

107TH CONGRESS
2^D SESSION

H. R. 3669

To amend the Internal Revenue Code of 1986 to empower employees to control their retirement savings accounts through new diversification rights, new disclosure requirements, and new tax incentives for retirement education.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2002

Mr. PORTMAN (for himself and Mr. CARDIN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to empower employees to control their retirement savings accounts through new diversification rights, new disclosure requirements, and new tax incentives for retirement education.

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 “Employee Retirement
5 Savings Bill of Rights”.

1 **SEC. 2. EXCISE TAX ON FAILURE OF PENSION PLANS TO**
2 **PROVIDE NOTICE OF GENERALLY ACCEPTED**
3 **INVESTMENT PRINCIPLES.**

4 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
5 enue Code of 1986 (relating to qualified pension, etc.,
6 plans) is amended by adding at the end the following new
7 section:

8 **“SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE**
9 **NOTICE OF GENERALLY ACCEPTED INVEST-**
10 **MENT PRINCIPLES.**

11 “(a) IMPOSITION OF TAX.—There is hereby imposed
12 a tax on the failure of any applicable pension plan to meet
13 the requirements of subsection (e) with respect to any ap-
14 plicable individual.

15 “(b) AMOUNT OF TAX.—The amount of the tax im-
16 posed by subsection (a) on any failure with respect to any
17 applicable individual shall be \$100.

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

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

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

1 “(B) such person provides the notice de-
2 scribed in subsection (e) during the 30-day pe-
3 riod beginning on the first date such person
4 knew, or exercising reasonable diligence should
5 have known, that such failure existed.

6 “(2) OVERALL LIMITATION FOR UNINTEN-
7 TIONAL FAILURES.—

8 “(A) IN GENERAL.—If the person subject
9 to liability for tax under subsection (d) exer-
10 cised reasonable diligence to meet the require-
11 ments of subsection (e) and paragraph (1) is
12 not otherwise applicable, the tax imposed by
13 subsection (a) for failures during the taxable
14 year of the employer (or, in the case of a multi-
15 employer plan, the taxable year of the trust
16 forming part of the plan) shall not exceed
17 \$500,000. For purposes of the preceding sen-
18 tence, all multiemployer plans of which the
19 same trust forms a part shall be treated as 1
20 plan.

21 “(B) TAXABLE YEARS IN THE CASE OF
22 CERTAIN CONTROLLED GROUPS.—For purposes
23 of this paragraph, if all persons who are treated
24 as a single employer for purposes of this section
25 do not have the same taxable year, the taxable

1 years taken into account shall be determined
2 under principles similar to the principles of sec-
3 tion 1561.

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

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

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

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

16 “(e) NOTICE OF GENERALLY ACCEPTED INVEST-
17 MENT PRINCIPLES.—

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

23 “(2) NOTICE.—The notice required by para-
24 graph (1) shall be written in a manner calculated to
25 be understood by the average plan participant and

1 shall provide sufficient information (as determined
2 in accordance with rules or other guidance adopted
3 by the Secretary) to allow applicable individuals to
4 understand generally accepted investment principles,
5 including principles of risk management and diver-
6 sification.

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

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

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

18 “(1) APPLICABLE INDIVIDUAL.—The term ‘ap-
19 plicable individual’ means—

20 “(A) any participant in the applicable pen-
21 sion plan,

22 “(B) any beneficiary who is an alternate
23 payee (within the meaning of section 414(p)(8))
24 under an applicable qualified domestic relations

1 order (within the meaning of section
2 414(p)(1)(A)), and

3 “(C) any beneficiary of a deceased partici-
4 pant or alternate payee,

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

8 “(2) APPLICABLE PENSION PLAN.—The term
9 ‘applicable pension plan’ means—

10 “(A) a plan described in section
11 219(g)(5)(A) (other than in clause (iii) thereof),
12 and

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

16 which permits any participant to direct the invest-
17 ment of some or all of his account in the plan or
18 under which the accrued benefit of any participant
19 depends in whole or in part on hypothetical invest-
20 ments directed by the participant.”.

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

“Sec. 4980G. Failure of applicable plans to provide notice of gen-
erally accepted investment principles.”.

24 (c) EFFECTIVE DATE.—

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

8 (2) MODEL INVESTMENT PRINCIPLES.—For
9 purposes of paragraph (1), not later than 120 days
10 after the date of the enactment of this Act, the Sec-
11 retary of the Treasury, in consultation with the Sec-
12 retary of Labor, shall issue rules or other guidance
13 and a model notice which meets the requirements of
14 section 4980G of the Internal Revenue Code of 1986
15 (as added by this section).

16 **SEC. 3. EXCISE TAX ON FAILURE OF PENSION PLANS TO**
17 **PROVIDE NOTICE OF TRANSACTION RESTRIC-**
18 **TION PERIODS.**

19 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
20 enue Code of 1986 (relating to qualified pension, etc.,
21 plans) is amended by adding at the end the following new
22 section:

1 **“SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE**
2 **NOTICE OF TRANSACTION RESTRICTION PE-**
3 **RIODS.**

4 “(a) IMPOSITION OF TAX.—There is hereby imposed
5 a tax on the failure of any applicable pension plan to meet
6 the requirements of subsection (e) with respect to any ap-
7 plicable individual.

8 “(b) AMOUNT OF TAX.—The amount of the tax im-
9 posed by subsection (a) on any failure with respect to any
10 applicable individual shall be \$100.

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

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

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

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

25 “(2) OVERALL LIMITATION FOR UNINTEN-
26 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) and paragraph (1) is
5 not otherwise applicable, the tax imposed by
6 subsection (a) for failures during the taxable
7 year of the employer (or, in the case of a multi-
8 employer plan, the taxable year of the trust
9 forming part of the plan) shall not exceed
10 \$500,000. For purposes of the preceding sen-
11 tence, all multiemployer plans of which the
12 same trust forms a part shall be treated as 1
13 plan.

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

22 “(3) WAIVER BY SECRETARY.—In the case of a
23 failure which is due to reasonable cause and not to
24 willful neglect, the Secretary may waive part or all
25 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 RESTRICTION PE-
10 RIOD.—

11 “(1) IN GENERAL.—The plan administrator of
12 an applicable pension plan shall provide notice of
13 any transaction restriction period to each applicable
14 individual to whom the transaction restriction period
15 applies (and to each employee organization rep-
16 resenting such applicable individuals).

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 restriction period.

25 “(3) TIMING OF NOTICE.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C), the notice required
3 by paragraph (1) shall be provided not later
4 than 21 days before the beginning of the trans-
5 action restriction period.

6 “(B) DISPOSITION OF STOCK OR AS-
7 SETS.—In the case of a transaction restriction
8 period in connection with the disposition of sub-
9 stantially all of the stock of a subsidiary of a
10 person or in connection with the disposition of
11 substantially all of the assets which are used by
12 such person in a trade or business of such
13 person—

14 “(i) the person disposing of such stock
15 or assets shall be treated as failing to meet
16 the requirements of this section unless, not
17 later than 21 days before such disposition,
18 the person provides notice required by
19 paragraph (1) of the possibility of a trans-
20 action restriction period in connection with
21 such disposition, and

22 “(ii) the person who acquires such
23 stock or assets need not provide a notice
24 under this section if the transaction re-
25 striction period in connection with such

1 disposition begins within 21 days after
2 such disposition.

3 Clause (i) shall not apply to the person dis-
4 posing of such stock or assets if such person
5 has a substantial basis to believe that there will
6 be no transaction restriction period in connec-
7 tion with the disposition of such stock or assets.

8 “(C) EXCEPTION FOR UNFORESEEABLE
9 EVENTS.—In the case of a transaction restric-
10 tion period resulting from the occurrence of an
11 unforeseeable event, such notice shall be pro-
12 vided as soon as reasonably practicable after
13 the occurrence of such event.

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

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

21 “(1) APPLICABLE INDIVIDUAL.—The term ‘ap-
22 plicable individual’ means—

23 “(A) any participant in the applicable pen-
24 sion plan, and

1 “(B) any beneficiary who is an alternate
2 payee (within the meaning of section 414(p)(8))
3 under an applicable qualified domestic relations
4 order (within the meaning of section
5 414(p)(1)(A)), and

6 “(C) any beneficiary of a deceased partici-
7 pant or alternate payee.

8 “(2) APPLICABLE PENSION PLAN.—The term
9 ‘applicable pension plan’ means—

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

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

15 which maintains accounts for participants under the
16 plan or under which the accrued benefit of any par-
17 ticipant depends in whole or in part on hypothetical
18 investments directed by the participant.

19 “(3) TRANSACTION RESTRICTION PERIOD.—

20 “(A) IN GENERAL.—The term ‘transaction
21 restriction period’ means a temporary or indefi-
22 nite period of at least 3 consecutive business
23 days during which rights of 1 or more applica-
24 ble individuals to direct investments in the ap-
25 plicable pension plan, obtain loans from such

1 plan, or obtain distributions from such plan are
2 substantially reduced (other than by reason of
3 the application of securities laws).

4 “(B) SPECIAL RULE FOR EMPLOYER SECURITIES.—For purposes of subparagraph (A),
5 rights shall be treated as substantially reduced
6 with respect to directing investments out of em-
7 ployer securities if rights in effect are signifi-
8 cantly restricted for at least 3 consecutive busi-
9 ness days.
10

11 “(C) BUSINESS DAY.—For purposes of
12 this paragraph, under rules prescribed by the
13 Secretary, a day shall not be treated as a busi-
14 ness day to the extent that 1 or more estab-
15 lished securities markets for trading securities
16 are not open.

17 “(D) REGULATIONS.—The Secretary shall
18 prescribe regulations which provide for such
19 other circumstances under which such rights
20 are substantially reduced.

21 “(4) EMPLOYER SECURITIES.—The term ‘em-
22 ployer securities’ shall have the meaning given such
23 term by section 407(d)(1) of the Employee Retirement
24 Income Security Act of 1974.”

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

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

4 (c) EFFECTIVE DATE.—

5 (1) EMPLOYER SECURITIES.—

6 (A) GUIDANCE.—Not later than 60 days
7 after the date of the enactment of this Act, the
8 Secretary of the Treasury, in consultation with
9 the Secretary of Labor, shall issue guidance in
10 carrying out section 4980H of the Internal Rev-
11 enue Code of 1986 (as added by this section)
12 with respect to the reduction of rights relating
13 to the direction of investments out of employer
14 securities.

15 (B) EFFECTIVE DATE.—The amendments
16 made by this section shall apply with respect to
17 transaction restriction periods resulting from
18 the reduction of rights relating to the direction
19 of investments out of employer securities begin-
20 ning after 60 days after the date of the
21 issuance of guidance under subparagraph (A).

22 (2) OTHER CIRCUMSTANCES.—In the case of
23 transaction restriction periods not referred to in
24 paragraph (1), the amendments made by this section

1 shall apply to such periods beginning after 120 days
2 after the date of the issuance of regulations referred
3 to in section 4980H(f)(3)(C) of such Code.

4 **SEC. 4. DIVERSIFICATION REQUIREMENTS FOR DEFINED**
5 **CONTRIBUTION PLANS THAT HOLD EM-**
6 **PLOYER SECURITIES.**

7 (a) IN GENERAL.—Subsection (a) of section 401 of
8 the Internal Revenue Code of 1986 (relating to require-
9 ments for qualification) is amended by adding at the end
10 the following new paragraph:

11 “(35) DIVERSIFICATION REQUIREMENTS FOR
12 DEFINED CONTRIBUTION PLANS THAT HOLD EM-
13 PLOYER SECURITIES.—

14 “(A) IN GENERAL.—In the case of a de-
15 fined contribution plan described in this sub-
16 section that includes a trust which is exempt
17 from tax under section 501(a) and which holds
18 employer securities that are readily tradable on
19 an established securities market, such trust
20 shall not constitute a qualified trust under this
21 section unless such plan meets the requirements
22 of subparagraphs (B), (C), and (D).

23 “(B) ELECTIVE DEFERRALS INVESTED IN
24 EMPLOYER SECURITIES.—

1 “(i) IN GENERAL.—In the case of the
2 portion of the account attributable to elec-
3 tive deferrals which is invested in employer
4 securities, a plan meets the requirements
5 of this subparagraph if each applicable in-
6 dividual in such plan may elect to direct
7 the plan to divest up to the applicable per-
8 centage of such securities in the individ-
9 ual’s account and to reinvest an equivalent
10 amount in other investment options which
11 meet the requirements of subparagraph
12 (E). The preceding sentence shall apply to
13 the extent that the amount attributable to
14 such applicable percentage exceeds the
15 amount to which a prior election under
16 this subparagraph or paragraph (28) ap-
17 plies.

18 “(ii) APPLICABLE INDIVIDUAL.—For
19 purposes of this subparagraph, the term
20 ‘applicable individual’ means—

21 “(I) any participant in the plan,

22 “(II) any beneficiary who is an
23 alternate payee (within the meaning
24 of section 414(p)(8)) under an appli-
25 cable qualified domestic relations

1 order (within the meaning of section
2 414(p)(1)(A)), and

3 “(III) any beneficiary of a de-
4 ceased participant or alternate payee.

5 “(C) MATCHING CONTRIBUTIONS.—

6 “(i) IN GENERAL.—In the case of the
7 portion of the account attributable to
8 matching contributions which is invested in
9 employer securities, a plan meets the re-
10 quirements of this subparagraph if each
11 qualified participant in the plan may elect
12 to direct the plan to divest up to the appli-
13 cable percentage of such securities in the
14 participant’s account and to reinvest an
15 equivalent amount in other investment op-
16 tions which meet the requirements of sub-
17 paragraph (E). The preceding sentence
18 shall apply to the extent that the amount
19 attributable to such applicable percentage
20 exceeds the amount to which a prior elec-
21 tion under this subparagraph or paragraph
22 (28) applies.

23 “(ii) MATCHING CONTRIBUTIONS DE-
24 FINED.—For purposes of this subpara-
25 graph, the term ‘matching contributions’

1 shall have the meaning given such term in
2 subsection (m)(4).

3 “(iii) QUALIFIED PARTICIPANT.—For
4 purposes of this subparagraph, the term
5 ‘qualified participant’ means—

6 “(I) any participant in the plan
7 who has completed at least 3 years of
8 service (as determined under section
9 411(a)) under the plan,

10 “(II) any beneficiary who, with
11 respect to a participant who met the
12 service requirement in subclause (I),
13 is an alternate payee (within the
14 meaning of section 414(p)(8)) under
15 an applicable qualified domestic rela-
16 tions order (within the meaning of
17 section 414(p)(1)(A)), and

18 “(III) any beneficiary of a de-
19 ceased participant who met the service
20 requirement in subclause (I) or alter-
21 nate payee described in subclause (II).

22 “(D) OTHER EMPLOYER CONTRIBU-
23 TIONS.—

24 “(i) IN GENERAL.—In the case of the
25 portion of the account attributable to em-

1 employer contributions (other than matching
2 contributions and elective deferrals) which
3 is invested in employer securities, a plan
4 meets the requirements of this subpara-
5 graph if each qualified participant in the
6 plan may elect to direct the plan to divest
7 up to the applicable percentage of such se-
8 curities in the participant’s account and to
9 reinvest an equivalent amount in other in-
10 investment options which meet the require-
11 ments of subparagraph (E). The preceding
12 sentence shall apply to the extent that the
13 amount attributable to such applicable per-
14 centage exceeds the amount to which a
15 prior election under this subparagraph or
16 paragraph (28) applies.

17 “(ii) QUALIFIED PARTICIPANT.—For
18 purposes of this subparagraph, the term
19 ‘qualified participant’ shall have the mean-
20 ing of such term under subparagraph (C),
21 except that clause (iii)(I) thereof shall be
22 applied by substituting ‘5 years of service’
23 for ‘3 years of service’.

24 “(E) INVESTMENT OPTIONS.—The require-
25 ments of this subparagraph are met if the plan

1 offers not less than 3 investment options (not
2 inconsistent with regulations prescribed by the
3 Secretary) other than employer securities.

4 “(F) OTHER DEFINITIONS AND RULES.—

5 For purposes of this paragraph—

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

11 “(ii) ELECTIVE DEFERRALS.—For
12 purposes of this subparagraph, the term
13 ‘elective deferrals’ means an employer con-
14 tribution described in section 402(g)(3)(A)
15 and any employee contribution.

16 “(iii) ELECTION.—Elections under
17 this paragraph shall be not less frequently
18 than quarterly.

19 “(iv) EMPLOYEE STOCK OWNERSHIP
20 PLAN.—The term ‘employee stock owner-
21 ship plan’ shall have the same meaning
22 given to such term by section 4975(e)(7).

23 “(v) APPLICABLE PERCENTAGE.—

24 “(I) ELECTIVE DEFERRALS
25 TREATED AS SEPARATE PLAN NOT IN-

1 INDIVIDUAL ACCOUNT PLAN.—In the
 2 case of elective deferrals (and any
 3 earnings allocable thereto) held within
 4 a plan treated as a separate plan as
 5 of the date of the enactment of this
 6 paragraph under section 407(b)(2) of
 7 the Employee Retirement Income Se-
 8 curity Act of 1974, for purposes of
 9 subparagraph (B) the applicable per-
 10 centage shall be 100 percent.

11 “(II) ELECTIVE DEFERRALS
 12 TREATED AS INDIVIDUAL ACCOUNT
 13 PLAN.—In the case of elective defer-
 14 rals (and any earnings allocable there-
 15 to) not held within a plan treated as
 16 a separate plan as of the date of the
 17 enactment of this paragraph under
 18 section 407(b)(2) of the Employee Re-
 19 tirement Income Security Act of
 20 1974, for purposes of subparagraph
 21 (B) the applicable percentage shall be
 22 as follows:

“Plan years beginning in:	Applicable percentage:
2003	The greater of the percentage deter- mined under paragraph (28) or 20 percent.
2004	The greater of the percentage deter- mined under paragraph (28) or 40 percent.

1 ownership plan merely because the plan meets the
2 requirements of section 401(a)(35) (or provides
3 greater diversification rights) or because participants
4 in such plan exercise diversification rights under
5 such section (or greater diversification rights avail-
6 able under the plan).”.

7 (4) Section 4980(c)(3)(A) of such Code is
8 amended by striking “if—” and all that follows and
9 inserting “if the requirements of subparagraphs (B),
10 (C), and (D) are met.”.

11 (5) Section 407 of the Employee Retirement In-
12 come Security Act of 1974 (29 U.S.C. 1107) is
13 amended by adding at the end the following new
14 subsection:

15 “(g) Notwithstanding section 408(e) or any other
16 provision of this title, an individual account plan may not
17 include provisions that do not meet the requirements of
18 section 401(a)(35)(B) of the Internal Revenue Code of
19 1986.”.

20 (c) EFFECTIVE DATE.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the amendments made by this section
23 shall apply to plan years beginning after December
24 31, 2002.

1 (2) EXCEPTION.—The amendments made by
2 this section shall not apply to employer securities
3 held by an employee stock ownership plan which are
4 not subject to section 401(a)(28) of the Internal
5 Revenue Code of 1986 by reason of section
6 1175(a)(2) of the Tax Reform Act of 1986 (100
7 Stat. 2519).

8 **SEC. 5. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
9 **NING SERVICES.**

10 (a) IN GENERAL.—Subsection (m) of section 132 of
11 the Internal Revenue Code of 1986 (defining qualified re-
12 tirement services) is amended by adding at the end the
13 following new paragraph:

14 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
15 shall be included in the gross income of any em-
16 ployee solely because the employee may choose be-
17 tween any qualified retirement planning services and
18 compensation which would otherwise be includible in
19 the gross income of such employee. The preceding
20 sentence shall apply to highly compensated employ-
21 ees only if the choice described in such sentence is
22 available on substantially the same terms to each
23 member of the group of employees normally provided
24 education and information regarding the employer’s
25 qualified employer plan.”.

1 (b) CONFORMING AMENDMENTS.—

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

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

7 (3) Section 415(c)(3)(D)(ii) of such Code is
8 amended by inserting “132(m)(4),” after
9 “132(f)(4),”.

10 (c) EFFECTIVE DATE.—The amendment made by
11 this section shall apply to years beginning after December
12 31, 2002.

○