribution requirements for the applicable plan years. The permissible range is from 90 percent to 120 percent for these years. Use of a higher interest rate under the expanded range will affect the plan's current liability, which may in turn affect the need to make additional contributions and the amount of any additional contributions.

Because the quarterly contributions requirements are based on current liability for the preceding plan year, a special rule is provided for applying these requirements for plan years beginning in 2002 (when the expanded range first applies) and 2004 (when the expanded range no longer applies). In each of those years ("present year"), current liability for the preceding year is redetermined, using the permissible range applicable to the present year. This redetermined current liability will be used for purposes of the plan's funded current liability percentage for the preceding year, which may affect the need to make quarterly contributions and for purposes of determining the amount of any quarterly contributions in the present year, which is based in part on the preceding year.

REASONS FOR CHANGE

Additional contributions are due within 8½ months after the end of the plan year, rather than on a quarterly basis during the plan year, if the plan was sufficiently funded in the preceding plan year. The Committee believes that the special interest rate rule provided under the Job Creation and Worker Assistance Act of 2002 should be extended to contributions for the 2001 plan year that are due within 8½ months after the end of the plan year.

EXPLANATION OF PROVISION

Under the provision, the special interest rate rule for 2002 and 2003 applies also in determining the amount of additional contributions for the 2001 plan year that must be contributed to the plan within 8½ months after the end of the plan year (e.g., by September 15, 2002). The provision does not affect quarterly contributions required to be made for the 2001 plan year.

EFFECTIVE DATE

The provision is effective as if included in section 405 of the Job Creation and Worker Assistance Act of 2002.

[22] Public Law 107–147.

[23] Under a related special rule, the interest rate used in determining the amount of unfunded vested benefits for PBGC variable rate premium purposes is increased to 100 percent of the interest rate on 30-year Treasury securities for the month preceding the month in which the applicable plan year begins.

L. Provisions Relating to Plan Amendments

(Sec. 213 of the bill)

PRESENT LAW

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

REASONS FOR CHANGE

The Committee believes that employers should have adequate time to amend their plans to reflect amendments to the law while operating their plans in compliance with such amendments.

EXPLANATION OF PROVISION

The provision permits certain plan amendments made pursuant to the changes made by title II of the bill or by title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 (or regulations issued thereunder) to be retroactively effective. If the plan amendment meets the requirements of the bill, then the plan will be treated as being operated in accordance with its terms and the amendment will not violate the prohibition of reductions of accrued benefits for purposes of the Internal Revenue Code. In order for this treatment to apply, the plan amendment is required to be made on or before the last day of the first plan year beginning on or after January 1, 2005 (January 1, 2007, in the case of a governmental plan). If the amendment is required to be made to retain qualified status as a result of the changes in the law (or regulations), the amendment is required to be made retroactively effective as of the date on which the change became effective with respect to the plan and the plan is required to be operated in compliance until the amendment is made. Amendments that are not required to retain qualified status but that are made pursuant to the changes made by the bill or the 2001 Act (or applicable regulations) could be made retroactive as of the first day the plan is operated in accordance with the amendment.

A plan amendment will not be considered to be pursuant to the bill or the 2001 Act (or applicable regulations) if it has an effective date before the effective date of the provision of the bill or Act (or regulations) to which it related. Similarly, the provision does not provide relief from section 411(d)(6) for periods prior to the effective date of the relevant provision (or regulations) or the plan amendment.

The Secretary is authorized to provide exceptions to the relief from the prohibition on reductions in accrued benefits. It is intended that the Secretary will not permit inappropriate reductions in contributions or benefits that are not directly related to the provisions of the bill or the 2001 Act. For example, it is intended that a plan that incorporates the section 415 limits by reference can be retroactively amended to impose the section 415 limits in effect before the 2001 Act.[24] On the other hand, suppose a plan incorporates the section 401(a)(17) limit on compensation by reference and provides for an employer contribution of three percent of compensation. It is expected that the Secretary will provide that the plan cannot be amended retroactively to reduce the contribution percentage for those participants not affected by the section 401(a)(17) limit, even though the reduction will result in the same dollar level of contributions for some participants because of the increase in compensation taken into account under the plan as a result of the increase in the section 401(a)(17) limit under the 2001 Act. As another example, suppose that under present law a plan is top-heavy and therefore a minimum benefit is required under the plan, and that under the provisions of the 2001 Act, the plan is not be considered to be top-heavy. It is expected that the Secretary will generally permit plans to be retroactively amended to reflect the new top-heavy provisions of the 2001 Act.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE III: STOCK OPTIONS

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

(Sec. 301 of the bill and secs. 421(b), 423(c), 3121(a), 3231, and 3306(b) of the Code)

PRESENT LAW

Generally, when an employee exercises a compensatory option on employer stock, the difference between the option price and the fair market value of the stock (i.e., the "spread") is includible in income as compensation. In the case of an incentive stock option or an option to purchase stock under an employee stock purchase plan (collectively referred to as "statutory stock options"), the spread is not included in income at the time of exercise.[25]

If the statutory holding period requirements are satisfied with respect to stock acquired through the exercise of a statutory stock option, the spread, and any additional appreciation, will be taxed as capital gain upon disposition of such stock. Compensation income is recognized, however, if there is a disqualifying disposition (i.e., if the statutory holding period is not satisfied) of stock acquired pursuant to the exercise of a statutory stock option. Compensation income is also recognized in the case of a qualifying disposition of employee stock purchase plan stock if the option price reflected a discount.[26] Even though compensation income is recog-

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[24] See also, section 411(j)(3) of the Job Creation and Worker Assistance Act of 2002, which provides a special rule for plan amendments adopted on or before June 30, 2002, in connection with the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Act"), in the case of a plan that incorporated the section 415 limits by reference on June 7, 2001, the date of enactment of the 2001 Act.

[25] Sec. 421.

[26] The amount that must be included in income is the lesser of (1) the excess of the fair market value of the stock at the time of disposition over the amount paid for the stock, or (2) the excess of the fair market value of the stock at the time the option was granted over the option price.

nized upon such dispositions, employers are generally not required to withhold income taxes.

Federal Insurance Contribution Act ("FICA") and Federal Unemployment Tax Act ("FUTA") taxes (collectively referred to as "employment taxes") are generally imposed in an amount equal to a percentage of wages paid by the employer with respect to employment.[27] The applicable Code provisions[28] do not provide an exception from FICA and FUTA taxes for wages paid to an employee arising from the exercise of a statutory stock option, i.e., for the excess of the fair market value of the stock at the time of exercise over the amount paid for the stock by the individual.

In 1971, the Internal Revenue Service issued a revenue ruling addressing the withholding obligations of a company upon the exercise of a qualified stock option (the predecessor to incentive stock options).[29] The ruling concluded that there is no payment of wages for purposes of FICA, FUTA, or income tax withholding at the time of exercise. There has been uncertainty as to the extent to which a similar result applies on exercise of an incentive stock option or employee stock purchase plan.

In January 2001, the Internal Revenue Service issued notice of its intent to clarify, through future guidance, the application of FICA, FUTA, and Federal income tax withholding to statutory stock options.[30] The notice provided that in the case of a statutory stock option exercised before January 1, 2003, the IRS would not assess FICA or FUTA taxes upon the exercise of the option and would not treat the disposition of stock acquired pursuant to the exercise of a statutory stock option as subject to Federal income tax withholding. The notice also provided that the Internal Revenue Service would honor claims for refunds of FICA and FUTA taxes paid. The notice also concluded that Revenue Ruling 71–52 is obsolete and that its holding does not apply to the exercise of statutory stock options.

Proposed Treasury regulations issued in November 2001 provide that the payment of FICA and FUTA taxes upon the exercise of statutory stock options will apply to the exercise of statutory stock options on or after January 1, 2003. Federal income tax withholding is not required under the proposed regulations. Consistent with Notice 2001–14, the Internal Revenue Service will not assess FICA or FUTA taxes upon the exercise of a statutory stock option before 2003.

REASONS FOR CHANGE

The Committee believes that it is appropriate to clarify the treatment of statutory stock options for employment tax and income tax withholding purposes. Until January 2001, the IRS had not published guidance with respect to the imposition of employment taxes and income tax withholding on statutory stock options. Many taxpayers relied on guidance published with respect to qualified stock options (the predecessor to incentive stock options) to take the position that no employment taxes and income tax withholding was required with respect to statutory stock options. Prior to its January

[27] Secs. 3101, 3111 and 3301.
[28] Secs. 3121 and 3306.
[29] Rev. Rul. 71–52, 1971–1 C.B. 278.
[30] Notice 2001–14, 2001–6 I.R.B. 516.

2001 announcement, the IRS was inconsistent in its treatment of taxpayers with respect to this issue and did not uniformly challenge taxpayers who did not collect employment taxes and withhold income taxes on statutory stock options. In the mid-1990's, some IRS regional offices started to enforce the imposition of these taxes and withholding with respect to statutory stock options, but the issue was not enforced consistently throughout the country. It is the Committee's belief that a majority of taxpayers did not withhold employment and income taxes with respect to statutory stock options. Thus, the announced IRS position with respect to this issue would alter the treatment of statutory stock options for most employers.

Because there is a specific income tax exclusion with respect to statutory stock options, the Committee believes it is appropriate to clarify that there is a conforming exclusion for employment taxes and income tax withholding. This clarification will ensure that taxpayers are treated consistently for income and employment tax purposes with respect to statutory stock options. Furthermore, this clarification will ensure that employees will not be faced with a tax increase that will reduce their net paychecks even though their total compensation has not changed.

The clarification will also eliminate the administrative burden and cost to employers who, in the absence of the Committee bill, would be required to modify their payroll systems to provide for the withholding of income and employment taxes on statutory stock options that they are not currently required to withhold.

EXPLANATION OF PROVISION

The provision provides specific exclusions from FICA and FUTA wages for remuneration on account of the transfer of stock pursuant to the exercise of an incentive stock option or under an employee stock purchase plan, or any disposition of such stock. Thus, under the provision, FICA and FUTA taxes do not apply upon the exercise of a statutory stock option.[31] The provision also provides that such remuneration is not taken into account for purposes of determining Social Security benefits.

Additionally, the provision provides that Federal income tax withholding is not required on a disqualifying disposition, nor when compensation is recognized in connection with an employee stock purchase plan discount. Present law reporting requirements continue to apply.

EFFECTIVE DATE

The provision applies to stock acquired pursuant to statutory stock options exercised after the date of enactment. It is expected that Treasury and the Internal Revenue Service will not attempt to collect FICA or FUTA taxes attributable to exercises of statutory stock options before the effective date.

[31] The provision also provides a similar exclusion for wages under the Railroad Retirement Tax Act.

TITLE IV: SOCIAL SECURITY HELD HARMLESS

A. NO IMPACT ON SOCIAL SECURITY AND MEDICARE TRUST FUNDS

(Sec. 401 of the bill)

PRESENT LAW

Present law provides for the transfer of employment taxes and self-employment taxes to the Social Security and Medicare trust funds. In addition, the income tax collected with respect to a portion of Social Security benefits included in gross income is transferred to the Social Security and Medicare trust funds.

REASONS FOR CHANGE

The Committee finds it appropriate to ensure that present-law transfers to the Social Security and Medicare trust funds will not be reduced as a result of the tax relief being provided under the Committee bill.

EXPLANATION OF PROVISION

Under the bill, the amounts transferred to the Social Security and Medicare trust funds are determined as if the bill is not enacted. Thus, there will be no reduction in transfers to these funds as a result of the bill.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 3669.

MOTION TO REPORT THE BILL

The bill, H.R. 3669, as amended, was ordered favorably reported by a rollcall vote of 36 yeas to 2 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel	X		
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui	X		
Mrs. Johnson	X			Mr. Coyne	X		
Mr. Houghton	X			Mr. Levin	X		
Mr. Herger	X			Mr. Cardin	X		
Mr. McCrery	X			Mr. McDermott	X		
Mr. Camp	X			Mr. Kleczka	X		
Mr. Ramstad	X			Mr. Lewis (GA)	X		
Mr. Nussle	X			Mr. Neal	X		
Mr. Johnson	X			Mr. McNulty	X		
Ms. Dunn				Mr. Jefferson			
Mr. Collins	X			Mr. Tanner	X		
Mr. Portman	X			Mr. Becerra			
Mr. English	X			Mrs. Thurman	X		
Mr. Watkins	X			Mr. Doggett		X	
Mr. Hayworth	X			Mr. Pomeroy	X		
Mr. Weller	X						

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the Chairman's amendment in the nature of a substitute.

An amendment by Mr. Rangel, which would impose a 20-percent excise tax on the proceeds from the sale of stock by executives who were not restricted like plan participants with respect to the employee's ability to transfer the stock, was defeated by a rollcall vote of 16 yeas to 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson	X			Mr. Coyne	X		
Mr. Houghton	X			Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)			
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		
Ms. Dunn		X		Mr. Jefferson			
Mr. Collins		X		Mr. Tanner			
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

An amendment by Mr. Matsui, which would require deferred compensation to be included in income of the employee in the year earned if the benefit is secured (directly or indirectly) with assets not owned by the employer and not subject to the claims of the creditors, was defeated by a rollcall vote of 16 yeas to 23 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne	X		
Mr. Houghton		X		Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCrery		X		Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka	X		
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty	X		

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Ms. Dunn	....	X	....	Mr. Jefferson	....	....	....
Mr. Collins	X	....	....	Mr. Tanner	....	....	....
Mr. Portman	....	X	....	Mr. Becerra	X	....	....
Mr. English	....	X	....	Mrs. Thurman	X	....	....
Mr. Watkins	....	X	....	Mr. Doggett	X	....	....
Mr. Hayworth	....	X	....	Mr. Pomeroy	X	....	....
Mr. Weller	....	X	....				
Mr. Hulshof	....	X	....				
Mr. McInnis	....	X	....				
Mr. Lewis (KY)	....	X	....				
Mr. Foley	....	X	....				
Mr. Brady	....	X	....				
Mr. Ryan	....	X	....				

An amendment by Mr. Doggett, regarding notification of plan and plan beneficiaries of certain insider stock transactions, was defeated by a rollcall vote of 14 yeas to 21 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	....	X	....	Mr. Rangel	X	....	....
Mr. Crane	....	X	....	Mr. Stark	X	....	....
Mr. Shaw	....	X	....	Mr. Matsui	X	....	....
Mrs. Johnson	....	X	....	Mr. Coyne	X	....	....
Mr. Houghton	....	X	....	Mr. Levin	X	....	....
Mr. Herger	....	X	....	Mr. Cardin	X	....	....
Mr. McCrery	....	X	....	Mr. McDermott	X	....	....
Mr. Camp	....	X	....	Mr. Kleczka	X	....	....
Mr. Ramstad	....	X	....	Mr. Lewis (GA)	....	....	....
Mr. Nussle	....	....	....	Mr. Neal	X	....	....
Mr. Johnson	....	X	....	Mr. McNulty	X	....	....
Ms. Dunn	....	....	....	Mr. Jefferson	....	....	....
Mr. Collins	....	X	....	Mr. Tanner	....	....	....
Mr. Portman	....	X	....	Mr. Becerra	X	....	....
Mr. English	....	X	....	Mrs. Thurman	X	....	....
Mr. Watkins	....	X	....	Mr. Doggett	X	....	....
Mr. Hayworth	....	X	....	Mr. Pomeroy	X	....	....
Mr. Weller	....	X	....				
Mr. Hulshof	....	X	....				
Mr. McInnis	....	X	....				
Mr. Lewis (KY)	....	X	....				
Mr. Foley	....	X	....				
Mr. Brady	....	....	....				
Mr. Ryan	....	X	....				

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 3669 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2002–2006:

ESTIMATED REVENUE EFFECTS OF H.R. 3669, THE ''EMPLOYEE RETIREMENT SAVINGS BILL OF RIGHTS,'' AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 2002–2007 in millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2007	2002–07
Defined Contribution Plan Protection Provisions:								
1. Excise tax on failure of pension plans to provide notice to participants regarding investment education.	pyba 12/31/02				Negligible Revenue Effect			
2. Excise tax on failure of pension plans to provide notice to participants of transaction restriction periods.	pyba 12/31/02				Negligible Revenue Effect			
3. Diversification requirements for defined contributions plans that hold employer securities	pyba 12/31/02				Negligible Revenue Effect			
4. Treatment of employer-provided qualified retirement planning services	tyba 12/31/02	....	−13	−24	−25	−22	−23	−107
5. Special rules	DOE				No Revenue Effect			
Total of Defined Contribution Plan Protection Provisions		....	−13	−24	−25	−22	−23	−107
Other Tax Provisions Relating to Pensions:								
1. Amendments to Retirement Protection Act of 1994	pyba 12/31/01				Negligible Revenue Effect			
2. Pension plan reporting simplification [1]	pybo/a 1/1/02				No Revenue Effect			
3. Improvement to Employee Plans Compliance Resolution System [1]	DOE				Negligible Revenue Effect			
4. Flexibility in nondiscrimination, coverage, and line of business rules [1]	DOE				Negligible Revenue Effect			
5. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans.	pyba 12/31/02				Negligible Revenue Effect			
6. Notice and consent period regarding distributions	yba 12/31/02				Negligible Revenue Effect			
7. Reduce flat-rate PBGC premiums for new plans of small employers [2]	pea 12/31/01	....	(3)	(3)	(3)	(3)	(3)	−1
8. Reduce variable-rate PBGC premium for new and small plans [2]	pea 12/31/01 & pyba 12/31/02	....	−7	−9	−9	−9	−9	−43
9. Authorization for PBGC to pay interest on premium overpayment refunds [2]	iafpbnet DOE	....	−3	−3	−3	−3	−3	−15
10. Rules for substantial owner benefits in terminated plans [2]	(4)	....	(3)	(3)	(3)	(3)	(3)	−1
11. Studies	DOE				No Revenue Effect			
12. Interest rate range for additional funding requirements	(5)	994	994	−270	−593	−485	−327	313
13. Provisions relating to plan amendments	DOE				No Revenue Effect			
Total of Other Tax Provisions Relating to Pensions		994	984	−282	−605	−497	−339	253
Stock Options—Exclusion of Incentive Stock Options and Employee Stock Purchase Plan Stock Options From Wages.[6]	(7)	....	−1,771	−2,283	−2,086	−2,224	−2,165	−10,529
Social Security Held Harmless	DOE				No Revenue Effect			
Net Total		994	−800	−2,589	−2,716	−2,743	−2,527	−10,383

[1] Directs the Secretary of the Treasury to modify rules through regulations.
[2] Estimate provided by the Congressional Budget Office and is preliminary and subject to change.
[3] Loss of less than $500,000.
[4] Effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2002.
[5] Effective as if included in section 405 of the ''Job Creation and Worker Assistance Act of 2002.''

[6] There is uncertainty with respect to the potential revenue effects from the proposal. Due to the long-standing administrative position of the IRS with respect to the imposition of employment taxes on incentive stock options and employee stock purchase plans, the level of compliance that can be expected with the revised IRS position is unclear.

[7] Effective for stock acquired pursuant to statutory stock options exercised after the date of enactment.

Legend for ''Effective'' column: DOE = date of enactment; iafpbnet = interest accruing for periods beginning not earlier than; pea = plans established after; pyba = plan years beginning after; and pybo/a = plan years beginning on or after.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves new or increased budget authority (as detailed in the statement by the Congressional Budget Office ("CBO"); see Part IV.C., below). The Committee further states that the revenue reducing provisions involve increased tax expenditures (see amounts in table in Part IV.A., above).

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

March 20, 2002.

Hon. William "Bill" M. Thomas,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3669, the Employee Retirement Savings Bill of Rights.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Erin Whitaker.

Sincerely,

Dan L. Crippen,
Director.

Enclosure.

H.R. 3669—Employee Retirement Savings Bill of Rights

Summary: H.R. 3669 would impose an excise tax on pensions plans if participants are not given certain information, and if the plans do not allow participants greater diversification of assets in contribution plans then is generally required under current law. The bill would exclude incentive stock options and employee stock purchase plan stock options from Federal Insurance Contribution Act (FICA) and Federal Unemployment Tax Act (FUTA) wages if exercised after the date of enactment. It also would make numerous changes to the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA) that would affect the taxation and operation of private pension plans.

CBO and the Joint Committee on Taxation (JCT) estimate that the bill would increase federal revenues by $994 million in 2002, but reduce federal revenues by $10.3 billion over the 2002–2007 period and by $24.4 billion over the 2002–2012 period. CBO estimates that the bill would increase direct spending by $6 million 2003, by $46 million over the 2003–2007 period, and by $104 million over the 2003–2012 period. Since this bill would affect direct spending and revenues, pay-as-you-go procedures would apply.

JCT has determined that the tax provisions of H.R. 3369 contain no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO has determined that the non-tax provisions of the bill contain no mandates and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3669 is shown in the following table. The costs of this legislation would fall within budget function 600 (income security).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
CHANGES IN REVENUES						
Treatment of Qualified Retirement Planning Services	0	−13	−24	−25	−22	−23
Interest Rate Range for Additional Funding Requirements	994	994	−270	−593	−485	−327
Exclusion of Certain Stock Options from Wages	0	−1,771	−2,283	−2,086	−2,224	−2,165
Total Revenues	994	−790	−2,577	−2,704	−2,731	−2,515
CHANGES IN DIRECT SPENDING						
Reduced PBGC Flat-Rate Premiums	0	1	1	2	2	2
Reduced PBGC Variable Premiums	0	2	4	5	6	6
Payment of Interest on PBGC Premium Overpayment	0	3	3	3	3	3
Benefits Paid to Substantial Owners	0	(*)	(*)	(*)	(*)	(*)
Total Additional Outlays	0	6	8	10	11	11
TOTAL CHANGES						
Net Decrease in Budget Surplus	0	−796	−2,585	−2,714	−2,742	−2,526

Notes.—Components may not sum to totals because of rounding.
*=Less than $550,000.

Sources: CBO and Joint Committee on Taxation.

Basis of estimate

Revenues

All estimates of the revenue proposals in the bill were provided by JCT. The provision that would exclude certain stock options from wages would have the greatest effect on revenues if enacted, with a loss of revenue of $10.5 billion over the 2002–2007 period and $23.2 billion over the 2002–2012 period.

The JCT estimate emphasizes that the potential revenue effects from the proposal are uncertain. The JCT report (JCX–16–02) indicates that "due to the long-standing administrative position of the IRS with respect to the imposition of employment taxes on incentive stock options and employee stock purchase plans, the level of compliance that can be expected with the revised IRS position is unclear."

Direct spending

Reduced Flat-Rate Premiums Paid to the PBGC. Under current law, defined benefit pension plans operated by a single employer pay two types of annual premiums to the Pension Benefit Guaranty Corporation (PBGC). All covered plans are subject to a flat-rate premium of $19 per participant. In addition, underfunded plans must also pay a variable premium that depends on the amount by which the plan's liabilities exceed its assets.

The bill would reduce the flat-rate premium from $19 to $5 per participant for plans established by employers with 100 or fewer employees during the first five years of the plan's operation. According to information obtained from the PBGC, approximately 7,500 plans would eventually qualify for this reduction. Those plans cover an average of about 10 participants each. CBO estimates that the change would reduce the PBGC's premium income, which is classified as an offsetting collection, by about $1 million in 2003 and by about $8 million over the 2003–2007 period.

Reduced Variable Premiums Paid to the PBGC. H.R. 3669 would make two changes affecting the variable-rate premium paid by underfunded plans. First, for all new plans that are underfunded, the bill would phase in the variable-rate premium. In the first year, plans would pay nothing. In the succeeding four years, they would pay 20 percent, 40 percent, 60 percent, and 80 percent, respectively, of the full amount. In the sixth and later years, they would pay the full variable-rate premium determined by their funding status. On the basis of information from the PBGC, CBO estimates that this change would affect the premiums of approximately 250 plans each year. It would reduce the PBGC's total premium receipts by about $19 million over the 2003–2007 period.

The bill would also reduce the variable-rate premium paid by all underfunded plans (not just new plans) established by employers with 25 or fewer employees. Under the bill, the variable-rate premium per participant paid by those plans would not exceed $5 multiplied by the number of participants in the plan. CBO estimates that approximately 2,500 plans would have their premium payments to the PBGC reduced by this provision beginning in 2003. As a result, premium receipts would decline by $1 million in 2004 and by $4 million over the 2004–2007 period.

Authorization for the PBGC to Pay Interest on Premium Overpayment Refunds. The legislation would authorize the PBGC to pay interest to plan sponsors on premium overpayments. Interest paid on overpayments would be calculated at the same rate as interest charged on premium underpayments. On average, PBGC receives $19 million per year in premium overpayments, charges an interest rate of 8 percent for underpayments, and experiences a two-year lag between the receipt of payments and the issuance of refunds. Based on this information, CBO estimates that direct spending would increase by $3 million annually.

Substantial Owner Benefits in Terminated Plans. H.R. 3669 would simplify the rules by which the PBGC pays benefits to substantial owners (those with an ownership interest of at least 10 percent) of terminated pension plans. Only about one-third of the plans taken over by the PBGC involve substantial owners, and the change in benefits paid to owner-employees under this provision would be less than $500,000 annually.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects through 2006 are counted.

	By fiscal year, in millions of dollars—										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Changes in receipts ..	994	−790	−2,577	−2,704	−2,731	−2,515	−2,866	−2,849	−2,800	−2,765	−2,845
Changes in outlays	0	6	8	10	11	11	11	11	12	12	12

Intergovernmental and private-sector impact: JCT has determined that the tax provisions of H.R. 3669 contain no intergovernmental or private-sector mandates as defined in UMRA. CBO has determined that the non-tax provisions of the bill contain no mandates and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Revenues: Erin Whitaker; Pension Benefit Guaranty Corporation: Geoff Gerhardt; Impact on State, Local, and Tribal Governments: Leo Lex; and Impact on the Private Sector: Bruce Vavrichek.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis and G. Thomas Woodward, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the revenue laws applicable to retirement plans and their affect of retirement security, as well as review of employment tax provisions, that the Committee concluded that it is appropriate and timely to enact the revenue provisions included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for any measure that authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

* * * * * * *

SEC. 132. CERTAIN FRINGE BENEFITS.

(a) * * *

* * * * * * *

(m) QUALIFIED RETIREMENT PLANNING SERVICES.—

(1) * * *

* * * * * * *

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

* * * * * * *

Subchapter D—Deferred compensation, etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General rule

* * * * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) * * *

* * * * * * *

(G) [STATE AND LOCAL GOVERNMENTAL PLANS] *GOVERNMENTAL PLANS*.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of [section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).] *section 414(d)).*

* * * * * * *

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) * * *

* * * * * * *

(H) [EXCEPTION FOR STATE AND LOCAL GOVERNMENTAL PLANS] *EXCEPTION FOR GOVERNMENTAL PLANS*.—This paragraph shall not apply to a governmental plan (within the meaning of [section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).] *section 414(d)).*

* * * * * * *

(28) ADDITIONAL REQUIREMENTS RELATING TO EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) * * *

* * * * * * *

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

* * * * * * *

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

(A) IN GENERAL.—In the case of a defined contribution plan described in this subsection that includes a trust which is exempt from tax under section 501(a) and which holds employer securities that are readily tradable on an established securities market, such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B), (C), and (D).

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

(C) MATCHING AND CERTAIN OTHER CONTRIBUTIONS.—

(i) IN GENERAL.—In the case of the portion of the account attributable to contributions to which this subparagraph applies and which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable 3-year individual in the plan may elect to direct the plan to divest up to the applicable percentage of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (E).

(ii) CONTRIBUTIONS TO WHICH THIS SUBPARAGRAPH APPLIES.—This subparagraph shall apply to—

(I) matching contributions (as defined in subsection (m)(4)(A)),

(II) qualified nonelective contributions (as defined in subsection (m)(4)(C)), and

(III) contributions made in order to meet the requirements of subsection (k)(12)(C).

(iii) APPLICABLE 3-YEAR INDIVIDUAL.—For purposes of clause (i), the term "applicable 3-year individual" means any individual who would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were taken into account under subparagraph (G)(i)(I).

(D) OTHER EMPLOYER CONTRIBUTIONS.—

(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than contributions to which subparagraph (B) or (C) applies) which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable 5-year individual described in clause (ii) may elect to direct the plan to divest up to the applicable percentage of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (E).

(ii) APPLICABLE 5-YEAR INDIVIDUAL.—For purposes of clause (i), the term "5-year individual" means any individual who would be an applicable individual if only participants in the plan who have completed at least 5 years of service (as determined under section 411(a)) were taken into account under subparagraph (G)(i)(I).

(E) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options (not inconsistent with regulations prescribed by the Secretary) other than employer securities.

(F) ELECTION.—Elections under this paragraph may made not less frequently than quarterly.

(G) OTHER DEFINITIONS AND RULES.—For purposes of this paragraph—

(i) APPLICABLE INDIVIDUAL.—The term "applicable individual" means—

(I) any participant in the plan,

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

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

(ii) ELECTIVE DEFERRALS.—The term "elective deferrals" means an employer contribution described in section 402(g)(3)(A).

(iii) EMPLOYER SECURITIES.—The term "employer securities" shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" shall have the same meaning given to such term by section 4975(e)(7).

(v) APPLICABLE PERCENTAGE.—

(I) IN GENERAL.—The applicable percentage shall be as follows:

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

(II) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—In the case of elective deferrals and employee contributions (and any earnings allocable thereto) held within a plan treated as a separate plan as of the date of the enactment of this paragraph under section 407(b)(2) of the Employee Retirement Income Security Act of 1974, for purposes of subparagraph (B) the applicable percentage shall be 100 percent.

(III) CONTRIBUTIONS HELD WITHIN AN ESOP.—In the case of contributions (other than elective deferrals and employee contributions) held within an employee stock ownership plan, in the case of years 2003 and 2004, the applicable percentage shall be the greater of the amount determined under subclause (I) or the percentage determined under paragraph (28) (determined as if paragraph (28) applied to a plan described in this paragraph).

(vi) COORDINATION WITH PARAGRAPH (28).—Subparagraphs (B), (C), and (D) shall apply to the extent that the amount attributable to the applicable percentage under such subparagraph exceeds the amount to which a prior election under such subparagraph or paragraph (28) applies.

(H) EXCEPTION FOR CERTAIN ESOPS.—This paragraph shall apply to an employee stock ownership plan only if the plan holds amounts attributable to deferrals or contributions to which subparagraph (B) or (C) apply.

* * * * * * *

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) * * *

* * * * * * *

(3) APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS.—

(A) * * *

* * * * * * *

(G) *GOVERNMENTAL PLANS*.—A governmental plan (within the meaning of section 414(d) [maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)] shall be treated as meeting the requirements of this paragraph.

* * * * * * *

SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) * * *

(b) TAXABILITY OF BENEFICIARY UNDER ANNUITY PURCHASED BY SECTION 501(c)(3) ORGANIZATION OR PUBLIC SCHOOL.—

(1) * * *

* * * * * * *

(B) in the second sentence by striking "or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated".

(3) INCLUDIBLE COMPENSATION.—For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), *132(m)(4),* or 457.

* * * * * * *

SEC. 409. QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

(a) * * *

* * * * * * *

(h) RIGHT TO DEMAND EMPLOYER SECURITIES; PUT OPTION.—

(1) * * *

* * * * * * *

(7) EXCEPTION WHERE EMPLOYEE ELECTED DIVERSIFICATION.—Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B) *or subparagraph (B), (C), or (D) of section 401(a)(35)*.

* * * * * * *

Subpart B—Special Rules

* * * * * * *

SEC. 410. MINIMUM PARTICIPATION STANDARDS.

(a) * * *

(b) MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

(A) * * *

* * * * * * *

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

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

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

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

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

* * * * * * *

SEC. 412. MINIMUM FUNDING STANDARDS.

(a) * * *

* * * * * * *

(l) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

(1) * * *

* * * * * * *

(7) CURRENT LIABILITY.—For purposes of this subsection—

(A) * * *

* * * * * * *

(C) INTEREST RATE AND MORTALITY ASSUMPTIONS USED.—Effective for plan years beginning after December 31, 1994—

(i) INTEREST RATE.—

(I) * * *

* * * * * * *

(III) SPECIAL RULE FOR [2002 AND 2003] *2001, 2002, AND 2003*.—For a plan year beginning in [2002 or 2003] *2001, 2002, or 2003*, notwithstanding subclause (I), in the case that the rate of interest used under subsection (b)(5) exceeds the highest rate permitted under subclause (I), the rate of interest used to determine current liability under this subsection may exceed the rate of interest otherwise permitted under subclause (I); except that such rate of interest shall not exceed 120 percent of the weighted average referred to in subsection (b)(5)(B)(ii).

* * * * * * *

SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(s) COMPENSATION.—For purposes of any applicable provision—

(1) * * *

(2) EMPLOYER MAY ELECT NOT TO TREAT CERTAIN DEFERRALS AS COMPENSATION.—An employer may elect not to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 132(f)(4), *132(m)(4),* 402(e)(3), 402(h), or 403(b).

* * * * * * *

SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.

(a) * * *

* * * * * * *

(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

(1) * * *

* * * * * * *

(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1)—

(A) * * *

* * * * * * *

(D) CERTAIN DEFERRALS INCLUDED.—The term "participant's compensation" shall include—

(i) any elective deferral (as defined in section 402(g)(3)), and

(ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), *132(m)(4),* or 457.

* * * * * * *

SEC. 417. DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS.

(a) ELECTION TO WAIVE QUALIFIED JOINT AND SURVIVOR ANNUITY OR QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

(1) * * *

* * * * * * *

(6) APPLICABLE ELECTION PERIOD DEFINED.—For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the [90-day] *180-day* period ending on the annuity starting date, or

* * * * * * *

PART II—CERTAIN STOCK OPTIONS

* * * * * * *

SEC. 421. GENERAL RULES.

(a) * * *

* * * * * * *

(b) EFFECT OF DISQUALIFYING DISPOSITION.—If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a) or 423(a) except that there is a failure to meet any of the holding period requirements of section 422(a)(1) or 423(a)(1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred. *No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.*

* * * * * * *

SEC. 423. EMPLOYEE STOCK PURCHASE PLANS.

(a) * * *

* * * * * * *

(c) SPECIAL RULE WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 100 PERCENT OF VALUE OF STOCK.—If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of—

(1) * * *

* * * * * * *

If the option price is not fixed or determinable at the time the option is granted, then for purposes of this subsection, the option price shall be determined as if the option were exercised at such time. In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income. *No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.*

* * * * * * *

Subtitle C—Employment Taxes

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

* * * * * * *

Subchapter C—General Provisions

* * * * * * *

SEC. 3121. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) * * *

* * * * * * *

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132; **[**or**]**

(21) in the case of a member of an Indian tribe, any remuneration on which no tax is imposed by this chapter by reason of section 7873 (relating to income derived by Indians from exercise of fishing rights)**[**.**]***; or*

(22) remuneration on account of—

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

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

* * * * * * *

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

* * * * * * *

Subchapter D—General Provisions

SEC. 3231. DEFINITIONS.

(a) * * *

* * * * * * *

(e) COMPENSATION.—For purposes of this chapter—

(1) * * *

* * * * * * *

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

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined

in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

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

* * * * * * *

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

* * * * * * *

SEC. 3306. DEFINITIONS.

(a) * * *

(b) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) * * *

* * * * * * *

(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132; **[**or**]**

(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(b)**[**.**]***; or*

(18) remuneration on account of—

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

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

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

* * * * * * *

SEC. 4980. TAX ON REVERSION OF QUALIFIED PLAN ASSETS TO EMPLOYER.

(a) * * *

* * * * * * *

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

(1) * * *

* * * * * * *

(3) EXCEPTION FOR EMPLOYEE STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—If, upon an employer reversion from a qualified plan, any applicable amount is transferred from such plan to an employee stock ownership plan described in section 4975(e)(7) or a tax credit employee stock ownership plan (as described in section 409), such amount shall not be treated as an employer reversion for purposes of this section (or includible in the gross income of the employer) [if—

[(i) the requirements of subparagraphs (B), (C), and (D) are met, and

[(ii) under the plan, employer securities to which subparagraph (B) applies must, except to the extent necessary to meet the requirements of section 401(a)(28), remain in the plan until distribution to participants in accordance with the provisions of such plan.] *if the requirements of subparagraphs (B), (C), and (D) are met.*

* * * * * * *

SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS.

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

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

(c) LIMITATIONS ON AMOUNT OF TAX.—

(1) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

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

(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

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

(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all

persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

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

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

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

(e) NOTICE REGARDING INVESTMENT EDUCATION.—

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

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

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

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

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

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

(f) DEFINITIONS.—For purposes of this section—

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

(A) any participant in the applicable pension plan,

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

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

(2) APPLICABLE PENSION PLAN.—The term "applicable pension plan" means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) LIMITATIONS ON AMOUNT OF TAX.—

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

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

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

(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable

year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

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

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

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

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

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

(e) NOTICE OF TRANSACTION RESTRICTION PERIOD.—

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

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

(3) TIMING OF NOTICE.—

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

(B) DISPOSITION OF STOCK OR ASSETS.—

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

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

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

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

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

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

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

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

(C) EXCEPTION FOR UNFORESEEABLE EVENTS.—In the case of a transaction restriction period resulting from the occurrence of an unforeseeable event, such notice shall be provided as soon as reasonably practicable after the occurrence of such event.

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

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

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

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

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

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

(2) APPLICABLE PENSION PLAN.—

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

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

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

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

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

(3) TRANSACTION RESTRICTION PERIOD.—

(A) IN GENERAL.—The term "transaction restriction period" means a temporary or indefinite period of at least 3 consecutive days during which rights otherwise provided under the plan to 1 or more applicable individuals to direct investments in the applicable pension plan, obtain loans from such plan, or obtain distributions from such plan are substantially reduced (other than by reason of the application of securities laws or other circumstances specified by the Secretary in regulations). In determining consecutive

days, days on which such rights are not normally available shall be disregarded.

(B) SPECIAL RULE FOR EMPLOYER SECURITIES.—

(i) IN GENERAL.—For purposes of subparagraph (A), rights shall be treated as substantially reduced with respect to directing investments out of employer securities if rights in effect are significantly restricted for at least 3 consecutive business days.

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

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

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

(4) EMPLOYER SECURITIES.—The term "employer securities" shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

* * * * * * *

SECTION 769 OF THE RETIREMENT PROTECTION ACT OF 1994

SEC. 769. SPECIAL FUNDING RULES FOR CERTAIN PLANS.

(a) * * *

* * * * * * *

(c) ❲TRANSITION❳ RULES FOR CERTAIN PLANS.—

(1) IN GENERAL.—In the case of a plan that—

(A) * * *

* * * * * * *

the ❲transition❳ rules described in paragraph (2) shall apply ❲for any plan year beginning after 1996 and before 2010❳.

❲(2) TRANSITION RULES.—The transition rules described in this paragraph are as follows:

❲(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974—

❲(i) the funded current liability percentage for any plan year beginning after 1996 and before 2005 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage is at least 85 percent, and

❲(ii) the funded current liability percentage for any plan year beginning after 2004 and before 2010 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage satisfies the minimum percentage determined according to the following table:

[In the case of a plan year beginning in:	The minimum percentage is:
2005	86 percent
2006	87 percent
2007	88 percent
2008	89 percent
2009 and thereafter	90 percent.

[(B) Sections 412(c)(7)(E)(i)(I) of such Code and 302(c)(7)(E)(i)(I) of such Act shall be applied—

[(i) by substituting "85 percent" for "90 percent" for plan years beginning after 1996 and before 2005, and

[(ii) by substituting the minimum percentage specified in the table contained in subparagraph (A)(ii) for "90 percent" for plan years beginning after 2004 and before 2010.

[(C) In the event the funded current liability percentage of a plan is less than 85 percent for any plan year beginning after 1996 and before 2005, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan if contributions for such a plan year are made to the plan in an amount equal to the lesser of—

[(i) the amount necessary to result in a funded current liability percentage of 85 percent, or

[(ii) the greater of—

[(I) 2 percent of the plan's current liability as of the beginning of such plan year, or

[(II) the amount necessary to result in a funded current liability percentage of 80 percent as of the end of such plan year.

For the plan year beginning in 2005 and for each of the 3 succeeding plan years, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan for such plan year only if contributions to the plan for such plan year equal at least the expected increase in current liability due to benefits accruing during such plan year.]

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

(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

(B) For purposes of section 412(m) of the Internal Revenue Code of 1986, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

SECTION 1505 OF THE TAXPAYER RELIEF ACT OF 1997

SEC. 1505. EXTENSION OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES TO STATE AND LOCAL GOVERNMENTS.

(a) * * *

*　　*　　*　　*　　*　　*　　*

(d) EFFECTIVE DATES.—

(1) * * *

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) [maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)] shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

* * * * * * *

TITLE IV—PLAN TERMINATION INSURANCE

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

* * * * * * *

PREMIUM RATES

SEC. 4006. (a)(1) * * *

* * * * * * *

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

(i) in the case of a single-employer plan, *other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),* for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

* * * * * * *

(iii) in the case of a multiemployer plan, for plan years beginning after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 [September 26, 1980], an amount equal to—

(I) * * *

* * * * * * *

(IV) $2.60 for each participant, for the ninth plan year, and for each succeeding plan year[.]*, and*

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

* * * * * * *

(E)(i) [The] *Except as provided in subparagraph (G), the* additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

* * * * * * *

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

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

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

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

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

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

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

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

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

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

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

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

* * * * * * *

PAYMENT OF PREMIUMS

SEC. 4007. (a) * * *

(b)*(1)* If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the designated payor obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the designated payor, but the corporation may not grant a waiver if it appears that the designated payor will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of the Internal Revenue Code of 1986 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

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

* * * * * * *

Subtitle B—Coverage

PLANS COVERED

SEC. 4021. (a) * * *

(b) This section does not apply to any plan—

(1) * * *

* * * * * * *

(9) which is established and maintained exclusively for substantial owners [as defined in section 4022(b)(6)];

* * * * * * *

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

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

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

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

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

SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. (a) * * *
(b)(1) * * *

* * * * * * *

⟦(5)(A) For purposes of this title, the term "substantial owner" means an individual who—

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

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

⟦(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

⟦(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

⟦(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

⟦(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) (as limited under paragraph (3) of this subsection).

⟦(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.⟧

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

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

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

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

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

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

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

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

* * * * * * *

Subtitle C—Terminations

* * * * * * *

REPORTABLE EVENTS

SEC. 4043. (a) * * *

* * * * * * *

(c) For purposes of this section a reportable event occurs—

(1) * * *

* * * * * * *

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in ❲section 4022(b)(6)❳ *section 4021(d)* if—

(A) * * *

* * * * * * *

ALLOCATION OF ASSETS

SEC. 4044. (a) In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) * * *

* * * * * * *

(4) Fourth—

(A) * * *

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 4022(b)(5)*(B)* did not apply.

For purposes of this paragraph, section 4021 shall be applied without regard to subsection (c) thereof.

(b) For purposes of subsection (a)—

(1) * * *

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs ❲(5)❳ *(4), (5),* and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the

present value (as of the termination date) of their respective benefits described in that paragraph.

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

⟦(3)⟧ *(4)* This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) * * *

* * * * * * *

⟦(4)⟧ *(5)* If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1986 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a) or 403(a) of such Code, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

⟦(5)⟧ *(6)* The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

⟦(6)⟧ *(7)* A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) in accordance with regulations prescribed by the corporation.

* * * * * * *

SECTION 209 OF THE SOCIAL SECURITY ACT

DEFINITION OF WAGES

SEC. 209. (a) For the purposes of this title, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1) * * *

* * * * * * *

(17) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132 of the Internal Revenue Code of 1986; [or]

(18) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights)[.]*; or*

(19) Remuneration on account of—

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

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

* * * * * * *

VII. ADDITIONAL VIEWS

The collapse of Enron and the devastating impact it has had on the retirement of thousands of Enron employees has forced us to examine our pension laws, and in particular how our defined contribution system works. We have approached these concerns with a common goal: the need to enact pension reforms that would enhance the security of retirement benefits for the 42 million workers who currently participate in 401(k) plans.

While we agree that many approaches can be taken to achieve this goal, we believe strongly that certain principles must be the foundation of any meaningful reform. One thing that has been clear in the collapse of Enron is the glaring disparity that existed between the executives and the rank and file employees with respect to (1) the security of pension benefits, (2) the transferability of company stock, and (3) the availability of important information that affects the value of the stock.

We believe this Congress should do more than is proposed by the underlying bill to address some of these issues.

We strongly support the provision of the bill that would require the plan to provide the participants with much needed notice of generally accepted investment principles, including principles of risk management and diversification. We believe this information would go a long way to help employees better manage their retirement accounts. In addition, we support the provision that would require the plan to provide the participants with adequate notice of any transaction restriction period.

We would like to ensure that employees will have the right to change their investment options prior to any transaction restriction and that all such changes will be implemented before the restriction period begins. We hope the clarification, as agreed to by the Chairman, will be made to the bill before it moves forward in the House of Representatives. Also, we believe employees would be empowered if they received investment information on diversification principles and risk management during this period.

The importance of workers' ability to transfer stock contributed by the employer to the employee's retirement account is an issue that has dominated discussion of Enron's demise. Under the three-year rule, employers would be required to allow workers to sell employer-contributed stock after they have participated in the plan for three years. In addressing this issue, President Bush adopted a three-year rule. President Bush based this rule on the fact that it is important to give employees greater flexibility to diversify their portfolios. Under the language contained in the bill, it is unclear that this result is achieved.

An amendment offered by Mr. Neal would have made this clarification. It also would have provided transition relief for company stock held in the plan prior to the effective date adopted in the bill.

We hope this clarification is adopted as the legislation moves forward.

In addition to the two perfecting amendments mentioned above, we believe the bill could be made stronger in certain areas. The following amendments were offered to accomplish this goal. Unfortunately, all of these amendments were rejected by Republicans on the Committee. The amendments would have modified the bill in the following areas:

Parity between executives and rank-and-file workers on transferability of employer-company stock

The bill contains no provision that would create parity between the executives and the rank-and-file workers with respect to the ability to sell their company stock. The media reports of the glaring disparity that existed between Enron executives and the rank-and-file workers in this area have left us in shock. While Enron restricted the ability to transfer company stock contributed to a participant's 401(k) account until after the participant reached age 50, no similar restrictions were imposed on the large amount of Enron stock held by its executives. This flexibility greatly enabled the executives to secure their financial position while the rank and file lost everything they had with the company, including their retirement benefits.

Democrats believe that we need to go beyond the talk of "making sure companies have a single standard for their executives and their employees." We need to make every effort to make this a reality for every American worker who owns employer stock both in and out of a pension plan. The absence of such a real standard will continue to lead to the egregious results that have occurred for Enron workers. At a time when rank and file workers were losing their modest retirement savings in Enron stock due to trading restrictions, Enron executives benefitted from freely selling millions of dollars worth of Enron stock.

Mr. Dery Ebright testified on March 5, 2002, before the Subcommittee on Oversight of the Committee on Ways and Means that when he tried to transfer his Enron stock holdings under the pension plan prior to the official "lockdown" of the plan, he was barred from doing so. This was the experience of many other employees. In addition, any stock that Enron contributed to the participant account could not be transferred until the participant reached age 50. Mr. Ebright's retirement savings dropped from $1 million to $2,300, the amount he received for his Enron stock when he was permitted to sell it.

Other employees watched their lives unravel before them as the secured retirement they believed they had disappeared. Mr. Charles Prestwood, an employee who worked for 33 years as a welder and machine operator and saved those many years for his retirement, watched his retirement savings be reduced from $1.2 million to $5,300. Mr. Tim Ramsey, a 55-year-old employee, lost $1 million in pension benefits; Roy Rinard, a 53-year-old worker, lost $472,000; Al Kasweter, a 43-year-old employee lost $318,000. This list goes on. Each name represents a real family whose lives have been shattered and financially ruined. These workers cannot regain what was lost; many of them are too old to even try.

Compare these results with the experience of some of Enron's highest ranking executives. According to an article appearing in Newsweek on January 21, 2002, Enron's chairman, Ken Lay, made $205 million in stock option profit in the past four years alone; $37.7 million was from sales between May 2000 and August 2000. During that same period, Lou Pai, unit CEO, made $62.9 million, and Jeff Skilling, former CEO, made $14.4 million. Other high ranking executives and board members cashed out stock worth millions before the company collapsed. While the executives were feverishly unloading company stock, the rank-and-file workers were barred from touching their modest, but vital retirement savings, held in their Enron-heavy 401(k) plan.

The amendment offered by Representative Rangel would have imposed an excise tax on the proceeds from the sale of company stock by company executives during any time the rank and file workers were barred from similarly selling their stock. We believe this amendment is necessary to deter the kind of corporate greed and callousness witnessed as the Enron case unfolded. Unfortunately, such behavior is not limited to Enron. According to a survey of 428 employers conducted by the benefits consulting firm of Hewitt Associates, 34 percent of 401(k) plans that match employee contributions with employer stock restrict the transferability of the stock, typically by age of the participant (age 50 or 55). However, these companies do not similarly restrict the stock owned by their executives through their stock options. This disparity in treatment will continue unless prohibited through legislation. The 42 million workers who participate in 401(k) plans must be protected from such double standards. Their retirement security depends on it.

It is disappointing to us that an issue of such importance to the retirement security of millions of American workers, and an issue that received the attention of President Bush as a major area for reform, has not been addressed in this bill. We disagree with the Chairman that this should be taken care of by another Committee. This Committee has jurisdiction over the very creation of pension plans. We are charged with ensuring that the benefits promised under these plans are secured for each worker. Thus, it is our inescapable responsibility to ensure that such measures are in place.

Some have rejected the amendment based on the theory that imposing an excise tax on certain behavior is not the way to resolve this problem. It is the method available to the Members of this Committee and has been used since the inception of the Internal Revenue Code. The tax is paid only when the prohibited behavior is executed. We do not agree that the problem should not be addressed within this Committee's jurisdiction. What is more important is that we do everything within our power to reform the pension system and restore much needed confidence in the system. The amendment offered by Representative Rangel would have gone a long way in accomplishing this goal.

The secured golden nest eggs of executives compared to the empty promise to rank-and-file employees

An amendment offered by Representative Matsui would have closed a major loophole in today's law with respect to the golden parachute payments many company executives receive despite the weak financial condition of their company. This is compared to the often worthless retirement benefits many rank-and-file workers receive from a financially troubled company. This is the converse of what is intended under the tax laws. The Employee Retirement Income Security Act of 1974 (ERISA) intended to insulate benefits promised under a qualified pension plan from the financial uncertainty of the employer. The assets held in trust for a qualified pension plan are not intended to be the assets of the employers and are not subject to the claims of the employer's creditors. However, in cases such as Enron's where the employee's retirement account is invested in company stock, the financial decline of the company can result in substantial loss of retirement benefits for plan participants. Any breach of fiduciary duty with respect to the employees' investments in company stock will result in many employees standing in line with the bankruptcy creditors of the employer hoping to recover some small fraction of their lost retirement benefits.

On the other hand, under current law, any non-qualified deferred benefits an employer promises to a worker should be linked directly to the financial health of the company. Non-qualified deferred compensation generally is received only by corporate executives. Mike McNamee of Business Week Investor, in an article entitled "Crackdown on a Pension Perk," noted that an employee can judge when he/she is approaching the top of the corporate ladder through the company's willingness to begin discussions of providing benefits under a split-dollar life insurance policy, one of the many methods used to secure non-qualified deferred benefits for corporate executives. Unfortunately, there is more truth to this statement than many of us are willing to accept.

Many major corporations continue to find ways to ensure that the extremely generous deferred compensation packages awarded to their top executives are secured. The rich golden parachute compensation packages many corporations are awarding their top executives were highlighted in an article appearing in the Wall Street Journal, February 26, 2002 ("As their Companies Crumbled, Some CEOs Got Big-money Payouts"), as well as the New York Times, March 5, 2002 ("For Executives, Nest Egg is Wrapped in a Security Blanket"). These packages often are awarded and secured at a time when the company is reducing pension benefits for most of its other employees.

We have seen how this disparity has resulted in a glaring injustice for the rank-and-file employees. According to recent Securities Exchange Commission (SEC) filings, Enron increased retirement benefits for its top executives at a time when it reduced retirement benefits for its other workers. According to these filings, Ken Lay will receive an annual benefit estimated at $475,042 for life. This is in addition to benefits he received under a $12 million split-dollar life insurance policy Enron secured on Mr. Lay. In addition, according to an article appearing in Mother Jones Magazine, February 25, 2002 ("Ken Lay's Nest Egg"), about $4 million—an amount greater than his entire salary from Enron that year—was paid for variable annuities that will, starting in 2007, guarantee Mr. Lay and his wife an annual income of about $900,000. Such compensation packages are not unique to Enron or to Mr. Lay.

Other top Enron executives received similar benefits. Many major corporations offer similar benefits to their top executives.

There is something fundamentally wrong with a system that permits top executives to walk away from the bankruptcy of their companies with such large benefits which consume assets that under current law should be the assets of the employer, and subject to the claims of its creditors, while the retirement benefits under a qualified plan are totally lost. The workers whose benefits should have been secured find themselves standing in line with all the other creditors, hoping to recover a small amount of what was lost. We should not allow sophisticated financial techniques to turn the pension system on its head—making that which is supposed to be unsecured, secured—and that which is supposed to be secured, as Enron workers have discovered, unsecured.

It is very disappointing that this amendment was not accepted. We must all agree that the use of creative planning techniques to guarantee these non-qualified benefits for executives must be stopped. Such actions by corporate leaders do a grave injustice to millions of workers. We must do more to protect these workers.

Meaningful and accurate information to plan participants

Enron top executives feverishly unloaded millions of dollars worth of Enron stock early in 2001 before the company collapsed. At that same time, the rank-and-file workers were barred from selling any Enron stock from their modest, but Enron-heavy, 401(k) portfolios. While top executives were unloading their Enron stock, they continued to advise workers to invest their 401(k) assets in the company stock. Mr. Skilling made $14.4 million between May 2000 and August 2001 from the sale of his stock but continued to advise employees that Enron stock was the best investment available to them. Mr. Skilling quit the company in August 2001, but not before making millions from the sale of Enron stock and cashing out his benefits under non-qualified deferred plans.

We believe executives of public companies have legal and moral responsibilities to produce honest books and records. We also believe that these responsibilities extend to providing workers and shareholders with accurate information about the true liabilities of the company so they can make informed decisions as to whether to hold or sell that company's stock. Because of the abuse that occurs in this area, we believe it is important to have standards that do not depend on the honesty and good nature of the key executives at any company, but rather, we believe there should be uniform standards to govern this disclosure of information.

Accordingly, Representative Doggett offered an amendment that would require executives to disclose insider stock sales of more than $100,000 to the plan administrator within twenty-four hours of such sales. The plan administrator would be required to notify the plan participants and beneficiaries within three days. The amendment was intended to get the same information to plan participants that currently is required to be filed with the Securities Exchange Commission. The amendment also was rejected.

We believe it is important to ensure that such critical information is available to all employees and shareholders. We have all witnessed how the absence of such information affected Enron employees and their decisions to continue to invest in Enron stock. None of us can doubt that the results would have been very different, and more favorable to the thousands of workers who lost their retirement benefits when Enron finally collapsed, if this information had been publicly available.

Conclusion

The impact the collapse of Enron has had on the retirement security of many of its 20,000 employees has underscored the need for additional reforms in this area. We must enact legislation that will restore confidence in our defined contribution retirement plan system. As in the 1970s, our pension system is broken. In the 1970s we responded by enacting ERISA. Today we must develop similar legislation that would restore confidence in a system that has failed thousands of workers. Otherwise, we will fail these workers a second time. The shame is on Enron now, but the shame will be on us if we fail to act to stop it from happening again.

As employers seek ways to pass the cost of saving for retirement on to employees, and as more and more workers are charged with managing the assets in their own 401(k) plans, it is imperative that we act in this area. The pension system has been undergoing a sea of change for many years, yet we continue simply to patch over holes in the dike. This legislation should be considered merely a modest beginning of badly needed systematic reform of our pension system.

CHARLES B. RANGEL.
KAREN L. THURMAN.
JIM MCDERMOTT.
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