

106TH CONGRESS
2^D SESSION

H. R. 4748

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to modernize such title and such Code to take into account the evolution of employer-sponsored retirement plans, to increase the availability of critical retirement plan services, including investment advisory services, to participants, beneficiaries, and plan fiduciaries, and to harmonize the requirements of such title and such Code with other Federal and State laws.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2000

Mr. BOEHNER introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, 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 title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to modernize such title and such Code to take into account the evolution of employer-sponsored retirement plans, to increase the availability of critical retirement plan services, including investment advisory services, to participants, beneficiaries, and plan fiduciaries, and to harmonize the requirements of such title and such Code with other Federal and State laws.

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 “Comprehensive ERISA
5 Modernization Act of 2000”.

6 **SEC. 2. PROHIBITED TRANSACTION EXEMPTION FOR ARM’S**
7 **LENGTH TRANSACTIONS.**

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

10 (1) IN GENERAL.—Section 408(b) of the Em-
11 ployee Retirement Income Security Act of 1974 (29
12 U.S.C. 1108(b)) is amended by adding at the end
13 the following new paragraph:

14 “(14) Any transaction of the type described in
15 subparagraph (A), (B), (C), or (D) of section
16 406(a)(1) or in 406(b) (other than a transaction de-
17 scribed in paragraph (15)) which meets the arm’s
18 length transaction requirements of subsection (g).

19 (2) ARM’S LENGTH TRANSACTION REQUIRE-
20 MENTS.—Section 408 of such Act is amended fur-
21 ther by adding at the end the following new sub-
22 section:

23 “(g)(1) The arm’s length transaction requirements of
24 this subsection are met by a transaction described in sub-
25 paragraph (A), (B), (C), or (D) of section 406(a)(1) if—

1 “(A) such transaction is entered into pursuant
2 to a written contract or arrangement which includes
3 the material terms and conditions of such trans-
4 action or transactions of the type of such trans-
5 action,

6 “(B) such transaction is in the interest of the
7 plan and its participants and beneficiaries, and

8 “(C) the terms and conditions of such trans-
9 action, including any direct or indirect compensa-
10 tion, are at least as favorable to the plan as an
11 arm’s length transaction would be.

12 “(2) The arm’s length transaction requirements of
13 this subsection are met by a transaction described in sec-
14 tion 406(b) if—

15 “(A) such transaction meets the requirements
16 of paragraph (1), and

17 “(B) prior to the commencement of such
18 transaction—

19 “(i) written disclosure of potential conflicts
20 of interest associated with the transaction (or
21 contemplated transactions of the type thereof),
22 including the receipt of direct or indirect com-
23 pensation, has been provided to a fiduciary of
24 the plan, and

1 “(ii) the transaction (or contemplated
2 transactions of the type thereof) have been pro-
3 vided for in the terms of the plan or of a writ-
4 ten contract with a fiduciary described in clause
5 (i) that is independent of the person entering
6 into the transaction and any of its affiliates.

7 “(3) In any case in which a fiduciary causes a plan
8 to enter into a transaction with such fiduciary or an affil-
9 iate thereof, the arm’s length transaction requirements of
10 this subsection are met only if—

11 “(A) such transaction meets the requirements
12 of paragraphs (1) and (2),

13 “(B) such fiduciary or affiliate is engaged in
14 the business of entering into transactions of such
15 type with the general public, and

16 “(C) such transaction is entered into under
17 substantially the same terms and conditions as those
18 under which such transactions with the general pub-
19 lic are entered into.”.

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

22 (1) IN GENERAL.—Subsection (d) of section
23 4975 of the Internal Revenue Code of 1986 (relating
24 to exemptions from tax on prohibited transactions)
25 is amended—

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

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

5 (C) by adding at the end the following new
6 paragraph:

7 “(16) Any transaction of the type described in
8 subsection (c)(1) (other than a transaction described
9 in paragraph (17)) which meets the arm’s length
10 transaction requirements of subsection (f)(7).”.

11 (2) ARM’S LENGTH TRANSACTION REQUIRE-
12 MENTS.—Subsection (f) of such section 4975 (relat-
13 ing to other definitions and special rules) is amended
14 by adding at the end the following new paragraph:

15 “(7) ARM’S LENGTH TRANSACTION REQUIRE-
16 MENTS.—

17 “(A) TRANSACTIONS WITH DISQUALIFIED
18 PERSONS.—The arm’s length transaction re-
19 quirements of this subsection are met by a
20 transaction described in subparagraph (A), (B),
21 (C), or (D) of subsection (c)(1) if—

22 “(i) such transaction is entered into
23 pursuant to a written contract or arrange-
24 ment which includes the material terms
25 and conditions of such transaction or

1 transactions of the type of such trans-
2 action,

3 “(ii) such transaction is in the inter-
4 est of the plan and its participants and
5 beneficiaries, and

6 “(iii) the terms and conditions of such
7 transaction, including any direct or indi-
8 rect compensation, are at least as favorable
9 to the plan as an arm’s length transaction
10 would be.

11 “(B) TRANSACTIONS WITH A FIDUCIARY
12 OR ITS AFFILIATE.—The arm’s length trans-
13 action requirements of this subsection are met
14 by a transaction described in subparagraph (E)
15 or (F) of subsection (c)(1) if—

16 “(i) such transaction meets the re-
17 quirements of subparagraph (A), and

18 “(ii) prior to the commencement of
19 such transaction—

20 “(I) written disclosure of poten-
21 tial conflicts of interest associated
22 with the transaction (or contemplated
23 transactions of the type thereof), in-
24 cluding the receipt of direct or indi-

1 rect compensation, has been provided
2 to a fiduciary of the plan, and

3 “(II) the transaction (or con-
4 templated transactions of the type
5 thereof) have been provided for in the
6 terms of the plan or of a written con-
7 tract with a fiduciary described in
8 subclause (I) that is independent of
9 the person entering into the trans-
10 action and any of its affiliates.

11 “(C) TRANSACTIONS WITH THE FIDUCIARY
12 CAUSING THE TRANSACTIONS.—In any case in
13 which a fiduciary causes a plan to enter into a
14 transaction with such fiduciary or an affiliate
15 thereof, the arm’s length transaction require-
16 ments of this subsection are met only if—

17 “(i) such transaction meets the re-
18 quirements of subparagraphs (A) and (B),

19 “(ii) such fiduciary or affiliate is en-
20 gaged in the business of entering into
21 transactions of such type with the general
22 public, and

23 “(iii) such transaction is entered into
24 under substantially the same terms and
25 conditions as those under which such

1 transactions with the general public are
2 entered into.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to transactions en-
5 tered into on or after January 1, 2001.

6 **SEC. 3. PROHIBITED TRANSACTION EXEMPTION FOR THE**
7 **PROVISION OF INVESTMENT ADVICE.**

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

10 (1) IN GENERAL.—Section 408(b) of the Em-
11 ployee Retirement Income Security Act of 1974 (29
12 U.S.C. 1108(b)) (as amended by section 2) is
13 amended further by adding at the end the following
14 new paragraph:

15 “(15) If the requirements of subsection (h) are
16 met—

17 “(A) the provision of investment advice re-
18 ferred to in section 3(21)(A)(ii) provided by a
19 fiduciary adviser (as defined in subsection
20 (h)(4)(A)) to an employee benefit plan or to a
21 participant or beneficiary of an employee ben-
22 efit plan,

23 “(B) the sale, acquisition, or holding of se-
24 curities or other property (including any exten-
25 sion of credit associated with the sale, acquisi-

1 tion, or holding of securities or other property)
2 pursuant to such investment advice, and

3 “(C) the direct or indirect receipt of fees
4 or other compensation by the fiduciary adviser
5 or an affiliate thereof (or any employee, agent,
6 or registered representative of the fiduciary ad-
7 viser or affiliate) in connection with the provi-
8 sion of such investment advice.”.

9 (2) REQUIREMENTS.—Section 408 of such Act
10 (as amended by section 2) is amended further by
11 adding at the end the following new subsection:

12 “(h)(1) The requirements of this subsection are met
13 in connection with the provision of advice referred to in
14 section 3(21)(A)(ii), provided to an employee benefit plan
15 or a participant or beneficiary of an employee benefit plan
16 by a fiduciary adviser with respect to such plan, in connec-
17 tion with any sale or acquisition of a security or other
18 property for purposes of investment of amounts held by
19 such plan, if—

20 “(A) in the case of the initial provision of such
21 advice by such fiduciary adviser to such plan, partic-
22 ipant, or beneficiary, the fiduciary adviser provides
23 to the plan, participant, or beneficiary, at the time
24 of or before the initial provision of such advice, a de-

1 scription, in writing or by means of electronic com-
2 munication, of—

3 “(i) all fees or other compensation relating
4 to such advice that the fiduciary adviser or any
5 affiliate thereof is to receive (including com-
6 pensation provided by any third party) in con-
7 nection with the provision of such advice or in
8 connection with such acquisition or sale,

9 “(ii) any material affiliation or contractual
10 relationship of the fiduciary adviser or affiliates
11 thereof in such security or other property,

12 “(iii) any limitation placed on the scope of
13 the investment advice to be provided by the fi-
14 ducuary adviser with respect to any such sale or
15 acquisition, and

16 “(iv) the types of services offered by the fi-
17 ducuary advisor in connection with the provision
18 of investment advice by the fiduciary adviser,

19 “(B) in the case of the initial or any subsequent
20 provision of such advice to such plan, participant, or
21 beneficiary, the fiduciary adviser, throughout the 1-
22 year period following the provision of such advice,
23 maintains the information described in clauses (i)
24 through (iv) of subparagraph (A) in currently accu-

1 rate form for availability, upon request and without
2 charge, to the recipient of such advice,

3 “(C) the fiduciary adviser provides appropriate
4 disclosure, in connection with any such acquisition
5 or sale, in accordance with all applicable securities
6 laws,

7 “(D) such acquisition or sale occurs solely at
8 the discretion of the recipient of such advice,

9 “(E) the compensation received by the fiduciary
10 adviser and affiliates thereof in connection with such
11 acquisition or sale is reasonable, and

12 “(F) the terms of such acquisition or sale are
13 at least as favorable to such plan as an arm’s length
14 transaction would be.

15 “(2) A fiduciary adviser referred to in paragraph (1)
16 who has provided advice referred to in such paragraph
17 shall, for a period of not less than 6 years after the provi-
18 sion of such advice, maintain any records necessary for
19 determining whether the requirements of the preceding
20 provisions of this subsection and of subsection (b)(15)
21 have been met. A prohibited transaction provided in sec-
22 tion 406 shall not be considered to have occurred solely
23 because the records are lost or destroyed prior to the end
24 of the 6-year period due to circumstances beyond the con-
25 trol of the fiduciary adviser.

1 “(3)(A) Subject to subparagraph (B), a plan sponsor
2 or other person who is a fiduciary shall not be treated
3 as failing to meet the requirements of this part solely by
4 reason of the provision of investment advice referred to
5 in section 3(21)(A)(ii), if—

6 “(i) such advice is provided by a fiduciary ad-
7 viser pursuant to an arrangement between such plan
8 sponsor or other fiduciary and such fiduciary adviser
9 for the provision by such fiduciary adviser of invest-
10 ment advice referred to in such section, and

11 “(ii) the terms of such arrangement require
12 compliance by the fiduciary adviser with the require-
13 ments of this subsection.

14 “(B) Nothing in subparagraph (A) shall be construed
15 to exempt a plan sponsor or other person who is a fidu-
16 ciary from any requirement of this part for the prudent
17 selection and periodic review of a fiduciary adviser with
18 whom the plan sponsor or other person enters into an ar-
19 rangement for the provision of advice referred to in section
20 3(21)(A)(ii). Such plan sponsor or other person who is a
21 fiduciary has no duty under this part to monitor the spe-
22 cific investment advice given by the fiduciary adviser to
23 any particular recipient of such advice.

24 “(C) Nothing in this part shall be construed to pre-
25 clude the use of plan assets to pay for reasonable expenses

1 in providing investment advice referred to in section
2 3(21)(A)(ii).

3 “(4) For purposes of this subsection and subsection
4 (b)(15)—

5 “(A) The term ‘fiduciary adviser’ means, with
6 respect to a plan, a person who is a fiduciary of the
7 plan by reason of the provision of investment advice
8 by such person to the plan or to a participant or
9 beneficiary and who is—

10 “(i) registered as an investment adviser
11 under the Investment Advisers Act of 1940 (15
12 U.S.C. 80b–1 et seq.) or under the laws of the
13 State in which the fiduciary maintains its prin-
14 cipal office and place of business,

15 “(ii) a bank or similar financial institution
16 referred to in section 408(b)(4),

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

19 “(iv) a person registered as a broker or
20 dealer under the Securities Exchange Act of
21 1934 (15 U.S.C. 78a et seq.),

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

1 “(vi) an employee, agent, or registered rep-
2 resentative of a person described in any of
3 clauses (i) through (v).

4 “(B) The term ‘affiliate’ means an affiliated
5 person, as defined in section 2(a)(3) of the Invest-
6 ment Company Act of 1940 (15 U.S.C 80a-2(a)(3)).

7 “(C) The term ‘registered representative’ means
8 a person described in section 3(a)(18) of the Securi-
9 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(18))
10 or section 202(a)(17) of the Investment Advisers Act
11 of 1940 (15 U.S.C 80b-2(a)(17)).”.

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

14 (1) IN GENERAL.—Subsection (d) of section
15 4975 of the Internal Revenue Code of 1986 (relating
16 to exemptions from tax on prohibited transactions)
17 (as amended by section 2) is amended further—

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

20 (B) in paragraph (16), by striking the pe-
21 riod at the end and inserting “; or”; and

22 (C) by adding at the end the following new
23 paragraph:

24 “(17) If the requirements of subsection (f)(8)
25 are met—

1 “(A) the provision of investment advice re-
2 ferred to in subsection (e)(3)(B) provided by a
3 fiduciary adviser (as defined in subsection
4 (f)(8)(C)(i)) to a plan or to a participant or
5 beneficiary of a plan,

6 “(B) the sale, acquisition, or holding of se-
7 curities or other property (including any exten-
8 sion of credit associated with the sale, acquisi-
9 tion, or holding of securities or other property)
10 pursuant to such investment advice, and

11 “(C) the direct or indirect receipt of fees
12 or other compensation by the fiduciary adviser
13 or an affiliate thereof (or any employee, agent,
14 or registered representative of the fiduciary ad-
15 viser or affiliate) in connection with the provi-
16 sion of such investment advice.”.

17 (2) REQUIREMENTS.—Subsection (f) of such
18 section 4975 (relating to other definitions and spe-
19 cial rules) (as amended by section 2) is amended
20 further by adding at the end the following new para-
21 graph:

22 “(8) REQUIREMENTS FOR EXEMPTION FOR IN-
23 VESTMENT ADVICE PROVIDED BY FIDUCIARY ADVIS-
24 ERS.—

1 “(A) IN GENERAL.—The requirements of
2 this paragraph are met in connection with the
3 provision of advice referred to in subsection
4 (e)(3)(B), provided to a plan or a participant or
5 beneficiary of a plan by a fiduciary adviser with
6 respect to such plan, in connection with any
7 sale or acquisition of a security or other prop-
8 erty for purposes of investment of amounts held
9 by such plan, if—

10 “(i) in the case of the initial provision
11 of such advice by such fiduciary adviser to
12 such plan, participant, or beneficiary, the
13 fiduciary adviser provides to the plan, par-
14 ticipant, or beneficiary, at the time of or
15 before the initial provision of such advice
16 such advice, a description, in writing or by
17 means of electronic communication, of—

18 “(I) all fees or other compensa-
19 tion relating to such advice that the
20 fiduciary adviser or any affiliate
21 thereof is to receive (including com-
22 pensation provided by any third
23 party) in connection with the provi-
24 sion of such advice or in connection
25 with such acquisition or sale,

1 “(II) any material affiliation or
2 contractual relationship of the fidu-
3 ciary adviser or affiliates thereof in
4 such security or other property,

5 “(III) any limitation placed on
6 the scope of the investment advice to
7 be provided by the fiduciary adviser
8 with respect to any such sale or acqui-
9 sition, and

10 “(IV) the types of services of-
11 fered by the fiduciary advisor in con-
12 nection with the provision of invest-
13 ment advice by the fiduciary adviser,

14 “(ii) in the case of the initial or any
15 subsequent provision of such advice to such
16 plan, participant, or beneficiary, the fidu-
17 ciary adviser, throughout the 1-year period
18 following the provision of such advice,
19 maintains the information described in
20 subclauses (I) through (IV) of clause (i) in
21 currently accurate form for availability,
22 upon request and without charge, to the
23 recipient of such advice,

24 “(iii) the fiduciary adviser provides
25 appropriate disclosure, in connection with

1 any such acquisition or sale, in accordance
2 with all applicable securities laws,

3 “(iv) such acquisition or sale occurs
4 solely at the discretion of the recipient of
5 such advice,

6 “(v) the compensation received by the
7 fiduciary adviser and affiliates thereof in
8 connection with such acquisition or sale is
9 reasonable, and

10 “(vi) the terms of such acquisition or
11 sale are at least as favorable to such plan
12 as an arm’s length transaction would be.

13 “(B) MAINTENANCE OF RECORDS.—A fi-
14 duciary adviser referred to in subparagraph (A)
15 who has provided advice referred to in such
16 subparagraph shall, for a period of not less
17 than 6 years after the provision of such advice,
18 maintain any records necessary for determining
19 whether the requirements of the preceding pro-
20 visions of this subsection and of subsection
21 (d)(17) have been met. A prohibited transaction
22 described in subsection (c)(1) shall not be con-
23 sidered to have occurred solely because the
24 records are lost or destroyed prior to the end of

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

3 “(C) DEFINITIONS.—For purposes of this
4 paragraph and subsection (d)(17)—

5 “(i) FIDUCIARY ADVISER.—The term
6 ‘fiduciary adviser’ means, with respect to a
7 plan, a person who is a fiduciary of the
8 plan by reason of the provision of invest-
9 ment advice by such person to the plan or
10 to a participant or beneficiary and who
11 is—

12 “(I) registered as an investment
13 adviser under the Investment Advisers
14 Act of 1940 (15 U.S.C. 80b–1 et seq.)
15 or under the laws of the State in
16 which the fiduciary maintains its prin-
17 cipal office and place of business,

18 “(II) a bank or similar financial
19 institution referred to in subsection
20 (d)(4),

21 “(III) an insurance company
22 qualified to do business under the
23 laws of a State,

24 “(IV) a person registered as a
25 broker or dealer under the Securities

1 Exchange Act of 1934 (15 U.S.C. 78a
2 et seq.),

3 “(V) an affiliate of a person de-
4 scribed in any of subclauses (I)
5 through (IV), or

6 “(VI) an employee, agent, or reg-
7 istered representative of a person de-
8 scribed in any of subclauses (I)
9 through (V).

10 “(ii) AFFILIATE.—The term ‘affiliate’
11 means an affiliated person, as defined in
12 section 2(a)(3) of the Investment Company
13 Act of 1940 (15 U.S.C 80a–2(a)(3)).

14 “(iii) REGISTERED REPRESENTA-
15 TIVE.—The term ‘registered representa-
16 tive’ means a person described in section
17 3(a)(18) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78c(a)(18)) or section
19 202(a)(17) of the Investment Advisers Act
20 of 1940 (15 U.S.C 80b–2(a)(17)).”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply with respect to advice referred to
23 in section 3(21)(A)(ii) of the Employee Retirement In-
24 come Security Act of 1974 or section 4975(e)(3)(B) of the

1 Internal Revenue Code of 1986 provided on or after Janu-
2 ary 1, 2001.

3 **SEC. 4. DEFINITION OF PARTY IN INTEREST.**

4 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
5 INCOME SECURITY ACT OF 1974.—Section 3(14) of the
6 Employee Retirement Income Security Act of 1974 (29
7 U.S.C. 1002(14)) is amended—

8 (1) by striking subparagraphs (A) and (B) and
9 inserting the following:

10 “(A) a person who is an administrator, officer,
11 counsel, or employee of the plan;

12 “(B) in connection with a transaction described
13 in section 406(a), a fiduciary not otherwise described
14 in subparagraph (A) who personally directed or ac-
15 tively participated in the plan’s entry into such
16 transaction;”;

17 (2) in subparagraph (G), by adding “or” at the
18 end;

19 (3) by striking subparagraphs (H) and (I) and
20 inserting the following:

21 “(H) an officer or director (or an individual
22 having powers or responsibilities similar to those of
23 officers and directors) of a person described in sub-
24 paragraph (C), (D), (E), or (G), or of the employee
25 benefit plan.”; and

1 (4) in the matter following subparagraph (I)
2 (as in effect before the amendments made by this
3 subsection), by striking “and lower than 10 percent
4 for subparagraph (H) or (I)”.

5 (b) AMENDMENTS TO THE INTERNAL REVENUE
6 CODE OF 1986.—Paragraph (2) of section 4975(e) of the
7 Internal Revenue Code of 1986 (relating to disqualified
8 person) is amended—

9 (1) by striking subparagraphs (A) and (B) and
10 inserting the following:

11 “(A) a person who is an administrator, of-
12 ficer, counsel, or employee of the plan;

13 “(B) in connection with a transaction de-
14 scribed in subparagraph (A), (B), (C), or (D)
15 of subsection (c)(1), a fiduciary not otherwise
16 described in subparagraph (A) of this para-
17 graph who personally directed or actively par-
18 ticipated in the plan’s entry into such trans-
19 action;”;

20 (2) in subparagraph (G), by adding “or” at the
21 end;

22 (3) by striking subparagraphs (H) and (I) and
23 inserting the following:

24 “(H) an officer or director (or an indi-
25 vidual having powers or responsibilities similar

1 to those of officers and directors) of a person
2 described in subparagraph (C), (D), (E), or
3 (G), or of the plan.”; and

4 (4) in the matter following subparagraph (I)
5 (as in effect before the amendments made by this
6 subsection), by striking “and lower than 10 percent
7 for subparagraph (H) or (I)”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply with respect to transactions, acts,
10 or omissions occurring on or after January 1, 2001.

11 **SEC. 5. STANDARDS FOR ISSUING EXEMPTIVE RELIEF.**

12 (a) **IN GENERAL.**—Section 408(a) of the Employee
13 Retirement Income Security Act of 1974 (29 U.S.C.
14 1108(a)) is amended—

15 (1) by striking the third sentence;

16 (2) by adding “and” at the end of paragraph
17 (1), by striking paragraph (2), and by redesignating
18 paragraph (3) as paragraph (2); and

19 (3) in the matter following paragraph (3) (as in
20 effect before the amendments made by this sub-
21 section)—

22 (A) by striking “Before granting” and in-
23 serting the following:

24 “The issuance of an exemption by the Secretary from any
25 restriction under section 406 or 407(a) does not exempt

1 a fiduciary who enters into a transaction subject to such
2 exemption from the fiduciary duties of section 404 with
3 respect to the plan or any other provision of this Act with
4 respect to the plan. In any case in which the Secretary
5 deems it appropriate, before granting”;

6 (B) by striking “shall” each place it ap-
7 pears and inserting “may”;

8 (C) by inserting “or provide such other no-
9 tice as the Secretary deems appropriate” after
10 “pendency of the exemption”;

11 (D) by striking “paragraphs (1), (2), and
12 (3)” and inserting “paragraphs (1) and (2)”;
13 and

14 (E) by adding at the end the following new
15 sentence: “The Secretary may not grant an ex-
16 emption under this section unless the Secretary
17 finds that the conditions or requirements set
18 forth in the exemption are necessary additions
19 to the existing Federal and State laws and reg-
20 ulations and the protections they afford to ad-
21 dress concerns unique to employee benefit
22 plans.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to transactions occur-
25 ring on or after January 1, 2001.

1 **SEC. 6. REGULATIONS RELATING TO DEFINITION OF PLAN**
2 **ASSETS.**

3 (a) IN GENERAL.—Section 401 of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C. 1101)
5 is amended by adding at the end the following new sub-
6 section:

7 “(d)(1)(A) Not later than March 31, 2001, the Sec-
8 retary shall issue proposed regulations (including proposed
9 amendments to existing regulations) to provide additional
10 guidance for the purpose of determining when the assets
11 of an entity in which an employee benefit plan has invested
12 will constitute assets of the plan for purposes of this part.

13 “(B) The proposed regulations issued pursuant to
14 subparagraph (A) shall be subject to public notice and
15 comment until June 30, 2001.

16 “(C) The Secretary shall issue final regulations pro-
17 viding the guidance described in subparagraph (A) not
18 later than September 30, 2001.

19 “(D) Except as otherwise determined by the Sec-
20 retary, such regulations shall apply only to investments
21 in an entity made by an employee benefit plan after Sep-
22 tember 30, 2001. No inference shall be drawn from the
23 preceding sentence with respect to the interpretation of
24 any existing regulations prior to such effective date.

25 “(2) The Secretary shall ensure that the regulations
26 issued under paragraph (1)—

1 “(A) are administratively feasible; and

2 “(B) protect the interests and rights of the plan
3 and of its participants and beneficiaries (including
4 meeting the requirements of paragraph (3)).

5 “(3) The regulations prescribed by the Secretary pur-
6 suant to paragraph (1) shall provide—

7 “(A) that an entity in whose assets investment
8 by an employee benefit plan is not significant will
9 not be treated as holding the plan assets of such
10 plan;

11 “(B) that participation by an employee benefit
12 plan will not be treated as significant unless such
13 plan owns 25 percent or more of any class of inter-
14 ests in the entity;

15 “(C) that, for purposes of determining whether
16 investment by an employee benefit plan in an entity
17 is significant, interests in the entity which are owned
18 by other entities that are deemed to hold assets of
19 employee benefit plans shall be treated as held by
20 such plans only to the extent proportionate to the in-
21 terests in such entities that are owned by such
22 plans;

23 “(D) that an entity that has made no invest-
24 ments, or that has made only short-term invest-
25 ments pending long-term commitment, shall be per-

1 mitted to qualify for the exception (as in effect
2 under existing regulations) from plan asset status as
3 a ‘venture capital operating company’ on a tentative
4 basis for purposes of accepting capital contributions
5 of employee benefit plans for a period not to exceed
6 30 days prior to the entity’s first investment that
7 would permit it to qualify as a ‘venture capital oper-
8 ating company’ pursuant to such exception;

9 “(E) that a startup or other early stage com-
10 pany is eligible to qualify as an ‘operating company’
11 for purposes of the definition of a ‘venture capital
12 operating company’ under the exception described in
13 subparagraph (D); and

14 “(F) that an entity which, for a prior period,
15 has not qualified or has failed to qualify for the ex-
16 ception described in subparagraph (D) may never-
17 theless qualify for such exception prospectively if it
18 satisfies the requirements for the exception on a pro-
19 spective basis.

20 “(4) For purposes of this subsection—

21 “(A) The term ‘existing regulations’ means the
22 regulations issued under this section which were in
23 effect immediately before the date of the enactment
24 of this subsection.

1 “(B) Any reference to an employee benefit plan
2 includes a reference to any employee benefit plan to
3 which the existing regulations apply.”.

4 (b) CONFORMING AMENDMENT.—Subsection (f) of
5 section 4975 of the Internal Revenue Code of 1986 (relat-
6 ing to other definitions and special rules) (as amended by
7 the preceding provisions of this Act) is amended further
8 by adding at the end the following new paragraph:

9 “(9) REGULATIONS RELATING TO DEFINITION
10 OF PLAN ASSETS.—Section 401(d) of the Employee
11 Retirement Income Security Act of 1974 shall apply
12 with respect to regulations issued under this section.
13 For purposes of this paragraph, references in such
14 section 401(d) to employee benefit plans shall be
15 deemed to include references to plans referred to in
16 this section.”.

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