

107TH CONGRESS
2^D SESSION

S. 1919

To amend the Employee Retirement Income Security Act of 1974 to provide for improved disclosure, diversification, account access, and accountability under individual account plans.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2002

Mr. WELLSTONE introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide for improved disclosure, diversification, account access, and accountability under individual account plans.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Retirement Security Protection Act of 2002”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
7 as follows:

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN DISCLOSURE

- Sec. 101. Pension benefit information.
 Sec. 102. Provision to participants and beneficiaries of material investment information in accurate form.

TITLE II—DIVERSIFICATION

- Sec. 201. Diversification standards for qualifying individual account plans holding employer stock and real property.
 Sec. 202. Elimination of employer requirements that assets be invested in employer securities.

TITLE III—APPROPRIATE ACCESS TO INDIVIDUAL ACCOUNTS

- Sec. 301. Advance notice, and limitation on duration, of lockdowns.
 Sec. 302. Limitation on fiduciary exception during lockdown period.
 Sec. 303. Corporate executives may not trade employer securities or derivatives during lockdown period.

TITLE IV—INCREASED ACCOUNTABILITY

- Sec. 401. Bonding or insurance adequate to protect interest of participants and beneficiaries.
 Sec. 402. Liability for breach of fiduciary duty.
 Sec. 403. Remedies available for violations of act.
 Sec. 404. Participation of participants in trusteeship of individual account plans.
 Sec. 405. Preservation of rights or claims.
 Sec. 406. Office of Pension Participant Advocacy.
 Sec. 407. Study regarding insurance system for individual account plans.
 Sec. 408. Prohibitions against interference with rights protected under ERISA.
 Sec. 409. Independent qualified public accountant.

TITLE V—GENERAL PROVISIONS

- Sec. 501. General effective date.
 Sec. 502. Plan amendments.

1 **TITLE I—IMPROVEMENTS IN** 2 **DISCLOSURE**

3 **SEC. 101. PENSION BENEFIT INFORMATION.**

4 (a) PENSION BENEFIT STATEMENTS REQUIRED ON
 5 PERIODIC BASIS.—

6 (1) IN GENERAL.—Subsection (a) of section
 7 105 of the Employee Retirement Income Security
 8 Act of 1974 (29 U.S.C. 1025) is amended—

1 (A) by striking “shall furnish to any plan
2 participant or beneficiary who so requests in
3 writing,” and inserting “shall furnish at least
4 once every 3 years, in the case of a participant
5 in a defined benefit plan who has attained age
6 35, and annually, in the case of an individual
7 account plan, to each plan participant, and
8 shall furnish to any plan participant or bene-
9 ficiary who so requests,”, and

10 (B) by adding at the end the following
11 flush sentence:

12 “Information furnished under the preceding sentence to
13 a participant in a defined benefit plan (other than at the
14 request of the participant) may be based on reasonable
15 estimates determined under regulations prescribed by the
16 Secretary.”

17 (2) MODEL STATEMENT.—Section 105 of such
18 Act (29 U.S.C. 1025) is amended by adding at the
19 end the following new subsection:

20 “(e) The Secretary of Labor shall develop a model
21 benefit statement which may be used by plan administra-
22 tors in complying with the requirements of subsection (a).
23 Such statement shall include—

1 “(1) the amount of nonforfeitable accrued bene-
2 fits as of the statement date which is payable at nor-
3 mal retirement age under the plan,

4 “(2) the amount of accrued benefits which are
5 forfeitable but which may become nonforfeitable
6 under the terms of the plan,

7 “(3) the amount or percentage of any reduction
8 due to any permitted disparity under section 401(l)
9 of the Internal Revenue Code of 1986,

10 “(4) the percentage of the net return on invest-
11 ment of plan assets for the preceding plan year (or,
12 with respect to investments directed by the partici-
13 pant, the net return on investment of plan assets for
14 such year so directed), and, stated separately, the
15 administrative, transaction, and other fees or
16 charges incurred in connection with such investment,

17 “(5) in the case of an individual account plan,
18 the percentage of assets in the individual account
19 that consists of employer securities and employer
20 real property (as defined in paragraphs (1) and (2),
21 respectively, of section 407(d)), as determined as of
22 the most recent valuation date of the plan,

23 “(6) a notice advising participants and bene-
24 ficiaries of the importance of diversifying the invest-
25 ment of the assets in their accounts,

1 “(7) information on early retirement benefits
2 and joint and survivor annuity reductions under the
3 plan, including information on the extent to which a
4 lump sum payment option fails to reflect the value
5 of any early retirement subsidy applicable to other
6 payment options, and

7 “(8) information on how to contact the Social
8 Security Administration to obtain a participant’s
9 personal earnings and benefit estimate statement.”

10 (3) RULE FOR MULTIEMPLOYER PLANS.—Sub-
11 section (d) of section 105 of such Act (29 U.S.C.
12 1025) is amended to read as follows:

13 “(d) Each administrator of a plan to which more than
14 1 unaffiliated employer is required to contribute shall fur-
15 nish to any plan participant or beneficiary who so requests
16 in writing, a statement described in subsection (a).”

17 (4) FORM OF NOTICE AND STATEMENT.—Sec-
18 tion 105 of such Act (29 U.S.C. 1025) is amended
19 by adding the end the following new subsection:

20 “(f) Any information provided under subsection (a),
21 and the model statement under subsection (e), shall be
22 in a form calculated to be understood by the average plan
23 participant.”

24 (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

1 (1) IN GENERAL.—Section 105 of such Act (as
2 amended by subsection (a)) is amended further—

3 (A) by redesignating subsections (b), (c),
4 (d), and (e) as subsections (c), (d), (e), and (f),
5 respectively; and

6 (B) by inserting after subsection (a) the
7 following new subsection:

8 “(b)(1) In the case of a participant or beneficiary who
9 is entitled to a distribution of a benefit under an employee
10 pension benefit plan, the administrator of such plan
11 shall—

12 “(A) notify each participant or beneficiary of
13 the availability of, and the right to request, the in-
14 formation described in paragraph (2), and

15 “(B) provide to the participant or beneficiary
16 the information described in paragraph (2) upon the
17 written request of the participant or beneficiary.

18 “(2) The information described in this paragraph
19 includes—

20 “(A) a worksheet explaining how the amount of
21 the distribution was calculated and stating the as-
22 sumptions used for such calculation,

23 “(B) upon written request of the participant or
24 beneficiary, any documents relating to the calcula-
25 tion (if available), and

1 “(C) such other information as the Secretary
2 may prescribe.

3 Any information provided under this paragraph shall be
4 in a form calculated to be understood by the average plan
5 participant.”.

6 (2) CONFORMING AMENDMENTS.—

7 (A) Section 101(a)(2) of such Act (29
8 U.S.C. 1021(a)(2)) is amended by striking
9 “105(a) and (c)” and inserting “105(a), (b),
10 and (d)”.

11 (B) Section 105(e) of such Act (as redesign-
12 nated by paragraph (1)(A) of this subsection) is
13 amended by inserting “or (b)” after “subsection
14 (a)”.

15 (C) Section 106(b) of such Act (29 U.S.C.
16 1026(b)) is amended by striking “sections
17 105(a) and 105(c)” and inserting “subsections
18 (a), (b), and (d) of section 105”.

19 **SEC. 102. PROVISION TO PARTICIPANTS AND BENE-**
20 **FICIARIES OF MATERIAL INVESTMENT IN-**
21 **FORMATION IN ACCURATE FORM.**

22 (a) IN GENERAL.—Section 404(c) of the Employee
23 Retirement Income Security Act of 1974 (29 U.S.C.
24 1104(c)) is amended by adding at the end the following
25 new paragraph:

1 “(4) The plan sponsor and plan administrator of a
2 pension plan described in paragraph (1) shall, in addition
3 to any other fiduciary duty or responsibility under this
4 part, have a fiduciary duty to ensure that each participant
5 and beneficiary under the plan, in connection with the in-
6 vestment by the participant or beneficiary of plan assets
7 in the exercise of his or her control over assets in his ac-
8 count, is provided with all material investment information
9 regarding investment of such assets to the extent that
10 such information is generally required to be disclosed by
11 the plan sponsor or plan administrator to investors in con-
12 nection with such an investment under applicable securi-
13 ties laws. The provision by the plan sponsor or plan ad-
14 ministrator of any misleading investment information
15 shall be treated as a violation of this paragraph.”

16 (b) ENFORCEMENT.—

17 (1) IN GENERAL.—Section 502(e) of such Act
18 (29 U.S.C. 1132(e)) is amended—

19 (A) by redesignating paragraph (7) as
20 paragraph (8); and

21 (B) by inserting after paragraph (6) the
22 following new paragraph:

23 “(7) The Secretary may assess a civil penalty against
24 any person of up to \$1,000 a day from the date of the
25 person’s failure or refusal to comply with the requirements

1 of section 404(c)(4) until such failure or refusal is cor-
 2 rected.”

3 (2) CONFORMING AMENDMENT.—Section
 4 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is
 5 amended by striking “(5), or (6)” and inserting
 6 “(5), (6), or (7)”.

7 **TITLE II—DIVERSIFICATION**

8 **SEC. 201. DIVERSIFICATION STANDARDS FOR QUALIFYING** 9 **INDIVIDUAL ACCOUNT PLANS HOLDING EM-** 10 **PLOYER STOCK AND REAL PROPERTY.**

11 (a) IN GENERAL.—Section 407 of the Employee Re-
 12 tirement Income Security Act of 1974 (29 U.S.C. 1107)
 13 is amended by adding at the end the following:

14 “(g) DIVERSIFICATION STANDARDS APPLICABLE TO
 15 CERTAIN INDIVIDUAL ACCOUNT PLANS.—

16 “(1) IN GENERAL.—Except as otherwise pro-
 17 vided in this subsection, an applicable individual ac-
 18 count plan—

19 “(A) may not acquire after December 31,
 20 2003, qualifying employer securities or quali-
 21 fying employer real property for allocation to
 22 the account of a participant or beneficiary to
 23 the extent that, immediately after the acquisi-
 24 tion, the participant’s or beneficiary’s employer
 25 asset percentage would exceed 20 percent, and

1 “(B) if, on December 31, 2003, a partici-
2 pant’s or beneficiary’s employer asset percent-
3 age exceeds 20 percent, shall require the partic-
4 ipant or beneficiary to reinvest qualifying em-
5 ployer securities and qualifying employer real
6 property which are allocated (or to be allocated)
7 to the account of the participant or beneficiary
8 to the extent necessary to ensure that on De-
9 cember 31, 2007, the participant’s and bene-
10 ficiary’s employer asset percentage does not ex-
11 ceed 20 percent.

12 For purposes of subparagraph (B), the amount de-
13 termined under paragraph (3)(A)(ii) shall be the
14 greater of the amount determined on December 31,
15 2003, or December 31, 2007.

16 “(2) EXCEPTION FOR PLANS WITH EMPLOYER
17 ASSETS OF LESS THAN 15 PERCENT.—

18 “(A) IN GENERAL.—Paragraph (1) shall
19 not apply to applicable individual account plan
20 if at all times after December 31, 2003, the
21 plan does not exceed the employer asset limita-
22 tion determined under paragraph (4).

23 “(B) RULES WHERE PLAN EXCEEDS LIM-
24 ITS.—

1 “(i) YEARS BEFORE 2008.—If for any
2 plan year beginning after December 31,
3 2003, and before January 1, 2008, an ap-
4 plicable individual account plan exceeds the
5 employer asset limitation determined under
6 paragraph (4), then—

7 “(I) paragraph (1)(A) shall apply
8 to plan years beginning after such
9 plan year, and

10 “(II) paragraph (1)(B) shall
11 apply as of December 31, 2007.

12 “(ii) YEARS AFTER 2007.—If for any
13 plan year beginning after December 31,
14 2007, an applicable individual account plan
15 exceeds the employer asset limitation de-
16 termined under paragraph (4), then para-
17 graph (1) shall apply to plan years begin-
18 ning after such plan year.

19 “(C) PLAN SUBSEQUENTLY COMPLYING
20 WITH LIMITS.—

21 “(i) PLAN YEAR FOLLOWING EXCESS
22 YEAR.—Subparagraph (B) shall not apply
23 to a plan year if the plan does not exceed
24 the employer asset limitation determined

1 under paragraph (4) for the following plan
2 year.

3 “(ii) OTHER YEARS.—If subparagraph
4 (B) applies to a plan for any plan year and
5 such plan does not exceed the employer
6 asset limitation of paragraph (4) for a sub-
7 sequent plan year after the plan year de-
8 scribed in clause (i), then, subject to the
9 provisions of subparagraph (B), paragraph
10 (1) shall cease to apply to plan years fol-
11 lowing such subsequent year.

12 “(3) EMPLOYER ASSET PERCENTAGE.—For
13 purposes of this subsection—

14 “(A) IN GENERAL.—The term ‘employer
15 asset percentage’ means, with respect to any
16 participant or beneficiary in an applicable indi-
17 vidual account plan maintained by 1 or more
18 plan sponsors, the percentage equal to a
19 fraction—

20 “(i) the numerator of which is the fair
21 market value of all qualifying employer se-
22 curities and qualifying employer real prop-
23 erty allocated (or to be allocated) to the
24 accounts of the participant or beneficiary

1 under all applicable individual account
2 plans maintained by such sponsors, and

3 “(ii) the denominator of which is an
4 amount equal to the sum of—

5 “(I) the fair market value of all
6 assets allocated (or to be allocated) to
7 the accounts of the participant or ben-
8 eficiary under all applicable individual
9 account plans maintained by those
10 sponsors, plus

11 “(II) the present value of the ag-
12 gregate accrued benefit of the partici-
13 pant or beneficiary under all defined
14 benefit plans maintained by those
15 plan sponsors.

16 “(B) TIME FOR DETERMINATION OF PER-
17 CENTAGE.—

18 “(i) IN GENERAL.—An applicable in-
19 dividual account plan shall determine the
20 employer asset percentage for each partici-
21 pant or beneficiary each time the plan val-
22 ues the assets of the participant or bene-
23 ficiary in the plan, except that such per-
24 centage shall be determined no less fre-
25 quently than annually.

1 “(ii) PRESENT VALUE.—For purposes
2 of subparagraph (A)(ii)(II), the present
3 value of a participant’s or beneficiary’s ac-
4 crued benefit shall be determined by the
5 plan, using the most recent valuation of
6 such accrued benefit under the defined
7 benefit plan as of the date of the deter-
8 mination under clause (i). The Secretary,
9 in consultation with the Secretary of the
10 Treasury, shall prescribe such rules as may
11 be necessary to simplify, and reduce the
12 administrative costs of, the process used to
13 determine such present value.

14 “(4) EMPLOYER ASSET LIMITATION.—For pur-
15 poses of this subsection—

16 “(A) IN GENERAL.—An applicable indi-
17 vidual account plan shall be treated as exceed-
18 ing the employer asset limitation determined
19 under this paragraph for any plan year if, as of
20 the close of such plan year, the percentage de-
21 termined under subparagraph (B) with respect
22 to the plan exceeds 15 percent.

23 “(B) PERCENTAGE.—The percentage de-
24 termined under this subparagraph with respect
25 to any applicable individual account plan main-

1 tained by 1 or more plan sponsors is the per-
2 centage equal to a fraction—

3 “(i) the numerator of which is the fair
4 market value of all qualifying securities
5 and qualifying employer real property held
6 by all applicable individual account plans
7 maintained by such sponsors, and

8 “(ii) the denominator of which is the
9 fair market value of all assets of all appli-
10 cable individual account plans and defined
11 benefit plans maintained by such sponsors.

12 “(C) RESTRICTIONS ON PLANS TAKEN
13 INTO ACCOUNT.—For purposes of subparagraph
14 (B), plans maintained by a sponsor shall only
15 be taken into account to the extent that, as de-
16 termined under regulations prescribed by the
17 Secretary, such plans cover the same or sub-
18 stantially all the same employees, or any group
19 of employees, as are covered by the applicable
20 individual account plan with respect to which a
21 determination under this paragraph is being
22 made. For purposes of the preceding sentence,
23 a group of employees may be taken into account
24 only if the members of such group are the
25 members of the same subsidiary, division, line

1 of business, or other business unit or group of
2 employees as determined in accordance with
3 such regulations.

4 “(5) DIVESTITURE.—

5 “(A) IN GENERAL.—The Secretary shall
6 prescribe regulations under which a plan is
7 given a reasonable period of time to divest itself
8 of qualifying employer securities and qualifying
9 employer real property in order to meet the re-
10 quirements of this subsection.

11 “(B) WAIVER IN CERTAIN CASES.—The
12 Secretary may by regulations waive the applica-
13 tion of this subsection or provide an extension
14 of time for compliance with this subsection in
15 cases where the failure to comply with para-
16 graph (1) or (2) was inadvertent or was attrib-
17 utable to an acquisition or merger involving a
18 plan sponsor, or in such other cases as the Sec-
19 retary determines appropriate.

20 “(6) APPLICABLE INDIVIDUAL ACCOUNT
21 PLAN.—For purposes of this subsection—

22 “(A) IN GENERAL.—The term ‘applicable
23 individual account plan’ means an individual ac-
24 count plan other than a plan described in sub-
25 paragraph (B) or (C).

1 “(B) EMPLOYEE STOCK OWNERSHIP
2 PLANS.—Such term shall not include an em-
3 ployee stock ownership plan (as defined in sec-
4 tion 4975(e)(7) of the Internal Revenue Code of
5 1986), or a plan which meets the requirements
6 of section 409(a) of such Code, if—

7 “(i) the plan sponsors of such plan, or
8 any affiliate thereof, have not issued any
9 securities which are readily tradable on an
10 established securities market, or

11 “(ii) the plan holds employer securi-
12 ties possessing more than 50 percent of—

13 “(I) the total combined voting
14 power of all classes of employer secu-
15 rities entitled to vote, or

16 “(II) the total value of employer
17 securities of all classes of employer se-
18 curities.

19 “(C) COLLECTIVELY BARGAINED PLANS.—
20 Such term shall not include any plan main-
21 tained pursuant to 1 or more collective bar-
22 gaining agreements between employee rep-
23 resentatives and 1 or more employers.

24 “(D) SECRETARIAL AUTHORITY.—The
25 Secretary may provide that a plan shall not be

1 treated as an applicable individual account plan
2 if the plan establishes to the satisfaction of the
3 Secretary that—

4 “(i) the plan has developed an alter-
5 native approach to management of risks
6 associated with failures to adequately di-
7 versify investments which is protective of
8 the rights and interests of participants and
9 beneficiaries, and

10 “(ii) the plan has an opinion from an
11 independent fiduciary that the require-
12 ments of clause (i) have been met.”

13 (b) STUDY.—As soon as practicable after the date of
14 enactment of this Act, the Secretary of Labor, acting
15 jointly with the Secretary of the Treasury, shall undertake
16 a study with respect to the application of the amendments
17 made by this section to employee stock ownership plans
18 under which the only contributions which may be made
19 are nonelective contributions. Such study shall include
20 consideration of—

21 (1) whether such plans should be exempted
22 from the application of such amendments,

23 (2) whether such plans should be given a longer
24 period to meet the diversification standards set forth

1 in such amendments or should be allowed to meet al-
2 ternative diversification standards,

3 (3) how to best balance the interests of partici-
4 pants and beneficiaries in employee stock ownership
5 plans with their retirement security interest of hav-
6 ing adequate protection from investment volatility
7 and the risk of large losses associated with inad-
8 equate diversification, and

9 (4) possible market responses to the need to
10 protect employees from losses through the use of
11 hedging or other insurance instruments, including
12 consideration of whether it would be appropriate to
13 give the Secretary of Labor authority to grant group
14 or class exceptions for use of such instruments.

15 The Secretary and the Secretary of the Treasury shall re-
16 port the results of the study, together with any rec-
17 ommendations for legislative changes, to the Committee
18 on Education and the Workforce of the House of Rep-
19 resentatives and the Committee on Health, Education,
20 Labor, and Pensions of the Senate.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Section 407 of such Act (29 U.S.C. 1107)
23 is amended—

1 (A) by striking “Subsection (a)” in sub-
2 section (b)(1) and inserting “Subject to sub-
3 section (g), subsection (a)”, and

4 (B) by striking “10 percent” in the head-
5 ing.

6 (2) The item relating to section 407 in the table
7 of sections for part 4 of title I of such Act is amend-
8 ed by striking “10 percent”.

9 **SEC. 202. ELIMINATION OF EMPLOYER REQUIREMENTS**
10 **THAT ASSETS BE INVESTED IN EMPLOYER SE-**
11 **CURITIES.**

12 (a) IN GENERAL.—Section 404 of the Employee Re-
13 tirement Income Security Act of 1974 (29 U.S.C. 1104)
14 is amended by adding at the end the following new sub-
15 section:

16 “(e)(1) An individual account plan shall provide
17 that—

18 “(A) a participant or beneficiary may not be re-
19 quired to invest any employee contribution or elec-
20 tive deferral (or any earnings allocable to either) in
21 employer securities or employer real property, and

22 “(B) if the plan permits a participant or bene-
23 ficiary to exercise control over assets in his or her
24 account, the participant or beneficiary has the right
25 after 1 year of service with employers maintaining

1 the plan to reinvest any employer contribution of
2 employer securities or employer real property in any
3 other investment option provided by the plan.

4 In the case of nonelective employer contributions to an em-
5 ployee stock ownership plan, a participant or beneficiary
6 shall not have the right to reinvest under subparagraph
7 (B) until the participant has 10 years of participation
8 under the plan.

9 “(2) Paragraph (1)(B) shall apply to a plan only if
10 any plan sponsor, or any affiliate thereof, has issued secu-
11 rities which are readily tradable on an established securi-
12 ties market.

13 “(3)(A) Except as provided in subparagraph (B),
14 within 30 days after the date of any election by a partici-
15 pant or beneficiary under paragraph (1)(B) to reinvest
16 employer contributions, the plan administrator shall take
17 such actions as are necessary to effectuate such reinvest-
18 ment.

19 “(B) In any case in which the plan provides for elec-
20 tions periodically during prescribed periods, the 30-day pe-
21 riod described in clause (i) shall commence at the end of
22 each such prescribed period.

23 “(4) Not later than 30 days prior to the date on
24 which a participant completes 1 year of service with em-
25 ployers maintaining the plan (or 10 years of participation

1 under the plan in the case of an employee stock ownership
 2 plan which only provides for nonelective employer con-
 3 tributions), the plan administrator shall provide to such
 4 participant and his or her beneficiaries a written notice—

5 “(A) setting forth their rights under paragraph
 6 (1)(B) with respect to employer contributions, and

7 “(B) describing the importance of diversifying
 8 the investment of account assets.

9 “(5) For purposes of this subsection—

10 “(A) the term ‘elective deferral’ has the mean-
 11 ing given such term by section 402(g)(3) of the In-
 12 ternal Revenue Code of 1986,

13 “(B) the term ‘employee stock ownership plan’
 14 has the meaning given such term by section
 15 4975(e)(7) of such Code,

16 “(C) the terms ‘employer securities’ and ‘em-
 17 ployer real property’ have the meanings given such
 18 terms by section 407(d),

19 “(D) the term ‘participation’ has the meaning
 20 given such term by section 204(b)(4), and

21 “(E) the term ‘year of service’ has the meaning
 22 given such term by section 203(b)(2).”

23 (b) QUALIFICATION REQUIREMENTS FOR EMPLOYEE
 24 STOCK OWNERSHIP PLANS.—Notwithstanding any other
 25 provision of law, an employee stock ownership plan shall

1 not be treated as failing to meet any requirement to main-
2 tain a minimum percentage of its assets in employer secu-
3 rities solely by reason of a participant electing to reinvest
4 employer securities in other assets.

5 (c) RECOMMENDATIONS RELATING TO NONPUBLICLY
6 TRADED STOCK.—Within 1 year after the date of the en-
7 actment of this Act, the Secretary of Labor shall transmit
8 to the Committee on Education and the Workforce of the
9 House of Representatives and the Committee on Health,
10 Education, Labor, and Pensions of the Senate the Sec-
11 retary's recommendations regarding legislative changes re-
12 lating to treatment, under section 404(a)(3) of the Em-
13 ployee Retirement Income Security Act of 1974 (as added
14 by this section), of individual account plans under which
15 a participant or beneficiary is permitted to exercise control
16 over assets in his or her account, in cases in which such
17 assets include employer securities which are not readily
18 tradable under an established securities market.

19 (d) CONFORMING AMENDMENT.—Section 407(b) of
20 the Employee Retirement Income Security Act of 1974
21 (29 U.S.C. 1107(b)) is amended by striking paragraph (2)
22 and by redesignating paragraph (3) as paragraph (2).

23 (e) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Subject to paragraph (2),
25 the amendments made by this section shall apply

1 with respect to plan years beginning on or after Jan-
 2 uary 1, 2003.

3 (2) DELAYED EFFECTIVE DATE FOR EXISTING
 4 HOLDINGS.—In any case in which a portion of the
 5 nonforfeitable accrued benefit of a participant or
 6 beneficiary is held in the form of employer securities
 7 (as so defined) immediately before the first date of
 8 the first plan year to which the amendments made
 9 by this section apply, such portion shall be taken
 10 into account only with respect to plan years begin-
 11 ning on or after January 1, 2004.

12 **TITLE III—APPROPRIATE AC-**
 13 **CESS TO INDIVIDUAL AC-**
 14 **COUNTS**

15 **SEC. 301. ADVANCE NOTICE, AND LIMITATION ON DURA-**
 16 **TION, OF LOCKDOWNS.**

17 Section 404 of the Employee Retirement Income Se-
 18 curity Act of 1974 (as amended by section 202) is amend-
 19 ed further by adding at the end the following new sub-
 20 section:

21 “(f)(1) In the case of any eligible individual account
 22 plan (as defined in section 407(d)(3)) which explicitly pro-
 23 vides for the acquisition and holding of qualifying em-
 24 ployer securities and qualifying employer real property (as
 25 defined in section 407(d))—

1 “(A) a person is otherwise a fiduciary with re-
2 spect to a plan described in paragraph (1), and

3 “(B) such person violates any fiduciary duty
4 under subsection (f) or any other provision of this
5 part in the implementation of a lockdown (as defined
6 in subsection (f)(3)) in connection with such plan,
7 such person shall be liable under this part for any loss
8 which results from a participant’s or beneficiary’s inability
9 to exercise control over qualifying employer securities or
10 qualifying employer real property (as defined in section
11 407(d)) in his or her account by reason of the lockdown.”

12 **SEC. 303. CORPORATE EXECUTIVES MAY NOT TRADE EM-**
13 **PLOYER SECURITIES OR DERIVATIVES DUR-**
14 **ING LOCKDOWN PERIOD.**

15 (a) IN GENERAL.—Part 5 of title I of the Employee
16 Retirement Income Security Act of 1974 is amended by
17 adding at the end the following:

18 **“SEC. 518. CORPORATE EXECUTIVES NOT TO TRADE EM-**
19 **PLOYER SECURITIES DURING LOCKDOWN PE-**
20 **RIOD.**

21 “If an individual account plan to which section 404(c)
22 applies allows a participant or beneficiary to direct the in-
23 vestment of assets in his or her account in qualifying em-
24 ployer securities or qualifying employer real property, it
25 shall be unlawful for any person described in section 16(a)

1 of the Securities Exchange Act of 1934 (15 U.S.C. 78p)
 2 with respect to any plan sponsor of such plan to, directly
 3 or indirectly, sell or exercise any employer security of the
 4 plan sponsor, or any derivative thereof, during any period
 5 during which a lockdown (as defined in section 404(f)(3))
 6 is in effect with respect to such plan.”

7 (b) CONFORMING AMENDMENT.—The table of con-
 8 tents for part 5 of title I of such Act is amended by adding
 9 at the end the following:

“518. Corporate executives not to trade employer securities during lockdown pe-
 riod.”

10 **TITLE IV—INCREASED**
 11 **ACCOUNTABILITY**

12 **SEC. 401. BONDING OR INSURANCE ADEQUATE TO PRO-**
 13 **TECT INTEREST OF PARTICIPANTS AND**
 14 **BENEFICIARIES.**

15 Section 412 of the Employee Retirement Income Se-
 16 curity Act of 1974 (29 U.S.C. 1112) is amended by adding
 17 at the end the following new subsection:

18 “(f) Notwithstanding the preceding provisions of this
 19 section, each fiduciary of an individual account plan shall
 20 be bonded or insured, in accordance with regulations
 21 which shall be prescribed by the Secretary, in an amount
 22 sufficient to ensure coverage by the bond or insurance of
 23 financial losses due to any failure to meet the require-
 24 ments of this part.”

1 **SEC. 402. LIABILITY FOR BREACH OF FIDUCIARY DUTY.**

2 (a) LIABILITY FOR PARTICIPATING IN OR CON-
3 CEALING FIDUCIARY BREACH.—

4 (1) IN GENERAL.—Section 409(a) of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1109(a)) is amended—

7 (A) by inserting “, or any other person
8 who, with notice of the facts constituting the
9 breach, participates in or undertakes to conceal
10 such breach,” after “duties imposed upon fidu-
11 ciaries by this title”;

12 (B) by inserting “and to each participant
13 and beneficiary of the plan” after “plan” the
14 second place it appears, and by inserting “or
15 such participant or beneficiary” after “plan”
16 the third place it appears;

17 (C) by inserting “or such other person”
18 after “profits of such fiduciary” and “by the fi-
19 duciary”; and

20 (D) by inserting “or entry of an order pro-
21 hibiting such fiduciary or such other person
22 from dealing with employee benefit plans” after
23 “removal of such fiduciary”.

24 (2) CONFORMING AMENDMENT.—Section
25 409(b) of such Act (29 U.S.C. 1109(b)) is amended
26 by inserting before the period the following:

1 “, unless his liability arises out of his role as a per-
2 son who, with notice of facts constituting such
3 breach, participates in or undertakes to conceal such
4 breach (as described in subsection (a))”.

5 (b) EXPANSION OF AVAILABLE REMEDIES.—Section
6 409(a) of such Act (29 U.S.C. 1109(a)) is amended by
7 striking “such other equitable or remedial relief” and in-
8 serting “such additional relief, including equitable, com-
9 pensatory, or remedial relief,”.

10 (c) MAINTENANCE OF FIDUCIARY LIABILITY.—Sec-
11 tion 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B))
12 is amended by inserting before the period the following:
13 “, except that this subparagraph shall not be construed
14 to exempt any fiduciary from liability for any violation of
15 subsection (e) or (f)”.

16 **SEC. 403. REMEDIES AVAILABLE FOR VIOLATIONS OF ACT.**

17 (a) VIOLATIONS OF ERISA.—Paragraphs (3)(B) and
18 (5)(B) of section 502(a) of such Act (29 U.S.C. 1132(a)
19 (3)(B) and (5)(B)) are each amended by striking “other
20 appropriate equitable relief” and inserting “other appro-
21 priate relief, including such additional relief as a court of
22 equity might have awarded in a case involving the enforce-
23 ment or administration of a trust, other equitable relief,
24 compensatory relief, or remedial relief,”.

1 (b) PUNITIVE DAMAGES.—Section 502(a)(5) of such
2 Act (29 U.S.C. 1132(a)(5)) is amended by striking “or”
3 at the end of subparagraph (A), by inserting “or” after
4 the semicolon at the end, and by inserting at the end the
5 following: “(C) to obtain punitive damages if such viola-
6 tion was committed with malice or reckless indifference;”.

7 (c) EXPERT FEES.—Section 502(g)(1) of such Act
8 (29 U.S.C. 1132(g)(1)) is amended—

9 (1) by inserting “, reasonable expert fees,” be-
10 fore “and costs”, and

11 (2) by inserting before the period at the end the
12 following: “, except that the court shall award such
13 fees and costs to a prevailing party in the case of
14 an action brought to enforce section 510 unless the
15 court determines that it would be unjust to do so
16 under the circumstances”.

17 **SEC. 404. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**
18 **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

19 (a) IN GENERAL.—Section 403(a) of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C.
21 1103(a)) is amended—

22 (1) by redesignating paragraphs (1) and (2) as
23 subparagraphs (A) and (B), respectively;

24 (2) by inserting “(1)” after “(a)”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(2)(A) Subject to subparagraph (B), the assets of
4 a single-employer plan which is an individual account plan
5 and under which some or all of the assets are derived from
6 employee contributions or elective deferrals shall be held
7 in trust by a joint board of trustees, which shall consist
8 of two or more trustees representing on an equal basis
9 the interests of the employer or employers maintaining the
10 plan and the interests of the participants and their bene-
11 ficiaries.

12 “(B) This paragraph shall apply for any plan year
13 only if a majority of the participants of the individual ac-
14 count plan indicates to the plan administrator, in such
15 form and manner as shall be prescribed in regulations of
16 the Secretary, its intention to have this paragraph so
17 apply.

18 “(C)(i) Except as provided in clause (ii), in any case
19 in which the plan is maintained pursuant to one or more
20 collective bargaining agreements between one or more em-
21 ployee organizations and one or more employers, the trust-
22 ees representing the interests of the participants and their
23 beneficiaries shall be designated by such employee organi-
24 zations.

1 “(ii) Clause (i) shall not apply with respect to a plan
2 described in such clause if the employee organization (or
3 all employee organizations, if more than one) referred to
4 in such clause file with the Secretary, in such form and
5 manner as shall be prescribed in regulations of the Sec-
6 retary, a written waiver of their rights under clause (i).

7 “(iii) In any case in which clause (i) does not apply
8 with respect to a single-employer plan because the plan
9 is not described in clause (i) or because of a waiver filed
10 pursuant to clause (ii), the trustee or trustees representing
11 the interests of the participants and their beneficiaries
12 shall be selected in accordance with regulations of the Sec-
13 retary. Such regulations may provide for selection of trust-
14 ees by the employer, but only from individuals who have
15 been demonstrated to be independent and to have no con-
16 flict of interest. An individual shall not be treated as ineli-
17 gible for selection as trustee solely because such individual
18 is an employee of the plan sponsor, except that the em-
19 ployee so selected may not be a highly compensated em-
20 ployee (as defined in section 414(q) of the Internal Rev-
21 enue Code of 1986).

22 “(iv) The Secretary shall provide by regulation for
23 the appointment of a neutral, in accordance with the pro-
24 cedures under section 203(f) of the Labor Management

1 Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as
2 necessary to resolve tie votes by the trustees.”

3 (b) REGULATIONS.—The Secretary of Labor shall
4 prescribe the initial regulations necessary to carry out the
5 provisions of the amendments made by this section not
6 later than 90 days after the date of the enactment of this
7 Act.

8 **SEC. 405. PRESERVATION OF RIGHTS OR CLAIMS.**

9 Section 502 of the Employee Retirement Income Se-
10 curity Act of 1974 (29 U.S.C. 1132) is amended by adding
11 at the end the following new subsection:

12 “(n)(1) The rights under this title (including the
13 right to maintain a civil action) may not be waived, de-
14 ferred, or lost pursuant to any agreement not authorized
15 under this title with specific reference to this subsection.

16 “(2) Paragraph (1) shall not apply to an agreement
17 providing for arbitration or participation in any other non-
18 judicial procedure to resolve a dispute if the agreement
19 is entered into knowingly and voluntarily by the parties
20 involved after the dispute has arisen or is pursuant to the
21 terms of a collective bargaining agreement.”

22 **SEC. 406. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

23 (a) IN GENERAL.—Title III of the Employee Retire-
24 ment Income Security Act of 1974 (29 U.S.C. 3001 et
25 seq.) is amended by adding at the end the following:

1 **“Subtitle D—Office of Pension**
2 **Participant Advocacy**

3 **“SEC. 3051. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

4 “(a) ESTABLISHMENT.—

5 “(1) IN GENERAL.—There is established in the
6 Department of Labor an office to be known as the
7 ‘Office of Pension Participant Advocacy’.

8 “(2) PENSION PARTICIPANT ADVOCATE.—The
9 Office of Pension Participant Advocacy shall be
10 under the supervision and direction of an official to
11 be known as the ‘Pension Participant Advocate’ who
12 shall—

13 “(A) have demonstrated experience in the
14 area of pension participant assistance, and

15 “(B) be selected by the Secretary after
16 consultation with pension participant advocacy
17 organizations.

18 The Pension Participant Advocate shall report di-
19 rectly to the Secretary and shall be entitled to com-
20 pensation at the same rate as the highest rate of
21 basic pay established for the Senior Executive Serv-
22 ice under section 5382 of title 5, United States
23 Code.

24 “(b) FUNCTIONS OF OFFICE.—It shall be the func-
25 tion of the Office of Pension Participant Advocacy to—

1 “(1) evaluate the efforts of the Federal Govern-
2 ment, business, and financial, professional, retiree,
3 labor, women’s, and other appropriate organizations
4 in assisting and protecting pension plan participants,
5 including—

6 “(A) serving as a focal point for, and ac-
7 tively seeking out, the receipt of information
8 with respect to the policies and activities of the
9 Federal Government, business, and such organi-
10 zations which affect such participants,

11 “(B) identifying significant problems for
12 pension plan participants and the capabilities of
13 the Federal Government, business, and such or-
14 ganizations to address such problems, and

15 “(C) developing proposals for changes in
16 such policies and activities to correct such prob-
17 lems, and communicating such changes to the
18 appropriate officials,

19 “(2) promote the expansion of pension plan cov-
20 erage and the receipt of promised benefits by in-
21 creasing the awareness of the general public of the
22 value of pension plans and by protecting the rights
23 of pension plan participants, including—

1 “(A) enlisting the cooperation of the public
2 and private sectors in disseminating informa-
3 tion, and

4 “(B) forming private-public partnerships
5 and other efforts to assist pension plan partici-
6 pants in receiving their benefits,

7 “(3) advocating for the full attainment of the
8 rights of pension plan participants, including by
9 making pension plan sponsors and fiduciaries aware
10 of their responsibilities,

11 “(4) giving priority to the special needs of low
12 and moderate income participants,

13 “(5) developing needed information with respect
14 to pension plans, including information on the types
15 of existing pension plans, levels of employer and em-
16 ployee contributions, vesting status, accumulated
17 benefits, benefits received, and forms of benefits,
18 and

19 “(6) pursuing claims on behalf of participants
20 and beneficiaries and providing appropriate assist-
21 ance in the resolution of disputes between partici-
22 pants and beneficiaries and pension plans, including
23 assistance in obtaining settlement agreements.

24 “(c) REPORTS.—

1 “(1) ANNUAL REPORT.—Not later than Decem-
2 ber 31 of each calendar year, the Pension Partici-
3 pant Advocate shall report to the Committee on
4 Education and the Workforce of the House of Rep-
5 resentatives and the Committee on Health, Edu-
6 cation, Labor, and Pensions of the Senate on its ac-
7 tivities during the fiscal year ending in the calendar
8 year. Such report shall—

9 “(A) identify significant problems the Ad-
10 vocate has identified,

11 “(B) include specific legislative and regu-
12 latory changes to address the problems, and

13 “(C) identify any actions taken to correct
14 problems identified in any previous report.

15 The Advocate shall submit a copy of such report to
16 the Secretary and any other appropriate official at
17 the same time it is submitted to the committees of
18 Congress.

19 “(2) SPECIFIC REPORTS.—The Pension Partici-
20 pant Advocate shall report to the Secretary or any
21 other appropriate official any time the Advocate
22 identifies a problem which may be corrected by the
23 Secretary or such official.

24 “(3) REPORTS TO BE SUBMITTED DIRECTLY.—
25 The report required under paragraph (1) shall be

1 provided directly to the committees of Congress
2 without any prior review or comment than the Sec-
3 retary or any other Federal officer or employee.

4 “(d) SPECIFIC POWERS.—

5 “(1) RECEIPT OF INFORMATION.—Subject to
6 such confidentiality requirements as may be appro-
7 priate, the Secretary and other Federal officials
8 shall, upon request, provide such information (in-
9 cluding plan documents) as may be necessary to en-
10 able the Pension Participant Advocate to carry out
11 the Advocate’s responsibilities under this section.

12 “(2) APPEARANCES.—The Pension Participant
13 Advocate may represent the views and interests of
14 pension plan participants before any Federal agency,
15 including, upon request of a participant, in any pro-
16 ceeding involving the participant.

17 “(3) CONTRACTING AUTHORITY.—In carrying
18 out responsibilities under subsection (b)(5), the Pen-
19 sion Participant Advocate may, in addition to any
20 other authority provided by law—

21 “(A) contract with any person to acquire
22 statistical information with respect to pension
23 plan participants, and

24 “(B) conduct direct surveys of pension
25 plan participants.”

1 (b) CONFORMING AMENDMENT.—The table of con-
 2 tents for title III of such Act is amended by adding at
 3 the end the following:

“Subtitle C—Office of Pension Participant Advocacy
 “3051. Office of Pension Participant Advocacy.”

4 (c) EFFECTIVE DATE.—The amendment made by
 5 this section shall take effect on January 1, 2003.

6 **SEC. 407. STUDY REGARDING INSURANCE SYSTEM FOR IN-**
 7 **DIVIDUAL ACCOUNT PLANS.**

8 (a) STUDY.—As soon as practicable after the date of
 9 the enactment of this Act, the Pension Benefit Guaranty
 10 Corporation shall undertake a study relating to the estab-
 11 lishment of an insurance system for individual account
 12 plans. In conducting such study, the Corporation shall
 13 consider—

- 14 (1) the feasibility of such a system, and
 15 (2) options for developing such a system.

16 (b) REPORT.—Not later than 3 years after the date
 17 of the enactment of this Act, the Corporation shall report
 18 the results of its study, together with any recommenda-
 19 tions for legislative changes, to the Committee on Edu-
 20 cation and the Workforce of the House of Representatives
 21 and the Committee on Health, Education, Labor, and
 22 Pensions of the Senate.

1 **SEC. 408. PROHIBITIONS AGAINST INTERFERENCE WITH**
2 **RIGHTS PROTECTED UNDER ERISA.**

3 (a) INQUIRIES AND STATEMENTS.—Section 510 of
4 the Employee Retirement Income Security Act of 1974
5 (29 U.S.C. 1140) is amended by adding after the second
6 sentence the following new sentence: “It shall be unlawful
7 for any person to discharge, fine, suspend, expel, or dis-
8 criminate against any person because such person has
9 made a public or private inquiry concerning the rights of
10 employees or former employees under any employee ben-
11 efit plan or this Act or concerning the administration of
12 (or managing of the assets of) any employee benefit plan,
13 or because such person has made such inquiry or state-
14 ment while at work or using the employer’s facilities.”

15 (b) CAUSE OF ACTION.—Section 502(a) of such Act
16 (29 U.S.C. 1132(a)) is amended by striking “or” at the
17 end of paragraph (8), by striking the period at the end
18 of paragraph (9) and inserting “; and”, and by adding
19 at the end the following new paragraph:

20 “(10) by the Secretary, or other person referred
21 to in section 510—

22 “(A) to enjoin any act or practice which
23 violates section 510, or

24 “(B) to obtain appropriate equitable or
25 legal relief to redress such violation or to en-
26 force section 510.”

1 (c) BURDEN OF PROOF.—Section 510 of such Act
2 (29 U.S.C. 1140) is amended—

3 (1) by inserting “(a)” after “SEC. 510.”, and

4 (2) by adding at the end the following new sub-
5 section:

6 “(b) If a person in any civil action under section 502
7 establishes a prima facie case that a violation under sub-
8 section (a) has occurred, the burden of proof shall be on
9 the person alleged to have committed the violation to es-
10 tablish by clear and convincing evidence that the violation
11 did not occur.”

12 **SEC. 409. INDEPENDENT QUALIFIED PUBLIC ACCOUNTANT.**

13 Section 103(a)(3) of the Employee Retirement In-
14 come Security Act of 1974 (29 U.S.C. 1023(a)(3)) is
15 amended by adding at the end the following new subpara-
16 graph:

17 “(E) For purposes of this paragraph, a
18 qualified public accountant shall not be treated
19 as independent with respect to an employee
20 benefit plan if the accountant or any member or
21 employee of the accountant’s firm is employed
22 by or performs services for compensation for
23 any employer maintaining the plan.”

1 **TITLE V—GENERAL PROVISIONS**

2 **SEC. 501. GENERAL EFFECTIVE DATE.**

3 (a) IN GENERAL.—Except as otherwise provided in
4 this Act, the amendments made by this Act shall apply
5 with respect to plan years beginning on or after January
6 1, 2003.

7 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
8 PLANS.—In the case of a plan maintained pursuant to 1
9 or more collective bargaining agreements between em-
10 ployee representatives and 1 or more employers ratified
11 on or before the date of the enactment of this Act, sub-
12 section (a) shall be applied to benefits pursuant to, and
13 individuals covered by, any such agreement by substituting
14 for “January 1, 2003” the date of the commencement of
15 the first plan year beginning on or after the earlier of—

16 (1) the later of—

17 (A) January 1, 2004, or

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

22 or

23 (2) January 1, 2005.

1 **SEC. 502. PLAN AMENDMENTS.**

2 If any amendment made by this Act requires an
3 amendment to any plan, such plan amendment shall not
4 be required to be made before the first plan year beginning
5 on or after January 1, 2005, if—

6 (1) during the period after such amendment
7 made by this Act takes effect and before such first
8 plan year, the plan is operated in accordance with
9 the requirements of such amendment made by this
10 Act, and

11 (2) such plan amendment applies retroactively
12 to the period after such amendment made by this
13 Act takes effect and before such first plan year.

○