

107TH CONGRESS
2^D SESSION

H. R. 3677

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide new protections under applicable fiduciary rules for participants and beneficiaries under 401(k) plans and to provide for 3-year vesting of elective deferrals under such plans.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2002

Mr. ENGLISH introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide new protections under applicable fiduciary rules for participants and beneficiaries under 401(k) plans and to provide for 3-year vesting of elective deferrals under such plans.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Safeguarding Amer-
3 ica’s Retirement Act of 2002”.

4 **SEC. 2. NEW PROTECTIONS UNDER ERISA FIDUCIARY**
5 **RULES FOR PARTICIPANTS AND BENE-**
6 **FICIARIES UNDER 401(k) PLANS.**

7 Section 404(a)(2) of the Employee Retirement In-
8 come Security Act of 1974 (29 U.S.C. 1104(a)(2)) is
9 amended—

10 (1) by striking “In the case” and inserting “(A)
11 Subject to subparagraph (B), in the case”; and

12 (2) by adding at the end the following new sub-
13 paragraph:

14 “(B)(i) In the case of any individual account plan
15 which includes a qualified cash or deferred arrangement
16 (as defined in section 401(k) of the Internal Revenue Code
17 of 1986)—

18 “(I) the requirements of clauses (ii), (iii), (iv),
19 and (v) shall be met in connection with such plan,
20 and

21 “(II) subparagraph (A) shall apply in connec-
22 tion with the plan for any plan year only if the plan,
23 as in effect for such plan year, provides for compli-
24 ance with such requirements.

25 “(ii) The requirements of this clause are met in con-
26 nection with a plan described in clause (i) only if, under

1 the plan, assets attributable to employee contributions are
2 invested in employer securities only to the extent elected
3 by the employee.

4 “(iii) The requirements of this clause are met in con-
5 nection with a plan described in clause (i) only if, under
6 the plan—

7 “(I) in the case of a participant who has not
8 completed 3 years of participation (as defined in sec-
9 tion 204(b)(4)) under the plan, not more than 20
10 percent of the participant’s accrued benefit derived
11 from employee contributions may be invested in em-
12 ployer securities, and

13 “(II) in the case of a participant who has com-
14 pleted 3 years of participation (as so defined) under
15 the plan, not more than 20 percent of the partici-
16 pant’s entire nonforfeitable accrued benefit may be
17 invested in employer securities

18 “(iv) The requirements of this clause are met in con-
19 nection with a plan described in clause (i) only if, under
20 the plan, a participant or beneficiary whose nonforfeitable
21 accrued benefit attributable to employee contributions is
22 invested in whole or in part in employer securities is peri-
23 odically given a reasonable opportunity (on at least a quar-
24 terly basis) to invest such accrued benefit in investment
25 vehicles, other than employer securities, selected so as to

1 permit diversification as described in paragraph (1)(C)
2 with respect to such accrued benefit.

3 “(v)(I) The requirements of this clause are met in
4 connection with a plan described in clause (i) only if,
5 under the plan, no lockdown may be imposed by the plan
6 sponsor, administrator, or any other fiduciary in connec-
7 tion with the nonforfeitable accrued benefit of a partici-
8 pant or beneficiary.

9 “(II) For purposes of this clause, the term ‘lockdown’
10 means any temporary lockdown, blackout, or freeze with
11 respect to, suspension of, or similar limitation on any op-
12 portunity otherwise generally available to a participant or
13 beneficiary under the plan to transfer some or all of the
14 nonforfeitable accrued benefit of the participant or bene-
15 ficiary from investment in the form of employer securities
16 to another investment vehicle otherwise available under
17 the plan. Such term does not include any reasonable re-
18 striction on the frequency of transfers between investment
19 vehicles established in accordance with clause (iv).”.

20 **SEC. 3. ENFORCEMENT OF NEW FIDUCIARY RULES.**

21 (a) CRIMINAL PENALTIES.—Section 501 of the Em-
22 ployee Retirement Income Security Act of 1974 (29
23 U.S.C. 1131) is amended—

24 (1) by inserting “(a)” before “Any person”; and

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

3 “(b) Any person who, acting in the capacity of plan
4 sponsor, plan administrator, or other fiduciary of a pen-
5 sion plan, willfully causes, in connection with the plan, a
6 violation of the requirements of clause (ii), (iii), (iv), or
7 (v) of section 402(a)(2)(B), of any regulation or order
8 issued under such clause, or of terms of the plan required
9 under any such clause, regulation, or order shall upon con-
10 viction be fined not more than \$5,000 or imprisoned not
11 more than one year, or both; except that, in the case of
12 such violation caused by a person not an individual, the
13 fine imposed upon such person shall be a fine not exceed-
14 ing \$100,000.”.

15 (b) CIVIL PENALTIES.—

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

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

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

22 “(7) The Secretary may assess against any person
23 a civil penalty of not more than \$1,000 a day for each
24 instance of a violation of the requirements of clause (ii),
25 (iii), (iv), or (v) of section 402(a)(2)(B), of any regulation

1 or order issued under such clause, or of terms of the plan
2 required under any such clause, regulation, or order
3 caused by such person in connection with the plan acting
4 in the capacity of plan sponsor, plan administrator, or
5 other fiduciary of the plan until such violation is corrected.
6 For purposes of this paragraph, each instance of such vio-
7 lation in connection with any participant or beneficiary
8 shall be treated as a separate instance of such violation.”.

9 (2) CONFORMING AMENDMENT.—Section
10 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is
11 amended by striking “(5), or (6)” and inserting
12 “(5), (6), or (7)”.

13 **SEC. 4. NONFORFEITABILITY AFTER 3 YEARS OF PARTICI-**
14 **PATION.**

15 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
16 INCOME SECURITY ACT OF 1974.—Section 203(a) of the
17 Employee Retirement Income Security Act of 1974 (29
18 U.S.C. 1053(a)) is amended—

19 (1) in the matter preceding paragraph (1), by
20 inserting before the period the following: “, and, as
21 applicable, paragraph (5) of this subsection”; and

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

24 “(5) An individual account plan which includes
25 a cash or deferred arrangement (as defined in sec-

1 tion 401(k)(2) of the Internal Revenue Code of
2 1986) satisfies the requirements of this paragraph
3 if, under the plan, a participant who has completed
4 3 years of participation (as defined in section
5 204(b)(4)) has a nonforfeitable right to 100 percent
6 of the participant's accrued benefit to the extent it
7 consists of elective deferrals (as defined in section
8 402(g)(3)(A) of such Code) made pursuant to such
9 arrangement.”.

10 (b) AMENDMENTS TO THE INTERNAL REVENUE
11 CODE OF 1986.—Subsection (a) of section 411 of the In-
12 ternal Revenue Code of 1986 (relating to minimum vesting
13 standards) is amended—

14 (1) in the matter preceding paragraph (1), by
15 inserting “, the requirements of paragraph (12) of
16 this subsection (as applicable),” after “paragraphs
17 (1), (2), and (11) of this subsection”; and

18 (2) by adding at the end the following new
19 paragraph:

20 “(12) ELECTIVE DEFERRALS UNDER CASH OR
21 DEFERRED ARRANGEMENTS.—A defined contribu-
22 tion plan which includes a cash or deferred arrange-
23 ment (as defined in section 401(k)(2)) satisfies the
24 requirements of this paragraph if, under the plan, a
25 participant who has completed 3 years of participa-

1 tion (as defined in subsection (b)(4)) has a non-
2 forfeitable right to 100 percent of the participant’s
3 accrued benefit to the extent it consists of elective
4 deferrals (as defined in section 402(g)(3)(A)) made
5 pursuant to such arrangement.”.

6 **SEC. 5. EFFECTIVE DATE AND RELATED RULES.**

7 (a) IN GENERAL.—Subject to subsection (b), the
8 amendments made by this Act shall apply with respect to
9 plan years beginning on or after January 1, 2003.

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

19 (1) the later of—

20 (A) January 1, 2004, or

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

25 or

1 (2) January 1, 2005.

2 (c) PLAN AMENDMENTS.—If the amendments made
3 by this Act require an amendment to any plan, such plan
4 amendment shall not be required to be made before the
5 first plan year beginning on or after January 1, 2005, if—

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

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

○