

# Calendar No. 525

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2<sup>D</sup> SESSION

# S. 1992

[Report No. 107-226]

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.

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## 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, Mr. DURBIN, Mr. LIEBERMAN, Mr. KERRY, Mr. ROCKEFELLER, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

JULY 26, 2002

Reported by Mr. KENNEDY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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## 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:

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

19 “(B) A plan which offers as an investment option the  
20 purchase of stock through an open brokerage account or  
21 similar investment vehicle shall not be treated as meeting  
22 the requirements of subparagraph (A) unless the plan pro-  
23 vides that such option may not be used to purchase em-  
24 ployer securities or employer real property.

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

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

8               “(I) which covers at least 90 percent of the em-  
 9       ployees as are covered by the individual account  
 10      plan; and

11              “(II) with respect to which the accrued benefit  
 12      of each participant is not less than a benefit which  
 13      is actuarially equivalent to a percentage of the par-  
 14      ticipant’s final average pay equal to 1.5 percent mul-  
 15      tplied by the number of years of service (not greater  
 16      than 20) of the participant.

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

21              “(I) the participant’s pay during the plan year  
 22      preceding the plan year of the determination shall be  
 23      used in lieu of final average pay; and

24              “(II) the plan shall be treated as satisfying the  
 25      requirement of such subclause if the average accrued

1 benefit under the plan of all the participants who  
 2 are also covered by the individual account plan  
 3 meets such requirement.

4 “(3) For purposes of this subsection—

5 “(A) the term ‘elective deferral’ has the mean-  
 6 ing given such term by section 402(g)(3) of the In-  
 7 ternal Revenue Code of 1986;

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

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

13 **SEC. 102. ELIMINATION OF EMPLOYER REQUIREMENTS**  
 14 **THAT ASSETS BE INVESTED IN EMPLOYER SE-**  
 15 **CURITIES.**

16 (a) IN GENERAL.—Section 404(e) of Employee Re-  
 17 tirement Income Security Act of 1974 (29 U.S.C.  
 18 1104(e)), as added by section 101, is amended by redesi-  
 19 gnating paragraphs (2) and (3) as paragraphs (3) and (4)  
 20 and by inserting after paragraph (1) the following new  
 21 paragraph:

22 “(2)(A) Except as provided in this subsection,  
 23 an individual account plan to which this paragraph  
 24 applies shall—

1           “(i) offer at least 3 investment options  
2 (not inconsistent with regulations prescribed by  
3 the Secretary) in addition to any option to in-  
4 vest in employer securities or employer real  
5 property;

6           “(ii) provide that a participant or bene-  
7 ficiary has the immediate right to reinvest any  
8 employee contributions and elective deferrals in-  
9 vested in employer securities or employer real  
10 property (and earnings thereon) in any other  
11 investment option provided by the plan;

12           “(iii) provide that a participant or bene-  
13 ficiary has the right after no more than 3 years  
14 of service under the plan to reinvest any em-  
15 ployer contributions (other than elective defer-  
16 rals) of employer securities or employer real  
17 property (and earnings thereon) in any other  
18 investment option provided by the plan; and

19           “(iv) meet the requirements of section  
20 409(e)(2) of the Internal Revenue Code of 1986  
21 with respect to employer securities held by the  
22 plan which are readily tradable on an estab-  
23 lished securities market.

24           “(B)(i) Except as provided in clause (ii), this  
25 paragraph shall apply to any individual account plan

1 which holds employer securities which are readily  
2 tradable on an established securities market.

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

7 (b) APPLICABLE RULES.—Section 404(e) of such Act  
8 (29 U.S.C. 1104(e)), as so added, is amended by striking  
9 paragraph (4) (as redesignated by subsection (a)) and in-  
10 serting the following new paragraphs:

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

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

20 “(5) Not later than 30 days before the first date on  
21 which a participant is eligible to exercise the right to rein-  
22 vest employer securities and employer real property under  
23 paragraph (2), the plan administrator shall provide to  
24 such participant and his or her beneficiaries a written  
25 notice—

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

3           “(B) describing the importance of diversifying  
4           the investment of retirement account assets.

5 The Secretary shall prescribe a model notice for purposes  
6 of satisfying the requirements of this paragraph which  
7 shall be in a form calculated to be understood by the aver-  
8 age plan participant.

9           “(6) 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); and

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

21           (c) RECOMMENDATIONS RELATING TO NONPUBLICLY  
22           TRADED STOCK.—Within 1 year after the date of the en-  
23           actment of this Act, the Secretary of Labor shall transmit  
24           to the Committee on Education and the Workforce of the  
25           House of Representatives and the Committee on Health,



1 Education, Labor, and Pensions of the Senate the Sec-  
 2 retary's recommendations as to—

3           (1) whether section 404(e) of the Employee Re-  
 4 tirement Income Security Act of 1974 (as added by  
 5 section 101 and amended by this section) should  
 6 apply to employer securities which are not readily  
 7 tradable on an established securities market, and

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

13 **SEC. 103. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**  
 14 **NATING INDEPENDENT INVESTMENT ADVIS-**  
 15 **ERS.**

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

20       “(f)(1) In the case of an individual account plan  
 21 which permits a plan participant or beneficiary to exercise  
 22 control over the assets in his or her account, if a plan  
 23 sponsor or other person who is a fiduciary designates and  
 24 monitors a qualified investment adviser pursuant to the  
 25 requirements of paragraph (3), such fiduciary—

1           ~~“(A) shall be deemed to have satisfied the re-~~  
2           ~~quirements under this section for the prudent des-~~  
3           ~~ignation and periodic review of an investment ad-~~  
4           ~~viser with whom the plan sponsor or other person~~  
5           ~~who is a fiduciary enters into an arrangement for~~  
6           ~~the provision of advice referred to in section~~  
7           ~~3(21)(A)(ii);~~

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

12          ~~“(C) shall not be liable for any co-fiduciary li-~~  
13          ~~ability under subsections (a)(2) and (b) of section~~  
14          ~~405 with respect to the provision of investment ad-~~  
15          ~~vice given by such adviser to any plan participant or~~  
16          ~~beneficiary.~~

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

20                 ~~“(i) who is a fiduciary of the plan by reason of~~  
21                 ~~the provision of investment advice by such person to~~  
22                 ~~a plan participant or beneficiary;~~

23                 ~~“(ii) who—~~

1           “(I) is registered as an investment adviser  
2 under the Investment Advisers Act of 1940 (15  
3 U.S.C. 80b-1 et seq.);

4           “(II) is registered as an investment adviser  
5 under the laws of the State in which such ad-  
6 viser maintains the principal office and place of  
7 business of such adviser, but only if such State  
8 has an examination requirement to qualify for  
9 such registration;

10           “(III) is a bank or similar financial institu-  
11 tion referred to in section 408(b)(4);

12           “(IV) is an insurance company qualified to  
13 do business under the laws of a State; or

14           “(V) is any other comparably qualified en-  
15 tity which satisfies such criteria as the Sec-  
16 retary determines appropriate, consistent with  
17 the purposes of this subsection; and

18           “(iii) who meets the requirements of subpara-  
19 graph (B).

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

1           “(i) an individual described in subclause (I) or  
2           (II) of subparagraph (A)(ii);

3           “(ii) registered as a broker or dealer under the  
4           Securities Exchange Act of 1934 (15 U.S.C. 78a et  
5           seq.);

6           “(iii) a registered representative as described in  
7           section 3(a)(18) of the Securities Exchange Act of  
8           1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17)  
9           of the Investment Advisers Act of 1940 (15 U.S.C.  
10          80b-2(a)(17)); or

11          “(iv) any other comparably qualified individual  
12          who satisfies such criteria as the Secretary deter-  
13          mines appropriate, consistent with the purposes of  
14          this subsection.

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

16               “(A) the plan sponsor or other person who is a  
17               fiduciary in designating a qualified investment ad-  
18               viser receives at the time of the designation, and an-  
19               nually thereafter, a written verification from the  
20               qualified investment adviser that the investment  
21               adviser—

22                       “(i) is and remains a qualified investment  
23                       adviser,

1           “(ii) acknowledges that the investment ad-  
2           viser is a fiduciary with respect to the plan and  
3           is solely responsible for its investment advice;

4           “(iii) has reviewed the plan documents (in-  
5           cluding investment options) and has determined  
6           that its relationship with the plan and the in-  
7           vestment advice provided to any plan partici-  
8           pant or beneficiary, including any fees or other  
9           compensation it will receive, will not constitute  
10          a violation of section 406;

11          “(iv) will, in providing investment advice to  
12          any participant or beneficiary, consider any em-  
13          ployer securities or employer real property allo-  
14          cated to his or her account, and

15          “(v) has the necessary insurance coverage  
16          (as determined by the Secretary) for any claim  
17          by any plan participant or beneficiary;

18          “(B) the plan sponsor or other person who is  
19          a fiduciary in designating a qualified investment ad-  
20          viser reviews the documents described in paragraph  
21          (4) provided by such adviser and determines that  
22          there is no material reason not to enter into an ar-  
23          rangement for the provision of advice by such quali-  
24          fied investment adviser, and

1           “(C) the plan sponsor or other person who is a  
2           fiduciary in designating a qualified investment ad-  
3           viser determines whether or not to continue the des-  
4           ignation of the investment adviser as a qualified in-  
5           vestment adviser within 30 days of having informa-  
6           tion brought to its attention that the investment ad-  
7           viser is no longer qualified or that a substantial  
8           number of plan participants or beneficiaries have  
9           raised concerns about the services being provided by  
10          the investment adviser.

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

14               “(A) The contract with the plan sponsor or  
15               other person who is a fiduciary for the services to  
16               be provided by the investment adviser to the plan  
17               participants and beneficiaries.

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

21               “(C) The Uniform Application for Investment  
22               Adviser Registration as filed with the Securities and  
23               Exchange Commission or a substantially similar dis-  
24               closure application as determined by and filed with  
25               the Secretary.

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

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

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

## 12 **TITLE II—IMPROVEMENTS IN** 13 **DISCLOSURE**

### 14 **SEC. 201. PENSION BENEFIT INFORMATION.**

15 (a) PENSION BENEFIT STATEMENTS REQUIRED ON  
 16 PERIODIC BASIS.—

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

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

22 “(i) at least once each calendar quarter to a  
 23 plan participant of an individual account plan which  
 24 permits a participant or beneficiary to exercise con-  
 25 trol over the assets in his or her account; and

1           ~~“(ii) to a plan participant or beneficiary upon~~  
2           ~~written request.~~

3           ~~“(B) The administrator of a defined benefit plan~~  
4           ~~shall furnish a pension benefit statement—~~

5           ~~“(i) at least once every 3 years to each partici-~~  
6           ~~pant, and~~

7           ~~“(ii) to a participant or beneficiary of the plan~~  
8           ~~upon written request.~~

9           ~~Information furnished under subparagraph (B) to a par-~~  
10          ~~ticipant (other than at the request of the participant) may~~  
11          ~~be based on reasonable estimates determined under regu-~~  
12          ~~lations prescribed by the Secretary.~~

13          ~~“(2)(A) A pension benefit statement under paragraph~~  
14          ~~(1)—~~

15          ~~“(i) shall indicate, on the basis of the latest~~  
16          ~~available information—~~

17                  ~~“(I) the total benefits accrued, and~~

18                  ~~“(II) the nonforfeitable pension benefits, if~~  
19                  ~~any, which have accrued, or the earliest date on~~  
20                  ~~which benefits will become nonforfeitable,~~

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

23                  ~~“(iii) may be provided in written, electronic, or~~  
24          ~~other appropriate form to the extent that such form~~



1 is reasonably accessible to the participant or bene-  
2 ficiary.

3 ~~“(B) In the case of an individual account plan, the~~  
4 ~~pension benefit statement under paragraph (1) shall in-~~  
5 ~~clude (together with the information required in subpara-~~  
6 ~~graph (A))—~~

7 ~~“(i) the value of any assets held in the form of~~  
8 ~~employer securities, without regard to whether such~~  
9 ~~securities were contributed by the plan sponsor or~~  
10 ~~acquired at the direction of the plan or of the partici-~~  
11 ~~ipant or beneficiary, and an explanation of any limi-~~  
12 ~~tations or restrictions on the right of the participant~~  
13 ~~or beneficiary to direct an investment,~~

14 ~~“(ii) an explanation, written in a manner cal-~~  
15 ~~culated to be understood by the average plan partici-~~  
16 ~~pant, of the importance, for the long-term retire-~~  
17 ~~ment security of participants and beneficiaries, of a~~  
18 ~~diversified investment portfolio, including a state-~~  
19 ~~ment of the risk of holding substantial portions of~~  
20 ~~a portfolio in the securities of any 1 entity, such as~~  
21 ~~employer securities, and~~

22 ~~“(iii) in the case of an individual account plan,~~  
23 ~~if the percentage of assets in the individual account~~  
24 ~~that consists of employer securities and employer~~  
25 ~~real property (as defined in paragraphs (1) and (2),~~

1 respectively, of section 407(d)), as determined as of  
 2 the most recent valuation date of the plan, exceeds  
 3 20 percent of the total account, a warning that the  
 4 account may be overinvested in employer securities  
 5 and employer real property.”

6 (2) CIVIL PENALTIES FOR FAILURE TO PRO-  
 7 VIDE QUARTERLY BENEFIT STATEMENTS.—Section  
 8 502 of such Act (29 U.S.C. 1132) is amended—

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

11 (B) by redesignating paragraph (7) of sub-  
 12 section (e) as paragraph (8); and

13 (C) by inserting after paragraph (6) of  
 14 subsection (e) the following new paragraph:

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

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

24 “(e) The Secretary of Labor shall develop a model  
 25 benefit statement which may be used by plan administra-

1 tors in complying with the requirements of subsection (a).  
 2 Such notice shall be in a form calculated to be understood  
 3 by the average plan participant.”

4           (4) CONFORMING AMENDMENT.—Section  
 5 105(b) of such Act (29 U.S.C. 1025(b)) is amended  
 6 to read as follows:

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

11           (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

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

14           (A) by redesignating subsections (b), (c),  
 15 (d), and (e) as subsections (c), (d), (e), and (f),  
 16 respectively; and

17           (B) by inserting after subsection (a) the  
 18 following new subsection:

19           “(b)(1) In the case of a participant or beneficiary who  
 20 is entitled to a distribution of a benefit under a defined  
 21 benefit plan, the administrator of such plan shall—

22           “(A) notify each participant or beneficiary of  
 23 the availability of, and the right to request, the in-  
 24 formation described in paragraph (2), and

1           ~~“(B) provide to the participant or beneficiary~~  
2           ~~the information described in paragraph (2) upon the~~  
3           ~~written request of the participant or beneficiary.~~

4           ~~“(2) The information described in this paragraph~~  
5           ~~includes—~~

6           ~~“(A) a worksheet explaining how the amount of~~  
7           ~~the distribution was calculated and stating the as-~~  
8           ~~sumptions used for such calculation,~~

9           ~~“(B) upon written request of the participant or~~  
10          ~~beneficiary, any plan documents relating to the cal-~~  
11          ~~culatation (if available), and~~

12          ~~“(C) such other information as the Secretary~~  
13          ~~may prescribe.”~~

14          ~~(2) CONFORMING AMENDMENTS.—~~

15                 ~~(A) Section 101(a)(2) of such Act (29~~  
16                 ~~U.S.C. 1021(a)(2)) is amended by striking~~  
17                 ~~“105(a) and (c)” and inserting “105(a), (b),~~  
18                 ~~and (d)”.~~

19                 ~~(B) Section 105(e) of such Act (as redesign-~~  
20                 ~~ated by paragraph (1)(A) of this subsection) is~~  
21                 ~~amended by inserting “or (b)” after “subsection~~  
22                 ~~(a)”.~~

23                 ~~(C) Section 106(b) of such Act (29 U.S.C.~~  
24                 ~~1026(b)) is amended by striking “sections~~

1           105(a) and 105(c)” and inserting “subsections  
2           (a), (b), and (d) of section 105”.

3 **SEC. 202. PROVISION TO PARTICIPANTS AND BENE-**  
4 **FICIARIES OF MATERIAL INVESTMENT IN-**  
5 **FORMATION IN ACCURATE FORM.**

6           (a) **IN GENERAL.**—Section 404(e) of the Employee  
7 Retirement Income Security Act of 1974 (29 U.S.C.  
8 1104(e)) is amended by adding at the end the following  
9 new paragraph:

10           “(4) The plan sponsor and plan administrator of a  
11 pension plan described in paragraph (1) shall, in addition  
12 to any other fiduciary duty or responsibility under this  
13 part, have a fiduciary duty to ensure that each participant  
14 and beneficiary under the plan, in connection with the in-  
15 vestment by the participant or beneficiary of plan assets  
16 in the exercise of his or her control over assets in his or  
17 her account, is provided with all material investment infor-  
18 mation regarding investment of such assets to the extent  
19 that such information is generally required to be disclosed  
20 by the plan sponsor to investors in connection with such  
21 an investment under applicable securities laws. The provi-  
22 sion by the plan sponsor or plan administrator of any ma-  
23 terially misleading investment information shall be treated  
24 as a violation of this paragraph.”

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

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

5           (2) by redesignating paragraph (8) of sub-  
6           section (e) as paragraph (9); and

7           (3) by inserting after paragraph (7) of sub-  
8           section (e) the following new paragraph:

9           “(8) The Secretary may assess a civil penalty against  
10          any person of up to \$1,000 a day from the date of the  
11          person’s failure or refusal to comply with the requirements  
12          of section 404(e)(4) until such failure or refusal is cor-  
13          rected.”

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

15          Section 101 of the Employee Retirement Income Se-  
16          curity Act of 1974 (29 U.S.C. 1021) is amended by redес-  
17          ignating the second subsection (h) as subsection (j) and  
18          by inserting after the first subsection (h) the following new  
19          subsection:

20          “(i)(1) Except as specifically provided in this Act,  
21          and notwithstanding any other provision of law, any dis-  
22          closure required by the Commission of the sale of any se-  
23          curities by an officer or director or other affiliated person  
24          of the issuer of the securities shall be made available in  
25          electronic form—

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

4           “(B) to the public by the Commission, before  
5           the end of the business day on which the disclosure  
6           is received under subparagraph (A) but only to the  
7           extent such public disclosure is allowed under appli-  
8           cable law; and

9           “(C) on any corporate website the issuer main-  
10          tains which is accessible only internally, before the  
11          end of the calendar day on which the transaction oc-  
12          curs.

13        If there are employees of an issuer who do not have access  
14        to the corporate website described in subparagraph (C),  
15        the information required to be provided under this para-  
16        graph shall be provided to the employees in written, elec-  
17        tronic, or other appropriate form to the extent that such  
18        form is reasonably accessible to them.

19          “(2) The Commission may provide that the require-  
20        ment under this subsection of disclosure in electronic form  
21        will be in lieu of any other form of such disclosure that  
22        may be required by the Commission or under any other  
23        Federal law.

24          “(3) In this subsection, the terms ‘affiliated person’,  
25        ‘Commission’, ‘issuer’, and ‘securities’ have the same

1 meanings as in section 3 of the Securities Exchange Act  
2 of 1934.”

3 **TITLE III—IMPROVEMENTS IN**  
4 **ACCESS AND ACCOUNTABILITY**

5 **SEC. 301. ADDITIONAL FIDUCIARY PROTECTIONS RELAT-**  
6 **ING TO LOCKDOWNS.**

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

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

12 “(A) no lockdown may take effect until at least  
13 30 days after written notice of such lockdown is pro-  
14 vided by the plan administrator to such participant  
15 or beneficiary, and

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

18 “(2) For purposes of this subsection, the term  
19 ‘lockdown’ means any suspension, restriction, or similar  
20 limitation which is imposed on the ability of a participant  
21 or beneficiary to exercise control over the assets in his or  
22 her account as otherwise generally provided under the  
23 terms of the plan (as determined under regulations of the  
24 Secretary).”



1 **SEC. 302. LIMITATION ON FIDUCIARY EXCEPTION DURING**  
2 **LOCKDOWN PERIOD.**

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

6 (1) in subparagraph (B), by inserting before  
7 the period the following: “, except that this subpara-  
8 graph shall not apply for any period during which  
9 the ability of a participant or beneficiary to direct  
10 the investment of assets in his or her individual ac-  
11 count is suspended by a plan sponsor or fiduciary”;  
12 and

13 (2) by adding at the end the following:  
14 “Any limitation or restriction that may govern the fre-  
15 quency of transfers between investment vehicles shall not  
16 be treated as a suspension referred to in subparagraph  
17 (B) to the extent such limitation or restriction is disclosed  
18 to participants or beneficiaries through the summary plan  
19 description or materials describing specific investment al-  
20 ternatives under the plan.”

21 (b) **GUIDANCE.**—The Secretary of Labor shall, not  
22 later than the 180th day after the date of the enactment  
23 of this Act, issue guidance as to what actions a fiduciary  
24 may take to meet his or her fiduciary duties during a pe-  
25 riod during which section 404(c)(1)(B) of the Employee

1 Retirement Income Security Act of 1974 does not apply  
 2 by reason of the amendments made by subsection (a).

3 **SEC. 303. INSURANCE ADEQUATE TO PROTECT INTEREST**  
 4 **OF PARTICIPANTS AND BENEFICIARIES.**

5 (a) **IN GENERAL.**—Section 412 of the Employee Re-  
 6 tirement Income Security Act of 1974 (29 U.S.C. 1112)  
 7 is amended by adding at the end the following new sub-  
 8 section:

9 “(f) Notwithstanding the preceding provisions of this  
 10 section, each fiduciary of an individual account plan which  
 11 covers more than 100 participants shall be insured, in ac-  
 12 cordance with regulations prescribed by the Secretary, to  
 13 provide reasonable coverage for failures to meet the re-  
 14 quirements of this part.”

15 (b) **EFFECTIVE DATES.**—

16 (1) **IN GENERAL.**—The amendment made by  
 17 this section shall take effect on the date on which  
 18 the regulations required to be promulgated under  
 19 section 412(f) of the Employee Retirement Income  
 20 Security Act of 1974 become final.

21 (2) **REGULATIONS.**—The Secretary of Labor  
 22 shall prescribe the regulations necessary to carry out  
 23 section 412(f) of the Employee Retirement Income  
 24 Security Act of 1974, as added by this section, not

1 later than one year after the date of the enactment  
2 of this Act.

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

4 (a) LIABILITY FOR PARTICIPATING IN OR CON-  
5 CEALING FIDUCIARY BREACH.—

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

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

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

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

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

1           (E) by adding at the end the following new  
 2 sentence: “This subsection shall not apply to  
 3 any claim by a participant or beneficiary which  
 4 relates to a claim or request for benefits under  
 5 the plan and which may be brought under sec-  
 6 tion 502(a).”

7           (2) CONFORMING AMENDMENT.—Section  
 8 409(b) of such Act (29 U.S.C. 1109(b)) is amended  
 9 by inserting before the period the following:  
 10 “, unless his liability arises out of his role as a per-  
 11 son who, with notice of facts constituting such  
 12 breach, participates in or undertakes to conceal such  
 13 breach (as described in subsection (a))”.

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

20 **SEC. 305. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**  
 21 **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

22           (a) IN GENERAL.—Section 403(a) of the Employee  
 23 Retirement Income Security Act of 1974 (29 U.S.C.  
 24 1103(a)) is amended—

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

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

4           (3) by adding at the end the following new  
5           paragraph:

6           “(2)(A) The assets of a single-employer plan which  
7           is an individual account plan which covers more than 100  
8           participants shall be held in trust by a joint board of trust-  
9           ees, which shall consist of two or more trustees rep-  
10          resenting on an equal basis the interests of the employer  
11          or employers maintaining the plan and the interests of the  
12          participants and their beneficiaries.

13          “(B)(i) Except as provided in clause (ii), in any case  
14          in which the plan is maintained pursuant to one or more  
15          collective bargaining agreements between one or more em-  
16          ployee organizations and one or more employers, the trust-  
17          ees representing the interests of the participants and their  
18          beneficiaries shall be designated by an election process or-  
19          ganized by the plan for all plan participants.

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

1       “(iii) In any case in which clause (i) does not apply  
2 with respect to a single-employer plan because the plan  
3 is not described in clause (i) or because of a waiver filed  
4 pursuant to clause (ii), the trustee or trustees representing  
5 the interests of the participants and their beneficiaries  
6 shall be elected by the participants in accordance with reg-  
7 ulations of the Secretary. An individual shall not be treat-  
8 ed as ineligible for selection as trustee solely because such  
9 individual is an employee of the plan sponsor, except that  
10 the employee so selected may not be a highly compensated  
11 employee (as defined in section 414(q) of the Internal Rev-  
12 enue Code of 1986).

13       “(iv) The Secretary shall provide by regulation for  
14 the appointment of a neutral, in accordance with the pro-  
15 cedures under section 203(f) of the Labor Management  
16 Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as  
17 necessary to resolve tie votes by the trustees.”

18       (b) REGULATIONS.—The Secretary of Labor shall  
19 prescribe the initial regulations necessary to carry out the  
20 provisions of the amendments made by this section not  
21 later than 90 days after the date of the enactment of this  
22 Act.

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

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

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

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

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

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

19 **“Subtitle D—Office of Pension**  
20 **Participant Advocacy**

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

22 “(a) ESTABLISHMENT.—

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

1           “(2) PENSION PARTICIPANT ADVOCATE.—The  
2           Office of Pension Participant Advocacy shall be  
3           under the supervision and direction of an official to  
4           be known as the ‘Pension Participant Advocate’ who  
5           shall—

6                       “(A) have demonstrated experience in the  
7                       area of pension participant assistance; and

8                       “(B) be selected by the Secretary after  
9                       consultation with pension participant advocacy  
10                      organizations.

11           The Pension Participant Advocate shall report di-  
12           rectly to the Secretary and shall be entitled to com-  
13           pensation at the same rate as the highest rate of  
14           basic pay established for the Senior Executive Serv-  
15           ice under section 5382 of title 5, United States  
16           Code.

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

19                       “(1) evaluate the efforts of the Federal Govern-  
20                       ment, business, and financial, professional, retiree,  
21                       labor, women’s, and other appropriate organizations  
22                       in assisting and protecting pension plan participants,  
23                       including—

24                               “(A) serving as a focal point for, and ac-  
25                               tively seeking out, the receipt of information



1 with respect to the policies and activities of the  
2 Federal Government, business, and such organi-  
3 zations which affect such participants,

4 “(B) identifying significant problems for  
5 pension plan participants and the capabilities of  
6 the Federal Government, business, and such or-  
7 ganizations to address such problems, and

8 “(C) developing proposals for changes in  
9 such policies and activities to correct such prob-  
10 lems, and communicating such changes to the  
11 appropriate officials,

12 “(2) promote the expansion of pension plan cov-  
13 erage and the receipt of promised benefits by in-  
14 creasing the awareness of the general public of the  
15 value of pension plans and by protecting the rights  
16 of pension plan participants, including—

17 “(A) enlisting the cooperation of the public  
18 and private sectors in disseminating informa-  
19 tion, and

20 “(B) forming private-public partnerships  
21 and other efforts to assist pension plan partici-  
22 pants in receiving their benefits,

23 “(3) advocate for the full attainment of the  
24 rights of pension plan participants, including by

1 making pension plan sponsors and fiduciaries aware  
2 of their responsibilities;

3 ~~“(4) give priority to the special needs of low-~~  
4 ~~and moderate-income participants;~~

5 ~~“(5) develop needed information with respect to~~  
6 ~~pension plans, including information on the types of~~  
7 ~~existing pension plans, levels of employer and em-~~  
8 ~~ployee contributions, vesting status, accumulated~~  
9 ~~benefits, benefits received, and forms of benefits,~~  
10 ~~and~~

11 ~~“(6) if the Advocate determines appropriate,~~  
12 ~~pursue claims on behalf of participants and bene-~~  
13 ~~ficiaries (including, upon request of any participant~~  
14 ~~or beneficiary, bringing any civil action on behalf of~~  
15 ~~the participant or beneficiary which the participant~~  
16 ~~or beneficiary is entitled to bring under section~~  
17 ~~502(a)(1)(B)) and provide appropriate assistance in~~  
18 ~~the resolution of disputes between participants and~~  
19 ~~beneficiaries and pension plans, including assistance~~  
20 ~~in obtaining settlement agreements.~~

21 ~~“(c) REPORTS.—~~

22 ~~“(1) ANNUAL REPORT.—Not later than Decem-~~  
23 ~~ber 31 of each calendar year, the Pension Partici-~~  
24 ~~part Advocate shall report to the Committee on~~  
25 ~~Education and the Workforce of the House of Rep-~~

1 representatives and the Committee on Health, Edu-  
 2 cation, Labor, and Pensions of the Senate on its ac-  
 3 tivities during the fiscal year ending in the calendar  
 4 year. Such report shall—

5 “(A) identify significant problems the Ad-  
 6 vocate has identified,

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

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

11 The Advocate shall submit a copy of such report to  
 12 the Secretary and any other appropriate official at  
 13 the same time it is submitted to the committees of  
 14 Congress.

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

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

25 “(d) SPECIFIC POWERS.—

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

8           “(2) APPEARANCES.—The Pension Participant  
9 Advocate may—

10           “(A) represent the views and interests of  
11 pension plan participants before any Federal  
12 agency, including, upon request of a partici-  
13 pant, in any proceeding involving the partici-  
14 pant, and

15           “(B) upon request of a participant or ben-  
16 efiary, represent the participant or beneficiary  
17 in any civil action which the participant or ben-  
18 efiary is entitled to bring under section  
19 502(a)(1)(B).

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

1           “(A) contract with any person to acquire  
2           statistical information with respect to pension  
3           plan participants; and

4           “(B) conduct direct surveys of pension  
5           plan participants.”

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

                                          “Subtitle D—Office of Pension Participant Advocacy

                                          “3051. Office of Pension Participant Advocacy.”

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

11 **SEC. 308. STUDY REGARDING INSURANCE SYSTEM FOR IN-**  
12 **DIVIDUAL ACCOUNT PLANS.**

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

19                   (1) the feasibility of such a system;

20                   (2) the problem with insuring investments in  
21 employer securities; and

22                   (3) options for developing such a system.

1 (b) REPORT.—Not later than 2 years after the date  
 2 of the enactment of this Act, the Corporation shall report  
 3 the results of its study, together with any recommenda-  
 4 tions for legislative changes, to the Committee on Edu-  
 5 cation and the Workforce of the House of Representatives  
 6 and the Committee on Health, Education, Labor, and  
 7 Pensions of the Senate.

8 **SEC. 309. STUDY REGARDING FEES CHARGED BY INDI-**  
 9 **VIDUAL ACCOUNT PLANS.**

10 (a) STUDY.—As soon as practicable after the date of  
 11 the enactment of this Act, the Secretary of Labor shall  
 12 undertake a study of the administrative and transaction  
 13 fees incurred by participants and beneficiaries in connec-  
 14 tion with the investment of assets in their accounts under  
 15 individual account plans. In conducting such study, the  
 16 Secretary shall consider—

17 (1) how the fees compare to fees charged for  
 18 similar services provided to investors not in indi-  
 19 vidual account plans; and

20 (2) whether participants or beneficiaries are  
 21 adequately notified of the fees.

22 (b) REPORT.—Not later than 1 year after the date  
 23 of the enactment of this Act, the Secretary shall report  
 24 the results of its study, together with any recommenda-  
 25 tions for legislative changes to the Committee on Edu-

1 cation and the Workforce of the House of Representatives  
 2 and the Committee on Health, Education, Labor, and  
 3 Pensions of the Senate.

4 **SEC. 310. COLLECTIVELY BARGAINED 401(K) PLANS.**

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

9 “(D) BENEFITS SUBJECT TO BAR-  
 10 GAINING.—For purposes of this subsection, em-  
 11 ployees described in section 410(b)(3)(A) may  
 12 be excluded from a qualified cash or deferred  
 13 arrangement maintained by an eligible employer  
 14 only if they are covered under any other collec-  
 15 tively bargained plan with respect to which the  
 16 trust forming part of such plan is a qualified  
 17 trust under this section.”

18 (b) EFFECTIVE DATE.—The amendment made by  
 19 this section shall apply to plan years beginning after the  
 20 date of the enactment of this Act.

21 **TITLE IV—GENERAL**  
 22 **PROVISIONS**

23 **SEC. 401. GENERAL EFFECTIVE DATE.**

24 (a) IN GENERAL.—Except as otherwise provided in  
 25 this Act, the amendments made by this Act shall apply

1 with respect to plan years beginning on or after January  
2 1, 2003.

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

12 (1) the later of—

13 (A) January 1, 2004, or

14 (B) the date on which the last of such col-  
15 lective bargaining agreements terminates (de-  
16 termined without regard to any extension there-  
17 of after the date of the enactment of this Act);

18 or

19 (2) January 1, 2005.

20 **SEC. 402. PLAN AMENDMENTS.**

21 If any amendment made by this Act requires an  
22 amendment to any plan, such plan amendment shall not  
23 be required to be made before the first plan year beginning  
24 on or after January 1, 2005, if—



1           (1) during the period after such amendment  
 2           made by this Act takes effect and before such first  
 3           plan year, the plan is operated in good faith compli-  
 4           ance with the requirements of such amendment  
 5           made by this Act, and

6           (2) such plan amendment applies retroactively  
 7           to the period after such amendment made by this  
 8           Act takes effect and before such first plan year.

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

10       (a) *SHORT TITLE.*—This Act may be cited as the “Pro-  
 11   *tecting America’s Pensions Act of 2002*”.

12       (b) *TABLE OF CONTENTS.*—

*Sec. 1. Short title and table of contents.*

*TITLE I—IMPROVEMENTS IN DIVERSIFICATION OF PLAN ASSETS*

*Sec. 101. Elimination of employer requirements that assets be invested in em-  
 ployer securities.*

*Sec. 102. Rules relating to plan investments in employer stock.*

*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 in-  
 formation 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 pension 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. Provisions relating to whistleblower actions involving pension plans.*

*Sec. 311. Plans required to provide adequate information to individuals offered choice of lump sum distribution.*

*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. ELIMINATION OF EMPLOYER REQUIREMENTS**  
 5 **THAT ASSETS BE INVESTED IN EMPLOYER SE-**  
 6 **CURITIES.**

7 *(a) IN GENERAL.—Section 404 of the Employee Re-*  
 8 *tirement Income Security Act of 1974 (29 U.S.C. 1104) is*  
 9 *amended by adding at the end the following new subsection:*

10 *“(e)(1)(A) An individual account plan to which this*  
 11 *paragraph applies shall—*

12 *“(i) offer at least 3 investment options (not in-*  
 13 *consistent with regulations prescribed by the Sec-*  
 14 *retary) in addition to any option to invest in em-*  
 15 *ployer securities or employer real property,*

16 *“(ii) provide that a participant or beneficiary*  
 17 *has the immediate right to reinvest any employee con-*  
 18 *tributions and elective deferrals invested in employer*  
 19 *securities or employer real property (and earnings*  
 20 *thereon) in any other investment option provided by*  
 21 *the plan,*

1           “(iii) provide that a participant or beneficiary  
2           has the right after no more than 3 years of service to  
3           reinvest any employer contributions (other than elec-  
4           tive deferrals) of employer securities or employer real  
5           property (and earnings thereon) in any other invest-  
6           ment option provided by the plan, and

7           “(iv) meet the requirements of section 409(e)(2)  
8           of the Internal Revenue Code of 1986 with respect to  
9           employer securities held by the plan which are readily  
10          tradable on an established securities market.

11          “(B)(i) Except as provided in clause (ii), this para-  
12          graph shall apply to any individual account plan which  
13          holds employer securities which are readily tradable on an  
14          established securities market.

15          “(ii) This paragraph shall not apply to an employee  
16          stock ownership plan if the plan has no contributions (or  
17          earnings thereon) which are subject to section 401(k)(3) or  
18          (m) of such Code.

19          “(C)(i) Except as provided in clause (ii), within 30  
20          days after the date of any election by a participant or bene-  
21          ficiary under this paragraph to reinvest (or as otherwise  
22          provided in regulations), the plan administrator shall take  
23          such actions as are necessary to effectuate such reinvest-  
24          ment.

1       “(ii) In any case in which the plan provides for elec-  
2 tions to reinvest periodically during prescribed time peri-  
3 ods, the 30-day period described in clause (i) shall com-  
4 mence at the end of each such prescribed period.

5       “(D) Not later than 30 days before the first date on  
6 which a participant is eligible to exercise the right to rein-  
7 vest employer securities and employer real property under  
8 this paragraph, the plan administrator shall provide to  
9 such participant and his or her beneficiaries a notice—

10           “(i) setting forth such right under this para-  
11 graph, and

12           “(ii) describing the importance of diversifying  
13 the investment of retirement account assets.

14 The Secretary shall prescribe a model notice for purposes  
15 of satisfying the requirements of this subparagraph which  
16 shall be in a form calculated to be understood by the average  
17 plan participant. The notice required by this subparagraph  
18 may be provided in written, electronic, or other appropriate  
19 form to the extent that such form is reasonably accessible  
20 to the participant or beneficiary.

21       “(2) For purposes of this subsection—

22           “(A) the term ‘elective deferral’ has the meaning  
23 given such term by section 402(g)(3) of the Internal  
24 Revenue Code of 1986,

1           “(B) the term ‘employee stock ownership plan’  
2           has the meaning given such term by section  
3           4975(e)(7) of such Code,

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

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

9           (b) *RECOMMENDATIONS RELATING TO NONPUBLICLY*  
10          *TRADED STOCK.*—*Within 1 year after the date of the enact-*  
11          *ment of this Act, the Secretary of Labor shall transmit to*  
12          *the Committee on Education and the Workforce of the*  
13          *House of Representatives and the Committee on Health,*  
14          *Education, Labor, and Pensions of the Senate the Sec-*  
15          *retary’s recommendations as to—*

16                 (1) *whether section 404(e) of the Employee Re-*  
17                 *irement Income Security Act of 1974 (as added by*  
18                 *this section and amended by section 102) should*  
19                 *apply to employer securities which are not readily*  
20                 *tradable on an established securities market, and*

21                 (2) *if the Secretary recommends that such section*  
22                 *apply to such securities, any legislative changes nec-*  
23                 *essary to reflect differences between such securities*  
24                 *and employer securities which are readily tradable on*  
25                 *an established securities market.*

1 **SEC. 102. RULES RELATING TO PLAN INVESTMENTS IN EM-**  
2 **PLOYER STOCK.**

3 *Section 404(e) of the Employee Retirement Income Se-*  
4 *curity Act of 1974 (29 U.S.C. 1104), as added by section*  
5 *101, is amended by redesignating paragraph (2) as para-*  
6 *graph (3) and by adding after paragraph (1) the following*  
7 *new paragraph:*

8 *“(2)(A)(i) Except as provided in this paragraph, an*  
9 *individual account plan under which a participant or bene-*  
10 *ficiary is permitted to exercise control over assets in his*  
11 *or her account shall provide that if the plan (or any other*  
12 *plan maintained by the employer which covers the partici-*  
13 *pant or beneficiary) requires employer contributions other*  
14 *than elective deferrals to be invested in employer securities*  
15 *or employer real property, the plan may not permit elective*  
16 *deferrals to be invested in employer securities or employer*  
17 *real property.*

18 *“(ii) This paragraph shall not apply to an individual*  
19 *account plan maintained by an employer for any plan year*  
20 *if the employer maintains a qualified defined benefit plan*  
21 *(as defined in subparagraph (C)) for the plan year.*

22 *“(B)(i) A plan which offers as an investment option*  
23 *the purchase of stock through an open brokerage account*  
24 *or similar investment vehicle shall not be treated as meeting*  
25 *the requirements of subparagraph (A) unless the plan pro-*  
26 *vides that such option may not be used to purchase em-*

1 *ployer securities or employer real property which are to be*  
2 *held by the plan.*

3       “(ii) *A plan shall not be treated as failing to meet*  
4 *the requirements of subparagraph (A) merely because elec-*  
5 *tive deferrals are invested in employer securities or em-*  
6 *ployer real property by reason of an investment in a pooled*  
7 *investment vehicle. For purposes of this clause, a pooled in-*  
8 *vestment vehicle is an investment option of the plan which*  
9 *is comprised of plan assets and which is not designed to*  
10 *invest primarily in employer securities or employer real*  
11 *property.*

12       “(C)(i) *For purposes of subparagraph (A)(ii), the term*  
13 *‘qualified defined benefit plan’ means, with respect to any*  
14 *individual account plan, a defined benefit plan—*

15               “(I) *which covers at least 90 percent of the em-*  
16 *ployees as are covered by the individual account plan,*  
17 *and*

18               “(II) *with respect to which the accrued benefit of*  
19 *each participant, payable at normal retirement age*  
20 *under the plan, is not less than a benefit which is ac-*  
21 *tuarially equivalent to a percentage of the partici-*  
22 *phant’s final average pay equal to 1.5 percent multi-*  
23 *plied by the number of years of service (not greater*  
24 *than 20) of the participant.*

1 *If a plan provides for benefits payable prior to normal re-*  
 2 *tirement age, the requirements of subclause (II) shall not*  
 3 *be treated as met unless such benefits are at least equal to*  
 4 *the actuarial equivalent of the normal retirement benefit*  
 5 *under the plan.*

6       “(ii) *In applying subclause (II) of clause (i) to a de-*  
 7 *finied benefit plan with respect to which a participant’s ac-*  
 8 *crued benefit is equal to a fixed dollar amount multiplied*  
 9 *by the number of years of service—*

10               “(I) *the participant’s pay during the plan year*  
 11 *preceding the plan year of the determination shall be*  
 12 *used in lieu of final average pay, and*

13               “(II) *the plan shall be treated as satisfying the*  
 14 *requirement of such subclause if the average accrued*  
 15 *benefit under the plan of all the participants who are*  
 16 *also covered by the individual account plan meets*  
 17 *such requirement.”*

18 **SEC. 103. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**  
 19 **NATING INDEPENDENT INVESTMENT ADVIS-**  
 20 **ERS.**

21       (a) *IN GENERAL.—Section 404 of the Employee Re-*  
 22 *tirement Income Security Act of 1974 (29 U.S.C. 1104),*  
 23 *as amended by sections 101 and 102, is amended by adding*  
 24 *at the end the following new subsection:*



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

7               “(A) *shall be deemed to have satisfied the re-*  
8 *quirements under this section for the prudent designa-*  
9 *tion and periodic review of an investment adviser*  
10 *with whom the plan sponsor or other person who is*  
11 *a fiduciary enters into an arrangement for the provi-*  
12 *sion of advice referred to in section 3(21)(A)(ii),*

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

17               “(C) *shall not be liable for any co-fiduciary li-*  
18 *ability under subsections (a)(2) and (b) of section 405*  
19 *with respect to the provision of investment advice*  
20 *given by such adviser to any plan participant or ben-*  
21 *eficiary.*

22               “(2)(A) *For purposes of this section, the term ‘qualified*  
23 *investment adviser’ means, with respect to a plan, a*  
24 *person—*

1           “(i) who is a fiduciary of the plan by reason of  
2           the provision of investment advice by such person to  
3           a plan participant or beneficiary;

4           “(ii) who—

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

8                   “(II) is registered as an investment adviser  
9                   under the laws of the State in which such adviser  
10                   maintains the principal office and place of busi-  
11                   ness of such adviser, but only if such State has  
12                   an examination requirement to qualify for such  
13                   registration,

14                   “(III) is a bank or similar financial insti-  
15                   tution referred to in section 408(b)(4),

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

18                   “(V) is any other comparably qualified en-  
19                   tity which satisfies such criteria as the Secretary  
20                   determines appropriate, consistent with the pur-  
21                   poses of this subsection, and

22           “(iii) who meets the requirements of subpara-  
23           graph (B).

24           “(B) The requirements of this subparagraph are met  
25           if every individual employed (or otherwise compensated) by

1 *a person described in subparagraph (A)(ii) who provides*  
2 *investment advice on behalf of such person to any plan par-*  
3 *ticipant or beneficiary is—*

4           “(i) *an individual described in subclause (I) or*  
5 *(II) of subparagraph (A)(ii),*

6           “(ii) *registered as a broker or dealer under the*  
7 *Securities Exchange Act of 1934 (15 U.S.C. 78a et*  
8 *seq.),*

9           “(iii) *a registered representative as described in*  
10 *section 3(a)(18) of the Securities Exchange Act of*  
11 *1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of*  
12 *the Investment Advisers Act of 1940 (15 U.S.C. 80b-*  
13 *2(a)(17)), or*

14           “(iv) *any other comparably qualified individual*  
15 *who satisfies such criteria as the Secretary determines*  
16 *appropriate, consistent with the purposes of this sub-*  
17 *section.*

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

19           “(A) *the plan sponsor or other person who is a*  
20 *fiduciary in designating a qualified investment ad-*  
21 *viser receives at the time of the designation, and an-*  
22 *nually thereafter, a written verification from the*  
23 *qualified investment adviser that the investment*  
24 *adviser—*

1           “(i) is and remains a qualified investment  
2           adviser,

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

6           “(iii) has reviewed the plan documents (in-  
7           cluding investment options) and has determined  
8           that its relationship with the plan and the in-  
9           vestment advice provided to any plan partici-  
10          pant or beneficiary, including any fees or other  
11          compensation it will receive, will not constitute  
12          a violation of section 406,

13          “(iv) will, in providing investment advice  
14          to any participant or beneficiary, consider any  
15          employer securities or employer real property al-  
16          located to his or her account, and

17          “(v) has the necessary insurance coverage  
18          (as determined by the Secretary) for any claim  
19          by any plan participant or beneficiary,

20          “(B) the plan sponsor or other person who is a  
21          fiduciary in designating a qualified investment ad-  
22          viser reviews the documents described in paragraph  
23          (4) provided by such adviser and determines that  
24          there is no material reason not to enter into an ar-

1        *rangement for the provision of advice by such quali-*  
2        *fied investment adviser, and*

3                *“(C) the plan sponsor or other person who is a*  
4        *fiduciary in designating a qualified investment ad-*  
5        *viser determines whether or not to continue the des-*  
6        *ignation of the investment adviser as a qualified in-*  
7        *vestment adviser within 30 days of having informa-*  
8        *tion brought to its attention that the investment ad-*  
9        *viser is no longer qualified or that a substantial num-*  
10       *ber of plan participants or beneficiaries have raised*  
11       *concerns about the services being provided by the in-*  
12       *vestment adviser.*

13               *“(4) A qualified investment adviser shall provide the*  
14       *following documents to the plan sponsor or other person who*  
15       *is a fiduciary in designating the adviser:*

16               *“(A) The contract with the plan sponsor or other*  
17       *person who is a fiduciary for the services to be pro-*  
18       *vided by the investment adviser to the plan partici-*  
19       *pants and beneficiaries.*

20               *“(B) A disclosure as to any fees or other com-*  
21       *penetration that will be received by the investment ad-*  
22       *viser for the provision of such investment advice.*

23               *“(C) The Uniform Application for Investment*  
24       *Adviser Registration as filed with the Securities and*  
25       *Exchange Commission or a substantially similar dis-*

1       *closure application as determined by and filed with*  
 2       *the Secretary.*

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

8       (b) *FIDUCIARY LIABILITY.*—*Section 404(c)(1)(B) is*  
 9 *amended by inserting “(other than a qualified investment*  
 10 *adviser)” after “fiduciary”.*

11       (c) *EFFECTIVE DATE.*—*The amendment made by this*  
 12 *section shall apply with respect to advisers designated after*  
 13 *the date of the enactment of this Act.*

14       ***TITLE II—IMPROVEMENTS IN***  
 15       ***DISCLOSURE***

16       ***SEC. 201. PENSION BENEFIT INFORMATION.***

17       (a) *PENSION BENEFIT STATEMENTS REQUIRED ON*  
 18 *PERIODIC BASIS.*—

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

22       “(a)(1)(A) *The administrator of an individual account*  
 23 *plan shall furnish a pension benefit statement—*

24               *“(i) at least once each calendar quarter to a plan*  
 25 *participant of an individual account plan which per-*

1       mits a participant or beneficiary to exercise control  
2       over the assets in his or her account, and

3               “(i) to a plan participant or beneficiary upon  
4       written request.

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

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

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

11      Information furnished under subparagraph (B) to a partici-  
12      pant (other than at the request of the participant) may  
13      be based on reasonable estimates determined under regula-  
14      tions prescribed by the Secretary.

15      “(2)(A) A pension benefit statement under paragraph  
16      (1)—

17               “(i) shall indicate, on the basis of the latest rea-  
18      sonably available information—

19                       “(I) the total benefits accrued, and

20                       “(II) the nonforfeitable pension benefits, if  
21      any, which have accrued, or the earliest date on  
22      which benefits will become nonforfeitable,

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

1           “(iii) may be provided in written, electronic, or  
2           other appropriate form to the extent that such form  
3           is reasonably accessible to the participant or bene-  
4           ficiary.

5           “(B) In the case of an individual account plan, the  
6           pension benefit statement under paragraph (1) shall include  
7           (together with the information required in subparagraph  
8           (A))—

9           “(i) the value of any assets held in the form of  
10           employer securities, without regard to whether such  
11           securities were contributed by the plan sponsor or ac-  
12           quired at the direction of the plan or of the partici-  
13           pant or beneficiary, and an explanation of any limi-  
14           tations or restrictions on the right of the participant  
15           or beneficiary to direct an investment,

16           “(ii) an explanation, written in a manner cal-  
17           culated to be understood by the average plan partici-  
18           pant, of the importance, for the long-term retirement  
19           security of participants and beneficiaries, of a diver-  
20           sified investment portfolio, including a statement of  
21           the risk of holding substantial portions of a portfolio  
22           in the securities of any 1 entity, such as employer se-  
23           curities, and

24           “(iii) in the case of an individual account plan,  
25           if the percentage of assets in the individual account



1        *that consists of employer securities and employer real*  
 2        *property (as defined in paragraphs (1) and (2), re-*  
 3        *spectively, of section 407(d)), as determined as of the*  
 4        *most recent valuation date of the plan, exceeds 20 per-*  
 5        *cent of the total account, a warning that the account*  
 6        *may be overinvested in employer securities and em-*  
 7        *ployer real property.*

8        *Employer securities and employer real property held by a*  
 9        *plan by reason of a pooled investment vehicle described in*  
 10       *section 404(e)(2)(B)(ii) shall be excluded for purposes of*  
 11       *clause (iii) from the calculation of the assets in an account*  
 12       *that consist of employer securities and employer real prop-*  
 13       *erty.”.*

14                    (2) *CIVIL PENALTIES FOR FAILURE TO PROVIDE*  
 15        *QUARTERLY BENEFIT STATEMENTS.—Section 502 of*  
 16        *such Act (29 U.S.C. 1132) is amended—*

17                    (A) *in subsection (a)(6), by striking “(5), or*  
 18                    *(6)” and inserting “(5), (6), or (7)”;*

19                    (B) *by redesignating paragraph (7) of sub-*  
 20                    *section (c) as paragraph (8); and*

21                    (C) *by inserting after paragraph (6) of sub-*  
 22                    *section (c) the following new paragraph:*

23                    *“(7) The Secretary may assess a civil penalty against*  
 24        *any plan administrator of an individual account plan of*  
 25        *up to \$1,000 a day from the date of such plan administra-*

1 *tor's failure or refusal to provide participants or bene-*  
 2 *ficiaries with a benefit statement on at least a quarterly*  
 3 *basis in accordance with section 105(a)(1)(A)(i).”.*

4           (3) *MODEL LANGUAGE.—Section 105 of such Act*  
 5 *(29 U.S.C. 1025), is amended by adding at the end*  
 6 *the following new subsection:*

7           “(e) *The Secretary of Labor shall develop model lan-*  
 8 *guage which may be used by plan administrators in com-*  
 9 *plying with the requirements of subsection (a). Such lan-*  
 10 *guage shall be in a form calculated to be understood by the*  
 11 *average plan participant.”.*

12           (4) *CONFORMING AMENDMENT.—Section 105(b)*  
 13 *of such Act (29 U.S.C. 1025(b)) is amended to read*  
 14 *as follows:*

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

19           (b) *DISCLOSURE OF BENEFIT CALCULATIONS.—*

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

22                   (A) *by redesignating subsections (b), (c),*  
 23                   *(d), and (e) as subsections (c), (d), (e), and (f),*  
 24                   *respectively; and*

1                   (B) by inserting after subsection (a) the fol-  
2                   lowing new subsection:

3           “(b)(1) In the case of a participant or beneficiary who  
4 is entitled to a distribution of a benefit under a defined  
5 benefit plan, the administrator of such plan shall—

6                   “(A) notify each participant or beneficiary of the  
7 availability of, and the right to request, the informa-  
8 tion described in paragraph (2), and

9                   “(B) provide to the participant or beneficiary  
10 the information described in paragraph (2) upon the  
11 request of the participant or beneficiary.

12           “(2) The information described in this paragraph  
13 includes—

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

17                   “(B) upon request of the participant or bene-  
18 ficiary, any plan documents relating to the calcula-  
19 tion (if available), and

20                   “(C) such other information as the Secretary  
21 may prescribe.”.

22           (2) CONFORMING AMENDMENTS.—

23                   (A) Section 101(a)(2) of such Act (29  
24 U.S.C. 1021(a)(2)) is amended by striking

1           “105(a) and (c)” and inserting “105(a), (b), and  
2           (d)”.

3           (B) Section 105(c) of such Act (as redesign-  
4           ated by paragraph (1)(A) of this subsection) is  
5           amended by inserting “or subsection (b)” after  
6           “(B)(ii)”.

7           (C) Section 106(b) of such Act (29 U.S.C.  
8           1026(b)) is amended by striking “sections 105(a)  
9           and 105(c)” and inserting “subsections (a), (b),  
10          and (d) of section 105”.

11 **SEC. 202. PROVISION TO PARTICIPANTS AND BENE-**  
12 **FICIARIES OF MATERIAL INVESTMENT INFOR-**  
13 **MATION IN ACCURATE FORM.**

14          (a) *IN GENERAL.*—Section 404(c) of the Employee Re-  
15 *tirement Income Security Act of 1974 (29 U.S.C. 1104(c))*  
16 *is amended by adding at the end the following new para-*  
17 *graph:*

18          “(4) *The plan sponsor and plan administrator of a*  
19 *pension plan described in paragraph (1) shall, in addition*  
20 *to any other fiduciary duty or responsibility under this*  
21 *part, have a fiduciary duty to ensure that each participant*  
22 *and beneficiary under the plan, in connection with the in-*  
23 *vestment of assets in his or her account in employer securi-*  
24 *ties, is provided with all material investment information*  
25 *regarding investment of such assets in employer securities*

1 *to the extent that such information is generally required*  
2 *to be provided by the plan sponsor to investors in connec-*  
3 *tion with such an investment under applicable securities*  
4 *laws. The provision by the plan sponsor or plan adminis-*  
5 *trator of any materially misleading investment information*  
6 *shall be treated as a violation of this paragraph.”.*

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

9 (1) *in subsection (a)(6), by striking “(6), or (7)”*  
10 *and inserting “(6), (7), or (8)”;*

11 (2) *by redesignating paragraph (8) of subsection*  
12 *(c) as paragraph (9); and*

13 (3) *by inserting after paragraph (7) of sub-*  
14 *section (c) the following new paragraph:*

15 “(8) *The Secretary may assess a civil penalty against*  
16 *any person of up to \$1,000 a day from the date of the per-*  
17 *son’s failure or refusal to comply with the requirements of*  
18 *section 404(c)(4) until such failure or refusal is corrected.”.*

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

20 *Section 101 of the Employee Retirement Income Secu-*  
21 *rity Act of 1974 (29 U.S.C. 1021) is amended by redesign-*  
22 *ating the second subsection (h) as subsection (j) and by*  
23 *inserting after the first subsection (h) the following new sub-*  
24 *section:*

1       “(i)(1) *Except as specifically provided in this Act, and*  
2 *notwithstanding any other provision of law, if the Commis-*  
3 *sion requires any disclosure of the sale or purchase of any*  
4 *securities by an officer or director or other affiliated person*  
5 *of any issuer of the securities that—*

6               “(A) *sponsors an individual account plan, and*

7               “(B) *permits elective deferrals (as defined in sec-*  
8 *tion 402(g)(3) of the Internal Revenue Code of 1986)*  
9 *to be invested in employer securities and employer*  
10 *real property,*

11 *the issuer shall, within 2 business days after disclosure to*  
12 *the Commission, make such disclosure available on any in-*  
13 *dividual account plan website the issuer maintains which*  
14 *is accessible only by plan participants and beneficiaries.*  
15 *If there are participants or beneficiaries of an individual*  
16 *account plan sponsored by an issuer who do not have access*  
17 *to such a website, the information required to be provided*  
18 *under this paragraph shall be provided to the participants*  
19 *and beneficiaries in written, electronic, or other appro-*  
20 *priate form to the extent that such form is reasonably acces-*  
21 *sible to them.*

22       “(2) *The Commission may provide that the require-*  
23 *ment under this subsection of disclosure in electronic form*  
24 *will be in lieu of any other form of such disclosure that*

1 *may be required by the Commission or under any other*  
 2 *Federal law.*

3 “(3) *In this subsection—*

4 “(A) *the terms ‘affiliated person’, ‘Commission’,*  
 5 *‘issuer’, and ‘securities’ have the same meanings as in*  
 6 *section 3 of the Securities Exchange Act of 1934, and*

7 “(B) *the terms ‘employer securities’ and ‘em-*  
 8 *ployer real property’ have the meanings given such*  
 9 *terms by section 407(d).”.*

10 ***TITLE III—IMPROVEMENTS IN***  
 11 ***ACCESS AND ACCOUNTABILITY***

12 ***SEC. 301. ADDITIONAL FIDUCIARY PROTECTIONS RELATING***  
 13 ***TO LOCKDOWNS.***

14 *Section 404 of the Employee Retirement Income Secu-*  
 15 *rity Act of 1974 (as amended by this Act) is amended by*  
 16 *adding at the end the following new subsection:*

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

19 “(A) *no lockdown may take effect until at least*  
 20 *30 days after notice of such lockdown is provided by*  
 21 *the plan administrator to such participant or bene-*  
 22 *ficiary, and*

23 “(B) *any lockdown may not continue for an un-*  
 24 *reasonable period.*

1           “(2) *The notice required by this subsection may be pro-*  
2 *vided in written, electronic, or other appropriate form to*  
3 *the extent that such form is reasonably accessible to the par-*  
4 *ticipant or beneficiary.*

5           “(3) *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 terms*  
10 *of the plan (as determined under regulations of the Sec-*  
11 *retary). Any limitation or restriction that may govern the*  
12 *frequency of transfers between investment vehicles shall not*  
13 *be treated as a suspension referred to in the preceding sen-*  
14 *tence to the extent such limitation or restriction is disclosed*  
15 *to participants or beneficiaries through the summary plan*  
16 *description or materials describing specific investment al-*  
17 *ternatives under the plan.”.*

18 **SEC. 302. LIMITATION ON FIDUCIARY EXCEPTION DURING**  
19 **LOCKDOWN PERIOD.**

20           (a) *IN GENERAL.*—Section 404(c)(1) of the *Employee*  
21 *Retirement Income Security Act of 1974* (29 U.S.C.  
22 *1104(c)(1)) is amended—*

23                   (1) *in subparagraph (B), by inserting before the*  
24 *period the following: “, except that this subparagraph*  
25 *shall not apply with respect to any participant or*



1        *beneficiary for any period during which the ability of*  
2        *the participant or beneficiary to direct the investment*  
3        *of assets in his or her individual account is suspended*  
4        *by a plan sponsor or fiduciary”;* and

5                *(2) by adding at the end the following:*

6        *“Any limitation or restriction that may govern the fre-*  
7        *quency of transfers between investment vehicles shall not be*  
8        *treated as a suspension referred to in subparagraph (B) to*  
9        *the extent such limitation or restriction is disclosed to par-*  
10       *ticipants or beneficiaries through the summary plan de-*  
11       *scription or materials describing specific investment alter-*  
12       *natives under the plan.”.*

13        *(b) GUIDANCE.—The Secretary of Labor shall, not*  
14        *later than the 180th day after the date of the enactment*  
15        *of this Act, issue guidance as to what actions a fiduciary*  
16        *may take to meet his or her fiduciary duties during a pe-*  
17        *riod during which section 404(c)(1)(B) of the Employee Re-*  
18        *tirement Income Security Act of 1974 does not apply by*  
19        *reason of the amendments made by subsection (a). In*  
20        *issuing such guidance, the Secretary shall establish safe*  
21        *harbors which a fiduciary may rely on in determining*  
22        *whether such duties are being met.*

1 **SEC. 303. INSURANCE ADEQUATE TO PROTECT INTEREST**  
2 **OF PARTICIPANTS AND BENEFICIARIES.**

3 (a) *IN GENERAL.*—Section 412 of the *Employee Re-*  
4 *tirement Income Security Act of 1974 (29 U.S.C. 1112)* is  
5 *amended by adding at the end the following new subsection:*

6 “(f) *Notwithstanding the preceding provisions of this*  
7 *section, each fiduciary of an individual account plan which*  
8 *covers more than 100 participants shall be insured, in ac-*  
9 *cordance with regulations prescribed by the Secretary, to*  
10 *provide reasonable coverage for failures to meet the require-*  
11 *ments of this part.*”.

12 (b) *EFFECTIVE DATES.*—

13 (1) *IN GENERAL.*—*The amendment made by this*  
14 *section shall take effect on the date on which the regu-*  
15 *lations required to be promulgated under section*  
16 *412(f) of the Employee Retirement Income Security*  
17 *Act of 1974 become final.*

18 (2) *REGULATIONS.*—*The Secretary of Labor shall*  
19 *prescribe the regulations necessary to carry out sec-*  
20 *tion 412(f) of the Employee Retirement Income Secu-*  
21 *rity Act of 1974, as added by this section, not later*  
22 *than one year after the date of the enactment of this*  
23 *Act.*

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

25 (a) *LIABILITY FOR PARTICIPATING IN OR CONCEALING*  
26 *FIDUCIARY BREACH.*—

1           (1) *APPLICATION TO PARTICIPANTS AND BENE-*  
2           *FICIARIES OF 401(k) PLANS.—*

3                   (A) *IN GENERAL.—Part 4 of subtitle B of*  
4                   *title I of the Employee Retirement Income Secu-*  
5                   *rity Act of 1974 (29 U.S.C. 1101 et seq.) is*  
6                   *amended by adding after section 409 the fol-*  
7                   *lowing new section:*

8           **“SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN**  
9                   **401(k) PLANS.**

10           “(a) *Any person who is a fiduciary with respect to*  
11           *an individual account plan that includes a qualified cash*  
12           *or deferred arrangement under section 401(k) of the Inter-*  
13           *nal Revenue Code of 1986 who breaches any of the respon-*  
14           *sibilities, obligations, or duties imposed upon fiduciaries by*  
15           *this title shall be personally liable to make good to each*  
16           *participant and beneficiary of the plan any losses to such*  
17           *participant or beneficiary resulting from each such breach,*  
18           *and to restore to such participant or beneficiary any profits*  
19           *of such fiduciary which have been made through use of as-*  
20           *sets of the plan by the fiduciary, and shall be subject to*  
21           *such other equitable or remedial relief as the court may*  
22           *deem appropriate, including removal of such fiduciary. A*  
23           *fiduciary may also be removed for a violation of section*  
24           *411 of this Act.*

1           “(b) *The right of participants and beneficiaries under*  
 2 *subsection (a) to sue for breach of fiduciary duty with re-*  
 3 *spect to an individual account plan that includes a quali-*  
 4 *fied cash or deferred arrangement under section 401(k) of*  
 5 *such Code shall be in addition to all existing rights that*  
 6 *participants and beneficiaries have under section 409, sec-*  
 7 *tion 502, and any other provision of this title, and shall*  
 8 *not be construed to give rise to any inference that such*  
 9 *rights do not already exist under section 409, section 502,*  
 10 *or any other provision of this title.*

11           “(c) *No fiduciary shall be liable with respect to a*  
 12 *breach of fiduciary duty under this title if such breach was*  
 13 *committed before he or she became a fiduciary or after he*  
 14 *or she ceased to be a fiduciary.”.*

15                         (B) *CONFORMING AMENDMENT.—The table*  
 16 *of contents for part 4 of subtitle B of title I of*  
 17 *such Act is amended by inserting the following*  
 18 *new item after the item relating to section 409:*

*“Sec. 409A. Liability for breach of fiduciary duty in 401(k)*  
*plans.”.*

19                         (2) *INSIDER LIABILITY.—*

20                                 (A) *IN GENERAL.—Section 409 of the Em-*  
 21 *ployee Retirement Income Security Act of 1974*  
 22 *(29 U.S.C. 1109) is amended by redesignating*  
 23 *subsection (b) as subsection (c) and by inserting*  
 24 *after subsection (a) the following new subsection:*

1       “(b)(1)(A) *If an insider with respect to the plan spon-*  
2 *sor of an employer individual account plan that holds em-*  
3 *ployer securities that are readily tradable on an established*  
4 *securities market—*

5               “(i) *knowingly participates in a breach of fidu-*  
6 *ciary responsibility to which subsection (a) applies,*  
7 *or*

8               “(ii) *knowingly undertakes to conceal such a*  
9 *breach,*  
10 *such insider shall be personally liable under this subsection*  
11 *for such breach in the same manner as the fiduciary who*  
12 *commits such breach.*

13       “(B) *For purposes of subparagraph (A), the term ‘in-*  
14 *sider’ means, with respect to any plan sponsor of a plan*  
15 *to which subparagraph (A) applies—*

16               “(i) *any officer or director with respect to the*  
17 *plan sponsor, or*

18               “(ii) *any independent qualified public account-*  
19 *ant of the plan or of the plan sponsor.*

20       “(3) *Any relief provided under this subsection or sec-*  
21 *tion 409A—*

22               “(A) *to an individual account plan shall inure*  
23 *to the individual accounts of the affected participants*  
24 *or beneficiaries, and*

1           “(B) to a participant or beneficiary shall be  
2           payable to the individual account plan on behalf of  
3           such participant or beneficiary unless such plan has  
4           been terminated.”.

5           (B) *CONFORMING AMENDMENT.*—Section  
6           409(c) of such Act (29 U.S.C. 1109(c)), as reded-  
7           ignated by subparagraph (A), is amended by in-  
8           serting before the period the following: “, unless  
9           such liability arises under subsection (b)”.

10          (b) *MAINTENANCE OF FIDUCIARY LIABILITY.*—Section  
11         404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)), as  
12         amended by section 302(a), is amended by inserting before  
13         the period the following: “and shall not be construed to ex-  
14         empt any fiduciary from liability for any violation of sub-  
15         section (e) or (f)”.

16         **SEC. 305. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**  
17                         **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

18          (a) *IN GENERAL.*—Section 403(a) of the Employee Re-  
19         irement Income Security Act of 1974 (29 U.S.C. 1103(a))  
20         is amended—

- 21                 (1) by redesignating paragraphs (1) and (2) as  
22                 subparagraphs (A) and (B), respectively;  
23                 (2) by inserting “(1)” after “(a)”;  
24                 (3) by adding at the end the following new para-  
25                 graph:

1       “(2)(A) *The assets of a single-employer plan which is*  
2 *an individual account plan which covers more than 100*  
3 *participants shall be held in trust by a joint board of trust-*  
4 *ees, which shall consist of two or more trustees representing*  
5 *on an equal basis the interests of the employer or employers*  
6 *maintaining the plan and the interests of the participants*  
7 *and their beneficiaries.*

8       “(B)(i) *Except as provided in clause (ii), in any case*  
9 *in which the plan is maintained pursuant to one or more*  
10 *collective bargaining agreements between one or more em-*  
11 *ployee organizations and one or more employers, the trust-*  
12 *ees representing the interests of the participants and their*  
13 *beneficiaries shall be designated by such employee organiza-*  
14 *tions.*

15       “(ii) *Clause (i) shall not apply with respect to a plan*  
16 *described in such clause if the employee organization (or*  
17 *all employee organizations, if more than one) referred to*  
18 *in such clause file with the Secretary, in such form and*  
19 *manner as shall be prescribed in regulations of the Sec-*  
20 *retary, a written waiver of their rights under clause (i).*

21       “(iii) *In any case in which clause (i) does not apply*  
22 *with respect to a single-employer plan because the plan is*  
23 *not described in clause (i) or because of a waiver filed pur-*  
24 *suant to clause (ii), the trustee or trustees representing the*  
25 *interests of the participants and their beneficiaries shall be*

1 *elected by the participants in accordance with regulations*  
2 *of the Secretary. An individual shall not be treated as ineli-*  
3 *gible for selection as trustee solely because such individual*  
4 *is an employee of the plan sponsor, except that the employee*  
5 *so selected may not be a highly compensated employee (as*  
6 *defined in section 414(q) of the Internal Revenue Code of*  
7 *1986).*

8       “(iv) *The Secretary shall provide by regulation for the*  
9 *appointment of a neutral, in accordance with the proce-*  
10 *dures under section 203(f) of the Labor Management Rela-*  
11 *tions Act, 1947 (29 U.S.C. 173(f)), to cast votes as necessary*  
12 *to resolve tie votes by the trustees.”.*

13       (b) *REGULATIONS.—The Secretary of Labor shall pre-*  
14 *scribe the initial regulations necessary to carry out the pro-*  
15 *visions of the amendments made by this section not later*  
16 *than 90 days after the date of the enactment of this Act.*

17 **SEC. 306. PRESERVATION OF PENSION RIGHTS OR CLAIMS.**

18       *Section 502 of the Employee Retirement Income Secu-*  
19 *rity Act of 1974 (29 U.S.C. 1132) is amended by adding*  
20 *at the end the following new subsection:*

21       “(n)(1) *The pension rights under this title (including*  
22 *the right to maintain a civil action) may not be waived,*  
23 *deferred, or lost pursuant to any agreement not authorized*  
24 *under this title with specific reference to this subsection.*



1       “(2) Paragraph (1) shall not apply to an agreement  
 2 providing for arbitration or participation in any other  
 3 nonjudicial procedure to resolve a dispute relating to a pen-  
 4 sion plan under this title if the agreement is entered into  
 5 knowingly and voluntarily by the parties involved after the  
 6 dispute has arisen or is pursuant to the terms of a collective  
 7 bargaining agreement.”.

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

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

12       **“Subtitle D—Office of Pension**  
 13       **Participant Advocacy**

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

15       “(a) *ESTABLISHMENT.*—

16               “(1) *IN GENERAL.*—There is established in the  
 17 Department of Labor an office to be known as the ‘Of-  
 18 fice of Pension Participant Advocacy’.

19               “(2) *PENSION PARTICIPANT ADVOCATE.*—The Of-  
 20 fice of Pension Participant Advocacy shall be under  
 21 the supervision and direction of an official to be  
 22 known as the ‘Pension Participant Advocate’ who  
 23 shall—

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

1           “(B) be selected by the Secretary after con-  
2           sultation with pension participant advocacy or-  
3           ganizations.

4           *The Pension Participant Advocate shall report di-*  
5           *rectly to the Secretary and shall be entitled to com-*  
6           *pen- sation at the same rate as the highest rate of basic*  
7           *pay established for the Senior Executive Service*  
8           *under section 5382 of title 5, United States Code.*

9           “(b) *FUNCTIONS OF OFFICE.—It shall be the function*  
10          *of the Office of Pension Participant Advocacy to—*

11           “(1) *evaluate the efforts of the Federal Govern-*  
12           *ment, business, and financial, professional, retiree,*  
13           *labor, women’s, and other appropriate organizations*  
14           *in assisting and protecting pension plan partici-*  
15           *pants, including—*

16           “(A) *serving as a focal point for, and ac-*  
17           *tively seeking out, the receipt of information*  
18           *with respect to the policies and activities of the*  
19           *Federal Government, business, and such organi-*  
20           *zations which affect such participants,*

21           “(B) *identifying significant problems for*  
22           *pension plan participants and the capabilities of*  
23           *the Federal Government, business, and such or-*  
24           *ganizations to address such problems, and*

1           “(C) developing proposals for changes in  
2           such policies and activities to correct such prob-  
3           lems, and communicating such changes to the  
4           appropriate officials,

5           “(2) promote the expansion of pension plan cov-  
6           erage and the receipt of promised benefits by increas-  
7           ing the awareness of the general public of the value  
8           of pension plans and by protecting the rights of pen-  
9           sion plan participants, including—

10           “(A) enlisting the cooperation of the public  
11           and private sectors in disseminating informa-  
12           tion, and

13           “(B) forming private-public partnerships  
14           and other efforts to assist pension plan partici-  
15           pants in receiving their benefits,

16           “(3) advocate for the full attainment of the rights  
17           of pension plan participants, including by making  
18           pension plan sponsors and fiduciaries aware of their  
19           responsibilities,

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

22           “(5) develop needed information with respect to  
23           pension plans, including information on the types of  
24           existing pension plans, levels of employer and em-

1     *ployee contributions, vesting status, accumulated ben-*  
 2     *efits, benefits received, and forms of benefits, and*

3             *“(6) if the Advocate determines appropriate,*  
 4     *pursue claims on behalf of participants and bene-*  
 5     *ficiaries (including, upon request of any participant*  
 6     *or beneficiary, bringing any civil action on behalf of*  
 7     *the participant or beneficiary which the participant*  
 8     *or beneficiary is entitled to bring under section*  
 9     *502(a)(1)(B)) and provide appropriate assistance in*  
 10    *the resolution of disputes between participants and*  
 11    *beneficiaries and pension plans, including assistance*  
 12    *in obtaining settlement agreements.*

13    *“(c) REPORTS.—*

14             *“(1) ANNUAL REPORT.—Not later than December*  
 15    *31 of each calendar year, the Pension Participant Ad-*  
 16    *vocate shall report to the Committee on Education*  
 17    *and the Workforce of the House of Representatives*  
 18    *and the Committee on Health, Education, Labor, and*  
 19    *Pensions of the Senate on its activities during the fis-*  
 20    *cal year ending in the calendar year. Such report*  
 21    *shall—*

22                     *“(A) identify significant problems the Advo-*  
 23                     *cate has identified,*

24                     *“(B) include specific legislative and regu-*  
 25                     *latory changes to address the problems, and*

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

3           *The Advocate shall submit a copy of such report to*  
4           *the Secretary and any other appropriate official at*  
5           *the same time it is submitted to the committees of*  
6           *Congress.*

7           “(2) *SPECIFIC REPORTS.*—*The Pension Partici-*  
8           *part Advocate shall report to the Secretary or any*  
9           *other appropriate official any time the Advocate iden-*  
10          *tifies a problem which may be corrected by the Sec-*  
11          *retary or such official.*

12          “(3) *REPORTS TO BE SUBMITTED DIRECTLY.*—  
13          *The report required under paragraph (1) shall be pro-*  
14          *vided directly to the committees of Congress without*  
15          *any prior review or comment by the Secretary or any*  
16          *other Federal officer or employee.*

17          “(d) *SPECIFIC POWERS.*—

18          “(1) *RECEIPT OF INFORMATION.*—*Subject to such*  
19          *confidentiality requirements as may be appropriate,*  
20          *the Secretary and other Federal officials shall, upon*  
21          *request, provide such information (including plan*  
22          *documents) as may be necessary to enable the Pension*  
23          *Participant Advocate to carry out the Advocate’s re-*  
24          *sponsibilities under this section.*

1           “(2) *APPEARANCES.—The Pension Participant*  
2 *Advocate may—*

3                   “(A) *represent the views and interests of*  
4 *pension plan participants before any Federal*  
5 *agency, including, upon request of a participant,*  
6 *in any proceeding involving the participant, and*

7                   “(B) *upon request of a participant or bene-*  
8 *ficiary, represent the participant or beneficiary*  
9 *in any civil action which the participant or ben-*  
10 *eficiary is entitled to bring under section*  
11 *502(a)(1)(B).*

12           “(3) *CONTRACTING AUTHORITY.—In carrying*  
13 *out responsibilities under subsection (b)(5), the Pen-*  
14 *sion Participant Advocate may, in addition to any*  
15 *other authority provided by law—*

16                   “(A) *contract with any person to acquire*  
17 *statistical information with respect to pension*  
18 *plan participants, and*

19                   “(B) *conduct direct surveys of pension plan*  
20 *participants.”.*

21           “(b) *CONFORMING AMENDMENT.—The table of contents*  
22 *for title III of such Act is amended by adding at the end*  
23 *the following:*

                  “*Subtitle D—Office of Pension Participant Advocacy*

                  “*3051. Office of Pension Participant Advocacy.*”.

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

3 **SEC. 308. STUDY REGARDING INSURANCE SYSTEM FOR IN-**  
 4 **DIVIDUAL ACCOUNT PLANS.**

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

11               (1) *the feasibility of such a system,*

12               (2) *the problem with insuring investments in*  
 13 *employer securities, and*

14               (3) *options for developing such a system.*

15       (b) *REPORT.*—*Not later than 2 years after the date*  
 16 *of the enactment of this Act, the Corporation shall report*  
 17 *the results of its study, together with any recommendations*  
 18 *for legislative changes, to the Committee on Education and*  
 19 *the Workforce of the House of Representatives and the Com-*  
 20 *mittee on Health, Education, Labor, and Pensions of the*  
 21 *Senate.*

22 **SEC. 309. STUDY REGARDING FEES CHARGED BY INDI-**  
 23 **VIDUAL ACCOUNT PLANS.**

24       (a) *STUDY.*—*As soon as practicable after the date of*  
 25 *the enactment of this Act, the Secretary of Labor shall un-*

1 *undertake a study of the administrative and transaction fees*  
2 *incurred by participants and beneficiaries in connection*  
3 *with the investment of assets in their accounts under indi-*  
4 *vidual account plans. In conducting such study, the Sec-*  
5 *retary shall consider—*

6           (1) *how the fees compare to fees charged for simi-*  
7 *lar services provided to investors not in individual*  
8 *account plans, and*

9           (2) *whether participants or beneficiaries are ade-*  
10 *quately notified of the fees.*

11       (b) *REPORT.—Not later than 1 year after the date of*  
12 *the enactment of this Act, the Secretary shall report the re-*  
13 *sults of its study, together with any recommendations for*  
14 *legislative changes to the Committee on Education and the*  
15 *Workforce of the House of Representatives and the Com-*  
16 *mittee on Health, Education, Labor, and Pensions of the*  
17 *Senate.*

18 **SEC. 310. PROVISIONS RELATING TO WHISTLEBLOWER AC-**  
19 **TIONS INVOLVING PENSION PLANS.**

20       (a) *AUTHORITY TO BRING ACTIONS.—Section 502(a)*  
21 *of the Employee Retirement Income Security Act of 1974*  
22 *(29 U.S.C. 1132(a)) is amended by striking “or” at the end*  
23 *of paragraph (8), by striking the period at the end of para-*  
24 *graph (9) and inserting “; and”, and by adding at the end*  
25 *the following new paragraph:*



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

3                   “(A) to enjoin any act or practice which  
4                   violates section 510 in connection with a pension  
5                   plan, or

6                   “(B) to obtain appropriate equitable or  
7                   legal relief to redress such violation or to enforce  
8                   section 510 in connection with a pension plan.”.

9           (b) *ADDITIONAL ACTIONS WHICH MAY BE*  
10 *BROUGHT.*—The second sentence of section 510 of the Em-  
11 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*  
12 *1140) is amended by striking “person because he” and in-*  
13 *serting “other person because such other person has opposed*  
14 *any practice in connection with a pension plan that is*  
15 *made unlawful by this title or”.*

16 **SEC. 311. PLANS REQUIRED TO PROVIDE ADEQUATE INFOR-**  
17 **MATION TO INDIVIDUALS OFFERED CHOICE**  
18 **OF LUMP SUM DISTRIBUTION.**

19           Section 205 of the *Employee Retirement Income Secu-*  
20 *rity Act of 1974 (29 U.S.C. 1055) is amended by redesign-*  
21 *ating subsection (l) as subsection (m) and by inserting*  
22 *after subsection (k) the following new subsection:*

23                   “(l)(1) *If a pension plan with more than 100 partici-*  
24 *pants provides a participant, spouse, or surviving spouse*  
25 *with the option to elect to have any nonforfeitable benefit*

1 *paid in the form of a lump sum distribution, or provides*  
2 *for other optional forms of benefits, the plan administrator*  
3 *shall provide, within a reasonable period of time before the*  
4 *individual is required to make the election, a statement*  
5 *comparing the relative values of each form of benefit pay-*  
6 *ment.*

7       “(2) *The statement under paragraph (1) shall include*  
8 *such information as the Secretary of the Treasury deter-*  
9 *mines appropriate to enable a participant, spouse, or sur-*  
10 *living spouse to make an informed decision as to what form*  
11 *of benefit to elect. Such information shall be provided in*  
12 *a form calculated to be understood by the average plan par-*  
13 *ticipant and shall include—*

14               “(A) *the interest rate and mortality assumptions*  
15 *used in determining the relative values, an expla-*  
16 *nation of how such assumptions compare to the as-*  
17 *sumptions used under subsection (g) or to any other*  
18 *assumptions specified by the Secretary, and one or*  
19 *more illustrations using dollar amounts to show the*  
20 *relative values of the benefits on a comparable basis,*  
21 *and*

22               “(B) *any factors (including early retirement sub-*  
23 *sidies) which are taken into account in determining*  
24 *the value of one form of payment but not taken into*  
25 *account in determining the other form of payment.”.*

1 **TITLE IV—GENERAL PROVISIONS**

2 **SEC. 401. GENERAL EFFECTIVE DATE.**

3       (a) *IN GENERAL.*—*Except as otherwise provided in*  
 4 *this Act, the amendments made by this Act shall apply with*  
 5 *respect to plan years beginning on or after January 1,*  
 6 *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 employee*  
 10 *representatives and 1 or more employers ratified on or be-*  
 11 *fore the date of the enactment of this Act, subsection (a)*  
 12 *shall be applied to benefits pursuant to, and individuals*  
 13 *covered by, any such agreement by substituting for “Janu-*  
 14 *ary 1, 2003” the date of the commencement of the first plan*  
 15 *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 collec-*  
 19 *tive bargaining agreements terminates (deter-*  
 20 *mined without regard to any extension thereof*  
 21 *after the date of the enactment of this Act), or*

22               (2) *January 1, 2005.*

23 **SEC. 402. PLAN AMENDMENTS.**

24       *If any amendment made by this Act requires an*  
 25 *amendment to any plan, such plan amendment shall not*

1 *be required to be made before the first plan year beginning*  
2 *on or after January 1, 2005, if—*

3           (1) *during the period after such amendment*  
4 *made by this Act takes effect and before such first*  
5 *plan year, the plan is operated in good faith compli-*  
6 *ance with the requirements of such amendment made*  
7 *by this Act, and*

8           (2) *such plan amendment applies retroactively to*  
9 *the period after such amendment made by this Act*  
10 *takes effect and before such first plan year.*



**Calendar No. 525**

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1992**

**[Report No. 107-226]**

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**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.

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JULY 26, 2002

Reported with an amendment