

107TH CONGRESS
2D SESSION

S. 1992

To amend the Employee Retirement Income Security Act of 1974 to improve diversification of plan assets for participants in individual account plans, to improve disclosure, account access, and accountability under individual account plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2002

Mr. KENNEDY (for himself, Mr. BINGAMAN, Mr. CORZINE, Mrs. BOXER, Mr. DASCHLE, Mr. HARKIN, Ms. MIKULSKI, Mr. REED, Mrs. CLINTON, and Mr. DURBIN) 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 improve diversification of plan assets for participants in individual account plans, to improve disclosure, account access, and accountability under individual account plans, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting America’s Pensions Act of 2002”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN DIVERSIFICATION OF PLAN ASSETS

Sec. 101. Rules relating to plan investments in employer stock.

Sec. 102. Elimination of employer requirements that assets be invested in employer securities.

Sec. 103. Fiduciary rules for plan sponsors designating independent investment advisers.

TITLE II—IMPROVEMENTS IN DISCLOSURE

Sec. 201. Pension benefit information.

Sec. 202. Provision to participants and beneficiaries of material investment information in accurate form.

Sec. 203. Electronic disclosure of insider trading.

TITLE III—IMPROVEMENTS IN ACCESS AND ACCOUNTABILITY

Sec. 301. Additional fiduciary protections relating to lockdowns.

Sec. 302. Limitation on fiduciary exception during lockdown period.

Sec. 303. Insurance adequate to protect interest of participants and beneficiaries.

Sec. 304. Liability for breach of fiduciary duty.

Sec. 305. Participation of participants in trusteeship of individual account plans.

Sec. 306. Preservation of rights or claims.

Sec. 307. Office of Pension Participant Advocacy.

Sec. 308. Study regarding insurance system for individual account plans.

Sec. 309. Study regarding fees charged by individual account plans.

Sec. 310. Collectively bargained 401(k) plans.

TITLE IV—GENERAL PROVISIONS

Sec. 401. General effective date.

Sec. 402. Plan amendments.

1 TITLE I—IMPROVEMENTS IN DI-
2 VERSIFICATION OF PLAN AS-
3 SETS

4 SEC. 101. RULES RELATING TO PLAN INVESTMENTS IN EM-
5 PLOYER STOCK.

6 Section 404 of the Employee Retirement Income Se-
7 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
8 at the end the following new subsection:

1 “(e)(1)(A) Except as provided in this subsection, an
2 individual account plan under which a participant or bene-
3 ficiary is permitted to exercise control over assets in his
4 or her account shall provide that if the plan (or any other
5 plan maintained by the employer which covers the partici-
6 pant or beneficiary) provides for or allows employer con-
7 tributions other than elective deferrals to be invested in
8 employer securities or employer real property, the plan
9 may not permit elective deferrals to be invested in em-
10 ployer securities or employer real property.

11 “(B) A plan which offers as an investment option the
12 purchase of stock through an open brokerage account or
13 similar investment vehicle shall not be treated as meeting
14 the requirements of subparagraph (A) unless the plan pro-
15 vides that such option may not be used to purchase em-
16 ployer securities or employer real property.

17 “(2)(A) This subsection shall not apply to an indi-
18 vidual account plan maintained by an employer for any
19 plan year if the employer maintains a qualified defined
20 benefit plan for the plan year.

21 “(B)(i) For purposes of subparagraph (A), the term
22 ‘qualified defined benefit plan’ means, with respect to any
23 individual account plan, a defined benefit plan—

1 “(I) which covers at least 90 percent of the em-
2 ployees as are covered by the individual account
3 plan, and

4 “(II) with respect to which the accrued benefit
5 of each participant is not less than a benefit which
6 is actuarially equivalent to a percentage of the par-
7 ticipant’s final average pay equal to 1.5 percent mul-
8 tiplied by the number of years of service (not greater
9 than 20) of the participant.

10 “(ii) In applying subclause (II) of clause (i) to a de-
11 fined benefit plan with respect to which a participant’s ac-
12 crued benefit is equal to a fixed dollar amount multiplied
13 by the number of years of service—

14 “(I) the participant’s pay during the plan year
15 preceding the plan year of the determination shall be
16 used in lieu of final average pay, and

17 “(II) the plan shall be treated as satisfying the
18 requirement of such subclause if the average accrued
19 benefit under the plan of all the participants who
20 are also covered by the individual account plan
21 meets such requirement.

22 “(3) For purposes of this subsection—

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

1 “(B) the terms ‘employer securities’ and ‘em-
2 ployer real property’ have the meanings given such
3 terms by section 407(d), and

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

6 **SEC. 102. ELIMINATION OF EMPLOYER REQUIREMENTS**
7 **THAT ASSETS BE INVESTED IN EMPLOYER SE-**
8 **CURITIES.**

9 (a) IN GENERAL.—Section 404(e) of Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C.
11 1104(e)), as added by section 101, is amended by redesi-
12 gnating paragraphs (2) and (3) as paragraphs (3) and (4)
13 and by inserting after paragraph (1) the following new
14 paragraph:

15 “(2)(A) Except as provided in this subsection,
16 an individual account plan to which this paragraph
17 applies shall—

18 “(i) offer at least 3 investment options
19 (not inconsistent with regulations prescribed by
20 the Secretary) in addition to any option to in-
21 vest in employer securities or employer real
22 property,

23 “(ii) provide that a participant or bene-
24 ficiary has the immediate right to reinvest any
25 employee contributions and elective deferrals in-

1 vested in employer securities or employer real
2 property (and earnings thereon) in any other
3 investment option provided by the plan,

4 “(iii) provide that a participant or bene-
5 ficiary has the right after no more than 3 years
6 of service under the plan to reinvest any em-
7 ployer contributions (other than elective defer-
8 rals) of employer securities or employer real
9 property (and earnings thereon) in any other
10 investment option provided by the plan, and

11 “(iv) meet the requirements of section
12 409(e)(2) of the Internal Revenue Code of 1986
13 with respect to employer securities held by the
14 plan which are readily tradable on an estab-
15 lished securities market.

16 “(B)(i) Except as provided in clause (ii), this
17 paragraph shall apply to any individual account plan
18 which holds employer securities which are readily
19 tradable on an established securities market.

20 “(ii) This paragraph shall not apply to an em-
21 ployee stock ownership plan if the plan has no con-
22 tributions (or earnings thereon) which are subject to
23 section 401 (k)(3) or (m) of such Code.”

24 (b) APPLICABLE RULES.—Section 404(e) of such Act
25 (29 U.S.C. 1104(e)), as so added, is amended by striking

1 paragraph (4) (as redesignated by subsection (a)) and in-
2 serting the following new paragraphs:

3 “(4)(A) Except as provided in subparagraph (B),
4 within 30 days after the date of any election by a partici-
5 pant or beneficiary under paragraph (2) to reinvest, the
6 plan administrator shall take such actions as are necessary
7 to effectuate such reinvestment.

8 “(B) In any case in which the plan provides for elec-
9 tions to reinvest periodically during prescribed time peri-
10 ods, the 30-day period described in subparagraph (A) shall
11 commence at the end of each such prescribed period.

12 “(5) Not later than 30 days before the first date on
13 which a participant is eligible to exercise the right to rein-
14 vest employer securities and employer real property under
15 paragraph (2), the plan administrator shall provide to
16 such participant and his or her beneficiaries a written
17 notice—

18 “(A) setting forth such right under paragraph
19 (2), and

20 “(B) describing the importance of diversifying
21 the investment of retirement account assets.

22 The Secretary shall prescribe a model notice for purposes
23 of satisfying the requirements of this paragraph which
24 shall be in a form calculated to be understood by the aver-
25 age plan participant.

1 “(6) For purposes of this subsection—

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

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

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

11 “(D) the term ‘year of service’ has the meaning
12 given such term by section 203(b)(2).”

13 (c) RECOMMENDATIONS RELATING TO NONPUBLICLY
14 TRADED STOCK.—Within 1 year after the date of the en-
15 actment of this Act, the Secretary of Labor shall transmit
16 to the Committee on Education and the Workforce of the
17 House of Representatives and the Committee on Health,
18 Education, Labor, and Pensions of the Senate the Sec-
19 retary’s recommendations as to—

20 (1) whether section 404(e) of the Employee Re-
21 tirement Income Security Act of 1974 (as added by
22 section 101 and amended by this section) should
23 apply to employer securities which are not readily
24 tradable on an established securities market, and

1 (2) if the Secretary recommends that such sec-
2 tion apply to such securities, any legislative changes
3 necessary to reflect differences between such securi-
4 ties and employer securities which are readily
5 tradable on an established securities market.

6 **SEC. 103. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**
7 **NATING INDEPENDENT INVESTMENT ADVIS-**
8 **ERS.**

9 (a) IN GENERAL.—Section 404 of the Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C. 1104),
11 as amended by sections 101 and 102, is amended by add-
12 ing at the end the following new subsection:

13 “(f)(1) In the case of an individual account plan
14 which permits a plan participant or beneficiary to exercise
15 control over the assets in his or her account, if a plan
16 sponsor or other person who is a fiduciary designates and
17 monitors a qualified investment adviser pursuant to the
18 requirements of paragraph (3), such fiduciary—

19 “(A) shall be deemed to have satisfied the re-
20 quirements under this section for the prudent des-
21 ignation and periodic review of an investment ad-
22 viser with whom the plan sponsor or other person
23 who is a fiduciary enters into an arrangement for
24 the provision of advice referred to in section
25 3(21)(A)(ii),

1 “(B) shall not be liable under this section for
2 any loss, or by reason of any breach, with respect to
3 the provision of investment advice given by such ad-
4 viser to any plan participant or beneficiary, and

5 “(C) shall not be liable for any co-fiduciary li-
6 ability under subsections (a)(2) and (b) of section
7 405 with respect to the provision of investment ad-
8 vice given by such adviser to any plan participant
9 or beneficiary.

10 “(2)(A) For purposes of this section, the term ‘quali-
11 fied investment adviser’ means, with respect to a plan, a
12 person—

13 “(i) who is a fiduciary of the plan by reason of
14 the provision of investment advice by such person to
15 a plan participant or beneficiary;

16 “(ii) who—

17 “(I) is registered as an investment adviser
18 under the Investment Advisers Act of 1940 (15
19 U.S.C. 80b–1 et seq.),

20 “(II) is registered as an investment adviser
21 under the laws of the State in which such ad-
22 viser maintains the principal office and place of
23 business of such adviser, but only if such State
24 has an examination requirement to qualify for
25 such registration,

1 “(III) is a bank or similar financial institu-
2 tion referred to in section 408(b)(4),

3 “(IV) is an insurance company qualified to
4 do business under the laws of a State, or

5 “(V) is any other comparably qualified en-
6 tity which satisfies such criteria as the Sec-
7 retary determines appropriate, consistent with
8 the purposes of this subsection, and

9 “(iii) who meets the requirements of subpara-
10 graph (B).

11 “(B) The requirements of this subparagraph are met
12 if every individual employed (or otherwise compensated)
13 by a person described in subparagraph (A)(ii) who pro-
14 vides investment advice on behalf of such person to any
15 plan participant or beneficiary is—

16 “(i) an individual described in subclause (I) or
17 (II) of subparagraph (A)(ii),

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

21 “(iii) a registered representative as described in
22 section 3(a)(18) of the Securities Exchange Act of
23 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17)
24 of the Investment Advisers Act of 1940 (15 U.S.C.
25 80b-2(a)(17)), or

1 “(iv) any other comparably qualified individual
2 who satisfies such criteria as the Secretary deter-
3 mines appropriate, consistent with the purposes of
4 this subsection.

5 “(3) The requirements of this paragraph are met if—

6 “(A) the plan sponsor or other person who is a
7 fiduciary in designating a qualified investment ad-
8 viser receives at the time of the designation, and an-
9 nually thereafter, a written verification from the
10 qualified investment adviser that the investment
11 adviser—

12 “(i) is and remains a qualified investment
13 adviser,

14 “(ii) acknowledges that the investment ad-
15 viser is a fiduciary with respect to the plan and
16 is solely responsible for its investment advice,

17 “(iii) has reviewed the plan documents (in-
18 cluding investment options) and has determined
19 that its relationship with the plan and the in-
20 vestment advice provided to any plan partici-
21 pant or beneficiary, including any fees or other
22 compensation it will receive, will not constitute
23 a violation of section 406,

24 “(iv) will, in providing investment advice to
25 any participant or beneficiary, consider any em-

1 employer securities or employer real property allo-
2 cated to his or her account, and

3 “(v) has the necessary insurance coverage
4 (as determined by the Secretary) for any claim
5 by any plan participant or beneficiary,

6 “(B) the plan sponsor or other person who is
7 a fiduciary in designating a qualified investment ad-
8 viser reviews the documents described in paragraph
9 (4) provided by such adviser and determines that
10 there is no material reason not to enter into an ar-
11 rangement for the provision of advice by such quali-
12 fied investment adviser, and

13 “(C) the plan sponsor or other person who is a
14 fiduciary in designating a qualified investment ad-
15 viser determines whether or not to continue the des-
16 ignation of the investment adviser as a qualified in-
17 vestment adviser within 30 days of having informa-
18 tion brought to its attention that the investment ad-
19 viser is no longer qualified or that a substantial
20 number of plan participants or beneficiaries have
21 raised concerns about the services being provided by
22 the investment adviser.

23 “(4) A qualified investment adviser shall provide the
24 following documents to the plan sponsor or other person
25 who is a fiduciary in designating the adviser:

1 “(A) The contract with the plan sponsor or
2 other person who is a fiduciary for the services to
3 be provided by the investment adviser to the plan
4 participants and beneficiaries.

5 “(B) A disclosure as to any fees or other com-
6 pensation that will be received by the investment ad-
7 viser for the provision of such investment advice.

8 “(C) The Uniform Application for Investment
9 Adviser Registration as filed with the Securities and
10 Exchange Commission or a substantially similar dis-
11 closure application as determined by and filed with
12 the Secretary.

13 “(5) Any qualified investment adviser that acknowl-
14 edges it is a fiduciary pursuant to paragraph (3)(A)(ii)
15 shall be deemed a fiduciary under this part with respect
16 to the provision of investment advice to a plan participant
17 or beneficiary.”

18 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) is
19 amended by inserting “(other than a qualified investment
20 adviser)” after “fiduciary”.

21 (c) EFFECTIVE DATE.—The amendment made by
22 this section shall apply with respect to advisers designated
23 after the date of the enactment of this Act.

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

3 **SEC. 201. PENSION BENEFIT INFORMATION.**

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

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

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

11 “(i) at least once each calendar quarter to a
12 plan participant of an individual account plan which
13 permits a participant or beneficiary to exercise con-
14 trol over the assets in his or her account, and

15 “(ii) to a plan participant or beneficiary upon
16 written request.

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

19 “(i) at least once every 3 years to each partici-
20 pant, and

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

23 Information furnished under subparagraph (B) to a par-
24 ticipant (other than at the request of the participant) may

1 be based on reasonable estimates determined under regu-
2 lations prescribed by the Secretary.

3 “(2)(A) A pension benefit statement under paragraph
4 (1)—

5 “(i) shall indicate, on the basis of the latest
6 available information—

7 “(I) the total benefits accrued, and

8 “(II) the nonforfeitable pension benefits, if
9 any, which have accrued, or the earliest date on
10 which benefits will become nonforfeitable,

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

13 “(iii) may be provided in written, electronic, or
14 other appropriate form to the extent that such form
15 is reasonably accessible to the participant or bene-
16 ficiary.

17 “(B) In the case of an individual account plan, the
18 pension benefit statement under paragraph (1) shall in-
19 clude (together with the information required in subpara-
20 graph (A))—

21 “(i) the value of any assets held in the form of
22 employer securities, without regard to whether such
23 securities were contributed by the plan sponsor or
24 acquired at the direction of the plan or of the partic-
25 ipant or beneficiary, and an explanation of any limi-

1 tations or restrictions on the right of the participant
2 or beneficiary to direct an investment,

3 “(ii) an explanation, written in a manner cal-
4 culated to be understood by the average plan partici-
5 pant, of the importance, for the long-term retire-
6 ment security of participants and beneficiaries, of a
7 diversified investment portfolio, including a state-
8 ment of the risk of holding substantial portions of
9 a portfolio in the securities of any 1 entity, such as
10 employer securities, and

11 “(iii) in the case of an individual account plan,
12 if the percentage of assets in the individual account
13 that consists of employer securities and employer
14 real property (as defined in paragraphs (1) and (2),
15 respectively, of section 407(d)), as determined as of
16 the most recent valuation date of the plan, exceeds
17 20 percent of the total account, a warning that the
18 account may be overinvested in employer securities
19 and employer real property.”

20 (2) CIVIL PENALTIES FOR FAILURE TO PRO-
21 VIDE QUARTERLY BENEFIT STATEMENTS.—Section
22 502 of such Act (29 U.S.C. 1132) is amended—

23 (A) in subsection (a)(6), by striking “(5),
24 or (6)” and inserting “(5), (6), or (7)”;

1 (B) by redesignating paragraph (7) of sub-
2 section (c) as paragraph (8); and

3 (C) by inserting after paragraph (6) of
4 subsection (c) the following new paragraph:

5 “(7) The Secretary may assess a civil penalty against
6 any plan administrator of an individual account plan of
7 up to \$1,000 a day from the date of such plan administra-
8 tor’s failure or refusal to provide participants or bene-
9 ficiaries with a benefit statement on at least a quarterly
10 basis in accordance with section 105(a)(1)(A)(i).”

11 (3) MODEL STATEMENT.—Section 105 of such
12 Act (29 U.S.C. 1025), is amended by adding at the
13 end the following new subsection:

14 “(e) The Secretary of Labor shall develop a model
15 benefit statement which may be used by plan administra-
16 tors in complying with the requirements of subsection (a).
17 Such notice shall be in a form calculated to be understood
18 by the average plan participant.”

19 (4) CONFORMING AMENDMENT.—Section
20 105(b) of such Act (29 U.S.C. 1025(b)) is amended
21 to read as follows:

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

1 (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

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

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

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

9 “(b)(1) In the case of a participant or beneficiary who
10 is entitled to a distribution of a benefit under a defined
11 benefit plan, the administrator of such plan 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 plan documents relating to the cal-
25 culation (if available), and

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

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 101(a)(2) of such Act (29
5 U.S.C. 1021(a)(2)) is amended by striking
6 “105(a) and (c)” and inserting “105(a), (b),
7 and (d)”.

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

12 (C) Section 106(b) of such Act (29 U.S.C.
13 1026(b)) is amended by striking “sections
14 105(a) and 105(c)” and inserting “subsections
15 (a), (b), and (d) of section 105”.

16 **SEC. 202. PROVISION TO PARTICIPANTS AND BENE-**
17 **FICIARIES OF MATERIAL INVESTMENT IN-**
18 **FORMATION IN ACCURATE FORM.**

19 (a) IN GENERAL.—Section 404(c) of the Employee
20 Retirement Income Security Act of 1974 (29 U.S.C.
21 1104(c)) is amended by adding at the end the following
22 new paragraph:

23 “(4) The plan sponsor and plan administrator of a
24 pension plan described in paragraph (1) shall, in addition
25 to any other fiduciary duty or responsibility under this

1 part, have a fiduciary duty to ensure that each participant
2 and beneficiary under the plan, in connection with the in-
3 vestment by the participant or beneficiary of plan assets
4 in the exercise of his or her control over assets in his or
5 her account, is provided with all material investment infor-
6 mation regarding investment of such assets to the extent
7 that such information is generally required to be disclosed
8 by the plan sponsor to investors in connection with such
9 an investment under applicable securities laws. The provi-
10 sion by the plan sponsor or plan administrator of any ma-
11 terially misleading investment information shall be treated
12 as a violation of this paragraph.”

13 (b) ENFORCEMENT.—Section 502 of such Act (29
14 U.S.C. 1132), as amended by section 201, is amended—

15 (1) in subsection (a)(6), by striking “(6), or
16 (7)” and inserting “(6), (7), or (8)”;

17 (2) by redesignating paragraph (8) of sub-
18 section (c) as paragraph (9); and

19 (3) by inserting after paragraph (7) of sub-
20 section (c) the following new paragraph:

21 “(8) The Secretary may assess a civil penalty against
22 any person of up to \$1,000 a day from the date of the
23 person’s failure or refusal to comply with the requirements
24 of section 404(c)(4) until such failure or refusal is cor-
25 rected.”

1 **SEC. 203. ELECTRONIC DISCLOSURE OF INSIDER TRADING.**

2 Section 101 of the Employee Retirement Income Se-
3 curity Act of 1974 (29 U.S.C. 1021) is amended by redес-
4 ignating the second subsection (h) as subsection (j) and
5 by inserting after the first subsection (h) the following new
6 subsection:

7 “(i)(1) Except as specifically provided in this Act,
8 and notwithstanding any other provision of law, any dis-
9 closure required by the Commission of the sale of any se-
10 curities by an officer or director or other affiliated person
11 of the issuer of the securities shall be made available in
12 electronic form—

13 “(A) to the Commission by the officer, director,
14 or affiliated person, before the end of the calendar
15 day on which the transaction occurs;

16 “(B) to the public by the Commission, before
17 the end of the business day on which the disclosure
18 is received under subparagraph (A) but only to the
19 extent such public disclosure is allowed under appli-
20 cable law; and

21 “(C) on any corporate website the issuer main-
22 tains which is accessible only internally, before the
23 end of the calendar day on which the transaction oc-
24 curs.

25 If there are employees of an issuer who do not have access
26 to the corporate website described in subparagraph (C),

1 the information required to be provided under this para-
 2 graph shall be provided to the employees in written, elec-
 3 tronic, or other appropriate form to the extent that such
 4 form is reasonably accessible to them.

5 “(2) The Commission may provide that the require-
 6 ment under this subsection of disclosure in electronic form
 7 will be in lieu of any other form of such disclosure that
 8 may be required by the Commission or under any other
 9 Federal law.

10 “(3) In this subsection, the terms ‘affiliated person’,
 11 ‘Commission’, ‘issuer’, and ‘securities’ have the same
 12 meanings as in section 3 of the Securities Exchange Act
 13 of 1934.”

14 **TITLE III—IMPROVEMENTS IN**
 15 **ACCESS AND ACCOUNTABILITY**

16 **SEC. 301. ADDITIONAL FIDUCIARY PROTECTIONS RELAT-**
 17 **ING TO LOCKDOWNS.**

18 Section 404 of the Employee Retirement Income Se-
 19 curity Act of 1974 (as amended by this Act) is amended
 20 further by adding at the end the following new subsection:

21 “(g)(1) In the case of any eligible individual account
 22 plan (as defined in section 407(d)(3))—

23 “(A) no lockdown may take effect until at least
 24 30 days after written notice of such lockdown is pro-

1 vided by the plan administrator to such participant
2 or beneficiary, and

3 “(B) any lockdown may not continue for an un-
4 reasonable period.

5 “(2) For purposes of this subsection, the term
6 ‘lockdown’ means any suspension, restriction, or similar
7 limitation which is imposed on the ability of a participant
8 or beneficiary to exercise control over the assets in his or
9 her account as otherwise generally provided under the
10 terms of the plan (as determined under regulations of the
11 Secretary).”

12 **SEC. 302. LIMITATION ON FIDUCIARY EXCEPTION DURING**
13 **LOCKDOWN PERIOD.**

14 (a) IN GENERAL.—Section 404(c)(1) of the Em-
15 ployee Retirement Income Security Act of 1974 (29
16 U.S.C. 1104(c)(1)) is amended—

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

24 (2) by adding at the end the following:

1 “Any limitation or restriction that may govern the fre-
2 quency of transfers between investment vehicles shall not
3 be treated as a suspension referred to in subparagraph
4 (B) to the extent such limitation or restriction is disclosed
5 to participants or beneficiaries through the summary plan
6 description or materials describing specific investment al-
7 ternatives under the plan.”

8 (b) GUIDANCE.—The Secretary of Labor shall, not
9 later than the 180th day after the date of the enactment
10 of this Act, issue guidance as to what actions a fiduciary
11 may take to meet his or her fiduciary duties during a pe-
12 riod during which section 404(c)(1)(B) of the Employee
13 Retirement Income Security Act of 1974 does not apply
14 by reason of the amendments made by subsection (a).

15 **SEC. 303. INSURANCE ADEQUATE TO PROTECT INTEREST**
16 **OF PARTICIPANTS AND BENEFICIARIES.**

17 (a) IN GENERAL.—Section 412 of the Employee Re-
18 tirement Income Security Act of 1974 (29 U.S.C. 1112)
19 is amended by adding at the end the following new sub-
20 section:

21 “(f) Notwithstanding the preceding provisions of this
22 section, each fiduciary of an individual account plan which
23 covers more than 100 participants shall be insured, in ac-
24 cordance with regulations prescribed by the Secretary, to

1 provide reasonable coverage for failures to meet the re-
2 quirements of this part.”

3 (b) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendment made by
5 this section shall take effect on the date on which
6 the regulations required to be promulgated under
7 section 412(f) of the Employee Retirement Income
8 Security Act of 1974 become final.

9 (2) REGULATIONS.—The Secretary of Labor
10 shall prescribe the regulations necessary to carry out
11 section 412(f) of the Employee Retirement Income
12 Security Act of 1974, as added by this section, not
13 later than one year after the date of the enactment
14 of this Act.

15 **SEC. 304. LIABILITY FOR BREACH OF FIDUCIARY DUTY.**

16 (a) LIABILITY FOR PARTICIPATING IN OR CON-
17 CEALING FIDUCIARY BREACH.—

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

21 (A) by inserting “, or any other person
22 who, with notice of the facts constituting the
23 breach, participates in or undertakes to conceal
24 such breach,” after “duties imposed upon fidu-
25 ciaries by this title”;

1 (B) by inserting “and to each participant
2 and beneficiary of the plan” after “plan” the
3 second place it appears, and by inserting “or
4 such participant or beneficiary” after “plan”
5 the third place it appears;

6 (C) by inserting “or such other person”
7 after “profits of such fiduciary” and “by the fi-
8 duciary”;

9 (D) by inserting “or entry of an order pro-
10 hibiting such fiduciary or such other person
11 from dealing with employee benefit plans” after
12 “removal of such fiduciary”; and

13 (E) by adding at the end the following new
14 sentence: “This subsection shall not apply to
15 any claim by a participant or beneficiary which
16 relates to a claim or request for benefits under
17 the plan and which may be brought under sec-
18 tion 502(a).”

19 (2) CONFORMING AMENDMENT.—Section
20 409(b) of such Act (29 U.S.C. 1109(b)) is amended
21 by inserting before the period the following:
22 “, unless his liability arises out of his role as a per-
23 son who, with notice of facts constituting such
24 breach, participates in or undertakes to conceal such
25 breach (as described in subsection (a))”.

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

7 **SEC. 305. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**
8 **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

9 (a) IN GENERAL.—Section 403(a) of the Employee
10 Retirement Income Security Act of 1974 (29 U.S.C.
11 1103(a)) is amended—

12 (1) by redesignating paragraphs (1) and (2) as
13 subparagraphs (A) and (B), respectively;

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

15 (3) by adding at the end the following new
16 paragraph:

17 “(2)(A) The assets of a single-employer plan which
18 is an individual account plan which covers more than 100
19 participants shall be held in trust by a joint board of trust-
20 ees, which shall consist of two or more trustees rep-
21 resenting on an equal basis the interests of the employer
22 or employers maintaining the plan and the interests of the
23 participants and their beneficiaries.

24 “(B)(i) Except as provided in clause (ii), in any case
25 in which the plan is maintained pursuant to one or more

1 collective bargaining agreements between one or more em-
2 ployee organizations and one or more employers, the trust-
3 ees representing the interests of the participants and their
4 beneficiaries shall be designated by an election process or-
5 ganized by the plan for all plan participants.

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

12 “(iii) In any case in which clause (i) does not apply
13 with respect to a single-employer plan because the plan
14 is not described in clause (i) or because of a waiver filed
15 pursuant to clause (ii), the trustee or trustees representing
16 the interests of the participants and their beneficiaries
17 shall be elected by the participants in accordance with reg-
18 ulations of the Secretary. An individual shall not be treat-
19 ed as ineligible for selection as trustee solely because such
20 individual is an employee of the plan sponsor, except that
21 the employee so selected may not be a highly compensated
22 employee (as defined in section 414(q) of the Internal Rev-
23 enue Code of 1986).

24 “(iv) The Secretary shall provide by regulation for
25 the appointment of a neutral, in accordance with the pro-

1 cedures under section 203(f) of the Labor Management
2 Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as
3 necessary to resolve tie votes by the trustees.”

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

9 **SEC. 306. PRESERVATION OF RIGHTS OR CLAIMS.**

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

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

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

1 **SEC. 307. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

2 (a) IN GENERAL.—Title III of the Employee Retirement
3 Income Security Act of 1974 (29 U.S.C. 3001 et
4 seq.) is amended by adding at the end the following:

5 **“Subtitle D—Office of Pension**
6 **Participant Advocacy**

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

8 “(a) ESTABLISHMENT.—

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

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

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

19 “(B) be selected by the Secretary after
20 consultation with pension participant advocacy
21 organizations.

22 The Pension Participant Advocate shall report di-
23 rectly to the Secretary and shall be entitled to com-
24 pensation at the same rate as the highest rate of
25 basic pay established for the Senior Executive Serv-

1 ice under section 5382 of title 5, United States
2 Code.

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

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

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

15 “(B) identifying significant problems for
16 pension plan participants and the capabilities of
17 the Federal Government, business, and such or-
18 ganizations to address such problems, and

19 “(C) developing proposals for changes in
20 such policies and activities to correct such prob-
21 lems, and communicating such changes to the
22 appropriate officials,

23 “(2) promote the expansion of pension plan cov-
24 erage and the receipt of promised benefits by in-
25 creasing the awareness of the general public of the

1 value of pension plans and by protecting the rights
2 of pension plan participants, including—

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

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

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

13 “(4) give priority to the special needs of low-
14 and moderate-income participants,

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

21 “(6) if the Advocate determines appropriate,
22 pursue claims on behalf of participants and bene-
23 ficiaries (including, upon request of any participant
24 or beneficiary, bringing any civil action on behalf of
25 the participant or beneficiary which the participant

1 or beneficiary is entitled to bring under section
2 502(a)(1)(B)) and provide appropriate assistance in
3 the resolution of disputes between participants and
4 beneficiaries and pension plans, including assistance
5 in obtaining settlement agreements.

6 “(c) REPORTS.—

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

15 “(A) identify significant problems the Ad-
16 vocate has identified,

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

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

21 The Advocate shall submit a copy of such report to
22 the Secretary and any other appropriate official at
23 the same time it is submitted to the committees of
24 Congress.

1 “(2) SPECIFIC REPORTS.—The Pension Partici-
2 pant Advocate shall report to the Secretary or any
3 other appropriate official any time the Advocate
4 identifies a problem which may be corrected by the
5 Secretary or such official.

6 “(3) REPORTS TO BE SUBMITTED DIRECTLY.—
7 The report required under paragraph (1) shall be
8 provided directly to the committees of Congress
9 without any prior review or comment by the Sec-
10 retary or any other Federal officer or employee.

11 “(d) SPECIFIC POWERS.—

12 “(1) RECEIPT OF INFORMATION.—Subject to
13 such confidentiality requirements as may be appro-
14 priate, the Secretary and other Federal officials
15 shall, upon request, provide such information (in-
16 cluding plan documents) as may be necessary to en-
17 able the Pension Participant Advocate to carry out
18 the Advocate’s responsibilities under this section.

19 “(2) APPEARANCES.—The Pension Participant
20 Advocate may—

21 “(A) represent the views and interests of
22 pension plan participants before any Federal
23 agency, including, upon request of a partici-
24 pant, in any proceeding involving the partici-
25 pant, and

1 “(B) upon request of a participant or ben-
 2 eficiary, represent the participant or beneficiary
 3 in any civil action which the participant or ben-
 4 eficiary is entitled to bring under section
 5 502(a)(1)(B).

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

10 “(A) contract with any person to acquire
 11 statistical information with respect to pension
 12 plan participants, and

13 “(B) conduct direct surveys of pension
 14 plan participants.”

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

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

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

20 **SEC. 308. STUDY REGARDING INSURANCE SYSTEM FOR IN-**
 21 **DIVIDUAL ACCOUNT PLANS.**

22 (a) STUDY.—As soon as practicable after the date of
 23 the enactment of this Act, the Pension Benefit Guaranty

1 Corporation shall undertake a study relating to the estab-
2 lishment of an insurance system for individual account
3 plans. In conducting such study, the Corporation shall
4 consider—

5 (1) the feasibility of such a system,

6 (2) the problem with insuring investments in
7 employer securities, and

8 (3) options for developing such a system.

9 (b) REPORT.—Not later than 2 years after the date
10 of the enactment of this Act, the Corporation shall report
11 the results of its study, together with any recommenda-
12 tions for legislative changes, to the Committee on Edu-
13 cation and the Workforce of the House of Representatives
14 and the Committee on Health, Education, Labor, and
15 Pensions of the Senate.

16 **SEC. 309. STUDY REGARDING FEES CHARGED BY INDI-**
17 **VIDUAL ACCOUNT PLANS.**

18 (a) STUDY.—As soon as practicable after the date of
19 the enactment of this Act, the Secretary of Labor shall
20 undertake a study of the administrative and transaction
21 fees incurred by participants and beneficiaries in connec-
22 tion with the investment of assets in their accounts under
23 individual account plans. In conducting such study, the
24 Secretary shall consider—

1 (1) how the fees compare to fees charged for
2 similar services provided to investors not in indi-
3 vidual account plans, and

4 (2) whether participants or beneficiaries are
5 adequately notified of the fees.

6 (b) REPORT.—Not later than 1 year after the date
7 of the enactment of this Act, the Secretary shall report
8 the results of its study, together with any recommenda-
9 tions for legislative changes to the Committee on Edu-
10 cation and the Workforce of the House of Representatives
11 and the Committee on Health, Education, Labor, and
12 Pensions of the Senate.

13 **SEC. 310. COLLECTIVELY BARGAINED 401(k) PLANS.**

14 (a) IN GENERAL.—Section 401(k)(4) of the Internal
15 Revenue Code of 1986 (relating to other requirements) is
16 amended by adding at the end the following new subpara-
17 graph:

18 “(D) BENEFITS SUBJECT TO BAR-
19 GAINING.—For purposes of this subsection, em-
20 ployees described in section 410(b)(3)(A) may
21 be excluded from a qualified cash or deferred
22 arrangement maintained by an eligible employer
23 only if they are covered under any other collec-
24 tively bargained plan with respect to which the

1 trust forming part of such plan is a qualified
2 trust under this section.”

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to plan years beginning after the
5 date of the enactment of this Act.

6 **TITLE IV—GENERAL** 7 **PROVISIONS**

8 **SEC. 401. GENERAL EFFECTIVE DATE.**

9 (a) **IN GENERAL.**—Except as otherwise provided in
10 this Act, the amendments made by this Act shall apply
11 with respect to plan years beginning on or after January
12 1, 2003.

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

22 (1) the later of—

23 (A) January 1, 2004, or

24 (B) the date on which the last of such col-
25 lective bargaining agreements terminates (de-

1 terminated without regard to any extension there-
2 of after the date of the enactment of this Act),
3 or
4 (2) January 1, 2005.

5 **SEC. 402. PLAN AMENDMENTS.**

6 If any amendment made by this Act requires an
7 amendment to any plan, such plan amendment shall not
8 be required to be made before the first plan year beginning
9 on or after January 1, 2005, if—

10 (1) during the period after such amendment
11 made by this Act takes effect and before such first
12 plan year, the plan is operated in good faith compli-
13 ance with the requirements of such amendment
14 made by this Act, and

15 (2) such plan amendment applies retroactively
16 to the period after such amendment made by this
17 Act takes effect and before such first plan year.

○