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HOUSE OF REPRESENTATIVES
REPORT
108–98

PROVIDING FOR CONSIDERATION OF H.R. 1000, PENSION SECURITY ACT OF 2003

MAY 13, 2003.—Referred to the House Calendar and ordered to be printed

Mr. LINDER, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. 230]

The Committee on Rules, having had under consideration House Resolution 230, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 1000, the Pension Security Act of 2003, under a modified closed rule.

The rule provides one hour and 20 minutes of debate in the House, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Education and the Workforce, and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

The rule provides that the amendment recommended by the Committee on Education and the Workforce now printed in the bill shall be considered as adopted. The rule waives all points of order against the bill, as amended.

The rule makes in order the amendment printed in this report, if offered by Representative George Miller of California or his designee, which shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

The waiver of all points of order against the bill includes a waiver of clause 5(a) of rule XXI (prohibiting the inclusion of a tax or tariff in a measure not reported by a committee having jurisdiction

over such measures), which is necessary because the Committee on Ways and Means did not report H.R. 1000.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 70

Date: May 13, 2003.
Measure: H.R. 1000, Pension Security Act of 2003.
Motion by: Mrs. Slaughter.
Summary of motion: To make in order the amendment offered by Representative Sanders which requires companies that convert to cash balance pension plans to allow workers who are at least 40 years old or have at least 10 years of service the choice to remain in the traditional defined benefit pension plan. Requires the Treasury Department to immediately withdraw proposed regulations that would allow companies to convert to cash balance plans.
Results: Defeated 4 to 9.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

Rules Committee record vote No. 71

Date: May 13, 2003.
Measure: H.R. 1000, Pension Security Act of 2003.
Motion by: Mr. McGovern.
Summary of motion: To make in order the amendment offered by Representative Visclosky which increases rights now held by workers by expanding their role in the management of their pensions. Requires single-employer pension plans to have representatives of employees or employee organizations serve as joint trustees.
Results: Defeated 4 to 9.
Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Frost—Yea; Slaughter—Yea; McGovern—Yea; Hastings (FL)—Yea; Dreier—Nay.

SUMMARY OF THE AMENDMENT MADE IN ORDER

(Summary derived from information provided by amendment sponsor.)

Miller, George (CA): Amendment in the Nature of a Substitute. Requires executive pensions to be subject to the same pension rules that apply to other workers. Changes provisions that allow special executive pension plans to escape taxation, to receive special protection against creditors, and to end-run pension laws that require wide employee participation at the company. Requires that executive plans be subject to the same uniform and fair vesting and contribution limits that apply to rank-and-file employees. Requires companies changing from traditional pension plans to cash balance plans to allow older workers the choice of remaining in the old plan or joining the new plan. Requires executive compensation packages including pensions to be approved by the board of directors, and re-

quires companies to notify shareholders and employees of any new executive pensions (in plan language), and of any additional benefits to executives 100 days before their adoption. Requires employers negotiating with its employees over wages and benefits to disclose directly to employees any changes (or proposed changes) in top executive pensions, health, or life insurance, and other substantial job perks, with a penalty for failure to disclose. Gives employees greater protections when a company declares bankruptcy, and denies executives preferential protection against creditors. Imposes an excise tax on executive golden parachutes when they leave behind companies with plummeting shareholder value or are facing bankruptcy proceedings. Prevents firms from deducting more than $1 million in executive performance-based compensation if it is obtained through manipulation of the company's pension funds. Imposes tax penalties on executives who sell stock they acquire from stock options if the sale would violate restrictions on the sale of corporate stock that rank-and-file employees face in their 401(k) plans. (One Hour)

TEXT OF THE AMENDMENT MADE IN ORDER

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pension Fairness Act of 2003".

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN DISCLOSURE

Sec. 101. Pension benefit information.
Sec. 102. Immediate warning of excessive stock holdings.
Sec. 103. Report to participants and beneficiaries of trades in employer securities.
Sec. 104. Enforcement of information and disclosure requirements.

TITLE II—FREEDOM TO MAKE INVESTMENT DECISIONS WITH PLAN ASSETS.

Sec. 201. Amendments to the Internal Revenue Code of 1986.
Sec. 202. Amendments to the Employee Retirement Income Security Act of 1974.
Sec. 203. Recommendations relating to non-publicly traded stock.
Sec. 204. Effective date of title.

TITLE III—EMPLOYEE REPRESENTATION

Sec. 301. Participation of participants in trusteeship of individual account plans.

TITLE IV—INCREASED ACCOUNTABILITY

Sec. 401. Bonding or insurance adequate to protect interest of participants and beneficiaries.
Sec. 402. Liability for breach of fiduciary duty.
Sec. 403. Preservation of rights or claims.
Sec. 404. Office of pension participant advocacy.
Sec. 405. Study regarding insurance system for individual account plans.
Sec. 406. Excise tax on failure of pension plans to provide notice of transaction restriction periods.

TITLE V—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES

Sec. 501. Independent investment advice.
Sec. 502. Tax treatment of qualified retirement planning services.

TITLE VI—PARITY IN EMPLOYEE BENEFITS

Sec. 601. Inclusion in gross income of funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.
Sec. 602. Performance-based compensation exception to $1,000,000 limitation on deductible compensation not to apply in certain cases.

TITLE VII—PROTECTION OF RETIREMENT EXPECTATIONS

Sec. 701. Protection of participants from conversions to hybrid defined benefit plans.

TITLE VIII—TREATMENT OF CORPORATE INSIDERS

Sec. 801. Special rules for executive perks and retirement benefits.
Sec. 802. Golden parachute excise tax to apply to deferred compensation paid by corporation after major decline in stock value or corporation declares bankruptcy.
Sec. 803. Adequate disclosure regarding executive compensation packages.

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. Corporate deduction for reinvested ESOP dividends subject to deductible limits.
Sec. 902. Credit for elective deferrals and IRA contributions by certain individuals made permanent (saver's tax credit).
Sec. 903. Authority to rescind transfers to plans made for the benefit of highly compensated employees.

TITLE X—GENERAL PROVISIONS

Sec. 1001. General effective date.
Sec. 1002. Plan amendments.

TITLE I—IMPROVEMENTS IN DISCLOSURE

SEC. 101. PENSION BENEFIT INFORMATION.

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

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

(A) by striking "shall furnish to any plan participant or beneficiary who so requests in writing," and inserting "shall furnish at least once every 3 years, in the case of a participant in a defined benefit plan who has attained age 35, and annually, in the case of an individual account plan, to each plan participant, and shall furnish to any plan participant or beneficiary who so requests,", and

(B) by adding at the end the following flush sentence:

"Information furnished under the preceding sentence to a participant in a defined benefit plan (other than at the request of the participant) may be based on reasonable estimates determined under regulations prescribed by the Secretary.".

(2) MODEL STATEMENT.—Section 105 of such Act (29 U.S.C. 1025) is amended by adding at the end the following new subsection:

"(e)(1) The Secretary of Labor shall develop a model benefit statement which shall be used by plan administrators in complying with the requirements of subsection (a). Such statement shall include—

"(A) the amount of nonforfeitable accrued benefits as of the statement date which is payable at normal retirement age under the plan,

"(B) the amount of accrued benefits which are forfeitable but which may become nonforfeitable under the terms of the plan,

"(C) the amount or percentage of any reduction due to integration of the benefit with the participant's Social Security benefits or similar governmental benefits,

"(D) information on early retirement benefit and joint and survivor annuity reductions, and

"(E) in the case of an individual account plan, the percentage of the net return on investment of plan assets for the preceding plan year (or, with respect to investments directed by the participant, the net return on investment of plan assets for such year so directed), itemized with respect to each type of investment, and, stated separately, the administrative and transaction fees incurred in connection with each such type of investment, and

"(F) in the case of an individual account plan, the amount and percentage of assets in the individual account that consists of employer securities and employer real property (as defined in paragraphs (1) and (2), respectively, of section 407(d)), as determined as of the most recent valuation date of the plan.

"(2) The Secretary shall also develop a separate notice, which shall be included by the plan administrator with the information furnished pursuant to subsection (a), which advises participants and beneficiaries of generally accepted investment principles, including principles of risk management and diversification for long-term retirement security and the risks of holding substantial assets in a single asset such as employer securities.".

(3) RULE FOR MULTIEMPLOYER PLANS.—Subsection (d) of section 105 of such Act (29 U.S.C. 1025) is amended to read as follows:

"(d) Each administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall furnish to any plan participant or beneficiary who so requests in writing, a statement described in subsection (a).".

(b) DISCLOSURE OF BENEFIT CALCULATIONS.—

(1) IN GENERAL.—Section 105 of such Act (as amended by subsection (a)) is amended further—

(A) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

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

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

"(2) The information described in this paragraph includes—

"(A) a worksheet explaining how the amount of the distribution was calculated and stating the assumptions used for such calculation,

"(B) upon written request of the participant or beneficiary, any documents relating to the calculation (if available), and

"(C) such other information as the Secretary may prescribe. Any information provided under this paragraph shall be in a form calculated to be understood by the average plan participant.".

(2) CONFORMING AMENDMENTS.—

(A) Section 101(a)(2) of such Act (29 U.S.C. 1021(a)(2)) is amended by striking "105(a) and (c)" and inserting "105(a), (b), and (d)".

(B) Section 105(c) of such Act (as redesignated by paragraph (1)(A) of this subsection) is amended by inserting "or (b)" after "subsection (a)".

(C) Section 106(b) of such Act (29 U.S.C. 1026(b)) is amended by striking "sections 105(a) and 105(c)" and inserting "subsections (a), (b), and (d) of section 105".

(c) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) 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 NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.

"(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 for each day in the noncompliance period with respect to such failure.

"(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) and paragraph (1) is not otherwise applicable, 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 GENERALLY ACCEPTED INVESTMENT PRINCIPLES.—

"(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide notice of generally accepted investment principles, including principles of risk management and diversification, to each applicable individual.

"(2) NOTICE.—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 rules or other guidance adopted by the Secretary) to allow applicable individuals to understand generally accepted investment principles, including principles of risk management and diversification.

"(3) TIMING OF NOTICE.—The notice required by paragraph (1) shall be provided upon enrollment of the applicable individual in such plan and at least once per plan year thereafter.

"(4) FORM AND MANNER OF NOTICE.—The notice required by paragraph (1) 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 with respect to an applicable pension plan—

"(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 an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

"(C) any beneficiary of a deceased participant or alternate payee described in subparagraph (A) or (B), as the case may be,

who has an accrued benefit under the plan and who is entitled to direct the investment (or hypothetical investment) of some or all of such accrued benefit.

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

"(A) a plan described in section 219(g)(5)(A) (other than in clause (iii) thereof), 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.".

(1) 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 notice of generally accepted investment principles.".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall take effect 60 days after the adoption of rules or other guidance to carry out the amendments made by this subsection, which shall include a model notice of generally accepted investment principles, including principles of risk management and diversification.

(B) MODEL INVESTMENT PRINCIPLES.—For purposes of subparagraph (A), not later than 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 rules or other guidance and a model notice which meets the requirements of section 4980G of the Internal Revenue Code of 1986 (as added by this section).

SEC. 102. IMMEDIATE WARNING OF EXCESSIVE STOCK HOLDINGS.

Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) (as amended by section 101 of this Act) is amended further by adding at the end the following new subsection:

"(g)(1) Upon receipt of information by the plan administrator of an individual account plan indicating that the individual account of any participant which had not been excessively invested in employer securities is excessively invested in such securities (or that such account, as initially invested, is excessively invested in employer securities), the plan administrator shall immediately provide to the participant a separate, written statement—

"(A) indicating that the participant's account has become excessively invested in employer securities,

"(B) setting forth the notice described in subsection (e)(7), and

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

In any case in which such a separate, written statement is required to be provided to a participant under this paragraph, each statement issued to such participant pursuant to subsection (a) thereafter shall also contain such separate, written statement until the plan administrator is made aware that such participant's account has ceased to be excessively invested in employer securities or the employee, in writing, waives the receipt of the notice and acknowledges understanding the importance of diversification.

"(2) Each notice required under this subsection shall be provided in a form and manner which shall be prescribed in regulations of the Secretary. Such regulations shall provide for inclusion in the notice a prominent reference to the risks of large losses in assets available for retirement from excessive investment in employer securities.

"(3) For purposes of paragraph (1), a participant's account is 'excessively invested' in employer securities if more than 10 percent

of the balance in such account is invested in employer securities (as defined in section 407(d)(1)).".

SEC. 103. REPORT TO PARTICIPANTS AND BENEFICIARIES OF TRADES IN EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsection (d) as subsection (e); and

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

"(d)(1) In any case in which assets in the individual account of a participant or beneficiary under an individual account plan include employer securities, if any person engages in a transaction constituting a direct or indirect purchase or sale of employer securities and—

"(A) such transaction is required under section 16 of the Securities Exchange Act of 1934 to be reported by such person to the Securities and Exchange Commission, or

"(B) such person is a named fiduciary of the plan,

such person shall comply with the requirements of paragraph (2).

"(2) A person described in paragraph (1) complies with the requirements of this paragraph in connection with a transaction described in paragraph (1) if such person provides to the plan administrator of the plan a written notification of the transaction not later than 1 business day after the date of the transaction.

"(3)(A) If the plan administrator is made aware, on the basis of notifications received pursuant to paragraph (2) or otherwise, that the proceeds from any transaction described in paragraph (1), constituting direct or indirect sales of employer securities by any person described in paragraph (1), exceed $100,000, the plan administrator of the plan shall provide to each participant and beneficiary a notification of such transaction. Such notification shall be in writing, except that such notification may be in electronic or other form to the extent that such form is reasonably accessible to the participant or beneficiary.

"(B) In any case in which the proceeds from any transaction described in paragraph (1) (with respect to which a notification has not been provided pursuant to this paragraph), together with the proceeds from any other such transaction or transactions described in paragraph (1) occurring during the preceding one-year period, constituting direct or indirect sales of employer securities by any person described in paragraph (1), exceed (in the aggregate) $100,000, such series of transactions by such person shall be treated as a transaction described in subparagraph (A) by such person.

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

"(4) Each notification required under paragraph (2) or (3) shall be made in such form and manner as may be prescribed in regulations of the Secretary and shall include the number of shares involved in each transaction and the price per share, and the notification required under paragraph (3) shall be written in language designed to be understood by the average plan participant. The Secretary may provide by regulation, in consultation with the Secu-

rities and Exchange Commission, for exemptions from the requirements of this subsection with respect to specified types of transactions to the extent that such exemptions are consistent with the best interests of plan participants and beneficiaries. Such exemptions may relate to transactions involving reinvestment plans, stock splits, stock dividends, qualified domestic relations orders, and similar matters.

"(5) For purposes of this subsection, the term 'employer security' has the meaning provided in section 407(d)(1).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transactions occurring after 90 days after the date of the enactment of this Act.

SEC. 104. ENFORCEMENT OF INFORMATION AND DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph:

"(7) The Secretary may assess a civil penalty against any person required to provide any notification under the provisions of section 104(d), any statement under the provisions of subsection (a), (d), or (f) of section 105, any information under the provisions of section 404(c)(4), or any notice under the provisions of section 404(e)(1) of up to $1,000 a day from the date of any failure by such person to provide such notification, statement, information, or notice in accordance with such provisions.".

(b) CONFORMING AMENDMENT.—Section 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) (as amended by section 102(b)) is amended further by striking "(5), or (6)" and inserting "(5), (6), or (7)".

TITLE II—FREEDOM TO MAKE INVESTMENT DECISIONS WITH PLAN ASSETS

SEC. 201. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(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) and (C).

"(B) ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—

"(i) IN GENERAL.—In the case of the portion of the account attributable to elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual in such plan may elect to direct the plan to

divest any portion of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D). The preceding sentence shall apply to the extent that the amount attributable to reinvested portion exceeds the amount to which a prior election under this subparagraph or paragraph (28) applies.

"(ii) APPLICABLE INDIVIDUAL.—For purposes of this subparagraph, 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.

"(C) OTHER EMPLOYER CONTRIBUTIONS.—

"(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals) which is invested in employer securities, a plan meets the requirements of this subparagraph if each qualified participant in the plan may elect to direct the plan to divest any portion of such securities in the participant's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (E). The preceding sentence shall apply to the extent that the amount attributable to such reinvested portion exceeds the amount to which a prior election under this subparagraph or paragraph (28) applies.

"(ii) QUALIFIED PARTICIPANT.—For purposes of this subparagraph, the term 'qualified participant' means—

"(I) any participant in the plan who has completed at least 3 years of service (as determined under section 411(a)) under the plan,

"(II) any beneficiary who, with respect to a participant who met the service requirement in subclause (I), 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 who met the service requirement in subclause (I) or alternate payee described in subclause (II).

"(D) 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.

"(E) PRESERVATION OF AUTHORITY OF PLAN TO LIMIT INVESTMENT.—Nothing in this paragraph shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities.

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

"(i) 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.

"(ii) ELECTIVE DEFERRALS.—For purposes of this subparagraph, the term 'elective deferrals' means an employer contribution described in section 402(g)(3)(A) and any employee contribution.

"(iii) ELECTION.—Elections under this paragraph shall be not less frequently than quarterly.

"(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).".

(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 with respect to employer securities which are readily tradable on an established securities market.".

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

(3) Section 4975(e)(7) of such Code is amended by adding at the end the following new sentence: "A plan shall not fail to be treated as an employee stock ownership plan merely because the plan meets the requirements of section 401(a)(35) (or provides greater diversification rights) or because participants in such plan exercise diversification rights under such section (or greater diversification rights available under the plan).".

(4) 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) and (C) are met.".

(5) Section 407 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107) is amended by adding at the end the following new subsection:

"(g) Notwithstanding section 408(e) or any other provision of this title, an individual account plan may not include provisions that do not meet the requirements of section 401(a)(35)(B) of the Internal Revenue Code of 1986.".

SEC. 202. AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

"(e) DIVERSIFICATION OF INVESTMENT OF ACCOUNT ASSETS HELD UNDER INDIVIDUAL ACCOUNT PLANS.—

"(1) IN GENERAL.—In the case of an individual account plan under which a participant or beneficiary is permitted to exercise control over assets in his or her account, with respect to the assets in the account to which the participant or beneficiary has a nonforfeitable right and which consist of employer securities which are readily tradable on an established securi-

ties market, the plan shall meet the requirements of paragraphs (2), (3), (4), (5), (6), and (7).

"(2) ASSETS ATTRIBUTABLE TO EMPLOYEE CONTRIBUTIONS.—In the case of any portion of the account assets described in paragraph (1) which is attributable to employee contributions, there shall be no restrictions on the right of a participant or beneficiary to allocate the assets in such portion to any investment option provided under the plan.

"(3) ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—

"(A) IN GENERAL.—In the case of the portion of the account assets described in paragraph (1) which is attributable to elective deferrals and is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual in such plan may elect to direct the plan to divest any portion of such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (5). The preceding sentence shall apply to the extent that the amount attributable to such reinvested portion exceeds the amount to which a prior election under this paragraph or section 401(a)(28) of the Internal Revenue Code of 1986 applies.

"(B) APPLICABLE INDIVIDUAL.—For purposes of this paragraph, the term 'applicable individual' means—

"(i) any participant in the plan,

"(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

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

"(4) OTHER EMPLOYER CONTRIBUTIONS.—

"(A) IN GENERAL.—In the case of the portion of the account assets described in paragraph (1) which is attributable employer contributions (other than elective deferrals) and is invested in employer securities, a plan meets the requirements of this paragraph if each qualified participant in the plan may elect to direct the plan to divest any portion of such securities in the participant's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (6). The preceding sentence shall apply to the extent that the amount attributable to such reinvested portion exceeds the amount to which a prior election under this paragraph or section 401(a)(28) of such Code applies.

"(B) QUALIFIED PARTICIPANT.—For purposes of this paragraph, the term 'qualified participant' means—

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

"(ii) any beneficiary who, with respect to a participant who met the service requirement in clause (i), is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic

relations order (within the meaning of section 206(d)(3)(B)(i)), and

"(iii) any beneficiary of a deceased participant who met the service requirement in clause (i) or alternate payee described in clause (ii).

"(5) INVESTMENT OPTIONS.—The requirements of this paragraph are met if, with respect to the account assets described in paragraph (1), the plan offers not less than 3 investment options (not inconsistent with regulations prescribed by the Secretary) other than employer securities.

"(6) PROMPT COMPLIANCE WITH DIRECTIONS TO ALLOCATE INVESTMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a plan meets the requirements of this paragraph with respect to plan assets described in paragraph (1) if the plan provides that, within 5 days after the date of any election by a participant or beneficiary allocating any such assets to any investment option provided under the plan, the plan administrator shall take such actions as are necessary to effectuate such allocation.

"(B) SPECIAL RULE FOR PERIODIC ELECTIONS.—In any case in which the plan provides for elections periodically during prescribed periods, the 5-day period described in subparagraph (A) shall commence at the end of each such prescribed period.

"(7) NOTICE OF RIGHTS AND OF IMPORTANCE OF DIVERSIFICATION.—A plan meets the requirements of this paragraph if the plan provides that, not later than 30 days prior to the date on which the right of a participant under the plan to his or her accrued benefit becomes nonforfeitable, the plan administrator shall provide to such participant and his or her beneficiaries a written notice—

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

"(B) describing the importance of diversifying the investment of account assets.

"(8) PRESERVATION OF AUTHORITY OF PLAN TO LIMIT INVESTMENT.—Nothing in this subsection shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities.

"(9) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) 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) ELECTIVE DEFERRALS.—The term 'elective deferrals' means an employer contribution described in section 402(g)(3)(A) of such Code and any employee contribution.

"(C) ELECTION.—Elections under this subsection shall be not less frequently than quarterly.

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

SEC. 203. RECOMMENDATIONS RELATING TO NON-PUBLICLY TRADED STOCK.

Within 1 year after the date of the enactment of this Act, the Secretary of Labor and the Secretary of the Treasury shall jointly transmit to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate their recommendations regarding legislative changes relating to treatment, under section 404(e) of the Employee Retirement Income Security Act of 1974 and section 401(a)(35) of the Internal Revenue Code of 1986 (as added by this title), of individual account plans under which a participant or beneficiary is permitted to exercise control over assets in his or her account, in cases in which such assets do not include employer securities which are readily tradable under an established securities market.

SEC. 204. EFFECTIVE DATE OF TITLE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall apply with respect to plan years beginning after December 31, 2003.

(b) 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).

(c) DELAYED EFFECTIVE DATE OF EXISTING HOLDINGS.—In any case in which a portion of the nonforfeitable accrued benefit of a participant or beneficiary is held in the form of employer securities (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) immediately before the first date of the first plan year to which the amendments made by this title apply, such portion shall be taken into account only with respect to plan years beginning on or after January 1, 2005.

TITLE III—EMPLOYEE REPRESENTATION

SEC. 301. PARTICIPATION OF PARTICIPANTS IN TRUSTEESHIP OF INDIVIDUAL ACCOUNT PLANS.

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

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

(2) by inserting "(1)" after "(a)"; and

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

"(2)(A) The assets of a single-employer plan which is an individual account plan and under which some or all of the assets are derived from employee contributions shall be held in trust by a joint board of trustees, which shall consist of two or more trustees representing on an equal basis the interests of the employer or employers maintaining the plan and the interests of the participants and their beneficiaries and having equal voting rights.

"(B)(i) Except as provided in clause (ii), in any case in which the plan is maintained pursuant to one or more collective bargaining

agreements between one or more employee organizations and one or more employers, the trustees representing the interests of the participants and their beneficiaries shall be designated by such employee organizations.

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

"(iii) In any case in which clause (i) does not apply with respect to a single-employer plan because the plan is not described in clause (i) or because of a waiver filed pursuant to clause (ii), the trustee or trustees representing the interests of the participants and their beneficiaries shall be selected by the plan participants in accordance with regulations of the Secretary.

"(C) An individual shall not be treated as ineligible for selection as trustee solely because such individual is an employee of the plan sponsor, except that the employee so selected may not be a highly compensated employee (as defined in section 414(q) of the Internal Revenue Code of 1986).

"(D) The Secretary shall provide by regulation for the appointment of a neutral individual, in accordance with the procedures under section 203(f) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as necessary to resolve tie votes by the trustees.".

(b) REGULATIONS.—The Secretary of Labor shall prescribe the initial regulations necessary to carry out the provisions of the amendments made by this section not later than 90 days after the date of the enactment of this Act.

TITLE IV—INCREASED ACCOUNTABILITY

SEC. 401. BONDING OR INSURANCE ADEQUATE TO PROTECT INTEREST OF PARTICIPANTS AND BENEFICIARIES.

Section 412 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112) is amended by adding at the end the following new subsection:

"(f) Notwithstanding the preceding provisions of this section, each fiduciary of an individual account plan shall be bonded or insured, in accordance with regulations which shall be prescribed by the Secretary, in an amount sufficient to ensure coverage by the bond or insurance of financial losses due to any failure to meet the requirements of this part.".

SEC. 402. LIABILITY FOR BREACH OF FIDUCIARY DUTY.

(a) ADDITIONAL EQUITABLE OR REMEDIAL RELIEF.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended—

(1) by redesignating subsection (b) as subsection (c);

(2) in subsection (a), by striking ", including removal of such fiduciary"; and

(3) by inserting after subsection (a) the following new subsection:

"(b) The equitable or remedial relief referred to in subsection (a) may include (but is not limited to) a court order removing the fiduciary from the plan referred to in subsection (a) and a court order prohibiting, conditionally or unconditionally, and permanently or for such period of time as the court shall determine, the fiduciary from serving—

"(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

"(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

"(3) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan.".

(b) LIABILITY FOR PARTICIPATING IN OR CONCEALING FIDUCIARY BREACH IN CONNECTION WITH INDIVIDUAL ACCOUNT PLANS.—

(1) APPLICATION TO PARTICIPANTS AND BENEFICIARIES OF 401(k) PLANS.—

(A) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1101 et seq.) is amended by adding after section 409 the following new section:

"SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN 401(k) PLANS.

"(a) Any person who is a fiduciary with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code of 1986 who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to each participant and beneficiary of the plan any losses to such participant or beneficiary resulting from each such breach, and to restore to such participant or beneficiary any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

"(b) The right of participants and beneficiaries under subsection (a) to sue for breach of fiduciary duty with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of such Code shall be in addition to all existing rights that participants and beneficiaries have under section 409, section 502, and any other provision of this title, and shall not be construed to give rise to any inference that such rights do not already exist under section 409, section 502, or any other provision of this title.

"(c) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he or she became a fiduciary or after he or she ceased to be a fiduciary."

(B) CONFORMING AMENDMENT.—The table of contents for part 4 of subtitle B of title I of such Act is amended by in-

serting the following new item after the item relating to section 409:

"Sec. 409A. Liability for breach of fiduciary duty in 401(k) plans."

(2) INSIDER LIABILITY.—

(A) IN GENERAL.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b)(1)(A) If an insider with respect to the plan sponsor of an individual account plan that holds employer securities that are readily tradable on an established securities market—

"(i) knowingly participates in a breach of fiduciary responsibility to which subsection (a) applies, or

"(ii) knowingly undertakes to conceal such a breach,

such insider shall be personally liable under this subsection for such breach in the same manner as the fiduciary who commits such breach.

"(B) For purposes of subparagraph (A), the term 'insider' means, with respect to any plan sponsor of a plan to which subparagraph (A) applies—

"(i) any officer or director with respect to the plan sponsor, or

"(ii) any independent qualified public accountant of the plan or of the plan sponsor.

"(3) Any relief provided under this subsection or section 409A—

"(A) if provided to an individual account plan, shall inure to the individual accounts of the affected participants or beneficiaries, and

"(B) if provided to a participant or beneficiary, shall be payable to the individual account plan on behalf of such participant or beneficiary unless such plan has been terminated."

(B) CONFORMING AMENDMENT.—Section 409(c) of such Act (29 U.S.C. 1109(c)), as redesignated by subparagraph (A), is amended by inserting before the period the following: ", unless such liability arises under subsection (b)".

(c) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: ", except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of subsection (e)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to breaches occurring on or after the date of the enactment of this Act.

SEC. 403. PRESERVATION OF RIGHTS OR CLAIMS.

Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

"(n)(1) The rights under this title (including the right to maintain a civil action) may not be waived, deferred, or lost pursuant to any agreement not authorized under this title with specific reference to this subsection.

"(2) Paragraph (1) shall not apply to an agreement providing for arbitration or participation in any other nonjudicial procedure to resolve a dispute if the agreement is entered into knowingly and voluntarily by the parties involved after the dispute has arisen or is pursuant to the terms of a collective bargaining agreement.".

SEC. 404. OFFICE OF PENSION PARTICIPANT ADVOCACY.

(a) IN GENERAL.—Subtitle A of title III of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 3001 et seq.) is amended by inserting after section 3004 the following new section:

"OFFICE OF PENSION PARTICIPANT ADVOCACY

"SEC. 3005. (a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established in the Department of Labor an office to be known as the 'Office of Pension Participant Advocacy'.

"(2) PENSION PARTICIPANT ADVOCATE.—The Office of Pension Participant Advocacy shall be under the supervision and direction of an official to be known as the 'Pension Participant Advocate' who shall—

"(A) have demonstrated experience in the area of pension participant assistance, and

"(B) be selected by the Secretary after consultation with pension participant advocacy organizations.

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

"(b) FUNCTIONS OF OFFICE.—It shall be the function of the Office of Pension Participant Advocacy to—

"(1) evaluate the efforts of the Federal Government, business, and financial, professional, retiree, labor, women's, and other appropriate organizations in assisting and protecting pension plan participants, including—

"(A) serving as a focal point for, and actively seeking out, the receipt of information with respect to the policies and activities of the Federal Government, business, and such organizations which affect such participants,

"(B) identifying significant problems for pension plan participants and the capabilities of the Federal Government, business, and such organizations to address such problems, and

"(C) developing proposals for changes in such policies and activities to correct such problems, and communicating such changes to the appropriate officials,

"(2) promote the expansion of pension plan coverage and the receipt of promised benefits by increasing the awareness of the general public of the value of pension plans and by protecting the rights of pension plan participants, including—

"(A) enlisting the cooperation of the public and private sectors in disseminating information, and

"(B) forming private-public partnerships and other efforts to assist pension plan participants in receiving their benefits,

"(3) advocating for the full attainment of the rights of pension plan participants, including by making pension plan sponsors and fiduciaries aware of their responsibilities,

"(4) giving priority to the special needs of low and moderate income participants,

"(5) developing needed information with respect to pension plans, including information on the types of existing pension plans, levels of employer and employee contributions, vesting status, accumulated benefits, benefits received, and forms of benefits, and

"(6) pursuing claims on behalf of participants and beneficiaries and providing appropriate assistance in the resolution of disputes between participants and beneficiaries and pension plans, including assistance in obtaining settlement agreements.

"(c) REPORTS.—

"(1) ANNUAL REPORT.—Not later than December 31 of each calendar year, the Pension Participant Advocate shall report to the Committee on Education and the Workforce 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 on its activities during the fiscal year ending in the calendar year. Such report shall—

"(A) identify significant problems the Advocate has identified,

"(B) include specific legislative and regulatory changes to address the problems, and

"(C) identify any actions taken to correct problems identified in any previous report.

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

"(2) SPECIFIC REPORTS.—The Pension Participant Advocate shall report to the Secretary or any other appropriate official any time the Advocate identifies a problem which may be corrected by the Secretary or such official.

"(3) REPORTS TO BE SUBMITTED DIRECTLY.—The report required under paragraph (1) shall be provided directly to the committees of Congress without any prior review or comment by the Secretary or any other Federal officer or employee.

"(d) SPECIFIC POWERS.—

"(1) RECEIPT OF INFORMATION.—Subject to such confidentiality requirements as may be appropriate, the Secretary and other Federal officials shall, upon request, provide such information (including plan documents) as may be necessary to enable the Pension Participant Advocate to carry out the Advocate's responsibilities under this section.

"(2) APPEARANCES.—The Pension Participant Advocate may represent the views and interests of pension plan participants before any Federal agency, including, upon request of a participant, in any proceeding involving the participant.

"(3) CONTRACTING AUTHORITY.—In carrying out responsibilities under subsection (b)(5), the Pension Participant Advocate may, in addition to any other authority provided by law—

"(A) contract with any person to acquire statistical information with respect to pension plan participants, and

"(B) conduct direct surveys of pension plan participants."

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 3004 the following new item:

"Sec. 3051. Office of Pension Participant Advocacy.".

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2004.

SEC. 405. STUDY REGARDING INSURANCE SYSTEM FOR INDIVIDUAL ACCOUNT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Pension Benefit Guaranty Corporation shall contract to carry out a study relating to the establishment of an insurance system for individual account plans. In conducting such study, the Corporation shall consider—

(1) the feasibility and impact of such a system, and

(2) options for developing such a system.

(b) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Corporation shall report the results of its study, together with any recommendations for legislative changes, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate.

SEC. 406. 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 for each day in the noncompliance period with respect to such failure.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

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

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

"(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

"(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e) and paragraph (1)

is not otherwise applicable, 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 PERIODS.—

"(1) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any transaction restriction period with respect to an applicable pension plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

"(2) NOTICE REQUIREMENTS.—

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

"(i) the reasons for the transaction restriction period,

"(ii) an identification of the investments and other rights affected,

"(iii) the expected beginning date and length of the transaction restriction period,

"(iv) in the case of investments affected, a statement that the applicable individual should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the transaction restriction period, and

"(v) such other matters as the Secretary may require by regulation.

"(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the transaction restriction period applies at least 30 days in advance of the transaction restriction period.

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

"(i) a deferral of the transaction restriction period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1) of the Employee Retirement Income Security Act of 1974, and a fiduciary (within the meaning of section 3(21) of such Act) of the plan reasonably so determines in writing, or

"(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

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

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

"(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO TRANSACTION RESTRICTION PERIOD.—In the case of any transaction restriction period in connection with an applicable pension plan, the plan administrator shall provide timely notice of such transaction restriction period to the issuer of any employer securities subject to such transaction restriction period.

"(3) EXCEPTION FOR TRANSACTION RESTRICTION PERIODS WITH LIMITED APPLICABILITY.—In any case in which the transaction restriction period applies to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be an applicable individual under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the transaction restriction period applies as soon as reasonably practicable.

"(4) CHANGES IN LENGTH OF TRANSACTION RESTRICTION PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the transaction restriction period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended transaction restriction period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

"(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of

this subsection which the Secretary determines are in the interests of participants and beneficiaries.

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

"(7) TRANSACTION RESTRICTION PERIOD.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'transaction restriction period' means, in connection with an applicable pension plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

"(B) EXCLUSIONS.—The term 'transaction restriction period' does not include a suspension, limitation, or restriction—

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

"(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

"(iii) which applies to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 414(p)(8)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 414(p)(1)).

"(8) APPLICABLE INDIVIDUAL.—For purposes of this section, 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 an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

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

who has an accrued benefit under the plan and who is entitled to direct the investment (or hypothetical investment) of some or all of such accrued benefit.

"(9) APPLICABLE PENSION PLAN.—For purposes of this subsection, the term 'applicable pension plan' means—

"(A) a plan described in section 219(g)(5)(A) (other than in clause (iii) thereof), 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.".

(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 AND RELATED RULES.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act. Good faith compliance with the requirements of such amendments in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

(2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—The Secretary of the Treasury shall, in consultation with the Secretary of Labor, issue initial guidance and a model notice pursuant to section 4980H(e)(6) of the Internal Revenue Code of 1986 (as added by this section) not later than January 1, 2005. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this section.

(3) PLAN AMENDMENTS.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this section takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this section, and

(B) such plan amendment applies retroactively to the period after such amendment made by this section takes effect and before such first plan year.

TITLE V—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES

SEC. 501. INDEPENDENT INVESTMENT ADVICE.

(a) IN GENERAL.—Section 404(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(1)) (as amended by section 102(c)) is amended further—

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

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

"(B)(i) In the case of a pension plan described in subparagraph (A) which provides investment in employer securities as at least one option for investment of plan assets at the direction of the participant or beneficiary, such plan shall make available to the participant or beneficiary the services of a qualified fiduciary adviser for purposes of providing investment advice described in section 3(21)(A)(ii) regarding investment in such securities.

"(ii) No person who is otherwise a fiduciary shall be liable by reason of any investment advice provided by a qualified fiduciary adviser pursuant to a request under clause (i) if—

"(I) the plan provides for selection and monitoring of such adviser in a prudent and effective manner,

"(II) such adviser is a named fiduciary under the plan in connection with the provision of such advice, and

"(III) in the provision of the advice, such adviser is not conflicted in connection with the provision of the advice, in accordance with subparagraph (C).

"(C) A qualified fiduciary adviser is not conflicted in the provision of investment advice if, with respect to any product taken into account in determining the asset allocation with respect to which such advice is provided—

"(i) the adviser has no material interest in such product, or

"(ii) the adviser discloses any material interest the adviser has in such product to the recipient of the advice and refers the recipient to an alternative qualified fiduciary adviser made available by the plan under subparagraph (B)(i) who has no material interest in any product taken into account in the recommended asset allocation.

"(D) For purposes of subparagraph (B)—

"(i) The term 'qualified fiduciary adviser' means, with respect to a plan, a person who—

"(I) is a fiduciary of the plan by reason of the provision of qualified investment advice by such person to a participant or beneficiary,

"(II) has no material interest in, and no material affiliation or contractual relationship with any third party having a material interest in, the employer (other than such person's relationship with the employer in the capacity of a qualified fiduciary adviser),

"(III) meets the independence requirements of clause (ii) in connection with investment advice provided by such person pursuant to services rendered pursuant to clause (i),

"(IV) meets the qualifications of clause (iii), and

"(V) meets the additional requirements of clause (iv).

"(ii) A person meets the independence requirements of this clause if—

"(I) the amount of compensation payable to any entity in connection with the provision of the advice is not dependent on any particular product with respect to which the advice is rendered or the value of any such product,

"(II) no recordkeeping is maintained by such person, the plan, the plan sponsor, or any other fiduciary with respect to the plan with respect to which products are recommended by such person,

"(III) such person has no material interest in, and no material affiliation or contractual relationship with any third party having a material interest in, any other person whose analysis, with respect to any security or other property with respect to which the advice is being provided, is employed in developing recommendations included in such advice, and

"(IV) the plan provides for prompt disclosure of material interests and for the services of alternative qualified fiduciary advisers, sufficient to meet the requirements of subparagraph (C).

"(iii) A person meets the qualifications of this subparagraph if such person—

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

"(II) if not registered as an investment adviser under such Act by reason of section 203A(a)(1) of such Act (15 U.S.C. 80b–3a(a)(1)), is registered under the laws of the State in which the fiduciary maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary,

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

"(IV) is a bank or similar financial institution referred to in section 408(b)(4),

"(V) is an insurance company qualified to do business under the laws of a State, or

"(VI) is any other comparable entity which satisfies such criteria as the Secretary determines appropriate.

"(iv) A person meets the additional requirements of this clause if every individual who is employed (or otherwise compensated) by such person and whose scope of duties includes the provision of qualified investment advice on behalf of such person to any participant or beneficiary is—

"(I) a registered representative of such person,

"(II) an individual described in subclause (I), (II), or (III) of clause (i), or

"(III) such other comparable qualified individual as may be designated in regulations of the Secretary.".

(b) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: ", except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of this section".

SEC. 502. TAX TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

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

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

(b) CONFORMING AMENDMENTS.—

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

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

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

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

TITLE VI—PARITY IN EMPLOYEE BENEFITS

SEC. 601. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

"(a) IN GENERAL.—If an employer maintains a defined contribution plan to which employer contributions are made in the form of employer stock and such employer maintains a funded deferred compensation plan—

"(1) compensation of any corporate insider which is deferred under such funded deferred compensation plan shall be included in the gross income of the insider or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

"(2) the tax treatment of any amount made available under the plan to a corporate insider or beneficiary shall be determined under section 72 (relating to annuities, etc.).

"(b) FUNDED DEFERRED COMPENSATION PLAN.—For purposes of this section—

"(1) IN GENERAL.—The term 'funded deferred compensation plan' means any plan providing for the deferral of compensation unless—

"(A) the employee's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the employer, and

"(B) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the employer (without being restricted to the provision of benefits under the plan), and

"(C) the amounts referred to in subparagraph (B) are available to satisfy the claims of the employer's general creditors at all times (not merely after bankruptcy or insolvency).

Such term shall not include a qualified employer plan.

"(2) SPECIAL RULES.—

"(A) EMPLOYEE'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(A) unless, under the written terms of the plan—

"(i) the compensation deferred under the plan is paid only upon separation from service, death, or at a specified time (or pursuant to a fixed schedule), and

"(ii) the plan does not permit the acceleration of the time such deferred compensation is paid by reason of any event.

If the employer and employee agree to a modification of the plan that accelerates the time for payment of any deferred compensation, then all compensation previously deferred under the plan shall be includible in gross income for the taxable year during which such modification takes effect and the taxpayer shall pay interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income in the taxable years deferred.

"(B) CREDITOR'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(B) with respect to amounts set aside in a trust unless—

"(i) the employee has no beneficial interest in the trust,

"(ii) assets in the trust are available to satisfy claims of general creditors at all times (not merely after bankruptcy or insolvency), and

"(iii) there is no factor (such as the location of the trust outside the United States) that would make it more difficult for general creditors to reach the assets in the trust than it would be if the trust assets were held directly by the employer in the United States.

"(c) CORPORATE INSIDER.—For purposes of this section, the term 'corporate insider' means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement.

"(2) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual."

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

"Sec. 409A. Denial of deferral for funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts deferred after the date of the enactment of this Act.

SEC. 602. PERFORMANCE-BASED COMPENSATION EXCEPTION TO $1,000,000 LIMITATION ON DEDUCTIBLE COMPENSATION NOT TO APPLY IN CERTAIN CASES.

(a) IN GENERAL.—Paragraph (4) of section 162(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(G) CERTAIN FACTORS NOT PERMITTED TO BE TAKEN INTO ACCOUNT IN DETERMINING WHETHER PERFORMANCE GOALS ARE MET.—Subparagraph (C) shall not apply if, in determining whether the performance goals are met, any of the following are taken into account:

"(i) Cost savings as a result of changes to any qualified employer plan (as defined in section 4972(d)).

"(ii) Excess assets of such a plan or earnings thereon.

"(iii) Any excess of the amount assumed to be the return on the assets of such a plan over the actual return on such assets."

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

TITLE VII—PROTECTION OF RETIREMENT EXPECTATIONS

SEC. 701. PROTECTION OF PARTICIPANTS FROM CONVERSIONS TO HYBRID DEFINED BENEFIT PLANS.

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

(1) ELECTION TO MAINTAIN RATE OF ACCRUAL IN EFFECT BEFORE PLAN AMENDMENT.—Section 204(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)) is amended by adding at the end the following new subparagraph:

"(I)(i) Notwithstanding the preceding subparagraphs, in the case of a plan amendment to a defined benefit plan—

"(I) which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or which has a similar effect as determined under regulations issued under clause (iii)), and

"(II) which has the effect of reducing the rate of future benefit accrual of 1 or more participants,

such plan shall be treated as not satisfying the requirements of this paragraph unless such plan meets the requirements of clause (ii).

"(ii) A plan meets the requirements of this clause if the plan provides each participant who has attained 10 years of service (as determined under section 203) under the plan at the time such amendment takes effect with—

"(I) notice of the plan amendment indicating that it has such effect, including a comparison of the present and projected values of the accrued benefit determined both with and without regard to the plan amendment, and

"(II) an election, on the date of the conversion, to either receive benefits under the terms of the plan as in effect on or after the effective date of such plan amendment or to receive benefits under the terms of the plan as in effect immediately before the effective date of such plan amendment (taking into account all benefit accruals under such terms since such date).

"(iii) The Secretary shall issue regulations under which any plan amendment which has an effect similar to the effect described in clause (i)(I) shall be treated as a plan amendment described in clause (i)(I). Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment has an effect described in the preceding sentence, such plan amendment shall be treated as a plan amendment described in clause (i)(I).".

(2) EARLY RETIREMENT SUBSIDY TAKEN INTO ACCOUNT FOR PURPOSES OF OPENING BALANCE OF HYBRID DEFINED BENEFIT PLAN.—Section 204(g) of such Act (29 U.S.C. 1054(g)) is amended by adding at the end the following new paragraph:

"(6) In the case of a plan amendment to a defined benefit plan which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or a plan amendment to such plan having a similar effect as determined under regulations issued under subsection (b)(1)(I)(iii)), such amendment shall not be treated as reducing accrued benefits merely because under such amendment any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (2)(A)) is taken into account for purposes of the opening balance of the amended plan.".

(3) INTEREST RATE FOR DETERMINATIONS RELATING TO PLAN CONVERSIONS.—Section 204(g) of such Act (as amended by paragraph (2)) is amended further by adding at the end the following new paragraph:

"(7) INTEREST RATE.—For purposes of this paragraph—

"(A) in the case of an amendment described in paragraph (1) which takes effect on or after the enactment of this paragraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendment shall be the applicable rate and tables under section 417(e)(3) of the Internal Revenue Code of 1986 as of the date on which such amendment takes effect, and

"(B) in the case of amendments described in paragraph (1) which took effect before the enactment of this paragraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendments shall be the applicable rate and tables which were in effect under section 412(l) of the Internal Revenue Code of 1986 as of the effective date of the respective amendment.".

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

(1) ELECTION TO MAINTAIN RATE OF ACCRUAL IN EFFECT BEFORE PLAN AMENDMENT.—Section 411(b)(1) of the Internal Revenue Code of 1986 (relating to accrued benefit requirements for defined benefit plans) is amended by adding at the end the following new subparagraph:

"(I) ELECTION TO MAINTAIN RATE OF ACCRUAL IN EFFECT BEFORE CERTAIN PLAN AMENDMENTS.—

"(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, in the case of a plan amendment to a defined benefit plan—

"(I) which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or which has a similar effect as determined under regulations issued under clause (iii)), and

"(II) which has the effect of reducing the rate of future benefit accrual of 1 or more participants,

such plan shall be treated as not satisfying the requirements of this paragraph unless such plan meets the requirements of clause (ii).

"(ii) REQUIREMENTS.—A plan meets the requirements of this clause if the plan provides each participant who has attained 10 years of service (as determined under section 203) under the plan at the time such amendment takes effect with—

"(I) notice of the plan amendment indicating that it has such effect, including a comparison of the present and projected values of the accrued benefit determined both with and without regard to the plan amendment, and

"(II) an election, on the date of the conversion, to either receive benefits under the terms of the plan as in effect on or after the effective date of such plan amendment or to receive benefits under the terms of the plan as in effect immediately before the effective date of such plan amendment (taking into account all benefit accruals under such terms since such date).

"(iii) REGULATIONS.—The Secretary shall issue regulations under which any plan amendment which has an effect similar to the effect described in clause (i)(I) shall be treated as a plan amendment described in clause (i)(I). Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment has an effect described in the preceding sentence, such plan amendment shall be treated as a plan amendment described in clause (i)(I).".

(2) EARLY RETIREMENT SUBSIDY TAKEN INTO ACCOUNT FOR PURPOSES OF OPENING BALANCE OF HYBRID DEFINED BENEFIT PLAN.—Paragraph (6) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following new subparagraph:

"(F) EARLY RETIREMENT SUBSIDY TAKEN INTO ACCOUNT FOR PURPOSES OF OPENING BALANCE OF HYBRID DEFINED BENEFIT PLAN.—In the case of a plan amendment to a defined benefit plan which has the effect of converting the plan to a plan under which the accrued benefit is ex-

pressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or a plan amendment to such plan having a similar effect as determined under regulations issued under subsection (b)(1)(I)(iii)), such amendment shall not be treated as reducing accrued benefits merely because under such amendment any early retirement benefit or retirement-type subsidy (within the meaning of section subparagraph (B)(i)) is taken into account for purposes of the opening balance of the amended plan.".

(3) INTEREST RATE FOR DETERMINATIONS RELATING TO PLAN CONVERSIONS.—

Paragraph (6) of section 411(d) of such Code (as amended by paragraph (2)) is amended further by adding at the end the following new subparagraph:

"(G) INTEREST RATE.—For purposes of this paragraph—

"(i) in the case of an amendment described in subparagraph (A) which takes effect on or after the enactment of this subparagraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendment shall be the applicable rate and tables under section 417(e)(3) as of the date on which such amendment takes effect, and

"(ii) in the case of amendments described in subparagraph (A) which took effect before the enactment of this subparagraph, the interest rate and mortality tables to be used in determining the present value of the accrued benefit under such amendments shall be the applicable rate and tables which were in effect under section 412(l) as of the effective date of the respective amendment.".

(b) EFFECTIVE DATE AND RELATED RULES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan amendments taking effect after the date of the enactment of this Act.

(2) PLAN AMENDMENTS SUBJECT TO LITIGATION.—The amendments made by this section also shall apply to any plan amendment taking effect on or before such date if—

(A) no determination letter is issued on or before such date by the Internal Revenue Service which has the effect of approving the plan amendment, and

(B) such plan amendment is, on April 8, 2003, subject to a court action based on age discrimination.

(3) SPECIAL RULE.—In the case of a plan amendment taking effect before 90 days after the date of the enactment of this Act, the requirements of section 204(b)(1)(I) of the Employee Retirement Income Security Act of 1974 (as added by this section) and section 411(b)(1)(I) of the Internal Revenue Code of 1986 (as added by this section) shall be treated as satisfied in connection with such plan amendment, in the case of any participant described in such sections 204(b)(1)(I) and 411(b)(1)(I) in connection with such plan amendment, if, as of the end of such 90-day period—

(A) the notice described in clause (i)(I) of such section 204(b)(1)(I) and clause (i)(I) of such section 411(b)(1)(I) in connection with such plan amendment has been provided to such participant, and

(B) the plan provides for the election described in clause (i)(II) of such section 204(b)(1)(I) and clause (i)(II) of such section 411(b)(1)(I) in connection with such participant's retirement under the plan.

TITLE VIII—TREATMENT OF CORPORATE INSIDERS

SEC. 801. SPECIAL RULES FOR EXECUTIVE PERKS AND RETIREMENT BENEFITS.

(a) IN GENERAL.—Part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by adding at the end the following new subpart:

"SUBPART F—SPECIAL RULES FOR EXECUTIVE PERKS AND RETIREMENT BENEFITS

"Sec. 420A. Holding period requirement for stock acquired through exercise of option.
"Sec. 420B. Additional tax on nondisclosed retirement perks.
"Sec. 420C. Definitions and special rule.

"SEC. 420A. HOLDING PERIOD REQUIREMENT FOR STOCK ACQUIRED THROUGH EXERCISE OF OPTION.

"(a) IN GENERAL.—In the case of a corporate insider with respect to a corporation, the tax imposed by this chapter on a corporate insider for any taxable year shall be increased by 50 percent of the amount realized by such insider from the disqualified disposition during such year of stock acquired by the corporate insider upon the exercise of a stock option granted by the corporation with respect to which such individual is a corporate insider.

"(b) DISQUALIFIED DISPOSITION OF STOCK.—

"(1) IN GENERAL.—For purposes of subsection (a), the term 'disqualified disposition of stock' means any sale, exchange, or other disposition of stock which, if such stock were employer securities held in a qualified cash or deferred arrangement (as defined in section 401(k)(2)), would violate any restriction imposed on the sale or other disposition of such securities by the plan of which such arrangement is a part.

"(2) SPECIAL RULE FOR 2 OR MORE CASH OR DEFERRED ARRANGEMENTS.—If a corporation has more than 1 qualified cash or deferred arrangement (as so defined), the restrictions which apply for purposes of paragraph (1) shall be the most restrictive provisions relating to the disposition of employer securities held pursuant to any such arrangements.

"SEC. 420B. ADDITIONAL TAX ON NONDISCLOSED RETIREMENT PERKS.

"(a) IN GENERAL.—In the case of a publicly traded corporation, the tax imposed by this chapter for the taxable year shall be increased by 50 percent of the net cost to the corporation for the tax-

able year of personal perks provided to a retired executive of the corporation.

"(b) WAIVER IF PERKS PROVIDED PURSUANT TO SHAREHOLDER APPROVAL.—Subsection (a) shall not apply with respect to any personal perks provided pursuant to a contract if—

"(1) all of the material terms of such contract (including a description of the benefits to be provided to the executive and the extent of such benefits) are disclosed to shareholders, and

"(2) such contract is approved by a majority of the vote in a separate shareholder vote before any benefits are provided under the contract.

"(c) NET COST OF PERSONAL PERKS.—

"(1) IN GENERAL.—For purposes of subsection (a), the net cost of personal perks provided to a retired executive is the excess of—

"(A) the cost to the corporation of such perks, over

"(B) the amount paid in cash during the taxable year by the executive to reimburse the corporation for the cost of such perks.

"(2) PERSONAL PERKS.—For purposes of paragraph (1), the term 'personal perks' means—

"(A) the use of corporate-owned property,

"(B) travel expenses, including meals and lodging, unless such expenses are directly related to the performance of services by the executive for the corporation and the business relationship of such expenses is substantiated under the requirements of section 274,

"(C) tickets to sporting or other entertainment events,

"(D) amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose, and

"(E) other personal services, including services related to maintenance or protection of any personal residence of the executive.

"(3) COST RELATING TO USE OF CORPORATE-OWNED PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The cost taken into account with respect to the use of corporate-owned property shall be the allocable portion of the total cost of operating such property.

"(B) ALLOCABLE PORTION.—For purposes of subparagraph (A), the allocable portion of total cost is—

"(i) the portion of the total cost (including depreciation) incurred by the corporation for operating and maintaining such property during the corporation's taxable year in which such use occurred,

"(ii) which is allocable to the use (determined on the basis of the relationship of such use to the total use of the property during the taxable year).

"SEC. 420C. DEFINITIONS AND SPECIAL RULE.

"(a) DEFINITIONS.—For purposes of this subpart—

"(1) CORPORATE INSIDER.—The term 'corporate insider' means, with respect to a corporation, any individual—

"(A) who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation, or

"(B) who would be subject to such requirements if such corporation were an issuer of equity securities referred to in such section.

"(2) RETIRED EXECUTIVE.—The term 'retired executive' means any corporate insider who is no longer performing services on a substantially full time basis in the capacity that resulted in being subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

"(3) PUBLICLY TRADED CORPORATION.—The term 'publicly traded corporation' means any corporation issuing any class of securities required to be registered under section 12 of the Securities Exchange Act of 1934.

"(4) CORPORATE-OWNED PROPERTY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'corporate-owned property' means any of the following property owned by a corporation—

"(i) planes,

"(ii) apartments or other residences,

"(iii) vacation, sports, and entertainment facilities, and

"(iv) cars.

Such term includes any such property which is leased or chartered by the corporation.

"(B) EXCEPTIONS.—Such term does not include any property used directly by the corporation in providing transportation, lodging, or entertainment services to the general public.

"(b) ADDITIONS TO TAX NOT TREATED AS TAX FOR CERTAIN PURPOSES.—The tax imposed by sections 420A and 420B shall not be treated as a tax imposed by this chapter for purposes of determining—

"(1) the amount of any credit allowable under this chapter, or

"(2) the amount of the minimum tax imposed by section 55.".

(b) CLERICAL AMENDMENT.—The table of subparts for part I of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

"Subpart F. Special Rules for Executive Perks and Retirement Benefits.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as follows:

(1) Section 420A of the Internal Revenue Code of 1986 (as added by this section) shall apply to stock acquired pursuant to the exercise of an option after the date of the enactment of this Act.

(2)(A) Except as provided by subparagraph (B), section 420B of such Code (as so added) shall apply to perks provided after the date of the enactment of this Act.

(B) In the case of perks provided pursuant to a contract in existence on the date of the enactment of this Act, such section 420B shall apply to such perks after the date of the first an-

nual shareholders meeting after the date of the enactment of this Act.

SEC. 802. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO DEFERRED COMPENSATION PAID BY CORPORATION AFTER MAJOR DECLINE IN STOCK VALUE OR CORPORATION DECLARES BANKRUPTCY.

(a) IN GENERAL.—Section 4999 of the Internal Revenue Code of 1986 (relating to golden parachute payments) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) TAX TO APPLY TO DEFERRED COMPENSATION PAID AFTER MAJOR STOCK VALUE DECLINE OR BANKRUPTCY.—

"(1) IN GENERAL.—For purposes of this section, the term 'excess parachute payment' includes severance pay, and any other payment of deferred compensation, which is received by a corporate insider after the date that the insider ceases to be employed by the corporation if—

"(A) there is at least a 75-percent decline in the value of the stock in such corporation during the 1-year period ending on such date, or

"(B) such corporation becomes a debtor in a title 11 or similar case (as defined in section 368(a)(3)(A)) during the 180-day period beginning 90 days before such date.

Such term shall not include any payment from a qualified employer plan.

"(2) CORPORATE INSIDER.—For purposes of paragraph (1), the term 'corporate insider' means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cessations of employment after the date of the enactment of this Act.

SEC. 803. ADEQUATE DISCLOSURE REGARDING EXECUTIVE COMPENSATION PACKAGES.

(a) IN GENERAL.—Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102) is amended by inserting after subsection (c) the following new subsection:

"(d) DISCLOSURE REGARDING EXECUTIVE COMPENSATION PACKAGES.—

"(1) IN GENERAL.—In any case in which an employer takes any action to establish or substantially improve an executive compensation package with respect to any employee, such action may not take effect unless the employer has met the requirements of paragraph (2).

"(2) REQUIREMENTS.—An employer meets the requirements of this paragraph if—

"(A) not less than 100 days prior to the effective date of the action described in paragraph (1), the employer provides written notification of the action to—

"(i) each employee of the employer,

"(ii) each employee organization representing employees of the employer (if any), and

"(iii) in the case of an employer that is a corporation, the board of directors, and

"(B) in the case of an employer that is a corporation, the board of directors has approved such action.

Any such written notification shall be written in language calculated to be understood by the average plan participant.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) EXECUTIVE COMPENSATION PACKAGE.—The term 'executive compensation package' means a combination of pay, benefits under employee benefit plans, and other forms of compensation provided by an employer primarily for employees who are members of a select group of management or highly compensated employees.

"(B) SUBSTANTIAL IMPROVEMENT.—An executive compensation package is 'substantially improved' if the present value of such package is increased by not less than 10 percent.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to actions taken after the date of the enactment of this Act.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. CORPORATE DEDUCTION FOR REINVESTED ESOP DIVIDENDS SUBJECT TO DEDUCTIBLE LIMITS.

(a) IN GENERAL.—Subsection (a) of section 404 of the Internal Revenue Code of 1986 (relating to general rule) is amended by adding at the end the following new paragraph:

"(13) CERTAIN DIVIDENDS REINVESTED IN EMPLOYEE STOCK OWNERSHIP PLANS SUBJECT TO DEDUCTIBLE LIMITS.—For purposes of this subsection, an applicable dividend described in subsection (k)(2)(A)(iii)(I) shall be treated as compensation.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 902. CREDIT FOR ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS MADE PERMANENT (SAVER'S TAX CREDIT).

Section 25B of the Internal Revenue Code of 1986 is amended by striking subsection (h) (relating to termination).

SEC. 903. AUTHORITY TO RESCIND TRANSFERS TO PLANS MADE FOR THE BENEFIT OF HIGHLY COMPENSATED EMPLOYEES.

Section 403 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103) is amended by adding at the end the following new subsection:

"(e) The plan administrator or any person acting as the plan administrator may avoid a transfer of an interest in property to any trust or similar arrangement for the benefit of any insider or other management employee to fund supplemental retirement benefits or other deferred compensation.".

TITLE X—GENERAL PROVISIONS

SEC. 1001. GENERAL EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the amendments made by this Act shall apply with respect to plan years beginning on or after January 1, 2004.

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for "January 1, 2004" the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2005, 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, 2006.

SEC. 1002. PLAN AMENDMENTS.

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date specified in section 601, if—

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

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

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