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104TH CONGRESS

2D SESSION H. R. 4005 To amend title I of the Employee Retirement Income Security Act of 1974

and the Internal Revenue Code of 1986 to promote availability of private pensions upon retirement.

IN THE HOUSE OF REPRESENTATIVES AUGUST 2, 1996 Mr. SCHUMER introduced the following bill; which was referred to the Com- mittee on Economic and Educational Opportunities, and in addition to

the Committee on Ways and Means, for a period to be subsequently de-

termined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL To amend title I of the Employee Retirement Income Secu-

rity Act of 1974 and the Internal Revenue Code of
1986 to promote availability of private pensions upon

retirement.

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 ‘‘Pension Choice and 5 Security Act of 1996’’.

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1 SEC. 2. AVAILABILITY OF DEFINED CONTRIBUTION PLAN
2 OPTION FOR PARTICIPANTS IN DEFINED
3 BENEFIT PLANS.

4 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT

5 INCOME SECURITY ACT OF 1974.—Section 206 of the
6 Employee Retirement Income Security Act of 1974 (29

7 U.S.C. 1056) is amended by adding at the end the follow-8 ing new subsection:
9 ‘‘(g) AVAILABILITY OF DEFINED CONTRIBUTION

10 PLAN OPTION FOR PARTICIPANTS IN DEFINED BENEFIT
11 PLANS.—

12 ‘‘(1) IN GENERAL.—Each defined benefit plan
13 to which an employer makes contributions shall pro-
14 vide (in such form and manner as may be provided

15 in regulations prescribed jointly by the Secretary
16 and the Secretary of the Treasury) for an oppor-

17 tunity for each participant employed by such em-
18 ployer to elect, in lieu of coverage under the defined

19 benefit plan and before any election made by the em-
20 ployer under such plan pursuant to subsection (c),
21 coverage under a defined contribution plan main-

22 tained in whole or in part by the participant’s em-
23 ployer. An employer making contributions to a de-

24 fined benefit plan shall maintain for his employees
25 a defined contribution plan to the extent necessary
26 to provide for coverage under such defined contribu-

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1 tion plan pursuant to elections under this sub-
2 section.
3 ‘‘(2) REQUIRED LEVEL OF CONTRIBUTIONS.—

4 The requirements of paragraph (1) shall not be

5 treated as met unless the defined contribution plan
6 with respect to which an election is made under
7 paragraph (1) provides for contributions (other than

8 employee contributions (if any)) at least equivalent
9 to the contributions (other than employee contribu-
10 tions (if any)) provided for under the terms of the

11 defined benefit plan.
12 ‘‘(3) REQUIRED ELECTION PERIOD.—The re-

13 quirements of paragraph (1) shall not be treated as
14 met unless the defined benefit plan provides that an
15 election under paragraph (1) may be made at any

16 time during the 90-day period beginning with the
17 later of—

18 ‘‘(A) the commencement of the first plan
19 year to which this subsection applies, or
20 ‘‘(B) the commencement of the employee’s

21 service under the plan.’’.
22 (b) AMENDMENTS TO THE INTERNAL REVENUE
23 CODE OF 1986.—Subsection (a) of section 401 of the In-

24 ternal Revenue Code of 1986 (relating to requirements for

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1 qualification) is amended by inserting after paragraph
2 (34) the following new paragraph:
3 ‘‘(35) AVAILABILITY OF DEFINED CONTRIBU-
4 TION PLAN OPTION FOR PARTICIPANTS IN DEFINED

5 BENEFIT PLANS.—

6 ‘‘(A) IN GENERAL.—A trust forming a
7 part of a defined benefit plan to which an em-

8 ployer makes contributions shall not constitute
9 a qualified trust under this section unless—
10 ‘‘(i) the plan provides (in such form

11 and manner as may be provided in regula-
12 tions prescribed jointly by the Secretary

13 and the Secretary of Labor) for an oppor-
14 tunity for each participant employed by

15 such employer to elect, in lieu of coverage
16 under the defined benefit plan and before
17 any election made by the employer under

18 such plan pursuant to section 417, cov-
19 erage under a defined contribution plan

20 maintained in whole or in part by the par-
21 ticipant’s employer, and
22 ‘‘(ii) the defined benefit plan provides

23 that each employer making contributions
24 to the plan maintains for his employees a

25 defined contribution plan to the extent nec-

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1 essary to provide for coverage under such
2 defined contribution plan pursuant to elec-

3 tions under this paragraph.
4 ‘‘(B) REQUIRED LEVEL OF CONTRIBU-
5 TIONS.—The requirements of subparagraph (A)

6 shall not be treated as met unless the defined
7 contribution plan with respect to which an elec-

8 tion is made under subparagraph (A) provides
9 for contributions (other than employee contribu-
10 tions (if any)) at least equivalent to the con-

11 tributions (other than employee contributions
12 (if any)) provided for under the terms of the

13 defined benefit plan.
14 ‘‘(C) REQUIRED ELECTION PERIOD.—The
15 requirements of subparagraph (A) shall not be

16 treated as met unless the defined benefit plan
17 provides that an election under subparagraph

18 (A) may be made at any time during the 90-
19 day period beginning with the later of—
20 ‘‘(i) the commencement of the first

21 plan year to which this paragraph applies,
22 or
23 ‘‘(ii) the commencement of the em-

24 ployee’s service under the plan.’’.
25 (c) EFFECTIVE DATES.—

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1 (1) GENERAL RULE.—The amendments made
2 by this section shall apply to plan years beginning

3 after December 31, 1996.
4 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-

5 ING AGREEMENTS.—In the case of a defined benefit

6 plan maintained pursuant to one or more collective
7 bargaining agreements between employee organiza-

8 tions and one or more employers ratified before the
9 date of the enactment of this Act, the amendments

10 made by this section shall not apply to plan years
11 beginning before the later of—
12 (A) the date on which the last of the col-

13 lective bargaining agreements relating to the
14 plan terminates (determined without regard to

15 any extension thereof agreed to after the date
16 of the enactment of this Act), or
17 (B) January 1, 1999.

18 For purposes of subparagraph (A), any plan amend-
19 ment made pursuant to a collective bargaining

20 agreement relating to the plan which amends the
21 plan solely to conform to any requirement added by
22 this section shall not be treated as a termination of

23 such collective bargaining agreement.

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1 SEC. 3. TIMELY INVESTMENT OF PLAN CONTRIBUTIONS.

2 (a) IN GENERAL.—Section 404 of the Employee Re-
3 tirement Income Security Act of 1974 (29 U.S.C. 1104)

4 is amended by adding at the end the following new sub-
5 section:
6 ‘‘(e) Any failure, by a person who is a fiduciary with

7 respect to a pension plan and who has discretionary au-8 thority respecting investment of amounts contributed to

9 the plan, to ensure that amounts contributed to the plan
10 are invested, in accordance with the terms of the plan and
11 this title, before 15 days after the calendar month in which

12 such amounts are received by the plan, shall be treated 13 as a breach of fiduciary duties under the plan.’’.
14 (b) EFFECTIVE DATE.—The amendment made by

15 subsection (a) shall apply with respect to plan years begin-
16 ning on December 31, 1996.
17 SEC. 4. INCREASE IN PENALTY FOR EARLY DISTRIBUTIONS
18 FROM PENSION PLANS.

19 (a) IN GENERAL.—Paragraph (1) of section 72(t) of

20 the Internal Revenue Code of 1986 (relating to imposition
21 of additional tax) is amended by striking ‘‘10 percent’’ and

22 all that follows and inserting ‘‘100 percent of the portion 23 of such distribution which would (but for the following
24 sentence) be includible in gross income. A distribution on

25 which tax is imposed by the preceding sentence shall not
26 be includible in gross income.’’

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1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to distributions after December

3 31, 1996.

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