

107TH CONGRESS
2D SESSION

S. 1971

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2002

Mr. GRASSLEY 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 protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, 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.**

4 This Act may be cited as the “National Employee
5 Savings and Trust Equity Guarantee Act”.

1 **TITLE I—DIVERSIFICATION OF**
2 **PENSION PLAN ASSETS**

3 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO**
4 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**
5 **VEST THEIR PLAN ASSETS.**

6 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

7 (1) QUALIFICATION REQUIREMENT.—Section
8 401(a) of the Internal Revenue Code of 1986 (relat-
9 ing to qualified pension, profit-sharing, and stock
10 bonus plans) is amended by inserting after para-
11 graph (34) the following new paragraph:

12 “(35) DIVERSIFICATION REQUIREMENTS FOR
13 CERTAIN DEFINED CONTRIBUTION PLANS.—

14 “(A) IN GENERAL.—A trust which is part
15 of an applicable defined contribution plan shall
16 not be treated as a qualified trust unless the
17 plan—

18 “(i) provides that a participant or
19 beneficiary of a participant has the right
20 at any time to invest any elective deferrals
21 (and earnings thereon) contributed to his
22 or her account in the form of publicly trad-
23 ed employer securities in any other invest-
24 ment option offered under the plan,

1 “(ii) provides that a participant with
2 3 or more years of service and any bene-
3 ficiary of a participant has the right to in-
4 vest any publicly traded employer securi-
5 ties (and earnings thereon) to which clause
6 (i) does not apply and which are allocated
7 to his or her account in any other invest-
8 ment option offered under the plan, and

9 “(iii) offers at least 3 investment op-
10 tions (not inconsistent with regulations
11 prescribed by the Secretary).

12 “(B) CERTAIN RESTRICTIONS AND CONDI-
13 TIONS NOT ALLOWED.—A plan shall not meet
14 the requirements of subparagraph (A) if the
15 plan imposes restrictions or conditions on the
16 investment of publicly traded employer securi-
17 ties which are not imposed on the investment of
18 other assets of the plan. This subparagraph
19 shall not apply to any restrictions or conditions
20 imposed by reason of application of securities
21 laws.

22 “(C) APPLICABLE DEFINED CONTRIBU-
23 TION PLAN.—For purposes of this paragraph—

24 “(i) IN GENERAL.—The term ‘applica-
25 ble defined contribution plan’ means any

1 defined contribution plan which holds any
2 publicly traded employer securities.

3 “(ii) EXCEPTION FOR CERTAIN
4 ESOPS.—Such term does not include an
5 employee stock ownership plan (within the
6 meaning of section 4975(e)(7)) if—

7 “(I) there are no contributions to
8 such plan (or earnings thereunder)
9 which are held within such plan and
10 are subject to subsections (k)(3) or
11 (m)(2), and

12 “(II) such plan is a separate plan
13 (within the meaning of section 414(l))
14 with respect to any other defined ben-
15 efit plan or defined contribution plan
16 maintained by the same employer or
17 employers.

18 “(D) OTHER DEFINITIONS.—For purposes
19 of this paragraph—

20 “(i) PUBLICLY TRADED EMPLOYER
21 SECURITIES.—The term ‘publicly traded
22 employer securities’ means employer secu-
23 rities which are readily tradable on an es-
24 tablished securities market.

1 “(ii) EMPLOYER SECURITIES.—The
2 term ‘employer securities’ has the meaning
3 given such term by section 407(d)(1) of
4 the Employee Retirement Income Security
5 Act of 1974.

6 “(iii) YEAR OF SERVICE.—The term
7 ‘year of service’ has the meaning given
8 such term by section 411(a)(5).”

9 (2) CONFORMING AMENDMENT.—Section
10 401(a)(28)(B) of such Code (relating to additional
11 requirements relating to employee stock ownership
12 plans) is amended by adding at the end the following
13 new clause:

14 “(v) EXCEPTION.—This paragraph
15 shall not apply to an applicable defined
16 contribution plan (as defined in paragraph
17 (35)(C)).”

18 (b) AMENDMENT OF ERISA.—Section 204 of the
19 Employee Retirement Income Security Act of 1974 (29
20 U.S.C. 1054) is amended by redesignating subsection (j)
21 as subsection (k) and by adding at the end the following
22 new subsection:

23 “(j)(1) An applicable individual account plan shall
24 provide that—

1 “(A) a participant or beneficiary of a partici-
2 pant has the right at any time to invest any elective
3 deferrals (and earnings thereon) contributed to his
4 or her account in the form of publicly traded em-
5 ployer securities in any other investment option of-
6 fered under the plan,

7 “(B) a participant with 3 or more years of serv-
8 ice and any beneficiary of a participant has the right
9 to invest any publicly traded employer securities
10 (and earnings thereon) to which subparagraph (A)
11 does not apply and which are allocated to his or her
12 account in any other investment option offered
13 under the plan, and

14 “(C) offers at least 3 investment options (not
15 inconsistent with regulations prescribed by the Sec-
16 retary).

17 “(2) A plan shall not meet the requirements of para-
18 graph (1) if the plan imposes restrictions or conditions
19 on the investment of publicly traded employer securities
20 which are not imposed on the investment of other assets
21 of the plan.

22 “(3)(A) For purposes of this subsection, the term ‘ap-
23 plicable individual account plan’ means any individual ac-
24 count plan which holds any publicly traded employer secu-
25 rities.

1 “(B) Such term does not include an employee stock
2 ownership plan (within the meaning of section 4975(e)(7)
3 of the Internal Revenue Code of 1986) if—

4 “(i) there are no contributions to such plan (or
5 earnings thereunder) which are held within such
6 plan and subject to subsection (k)(3) or (m)(2) of
7 section 401 of such Code, and

8 “(ii) such plan is a separate plan (within the
9 meaning of section 414(l) of such Code) with respect
10 to any other defined benefit plan or defined con-
11 tribution plan maintained by the same employer or
12 employers.

13 “(4) For purposes of this subsection—

14 “(A) the term ‘publicly traded employer securi-
15 ties’ means employer securities which are readily
16 tradable on an established securities market,

17 “(B) the term ‘employer security’ has the
18 meaning given such term by section 407(d)(1), and

19 “(C) the term ‘year of service’ has the meaning
20 given such term by section 203(b)(2).”

21 (c) EFFECTIVE DATES.—

22 (1) IN GENERAL.—The amendments made by
23 this section shall apply to plan years beginning on
24 or after January 1, 2003.

1 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 2 GAINED AGREEMENTS.—In the case of a plan main-
 3 tained pursuant to 1 or more collective bargaining
 4 agreements between employee representatives and 1
 5 or more employers ratified on or before the date of
 6 the enactment of this Act, subsection (a) shall be ap-
 7 plied to benefits pursuant to, and individuals covered
 8 by, any such agreement by substituting for “Janu-
 9 ary 1, 2003” the earlier of—

10 (A) the later of—

11 (i) January 1, 2004, or

12 (ii) the date on which the last of such
 13 collective bargaining agreements termi-
 14 nates (determined without regard to any
 15 extension thereof after such date of enact-
 16 ment), or

17 (B) January 1, 2005.

18 **TITLE II—PROTECTION OF EM-**
 19 **PLOYEES DURING PENSION**
 20 **PLAN TRANSACTION SUSPEN-**
 21 **SION PERIOD**

22 **SEC. 201. PROTECTION OF PARTICIPANTS OR BENE-**
 23 **FICIARIES FROM SUSPENSION OF ABILITY TO**
 24 **DIVERSIFY PLAN ASSETS.**

25 (a) NOTICE REQUIREMENTS.—

1 (1) EXCISE TAX.—

2 (A) IN GENERAL.—Chapter 43 of the In-
3 ternal Revenue Code of 1986 (relating to quali-
4 fied pension, etc., plans) is amended by adding
5 at the end the following new section:

6 **“SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE**
7 **NOTICE OF TRANSACTION SUSPENSION PE-**
8 **RIOD.**

9 “(a) IMPOSITION OF TAX.—There is hereby imposed
10 a tax on the failure of any applicable defined contribution
11 plan to meet the requirements of subsection (e) with re-
12 spect to any participant or beneficiary.

13 “(b) AMOUNT OF TAX.—

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

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

25 “(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 subsection (e).

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

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

18 “(B) such person provides the notice de-
19 scribed in subsection (e) as soon as reasonably
20 practicable after the first date such person
21 knew, or exercising reasonable diligence should
22 have known, that such failure existed.

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

1 “(A) IN GENERAL.—If the person subject
2 to liability for tax under subsection (d) exer-
3 cised reasonable diligence to meet the require-
4 ments of subsection (e), the tax imposed by
5 subsection (a) for failures during the taxable
6 year of the employer (or, in the case of a multi-
7 employer plan, the taxable year of the trust
8 forming part of the plan) shall not exceed
9 \$500,000. For purposes of the preceding sen-
10 tence, all multiemployer plans of which the
11 same trust forms a part shall be treated as 1
12 plan.

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

21 “(4) WAIVER BY SECRETARY.—In the case of a
22 failure which is due to reasonable cause and not to
23 willful neglect, the Secretary may waive part or all
24 of the tax imposed by subsection (a) to the extent

1 that the payment of such tax would be excessive or
2 otherwise inequitable relative to the failure involved.

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

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

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

9 “(e) NOTICE OF TRANSACTION SUSPENSION PE-
10 RIOD.—

11 “(1) IN GENERAL.—The plan administrator of
12 an applicable defined contribution plan shall provide
13 notice of any transaction suspension period to each
14 participant or beneficiary to whom the transaction
15 suspension period applies (and to any employee or-
16 ganization representing such participants).

17 “(2) NOTICE.—The notice required by para-
18 graph (1) shall be written in a manner calculated to
19 be understood by the average plan participant and
20 shall provide sufficient information (as determined
21 in accordance with rules or other guidance adopted
22 by the Secretary) to allow applicable individuals to
23 understand the timing and effect of such transaction
24 suspension period.

25 “(3) TIMING OF NOTICE.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the notice required by para-
3 graph (1) shall be provided not later than 30
4 days before the beginning of the transaction
5 suspension period.

6 “(B) EXCEPTIONS TO 30-DAY NOTICE.—

7 “(i) UNPLANNED EVENTS.—In the
8 case of any transaction suspension period
9 which is imposed by reason of an event
10 outside of the control of a plan sponsor or
11 administrator, subparagraph (A) shall not
12 apply and the notice shall be furnished as
13 soon as reasonably possible under the cir-
14 cumstances.

15 “(ii) ACQUISITIONS, ETC.—In the case
16 of any transaction suspension period—

17 “(I) in connection with an acqui-
18 sition or disposition to which section
19 410(b)(6)(C) applies, or

20 “(II) due to such other cir-
21 cumstances specified by the Secretary,
22 the Secretary may provide that subpara-
23 graph (A) shall not apply and the notice
24 shall be furnished at such time as the Sec-
25 retary specifies.

1 “(4) FORM AND MANNER OF NOTICE.—The no-
 2 tice required by paragraph (1) shall be in writing,
 3 except that such notice may be in electronic or other
 4 form to the extent that such form is reasonably ac-
 5 cessible to the applicable individual.

6 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
 7 poses of this section—

8 “(1) APPLICABLE DEFINED CONTRIBUTION
 9 PLAN.—The term ‘applicable defined contribution
 10 plan’ means a defined contribution plan which—

11 “(A) is a qualified retirement plan (as de-
 12 fined in section 4974(c)), and

13 “(B) permits a participant or beneficiary
 14 to exercise control over assets in his or her ac-
 15 count.

16 “(2) TRANSACTION SUSPENSION PERIOD.—

17 “(A) IN GENERAL.—The term ‘transaction
 18 suspension period’ means a temporary or indefi-
 19 nite period of 2 or more consecutive business
 20 days during which there is a substantial reduc-
 21 tion (other than by reason of application of se-
 22 curities laws) in the rights of 1 or more partici-
 23 pants or beneficiaries to direct investments in a
 24 defined contribution plan.

1 “(B) BUSINESS DAY.—For purposes of
2 this paragraph, a day shall not be treated as a
3 business day to the extent that 1 or more estab-
4 lished securities markets for trading securities
5 are not open.”

6 (B) CLERICAL AMENDMENT.—The table of
7 sections for chapter 43 of such Code is amend-
8 ed by adding at the end the following new item:

“Sec. 4980G. Failure of applicable plans to provide notice of transaction suspen-
sion period.”

9 (2) AMENDMENTS OF ERISA.—

10 (A) IN GENERAL.—Section 101 of the Em-
11 ployee Retirement Income Security Act of 1974
12 (29 U.S.C. 11021) is amended by redesignating
13 the second subsection (h) as subsection (j) and
14 by inserting after the first subsection (h) the
15 following new subsection:

16 “(i)(1) The plan administrator of an individual ac-
17 count plan which permits a participant or beneficiary to
18 exercise control over assets in his or her account applies
19 shall provide notice of any transaction suspension period
20 to each participant or beneficiary to whom the transaction
21 suspension period applies (and to any employee organiza-
22 tion representing such participants).

23 “(2) The notice required by paragraph (1) shall be
24 written in a manner calculated to be understood by the

1 average plan participant and shall provide sufficient infor-
2 mation (as determined in accordance with rules or other
3 guidance adopted by the Secretary of the Treasury) to
4 allow applicable individuals to understand the timing and
5 effect of such transaction suspension period.

6 “(3)(A) Except as provided in subparagraph (B), the
7 notice required by paragraph (1) shall be provided not
8 later than 30 days before the beginning of the transaction
9 suspension period.

10 “(B)(i) In the case of any transaction suspension pe-
11 riod which is imposed outside of the control of a plan spon-
12 sor or administrator, subparagraph (A) shall not apply
13 and the notice shall be furnished as soon as reasonably
14 possible under the circumstances.

15 “(ii) In the case of any transaction suspension
16 period—

17 “(I) in connection with an acquisition or dis-
18 position to which section 410(b)(6)(C) of the Inter-
19 nal Revenue Code of 1986 applies, or

20 “(II) due to such other circumstances specified
21 by the Secretary of the Treasury,

22 the Secretary of the Treasury may provide that subpara-
23 graph (A) shall not apply and the notice shall be furnished
24 at such time as the Secretary specifies.

1 “(4) The notice required by paragraph (1) shall be
2 in writing, except that such notice may be in electronic
3 or other form to the extent that such form is reasonably
4 accessible to the applicable individual.

5 “(5)(A) For purposes of this subparagraph, the term
6 ‘transaction suspension period’ means a temporary or in-
7 definite period of 2 or more consecutive business days dur-
8 ing which there is a substantial reduction (other than by
9 reason of application of securities laws) in the rights of
10 1 or more participants or beneficiaries to direct invest-
11 ments in an individual account plan.

12 “(B) For purposes of this paragraph, a day shall not
13 be treated as a business day to the extent that 1 or more
14 established securities markets for trading securities are
15 not open.”

16 (B) CIVIL PENALTIES FOR FAILURE TO
17 PROVIDE NOTICE.—Section 502 of such Act is
18 amended—

19 (i) in subsection (a)(6), by striking
20 “or (6)” and inserting “(6), or (7)”;

21 (ii) by redesignating paragraph (7) of
22 subsection (c) as paragraph (8); and

23 (iii) by inserting after paragraph (6)
24 of subsection (c) the following new para-
25 graph:

1 “(7) The Secretary may assess a civil penalty against
2 any person of up to \$100 a day from the date of the per-
3 son’s failure or refusal to provide notice to participants
4 and beneficiaries in accordance with section 101(i). For
5 purposes of this paragraph, each violation with respect to
6 any single participant or beneficiary, shall be treated as
7 a separate violation.”

8 (b) INAPPLICABILITY OF RELIEF FROM FIDUCIARY
9 LIABILITY DURING SUSPENSION OF ABILITY OF PARTICI-
10 PANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Sec-
11 tion 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is
12 amended—

13 (1) in subparagraph (B), by inserting before
14 the period the following: “, except that this subpara-
15 graph shall not apply for any period during which
16 the ability of a participant or beneficiary to direct
17 the investment of assets in his or her individual ac-
18 count is suspended by a plan sponsor or fiduciary”;
19 and

20 (2) by adding at the end the following:
21 “Any limitation or restriction that may govern the fre-
22 quency of transfers between investment vehicles shall not
23 be treated as a suspension referred to in subparagraph
24 (B) to the extent such limitation or restriction is disclosed
25 to participants or beneficiaries through the summary plan

1 description or materials describing specific investment al-
2 ternatives under the plan.”

3 “(c) SAFE HARBOR GUIDANCE.—The Secretary of
4 Labor, in consultation with the Secretary of Treasury,
5 shall, prior to December 31, 2002, issue final regulations
6 providing clear guidance, including safe harbors, on how
7 plan sponsors or any other affected fiduciaries can satisfy
8 their fiduciary responsibilities during any period which the
9 ability of a participant or beneficiary to direct the invest-
10 ment of assets in his or her individual account is sus-
11 pended.”

12 (d) EFFECTIVE DATE.—

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

16 (2) EXCEPTIONS TO 30-DAY NOTICE.—The Sec-
17 retary of the Treasury shall, no later than 120 days
18 after the date of the enactment of this Act, specify
19 the circumstances under section 4980G(e)(3)(B)(ii)
20 of the Internal Revenue Code of 1986 under which
21 the 30-day notice rule would not apply and the time
22 by which the notice is required to be provided.

1 **SEC. 202. CERTAIN SALES AND PURCHASES OF COMPANY**
 2 **STOCK BY CORPORATE INSIDERS TO BE SUB-**
 3 **JECT TO EXCISE TAX ON GOLDEN PARA-**
 4 **CHUTE PAYMENTS.**

5 (a) IN GENERAL.—Section 4999 of the Internal Rev-
 6 enue Code of 1986 (relating to golden parachute pay-
 7 ments) is amended by redesignating subsection (c) as sub-
 8 section (d) and by inserting after subsection (b) the fol-
 9 lowing new subsection:

10 “(c) CERTAIN SALES OF COMPANY STOCK BY COR-
 11 PORATE INSIDERS.—

12 “(1) TREATMENT AS EXCESS PARACHUTE PAY-
 13 MENT.—

14 “(A) IN GENERAL.—For purposes of this
 15 section, if there is a sale or exchange, or pur-
 16 chase, of stock in a corporation by a corporate
 17 insider during any period in which a transaction
 18 suspension period affecting the ability of par-
 19 ticipants and beneficiaries to invest stock in
 20 such corporation is in effect with respect to a
 21 defined contribution plan—

22 “(i) to which section 401(a) (28) or
 23 (35) applies, and

24 “(ii) which is maintained by such cor-
 25 poration (or any other entity consolidated
 26 with such corporation for purposes of re-

1 porting to the Securities and Exchange
2 Commission),
3 any amount realized by the corporate insider on
4 such sale or exchange (or the purchase price in
5 the case of a purchase) shall be treated as an
6 excess parachute payment.

7 “(B) LIMITATION.—Subparagraph (A)
8 shall only apply to stock acquired by an indi-
9 vidual by reason of the individual’s employment
10 with the corporation or by reason of any other
11 relationship with the corporation that makes
12 the individual a corporate insider.

13 “(2) APPLICATION TO OTHER INSTRUMENTS.—
14 For purposes of paragraph (1)—

15 “(A) any sale or exchange, or purchase, of
16 an option, warrant, or other derivative of stock
17 in a corporation,

18 “(B) any transaction involving the exercise
19 of an option, warrant, or other derivative of
20 stock in a corporation, or

21 “(C) any similar transaction,
22 shall be treated in the same manner as a transaction
23 involving the sale or exchange, or purchase, of stock.

24 “(3) CORPORATE INSIDER.—For purposes of
25 this subsection, the term ‘corporate insider’ means,

1 with respect to a corporation, any individual who is
 2 subject to the requirements of section 16(a) of the
 3 Securities Exchange Act of 1934 with respect to
 4 such corporation.

5 “(4) TRANSACTION SUSPENSION PERIOD.—The
 6 term ‘transaction suspension period’ has the mean-
 7 ing given such term by section 4980G(f)(2).”

8 (b) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to sales and exchanges after the
 10 120th day after the date of the enactment of this Act.

11 **TITLE III—PROVIDING OF IN-**
 12 **FORMATION TO ASSIST PAR-**
 13 **TICIPANTS**

14 **SEC. 301. PERIODIC PENSION BENEFITS STATEMENTS.**

15 (a) EXCISE TAX.—

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

20 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-**
 21 **TION PLANS TO PROVIDE REQUIRED QUAR-**
 22 **TERLY STATEMENTS.**

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

1 plan to meet the requirements of subsection (e) with re-
2 spect 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 statement to which the failure re-
14 lates is 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 subsection (e).

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

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

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

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

15 “(A) IN GENERAL.—If the person subject
16 to liability for tax under subsection (d) exer-
17 cised reasonable diligence to meet the require-
18 ments of subsection (e), the tax imposed by
19 subsection (a) for failures during the taxable
20 year of the employer (or, in the case of a multi-
21 employer plan, the taxable year of the trust
22 forming part of the plan) shall not exceed
23 \$500,000. For purposes of the preceding sen-
24 tence, all multiemployer plans of which the

1 same trust forms a part shall be treated as 1
2 plan.

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

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

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

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

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

23 “(e) REQUIREMENT TO PROVIDE QUARTERLY
24 STATEMENTS.—

1 “(1) IN GENERAL.—The administrator of an
2 applicable defined contribution plan shall furnish a
3 pension benefit statement—

4 “(A) to a plan participant at least once
5 each calendar quarter, and

6 “(B) to a plan beneficiary upon written re-
7 quest but no more frequently than once during
8 any 12-month period.

9 “(2) STATEMENT.—

10 “(A) IN GENERAL.—A pension benefit
11 statement under paragraph (1) shall indicate,
12 on the basis of the latest available
13 information—

14 “(i) the total benefits accrued, and

15 “(ii) the nonforfeitable pension bene-
16 fits, if any, which have accrued, or the ear-
17 liest date on which benefits will become
18 nonforfeitable.

19 “(B) SPECIFIC INFORMATION.—A pension
20 benefit statement under paragraph (1) shall in-
21 clude (together with the information required in
22 subparagraph (A))—

23 “(i) the value of any assets held in the
24 form of employer securities, without regard
25 to whether such securities were contributed

1 by the plan sponsor or acquired at the di-
 2 rection of the plan or of the participant or
 3 beneficiary, and an explanation of any lim-
 4 itations or restrictions on the right of the
 5 participant or beneficiary to direct an in-
 6 vestment; and

7 “(ii) an explanation of the impor-
 8 tance, for the long-term retirement secu-
 9 rity of participants and beneficiaries, of a
 10 well-balanced and diversified investment
 11 portfolio, including a discussion of the risk
 12 of holding substantial portions of a port-
 13 folio in the security of any one entity, such
 14 as employer securities.

15 “(3) MANNER OF STATEMENT.—A pension ben-
 16 efit statement under paragraph (1)—

17 “(A) shall be written in a manner cal-
 18 culated to be understood by the average plan
 19 participant, and

20 “(B) may be provided in written, elec-
 21 tronic, or other appropriate form.

22 “(f) APPLICABLE DEFINED CONTRIBUTION PLAN.—

23 For purposes of this section, the term ‘applicable defined
 24 contribution plan’ means a defined contribution plan
 25 which—

1 “(1) is a qualified retirement plan (as defined
2 in section 4974(c)), and

3 “(2) permits a participant or beneficiary to ex-
4 ercise control over assets in his or her account.”

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

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

8 (b) AMENDMENTS OF ERISA.—

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

12 “(a)(1)(A) The administrator of an individual ac-
13 count plan shall furnish a pension benefit statement—

14 “(i) to a plan participant at least once annually
15 (each calendar quarter in the case of an applicable
16 individual account plan), and

17 “(ii) to a plan beneficiary upon written request.

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

20 “(i) at least once every 3 years to each partici-
21 pant with a nonforfeitable accrued benefit who is
22 employed by the employer maintaining the plan at
23 the time the statement is furnished to participants,
24 and

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

3 Information furnished under subparagraph (B) to a par-
4 ticipant (other than at the request of the participant) may
5 be based on reasonable estimates determined under regu-
6 lations prescribed by the Secretary.

7 “(2)(A) A pension benefit statement under paragraph
8 (1)—

9 “(i) shall indicate, on the basis of the latest
10 available information—

11 “(I) the total benefits accrued, and

12 “(II) the nonforfeitable pension benefits, if
13 any, which have accrued, or the earliest date on
14 which benefits will become nonforfeitable,

15 “(ii) shall be written in a manner calculated to
16 be understood by the average plan participant, and

17 “(iii) may be provided in written, electronic, tel-
18 ephonic, or other appropriate form.

19 “(B) In the case of an applicable individual account
20 plan, the pension benefit statement under paragraph (1)
21 shall include (together with the information required in
22 subparagraph (A))—

23 “(i) the value of any assets held in the form of
24 employer securities, without regard to whether such
25 securities were contributed by the plan sponsor or

1 acquired at the direction of the plan or of the partic-
2 ipant or beneficiary, and an explanation of any limi-
3 tations or restrictions on the right of the participant
4 or beneficiary to direct an investment, and

5 “(ii) an explanation of the importance, for the
6 long-term retirement security of participants and
7 beneficiaries, of a well-balanced and diversified in-
8 vestment portfolio, including a discussion of the risk
9 of holding substantial portions of a portfolio in the
10 security of any 1 entity, such as employer securities.

11 “(C) For purposes of this subsection, the term ‘appli-
12 cable individual account plan’ means an individual account
13 plan to which section 404(c) applies.

14 “(3)(A) In the case of a defined benefit plan, the re-
15 quirements of paragraph (1)(B)(i) shall be treated as met
16 with respect to a participant if the administrator provides
17 the participant at least once each year with notice of the
18 availability of the pension benefit statement and the ways
19 in which the participant may obtain such statement. Such
20 notice shall be provided in written, electronic, telephonic,
21 or other appropriate form, and may be included with other
22 communications to the participant if done in a manner
23 reasonably designed to attract the attention of the partici-
24 pant.

1 “(B) The Secretary may provide that years in which
2 no employee or former employee benefits (within the
3 meaning of section 410(b) of the Internal Revenue Code
4 of 1986) under the plan need not be taken into account
5 in determining the 3-year period under paragraph
6 (1)(B)(i).”

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 105 of the Employee Retirement In-
9 come Security Act of 1974 (29 U.S.C. 1025) is
10 amended by striking subsection (d).

11 (2) Section 105(b) of such Act (29 U.S.C.
12 1025(b)) is amended to read as follows:

13 “(b) In no case shall a participant or beneficiary of
14 a plan be entitled to more than 1 statement described in
15 subsection (a)(1) (A)(ii) or (B)(ii), whichever is applicable,
16 in any 12-month period.”

17 (d) MODEL STATEMENTS.—The Secretary of Labor
18 shall develop 1 or more model benefit statements, written
19 in a manner calculated to be understood by the average
20 plan participant, that may be used by plan administrators
21 in complying with the requirements of section 4980H of
22 the Internal Revenue Code of 1986 and section 105 of
23 the Employee Retirement Income Security Act of 1974.

1 (e) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after De-
3 cember 31, 2003.

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