

107TH CONGRESS
2D SESSION

S. 1921

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide greater protection of workers' retirement plans, to prohibit certain activities by persons providing auditing services to issuers of public securities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2002

Mrs. HUTCHISON (for herself, Mr. LOTT, and Mr. CRAIG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide greater protection of workers' retirement plans, to prohibit certain activities by persons providing auditing services to issuers of public securities, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pension Plan Protection Act”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—PROVISIONS TO PROMOTE ENSURING PENSION PLAN ASSET DIVERSIFICATION

Sec. 101. Diversification requirements for certain plans holding employer securities.

Sec. 102. Mandatory quarterly statements.

Sec. 103. Study relating to individual account plans.

TITLE II—PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE

Sec. 201. Prohibited transaction exemption for the provision of investment advice.

TITLE III—PROTECTIONS DURING PLAN INVESTMENT BLACKOUT PERIODS

Sec. 301. Protections relating to blackouts under defined contribution plans.

Sec. 302. Fiduciary exception for participant-controlled investment not to apply during blackout period.

Sec. 303. Corporate executives may not trade employer securities or derivatives during blackout period.

TITLE IV—LIMITATION ON AUDITOR SERVICES

Sec. 401. Limitation on auditor services.

TITLE V—GENERAL PROVISIONS

Sec. 501. Effective date and related rules.

1 **TITLE I—PROVISIONS TO PRO-**
2 **MOTE ENSURING PENSION**
3 **PLAN ASSET DIVERSIFICA-**
4 **TION**

5 **SEC. 101. DIVERSIFICATION REQUIREMENTS FOR CERTAIN**
6 **PLANS HOLDING EMPLOYER SECURITIES.**

7 (a) AMENDMENTS OF 1986 CODE.—

8 (1) QUALIFICATION REQUIREMENT.—Section
9 401(a) of the Internal Revenue Code of 1986 (relat-
10 ing to qualified pension, profit-sharing, and stock

1 bonus plans) is amended by inserting after para-
2 graph (34) the following new paragraph:

3 “(35) DIVERSIFICATION REQUIREMENTS FOR
4 CERTAIN DEFINED CONTRIBUTION PLANS.—

5 “(A) IN GENERAL.—A trust which is part
6 of an applicable defined contribution plan shall
7 not be treated as a qualified trust unless the
8 plan meets the requirements of subparagraphs
9 (B), (C), and (D).

10 “(B) INVESTMENT OPTIONS.—A plan
11 meets the requirements of this subparagraph if
12 the plan provides participants and beneficiaries
13 with at least 4 different investment options, in-
14 cluding 3 options which do not involve the ac-
15 quisition or holding of qualifying employer secu-
16 rities or qualifying employer real property.

17 “(C) NO REQUIREMENT TO INVEST EM-
18 PLOYEE CONTRIBUTIONS IN EMPLOYER SECURI-
19 TIES.—A plan meets the requirements of this
20 subparagraph if the plan provides that no em-
21 ployee contribution or elective deferral may be
22 required to be invested in qualifying employer
23 securities or qualifying employer real property
24 either—

1 “(i) pursuant to the terms of the plan,
2 or

3 “(ii) at the direction of a person other
4 than the participant making the employee
5 contribution or elective deferral or a bene-
6 ficiary of the participant.

7 “(D) REQUIRED ABILITY TO INVEST.—

8 “(i) IN GENERAL.—A plan meets the
9 requirements of this subparagraph if each
10 employee who has a nonforfeitable right to
11 100 percent of the employee’s accrued ben-
12 efit derived from employer contributions
13 may, at any time after the 90th day fol-
14 lowing the allocation of any qualifying em-
15 ployer securities or qualifying employer
16 real property to the employee under the
17 plan, direct the plan to divest the employ-
18 ee’s account of such securities or property
19 and reinvest an equivalent amount in other
20 assets.

21 “(ii) REGULATIONS.—The Secretary,
22 in consultation with the Secretary of
23 Labor, shall prescribe regulations under
24 which an employee is given reasonable no-
25 tice of the opportunity, and a reasonable

1 period of time, to make the divestiture and
2 reinvestment under clause (i).

3 “(E) DEFINITIONS.—For purposes of this
4 paragraph—

5 “(i) APPLICABLE DEFINED CONTRIBU-
6 TION PLAN.—The term ‘applicable defined
7 contribution plan’ means any defined con-
8 tribution plan, except that such term shall
9 not include—

10 “(I) an employee stock ownership
11 plan (within the meaning of section
12 4975(e)(7)), or

13 “(II) a plan which meets the re-
14 quirements of section 409(a),
15 under which the only contributions which
16 may be made are qualified nonelective con-
17 tributions (as defined in subsection
18 (m)(4)(C) without regard to clause (ii)
19 thereof).

20 “(ii) ELECTIVE DEFERRALS.—The
21 term ‘elective deferrals’ has the meaning
22 given such term by section 402(g)(3).

23 “(iii) EMPLOYER SECURITIES AND
24 REAL PROPERTY.—The terms ‘qualifying
25 employer securities’ and ‘qualifying em-

1 ployer real property’ have the meanings
2 given such terms by section 407(d) of the
3 Employee Retirement Income Security Act
4 of 1974.”

5 (2) CONFORMING AMENDMENT.—Section
6 401(a)(28) of such Code (relating to additional re-
7 quirements relating to employee stock ownership
8 plans) is amended by adding at the end the following
9 new subparagraph:

10 “(D) EXCEPTION FOR PLANS REQUIRED
11 TO DIVERSIFY.—This paragraph shall not apply
12 to an applicable defined contribution plan (as
13 defined in paragraph (35)(E)(i)).”

14 (b) AMENDMENT OF ERISA.—Section 404 of the
15 Employee Retirement Income Security Act of 1974 (29
16 U.S.C. 1104) is amended by adding at the end the fol-
17 lowing new subsection:

18 “(e)(1) An applicable individual account plan shall
19 meet the requirements of paragraphs (2), (3), and (4).

20 “(2) A plan meets the requirements of this paragraph
21 if the plan provides participants and beneficiaries with at
22 least 4 different investment options, including 3 options
23 which do not involve the acquisition or holding of quali-
24 fying employer securities or qualifying employer real prop-
25 erty.

1 “(3) A plan meets the requirements of this paragraph
2 if the plan provides that no employee contribution or elec-
3 tive deferral may be required to be invested in qualifying
4 employer securities or qualifying employer real property
5 either—

6 “(A) pursuant to the terms of the plan, or

7 “(B) at the direction of a person other than the
8 participant making the employee contribution or
9 elective deferral or a beneficiary of the participant.

10 “(4)(A) A plan meets the requirements of this para-
11 graph if each employee who has a nonforfeitable right to
12 100 percent of the employee’s accrued benefit derived
13 from employer contributions may, at any time after the
14 90th day following the allocation of any qualifying em-
15 ployer securities or qualifying employer real property to
16 the employee under the plan, direct the plan to divest the
17 employee’s account of such securities or property and rein-
18 vest an equivalent amount in other assets.

19 “(B) The Secretary of the Treasury, in consultation
20 with the Secretary, shall prescribe regulations under which
21 an employee is given reasonable notice of the opportunity,
22 and a reasonable period of time, to make the divestiture
23 and reinvestment under subparagraph (A).

24 “(5) For purposes of this subsection—

1 “(A) The term ‘applicable individual account
2 plan’ means any individual account plan, except that
3 such term shall not include an employee stock own-
4 ership plan (within the meaning of section
5 4975(e)(7) of the Internal Revenue Code of 1986),
6 or a plan which meets the requirements of section
7 409(a) of such Code, under which the only contribu-
8 tions which may be made are qualified nonelective
9 contributions (as defined in section 401(m)(4)(C) of
10 such Code).

11 “(B) ELECTIVE DEFERRALS.—The term ‘elec-
12 tive deferrals’ has the meaning given such term by
13 section 402(g)(3) of such Code.

14 “(C) The terms ‘qualifying employer securities’
15 and ‘qualifying employer real property’ have the
16 meanings given such terms by section 407(d).”

17 **SEC. 102. MANDATORY QUARTERLY STATEMENTS.**

18 (a) AMENDMENTS OF 1986 CODE.—Section
19 401(a)(35) of the Internal Revenue Code of 1986 (relating
20 to diversification requirements for certain defined con-
21 tribution plans), as added by section 101, is amended—

22 (1) by redesignating subparagraph (E) as sub-
23 paragraph (F) and by inserting after subparagraph
24 (D) the following new subparagraph:

1 “(E) QUARTERLY STATEMENTS RE-
2 QUIRED.—

3 “(i) IN GENERAL.—A plan meets the
4 requirements of this subparagraph if the
5 plan administrator, within a reasonable pe-
6 riod of time following the close of each cal-
7 endar quarter, shall provide to each partic-
8 ipant or beneficiary a statement with re-
9 spect to his or her individual account
10 which includes—

11 “(I) the fair market value as of
12 the close of such quarter of the assets
13 in the account in each investment op-
14 tion,

15 “(II) the percentage as of such
16 calendar quarter of assets which each
17 investment option is of the total as-
18 sets in the account,

19 “(III) any administrative and
20 transaction fees incurred in connec-
21 tion with the account during such
22 quarter, and

23 “(IV) such other information as
24 the Secretary may prescribe.

1 “(ii) EMPLOYER SECURITIES OR
2 PROPERTY EXCEEDING 25 PERCENT OF
3 TOTAL ASSETS.—If, as of the close of any
4 calendar quarter, the aggregate fair mar-
5 ket value of applicable securities held by a
6 participant or beneficiary in the plan ex-
7 ceeded 25 percent of the aggregate value
8 of all assets held by the participant or ben-
9 eficiary in the plan, the plan administrator
10 shall include with the statement under
11 clause (i) a separate notice which—

12 “(I) notifies the participant or
13 beneficiary of such percentage, and

14 “(II) reminds the participant or
15 beneficiary of the right to diversify
16 plan assets and recommends that the
17 participant or beneficiary seek advice
18 from a professional investment advisor
19 as to the need for a reassessment of
20 the participant’s or beneficiary’s in-
21 vestment diversification.

22 “(iii) EXCEPTION FOR SMALL
23 PLANS.—The Secretary of Labor may by
24 regulation provide that this subparagraph
25 shall not apply to plans with fewer than

1 100 participants, except that any such ex-
2 ception shall not apply to any requirement
3 under this subparagraph to provide a
4 statement and notice to a participant or
5 beneficiary under the plan to whom clause
6 (ii) applies for any calendar quarter.

7 “(iv) STATEMENT AND NOTICE.—Any
8 statement or notice under this subpara-
9 graph shall be written in a manner cal-
10 culated to be understood by the average
11 plan participant.

12 “(v) APPLICABLE SECURITIES.—For
13 purposes of this subparagraph, the term
14 ‘applicable securities’ means any securities
15 described in subparagraph (A), (B), or (C)
16 of section 407(d)(5) of the Employee Re-
17 tirement Income Security Act of 1974
18 which are issued by the same person or an
19 affiliate of, or related person to, such per-
20 son.

21 “(vi) AGGREGATION.—For purposes
22 of this subparagraph, all applicable defined
23 contribution plans maintained by the same
24 employer shall be treated as one plan.”,

1 (2) by striking “or (D)” in subparagraph (A)
2 and inserting “(D), or (E)”, and

3 (3) by inserting “AND NOTIFICATION” after
4 “DIVERSIFICATION” in the heading.

5 (b) AMENDMENTS OF ERISA.—

6 (1) IN GENERAL.—Section 104 of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1024) is amended—

9 (A) by redesignating subsections (c) and
10 (d) as subsections (d) and (e), respectively, and

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

13 “(c)(1) The plan administrator of an applicable indi-
14 vidual account plan shall, within a reasonable period of
15 time following the close of each calendar quarter, provide
16 to each participant or beneficiary a statement with respect
17 to his or her individual account which includes—

18 “(A) the fair market value as of the close of
19 such quarter of the assets in the account in each in-
20 vestment option,

21 “(B) the percentage as of such calendar quarter
22 of assets which each investment option is of the total
23 assets in the account,

1 “(C) any administrative and transaction fees in-
2 curred in connection with the account during such
3 quarter, and

4 “(D) such other information as the Secretary of
5 the Treasury may prescribe.

6 “(2) If, as of the close of any calendar quarter, the
7 aggregate fair market value of applicable securities held
8 by a participant or beneficiary in an applicable individual
9 account plan exceeds 25 percent of the aggregate value
10 of all assets held by the participant or beneficiary in the
11 plan, the plan administrator shall include with the state-
12 ment under paragraph (1) a separate notice which —

13 “(A) notifies the participant or beneficiary of
14 such percentage, and

15 “(B) reminds the participant or beneficiary of
16 the right to diversify plan assets and recommends
17 that the participant or beneficiary seek advice from
18 a professional investment advisor as to the need for
19 a reassessment of the participant’s or beneficiary’s
20 investment diversification.

21 “(3) The Secretary of Labor may by regulation pro-
22 vide that this subsection shall not apply to plans with
23 fewer than 100 participants, except that any such excep-
24 tion shall not apply for any requirement under this sub-
25 section to provide a statement and notice to a participant

1 or beneficiary under the plan to whom paragraph (2) ap-
2 plies for any calendar quarter.

3 “(4) Any statement or notice under this subsection
4 shall be written in a manner calculated to be understood
5 by the average plan participant.

6 “(5) For purposes of this subsection—

7 “(A) the term ‘applicable individual account
8 plan’ has the meaning given such term by section
9 404(e), and

10 “(B) the term ‘applicable securities’ means any
11 securities described in subparagraph (A), (B), or (C)
12 of section 407(d)(5) which are issued by the same
13 person or an affiliate of, or related person to, such
14 person.

15 “(6) For purposes of this subsection, all applicable
16 individual account plans maintained by the same employer
17 shall be treated as one employer.”

18 (2) ENFORCEMENT.—Section 502(c)(1) of such
19 Act (29 U.S.C. 1132(c)(1)) is amended by striking
20 “or section 101(e)(1)” and inserting “, section
21 101(e)(1), or section 104(c)”.

22 (c) EXCISE TAX ON FAILURE OF CERTAIN DEFINED
23 CONTRIBUTION PLANS TO PROVIDE REQUIRED QUAR-
24 TERLY STATEMENTS.—

1 (1) IN GENERAL.—Chapter 43 of the Internal
2 Revenue Code of 1986 (relating to qualified pension,
3 etc., plans) is amended by adding at the end the fol-
4 lowing new section:

5 **“SEC. 4980G. FAILURE OF CERTAIN DEFINED CONTRIBU-**
6 **TION PLANS TO PROVIDE REQUIRED QUAR-**
7 **TERLY STATEMENTS.**

8 “(a) IMPOSITION OF TAX.—There is hereby imposed
9 a tax on the failure of any applicable defined contribution
10 plan to meet the requirements of section 401(a)(35)(E)
11 with respect to any participant or beneficiary.

12 “(b) AMOUNT OF TAX.—

13 “(1) IN GENERAL.—The amount of the tax im-
14 posed by subsection (a) on any failure with respect
15 to any participant or beneficiary shall be \$100 for
16 each day in the noncompliance period with respect to
17 the failure.

18 “(2) NONCOMPLIANCE PERIOD.—For purposes
19 of this section, the term ‘noncompliance period’
20 means, with respect to any failure, the period begin-
21 ning on the date the failure first occurs and ending
22 on the date the statement to which the failure re-
23 lates is provided or the failure is otherwise corrected.

24 “(c) LIMITATIONS ON AMOUNT OF TAX.—

1 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
2 DISCOVERED AND REASONABLE DILIGENCE EXER-
3 CISED.—No tax shall be imposed by subsection (a)
4 on any failure during any period for which it is es-
5 tablished to the satisfaction of the Secretary that
6 any person subject to liability for tax under sub-
7 section (d) did not know that the failure existed and
8 exercised reasonable diligence to meet the require-
9 ments of section 401(a)(35)(E).

10 “(2) TAX NOT TO APPLY TO FAILURES COR-
11 RECTED WITHIN 30 DAYS.—No tax shall be imposed
12 by subsection (a) on any failure if—

13 “(A) any person subject to liability for the
14 tax under subsection (d) exercised reasonable
15 diligence to meet the requirements of section
16 401(a)(35)(E), and

17 “(B) such person provides the statement
18 described in section 401(a)(35)(E) during the
19 30-day period beginning on the first date such
20 person knew, or exercising reasonable diligence
21 should have known, that such failure existed.

22 “(3) OVERALL LIMITATION FOR UNINTEN-
23 TIONAL FAILURES.—

24 “(A) IN GENERAL.—If the person subject
25 to liability for tax under subsection (d) exer-

1 cised reasonable diligence to meet the require-
2 ments of section 401(a)(35)(E) and paragraph
3 (1) is not otherwise applicable, the tax imposed
4 by subsection (a) for failures during the taxable
5 year of the employer (or, in the case of a multi-
6 employer plan, the taxable year of the trust
7 forming part of the plan) shall not exceed
8 \$500,000. For purposes of the preceding sen-
9 tence, all multiemployer plans of which the
10 same trust forms a part shall be treated as 1
11 plan.

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

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

1 “(d) LIABILITY FOR TAX.—The following shall be lia-
2 ble for the tax imposed by subsection (a):

3 “(1) In the case of a plan other than a multi-
4 employer plan, the employer.

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

7 “(e) APPLICABLE DEFINED CONTRIBUTION PLAN.—
8 For purposes of this section, the term ‘applicable defined
9 contribution plan’ has the meaning given such term by
10 section 401(a)(35).”

11 (2) CLERICAL AMENDMENT.—The table of sec-
12 tions for chapter 43 of such Code is amended by
13 adding at the end the following new item:

“Sec. 4980G. Failure of certain defined contribution plans to provide required
quarterly statements.”

14 (3) EFFECTIVE DATE.—The amendments made
15 by this subsection shall apply to statements required
16 to be made under section 401(a)(35)(E) of the In-
17 ternal Revenue Code of 1986, as added by this sec-
18 tion.

19 **SEC. 103. STUDY RELATING TO INDIVIDUAL ACCOUNT**
20 **PLANS.**

21 (a) IN GENERAL.—As soon as practicable after the
22 date of the enactment of this Act, the Secretary of Labor,
23 in consultation with the Secretary of the Treasury and the
24 Securities and Exchange Commission, shall conduct a

1 study relating to the investment of plan assets of indi-
2 vidual account plans in stock or other securities.

3 (b) MATTERS TO BE STUDIED.—In conducting the
4 study under subsection (a), the Secretary shall—

5 (1) consider the feasibility and likely effects of
6 a statutory requirement that plan participants and
7 beneficiaries be allowed to trade securities on a daily
8 basis,

9 (2) consider the feasibility and likely effects of
10 a mechanism to allow plan participants and bene-
11 ficiaries to sell employer securities during a period
12 of high market volatility if a blackout period is in ef-
13 fect,

14 (3) consider the feasibility and likely effects of
15 establishing an insurance program to protect partici-
16 pants and beneficiaries from losses of their initial in-
17 vestment of employer and employee contributions in
18 employer securities due to fraud, and

19 (4) consider such other matters as the Sec-
20 retary determines appropriate to ensure the protec-
21 tion of participants or beneficiaries from insufficient
22 diversification of plan assets.

23 (c) REPORT.—Not later than 180 days after the date
24 of the enactment of this Act, the Secretary of Labor shall
25 submit to each House of Congress a report setting forth

1 the results of the study conducted under this section, in-
 2 cluding any statutory or administrative changes as the
 3 Secretary determines appropriate.

4 **TITLE II—PROHIBITED TRANS-**
 5 **ACTION EXEMPTION FOR THE**
 6 **PROVISION OF INVESTMENT**
 7 **ADVICE**

8 **SEC. 201. PROHIBITED TRANSACTION EXEMPTION FOR THE**
 9 **PROVISION OF INVESTMENT ADVICE.**

10 (a) AMENDMENTS OF 1986 CODE.—

11 (1) EXEMPTION FROM PROHIBITED TRANS-
 12 ACTIONS.—Subsection (d) of section 4975 of the In-
 13 ternal Revenue Code of 1986 (relating to exemptions
 14 from tax on prohibited transactions) is amended—

15 (A) in paragraph (14), by striking “or” at
 16 the end;

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

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

21 “(16) any transaction described in subsection
 22 (f)(7)(A) in connection with the provision of invest-
 23 ment advice described in subsection (e)(3)(B), in
 24 any case in which—

1 “(A) the investment of assets of the plan
2 is subject to the direction of plan participants
3 or beneficiaries,

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

10 “(C) the requirements of subsection
11 (f)(7)(B) are met in connection with the provi-
12 sion of the advice.”

13 (2) ALLOWED TRANSACTIONS AND REQUIRE-
14 MENTS.—Subsection (f) of such section 4975 (relat-
15 ing to other definitions and special rules) is amended
16 by adding at the end the following new paragraph:

17 “(7) PROVISIONS RELATING TO INVESTMENT
18 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

19 “(A) TRANSACTIONS ALLOWABLE IN CON-
20 NECTION WITH INVESTMENT ADVICE PROVIDED
21 BY FIDUCIARY ADVISERS.—The transactions re-
22 ferred to in subsection (d)(16), in connection
23 with the provision of investment advice by a fi-
24 duciary adviser, are the following:

1 “(i) the provision of the advice to the
2 plan, participant, or beneficiary;

3 “(ii) the sale, acquisition, or holding
4 of a security or other property (including
5 any lending of money or other extension of
6 credit associated with the sale, acquisition,
7 or holding of a security or other property)
8 pursuant to the advice; and

9 “(iii) the direct or indirect receipt of
10 fees or other compensation by the fiduciary
11 adviser or an affiliate thereof (or any em-
12 ployee, agent, or registered representative
13 of the fiduciary adviser or affiliate) in con-
14 nection with the provision of the advice or
15 in connection with a sale, acquisition, or
16 holding of a security or other property pur-
17 suant to the advice.

18 “(B) REQUIREMENTS RELATING TO PROVI-
19 SION OF INVESTMENT ADVICE BY FIDUCIARY
20 ADVISERS.—The requirements of this subpara-
21 graph (referred to in subsection (d)(16)(C)) are
22 met in connection with the provision of invest-
23 ment advice referred to in subsection (e)(3)(B),
24 provided to a plan or a participant or bene-
25 ficiary of a plan by a fiduciary adviser with re-

1 spect to the plan in connection with any sale,
2 acquisition, or holding of a security or other
3 property for purposes of investment of amounts
4 held by the plan, if—

5 “(i) in the case of the initial provision
6 of the advice with regard to the security or
7 other property by the fiduciary adviser to
8 the plan, participant, or beneficiary, the fi-
9 duciary adviser provides to the recipient of
10 the advice, at a time reasonably contem-
11 poraneous with the initial provision of the
12 advice, a written notification (which may
13 consist of notification by means of elec-
14 tronic communication)—

15 “(I) of all fees or other com-
16 pensation relating to the advice that
17 the fiduciary adviser or any affiliate
18 thereof is to receive (including com-
19 pensation provided by any third
20 party) in connection with the provi-
21 sion of the advice or in connection
22 with the sale, acquisition, or holding
23 of the security or other property,

24 “(II) of any material affiliation
25 or contractual relationship of the fidu-

1 ciary adviser or affiliates thereof in
2 the security or other property,

3 “(III) of any limitation placed on
4 the scope of the investment advice to
5 be provided by the fiduciary adviser
6 with respect to any such sale, acquisi-
7 tion, or holding of a security or other
8 property,

9 “(IV) of the types of services
10 provided by the fiduciary advisor in
11 connection with the provision of in-
12 vestment advice by the fiduciary ad-
13 viser, and

14 “(V) that the adviser is acting as
15 a fiduciary of the plan in connection
16 with the provision of the advice,

17 “(ii) the fiduciary adviser provides ap-
18 propriate disclosure, in connection with the
19 sale, acquisition, or holding of the security
20 or other property, in accordance with all
21 applicable securities laws,

22 “(iii) the sale, acquisition, or holding
23 occurs solely at the direction of the recipi-
24 ent of the advice,

1 “(iv) the compensation received by the
2 fiduciary adviser and affiliates thereof in
3 connection with the sale, acquisition, or
4 holding of the security or other property is
5 reasonable, and

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

10 “(C) STANDARDS FOR PRESENTATION OF
11 INFORMATION.—The notification required to be
12 provided to participants and beneficiaries under
13 subparagraph (B)(i) shall be written in a clear
14 and conspicuous manner and in a manner cal-
15 culated to be understood by the average plan
16 participant and shall be sufficiently accurate
17 and comprehensive to reasonably apprise such
18 participants and beneficiaries of the information
19 required to be provided in the notification.

20 “(D) EXEMPTION CONDITIONED ON MAK-
21 ING REQUIRED INFORMATION AVAILABLE ANNU-
22 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
23 TERIAL CHANGE.—The requirements of sub-
24 paragraph (B)(i) shall be deemed not to have
25 been met in connection with the initial or any

1 subsequent provision of advice described in sub-
2 paragraph (B) to the plan, participant, or bene-
3 ficiary if, at any time during the provision of
4 advisory services to the plan, participant, or
5 beneficiary, the fiduciary adviser fails to main-
6 tain the information described in subclauses (I)
7 through (IV) of subparagraph (B)(i) in cur-
8 rently accurate form and in the manner re-
9 quired by subparagraph (C), or fails—

10 “(i) to provide, without charge, such
11 currently accurate information to the re-
12 cipient of the advice no less than annually,

13 “(ii) to make such currently accurate
14 information available, upon request and
15 without charge, to the recipient of the ad-
16 vice, or

17 “(iii) in the event of a material
18 change to the information described in
19 subclauses (I) through (IV) of subpara-
20 graph (B)(i), to provide, without charge,
21 such currently accurate information to the
22 recipient of the advice at a time reasonably
23 contemporaneous to the material change in
24 information.

1 “(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser
2 referred to in subparagraph (B) who has provided advice referred to in such subparagraph
3 shall, for a period of not less than 6 years after the provision of the advice, maintain any
4 records necessary for determining whether the requirements of the preceding provisions of this
5 paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection
6 (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed
7 prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary
8 adviser.
9

10 “(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor
11 or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as fail-
12 ing to meet the requirements of this section solely by reason of the provision of investment
13 advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise
14 arranging for the provision of the advice), if—
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1 “(i) the advice is provided by a fidu-
2 ciary adviser pursuant to an arrangement
3 between the plan sponsor or other fidu-
4 ciary and the fiduciary adviser for the pro-
5 vision by the fiduciary adviser of invest-
6 ment advice referred to in such section,

7 “(ii) the terms of the arrangement re-
8 quire compliance by the fiduciary adviser
9 with the requirements of this paragraph,

10 “(iii) the terms of the arrangement
11 include a written acknowledgment by the
12 fiduciary adviser that the fiduciary adviser
13 is a fiduciary of the plan with respect to
14 the provision of the advice, and

15 “(iv) the requirements of part 4 of
16 subtitle B of title I of the Employee Re-
17 tirement Income Security Act of 1974 are
18 met in connection with the provision of
19 such advice.

20 “(G) DEFINITIONS.—For purposes of this
21 paragraph and subsection (d)(16)—

22 “(i) FIDUCIARY ADVISER.—The term
23 ‘fiduciary adviser’ means, with respect to a
24 plan, a person who is a fiduciary of the
25 plan by reason of the provision of invest-

1 ment advice by the person to the plan or
2 to a participant or beneficiary and who
3 is—

4 “(I) registered as an investment
5 adviser under the Investment Advisers
6 Act of 1940 (15 U.S.C. 80b–1 et seq.)
7 or under the laws of the State in
8 which the fiduciary maintains its prin-
9 cipal office and place of business,

10 “(II) a bank or similar financial
11 institution referred to in subsection
12 (d)(4),

13 “(III) an insurance company
14 qualified to do business under the
15 laws of a State,

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

20 “(V) an affiliate of a person de-
21 scribed in any of subclauses (I)
22 through (IV), or

23 “(VI) an employee, agent, or reg-
24 istered representative of a person de-
25 scribed in any of subclauses (I)

1 through (V) who satisfies the require-
2 ments of applicable insurance, bank-
3 ing, and securities laws relating to the
4 provision of the advice.

5 “(ii) AFFILIATE.—The term ‘affiliate’
6 of another entity means an affiliated per-
7 son of the entity (as defined in section
8 2(a)(3) of the Investment Company Act of
9 1940 (15 U.S.C. 80a-2(a)(3))).

10 “(iii) REGISTERED REPRESENTA-
11 TIVE.—The term ‘registered representa-
12 tive’ of another entity means a person de-
13 scribed in section 3(a)(18) of the Securi-
14 ties Exchange Act of 1934 (15 U.S.C.
15 78c(a)(18)) (substituting the entity for the
16 broker or dealer referred to in such sec-
17 tion) or a person described in section
18 202(a)(17) of the Investment Advisers Act
19 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-
20 stituting the entity for the investment ad-
21 viser referred to in such section).”

22 (b) AMENDMENTS OF ERISA.—

23 (1) EXEMPTION FROM PROHIBITED TRANS-
24 ACTIONS.—Section 408(b) of the Employee Retirement
25 Income Security Act of 1974 (29 U.S.C.

1 1108(b)) is amended by adding at the end the fol-
2 lowing new paragraph:

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

7 “(i) the investment of assets of the plan is
8 subject to the direction of plan participants or
9 beneficiaries,

10 “(ii) the advice is provided to the plan or
11 a participant or beneficiary of the plan by a fi-
12 duciary adviser in connection with any sale, ac-
13 quisition, or holding of a security or other prop-
14 erty for purposes of investment of plan assets,
15 and

16 “(iii) the requirements of subsection (g)
17 are met in connection with the provision of the
18 advice.

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

21 “(i) the provision of the advice to the plan,
22 participant, or beneficiary;

23 “(ii) the sale, acquisition, or holding of a
24 security or other property (including any lend-
25 ing of money or other extension of credit associ-

1 ated with the sale, acquisition, or holding of a
2 security or other property) pursuant to the ad-
3 vice; and

4 “(iii) the direct or indirect receipt of fees
5 or other compensation by the fiduciary adviser
6 or an affiliate thereof (or any employee, agent,
7 or registered representative of the fiduciary ad-
8 viser or affiliate) in connection with the provi-
9 sion of the advice or in connection with a sale,
10 acquisition, or holding of a security or other
11 property pursuant to the advice.”.

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

15 “(g) REQUIREMENTS RELATING TO PROVISION OF
16 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

17 “(1) IN GENERAL.—The requirements of this
18 subsection are met in connection with the provision
19 of investment advice referred to in section
20 3(21)(A)(ii), provided to an employee benefit plan or
21 a participant or beneficiary of an employee benefit
22 plan by a fiduciary adviser with respect to the plan
23 in connection with any sale, acquisition, or holding
24 of a security or other property for purposes of in-
25 vestment of amounts held by the plan, if—

1 “(A) in the case of the initial provision of
2 the advice with regard to the security or other
3 property by the fiduciary adviser to the plan,
4 participant, or beneficiary, the fiduciary adviser
5 provides to the recipient of the advice, at a time
6 reasonably contemporaneous with the initial
7 provision of the advice, a written notification
8 (which may consist of notification by means of
9 electronic communication)—

10 “(i) of all fees or other compensation
11 relating to the advice that the fiduciary ad-
12 viser or any affiliate thereof is to receive
13 (including compensation provided by any
14 third party) in connection with the provi-
15 sion of the advice or in connection with the
16 sale, acquisition, or holding of the security
17 or other property,

18 “(ii) of any material affiliation or con-
19 tractual relationship of the fiduciary ad-
20 viser or affiliates thereof in the security or
21 other property,

22 “(iii) of any limitation placed on the
23 scope of the investment advice to be pro-
24 vided by the fiduciary adviser with respect

1 to any such sale, acquisition, or holding of
2 a security or other property,

3 “(iv) of the types of services provided
4 by the fiduciary advisor in connection with
5 the provision of investment advice by the
6 fiduciary adviser, and

7 “(v) that the adviser is acting as a fi-
8 duciary of the plan in connection with the
9 provision of the advice,

10 “(B) the fiduciary adviser provides appro-
11 priate disclosure, in connection with the sale,
12 acquisition, or holding of the security or other
13 property, in accordance with all applicable secu-
14 rities laws,

15 “(C) the sale, acquisition, or holding oc-
16 curs solely at the direction of the recipient of
17 the advice,

18 “(D) the compensation received by the fi-
19 duciary adviser and affiliates thereof in connec-
20 tion with the sale, acquisition, or holding of the
21 security or other property is reasonable, and

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

1 “(2) STANDARDS FOR PRESENTATION OF IN-
2 FORMATION.—The notification required to be pro-
3 vided to participants and beneficiaries under para-
4 graph (1)(A) shall be written in a clear and con-
5 spicuous manner and in a manner calculated to be
6 understood by the average plan participant and shall
7 be sufficiently accurate and comprehensive to rea-
8 sonably apprise such participants and beneficiaries
9 of the information required to be provided in the no-
10 tification.

11 “(3) EXEMPTION CONDITIONED ON CONTINUED
12 AVAILABILITY OF REQUIRED INFORMATION ON RE-
13 QUEST FOR 1 YEAR.—The requirements of para-
14 graph (1)(A) shall be deemed not to have been met
15 in connection with the initial or any subsequent pro-
16 vision of advice described in paragraph (1) to the
17 plan, participant, or beneficiary if, at any time dur-
18 ing the provision of advisory services to the plan,
19 participant, or beneficiary, the fiduciary adviser fails
20 to maintain the information described in clauses (i)
21 through (iv) of subparagraph (A) in currently accu-
22 rate form and in the manner described in paragraph
23 (2) or fails—

1 “(A) to provide, without charge, such cur-
2 rently accurate information to the recipient of
3 the advice no less than annually,

4 “(B) to make such currently accurate in-
5 formation available, upon request and without
6 charge, to the recipient of the advice, or

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

14 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
15 OF COMPLIANCE.—A fiduciary adviser referred to in
16 paragraph (1) who has provided advice referred to in
17 such paragraph shall, for a period of not less than
18 6 years after the provision of the advice, maintain
19 any records necessary for determining whether the
20 requirements of the preceding provisions of this sub-
21 section and of subsection (b)(14) have been met. A
22 transaction prohibited under section 406 shall not be
23 considered to have occurred solely because the
24 records are lost or destroyed prior to the end of the

1 6-year period due to circumstances beyond the con-
2 trol of the fiduciary adviser.

3 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
4 TAIN OTHER FIDUCIARIES.—

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

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

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

24 “(iii) the terms of the arrangement
25 include a written acknowledgment by the

1 fiduciary adviser that the fiduciary adviser
2 is a fiduciary of the plan with respect to
3 the provision of the advice.

4 “(B) CONTINUED DUTY OF PRUDENT SE-
5 LECTION OF ADVISER AND PERIODIC REVIEW.—
6 Nothing in subparagraph (A) shall be construed
7 to exempt a plan sponsor or other person who
8 is a fiduciary from any requirement of this part
9 for the prudent selection and periodic review of
10 a fiduciary adviser with whom the plan sponsor
11 or other person enters into an arrangement for
12 the provision of advice referred to in section
13 3(21)(A)(ii). The plan sponsor or other person
14 who is a fiduciary has no duty under this part
15 to monitor the specific investment advice given
16 by the fiduciary adviser to any particular recipi-
17 ent of the advice.

18 “(C) AVAILABILITY OF PLAN ASSETS FOR
19 PAYMENT FOR ADVICE.—Nothing in this part
20 shall be construed to preclude the use of plan
21 assets to pay for reasonable expenses in pro-
22 viding investment advice referred to in section
23 3(21)(A)(ii).

24 “(6) DEFINITIONS.—For purposes of this sub-
25 section and subsection (b)(14)—

1 “(A) FIDUCIARY ADVISER.—The term ‘fi-
2 duciary adviser’ means, with respect to a plan,
3 a person who is a fiduciary of the plan by rea-
4 son of the provision of investment advice by the
5 person to the plan or to a participant or bene-
6 ficiary and who is—

7 “(i) registered as an investment ad-
8 viser under the Investment Advisers Act of
9 1940 (15 U.S.C. 80b–1 et seq.) or under
10 the laws of the State in which the fiduciary
11 maintains its principal office and place of
12 business,

13 “(ii) a bank or similar financial insti-
14 tution referred to in section 408(b)(4),

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

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

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

22 “(vi) an employee, agent, or registered
23 representative of a person described in any
24 of clauses (i) through (v) who satisfies the
25 requirements of applicable insurance,

1 banking, and securities laws relating to the
2 provision of the advice.

3 “(B) AFFILIATE.—The term ‘affiliate’ of
4 another entity means an affiliated person of the
5 entity (as defined in section 2(a)(3) of the In-
6 vestment Company Act of 1940 (15 U.S.C.
7 80a–2(a)(3))).

8 “(C) REGISTERED REPRESENTATIVE.—
9 The term ‘registered representative’ of another
10 entity means a person described in section
11 3(a)(18) of the Securities Exchange Act of
12 1934 (15 U.S.C. 78c(a)(18)) (substituting the
13 entity for the broker or dealer referred to in
14 such section) or a person described in section
15 202(a)(17) of the Investment Advisers Act of
16 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
17 the entity for the investment adviser referred to
18 in such section).”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply with respect to advice referred to
21 in section 3(21)(A)(ii) of the Employee Retirement In-
22 come Security Act of 1974 or section 4975(e)(3)(B) of the
23 Internal Revenue Code of 1986 provided on or after Janu-
24 ary 1, 2002.

1 **TITLE III—PROTECTIONS DUR-**
 2 **ING PLAN INVESTMENT**
 3 **BLACKOUT PERIODS**

4 **SEC. 301. PROTECTIONS RELATING TO BLACKOUTS UNDER**
 5 **DEFINED CONTRIBUTION PLANS.**

6 (a) AMENDMENTS OF 1986 CODE.—Section
 7 401(a)(35) of the Internal Revenue Code of 1986 (relating
 8 to diversification requirements for certain defined con-
 9 tribution plans), as added and amended by sections 101
 10 and 102, is amended—

11 (1) by redesignating subparagraph (F) as sub-
 12 paragraph (G) and by inserting after subparagraph
 13 (E) the following new subparagraph:

14 “(F) 30-DAY NOTICE BEFORE BLACKOUT
 15 PERIOD.—

16 “(i) IN GENERAL.—A plan meets the
 17 requirements of this subparagraph if the
 18 plan provides that a blackout may not take
 19 effect under the plan until at least 30 days
 20 after written notice (including notice by
 21 means of electronic communication) of the
 22 blackout has been provided by the plan ad-
 23 ministrator to participants and bene-
 24 ficiaries.

1 “(ii) BLACKOUT.—For purposes of
2 this paragraph, the term ‘blackout’ means
3 any temporary blackout, lockdown, or
4 freeze with respect to, suspension of, or
5 similar limitation—

6 “(I) on the ability of a partici-
7 pant or beneficiary (who has met min-
8 imum participation requirements ap-
9 plicable in accordance with section
10 410) to transfer some or all of the
11 nonforfeitable accrued benefit of the
12 participant or beneficiary from invest-
13 ment in the form of qualifying em-
14 ployer securities (as defined in section
15 407(d)(5) of the Employee Retirement
16 Income Security Act of 1974) to an-
17 other investment option otherwise
18 available under the terms of the plan,
19 and

20 “(II) which is within the control
21 of the plan sponsor or administrator.
22 Such term does not include any permanent
23 limitation which applies only to benefits at-
24 tributable to employer contributions, or
25 any reasonable restriction on the frequency

1 of transfers between investment vehicles,
2 subject to such regulations as the Sec-
3 retary may prescribe.”, and

4 (2) by striking “or (E)” in subparagraph (A)
5 and inserting “(E), or (F)”.

6 (b) AMENDMENTS OF ERISA.—Section 404(a)(2) of
7 the Employee Retirement Income Security Act of 1974
8 (29 U.S.C. 1104(a)(2)) is amended—

9 (1) by striking “In the case” and inserting “(A)
10 Subject to subparagraph (B), in the case”; and

11 (2) by adding at the end the following new sub-
12 paragraph:

13 “(B)(i) An eligible individual account plan (as defined
14 in section 407(d)(3)) shall provide that a blackout may
15 not take effect under the plan until at least 30 days after
16 written notice (including notice by means of electronic
17 communication) of the blackout has been provided by the
18 plan administrator to participants and beneficiaries.

19 “(ii) For purposes of this subparagraph, the term
20 ‘blackout’ means any temporary blackout, lockdown, or
21 freeze with respect to, suspension of, or similar
22 limitation—

23 “(I) on the ability of a participant or bene-
24 ficiary (who has met minimum participation require-
25 ments applicable in accordance with section 202) to

1 transfer some or all of the nonforfeitable accrued
 2 benefit of the participant or beneficiary from invest-
 3 ment in the form of qualifying employer securities
 4 (as defined in section 407(d)(5)) to another invest-
 5 ment vehicle otherwise available under the terms of
 6 the plan, and

7 “(II) which is within the control of the plan
 8 sponsor or administrator.

9 Such term does not include any permanent limitation
 10 which applies only to benefits attributable to employer
 11 contributions, or any reasonable restriction on the fre-
 12 quency of transfers between investment vehicles, subject
 13 to such regulations as the Secretary may prescribe.”

14 (c) EXCISE TAX ON FAILURE OF CERTAIN DEFINED
 15 CONTRIBUTION PLANS TO PROVIDE NOTICE OF PLAN
 16 BLACKOUTS.—

17 (1) IN GENERAL.—Chapter 43 of the Internal
 18 Revenue Code of 1986 (relating to qualified pension,
 19 etc., plans), as amended by section 102, is amended
 20 by adding at the end the following new section:

21 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-**
 22 **TION PLANS TO PROVIDE NOTICE OF PLAN**
 23 **BLACKOUTS.**

24 “(a) IMPOSITION OF TAX.—There is hereby imposed
 25 a tax on the failure of any applicable defined contribution

1 plan to meet the requirements of section 401(a)(35)(F)
2 with respect to any participant or beneficiary.

3 “(b) AMOUNT OF TAX.—

4 “(1) IN GENERAL.—The amount of the tax im-
5 posed by subsection (a) on any failure with respect
6 to any participant or beneficiary shall be \$100 for
7 each day in the noncompliance period with respect to
8 the failure.

9 “(2) NONCOMPLIANCE PERIOD.—For purposes
10 of this section, the term ‘noncompliance period’
11 means, with respect to any failure, the period begin-
12 ning on the date the failure first occurs and ending
13 on the date the notice to which the failure relates is
14 provided or the failure is otherwise corrected.

15 “(c) LIMITATIONS ON AMOUNT OF TAX.—

16 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
17 DISCOVERED AND REASONABLE DILIGENCE EXER-
18 CISED.—No tax shall be imposed by subsection (a)
19 on any failure during any period for which it is es-
20 tablished to the satisfaction of the Secretary that
21 any person subject to liability for tax under sub-
22 section (d) did not know that the failure existed and
23 exercised reasonable diligence to meet the require-
24 ments of section 401(a)(35)(F).

1 “(2) TAX NOT TO APPLY TO FAILURES COR-
2 RECTED AS SOON AS REASONABLY PRACTICABLE.—
3 No tax shall be imposed by subsection (a) on any
4 failure if—

5 “(A) any person subject to liability for the
6 tax under subsection (d) exercised reasonable
7 diligence to meet the requirements of section
8 401(a)(35)(F), and

9 “(B) such person provides the notice de-
10 scribed in section 401(a)(35)(F) as soon as rea-
11 sonably practicable after the first date such per-
12 son knew, or exercising reasonable diligence
13 should have known, that such failure existed.

14 “(3) OVERALL LIMITATION FOR UNINTEN-
15 TIONAL FAILURES.—

16 “(A) IN GENERAL.—If the person subject
17 to liability for tax under subsection (d) exer-
18 cised reasonable diligence to meet the require-
19 ments of section 401(a)(35)(F) and paragraph
20 (1) is not otherwise applicable, the tax imposed
21 by subsection (a) for failures during the taxable
22 year of the employer (or, in the case of a multi-
23 employer plan, the taxable year of the trust
24 forming part of the plan) shall not exceed
25 \$500,000. For purposes of the preceding sen-

1 tence, all multiemployer plans of which the
2 same trust forms a part shall be treated as 1
3 plan.

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

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

18 “(d) LIABILITY FOR TAX.—The following shall be lia-
19 ble for the tax imposed by subsection (a):

20 “(1) In the case of a plan other than a multi-
21 employer plan, the employer.

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

24 “(e) APPLICABLE DEFINED CONTRIBUTION PLAN.—
25 For purposes of this section, the term ‘applicable defined

1 contribution plan' has the meaning given such term by
2 section 401(a)(35).”

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for chapter 43 of such Code is amended by
5 adding at the end the following new item:

“Sec. 4980H. Failure of certain defined contribution plans to provide notice of
plan blackouts.”

6 (3) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to notices required to
8 be made under section 401(a)(35)(F) of the Internal
9 Revenue Code of 1986, as added by this section.

10 **SEC. 302. FIDUCIARY EXCEPTION FOR PARTICIPANT-CON-**
11 **TROLLED INVESTMENT NOT TO APPLY DUR-**
12 **ING BLACKOUT PERIOD.**

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

16 “(3) Notwithstanding paragraph (1), if a person who
17 is otherwise a fiduciary violates any fiduciary duty or re-
18 sponsibility with respect to —

19 “(A) the imposition of a blackout (as defined in
20 subsection (a)(2)(B)(ii)), or

21 “(B) the ability of a participant or beneficiary
22 to exercise control over assets during the blackout,
23 such person shall be liable under this part for any loss
24 during such blackout from the investment of the partici-

1 pant’s or beneficiary’s assets in qualifying employer secu-
 2 rities or qualifying employer real property.”

3 **SEC. 303. CORPORATE EXECUTIVES MAY NOT TRADE EM-**
 4 **EMPLOYER SECURITIES OR DERIVATIVES DUR-**
 5 **ING BLACKOUT PERIOD.**

6 Section 16 of the Securities Exchange Act of 1934
 7 (15 U.S.C. 78p) is amended by adding at the end the fol-
 8 lowing:

9 “(h) CERTAIN TRANSACTIONS PROHIBITED.—It shall
 10 be unlawful for any beneficial owner, director, or officer
 11 of an issuer described in subsection (a), directly or indi-
 12 rectly, to sell or exercise any equity security of the issuer
 13 (other than an exempted security) or any derivative there-
 14 of, during any period during which a blackout (as defined
 15 in section 404(a)(2)(B)(ii) of the Employee Retirement
 16 Income Security Act of 1974) is in effect with respect to
 17 any pension plan established or maintained by the issuer.”

18 **TITLE IV—LIMITATION ON**
 19 **AUDITOR SERVICES**

20 **SEC. 401. LIMITATION ON AUDITOR SERVICES.**

21 (a) IN GENERAL.—Section 10A of the Securities Ex-
 22 change Act of 1934 (15 U.S.C. 78j–1) is amended by add-
 23 ing at the end the following:

24 “(g) NONAUDIT SERVICES PROHIBITED.—

1 “(1) IN GENERAL.—An independent public ac-
2 countant that performs for any applicable entity any
3 auditing service that is required under the securities
4 laws or the rules or regulations of the Commission
5 pursuant to the securities laws, or any affiliate of
6 such independent public accountant, may not provide
7 to that entity any other service that is not directly
8 related to the performance of the auditing service.

9 “(2) APPLICABLE ENTITY.—For purposes of
10 this subsection, the term ‘applicable entity’ means
11 an entity issuing securities that are readily tradable
12 on an established securities market.”

13 (b) EFFECTIVE DATE.—Section 10A(g) of the Secu-
14 rities Exchange Act of 1934, as added by subsection (a),
15 shall apply on and after the date of enactment of this Act,
16 except that if there are agreements for the provision of
17 both auditing and other services in effect on that date of
18 enactment, such section shall not apply to services pro-
19 vided under such agreements before the earlier of—

20 (1) the first date on which any such agreement
21 is renewed or amended, or

22 (2) 6 months after the date of enactment of
23 this Act.

1 **TITLE V—GENERAL PROVISIONS**

2 **SEC. 501. EFFECTIVE DATE AND RELATED RULES.**

3 (a) IN GENERAL.—Except as otherwise provided in
4 this Act, the amendments made by this Act shall apply
5 with respect to plan years beginning on or after January
6 1, 2002.

7 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
8 PLANS.—In the case of a plan maintained pursuant to 1
9 or more collective bargaining agreements between em-
10 ployee representatives and 1 or more employers ratified
11 on or before the date of the enactment of this Act, sub-
12 section (a) shall be applied to benefits pursuant to, and
13 individuals covered by, any such agreement by substituting
14 for “January 1, 2002” the date of the commencement of
15 the first plan year beginning on or after the earlier of—

16 (1) the later of—

17 (A) January 1, 2003, or

18 (B) the date on which the last of such col-
19 lective bargaining agreements terminates (de-
20 termined without regard to any extension there-
21 of after the date of the enactment of this Act),

22 or

23 (2) January 1, 2004.

24 (c) PLAN AMENDMENTS.—If the amendments made
25 by this Act require an amendment to any plan, such plan

1 amendment shall not be required to be made before the
2 first plan year beginning on or after January 1, 2004, if—

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

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

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