

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

# S. 2032

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

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IN THE SENATE OF THE UNITED STATES

MARCH 19, 2002

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

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## A BILL

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

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Investor-Employees Need Financial Facts and Options  
6       for Responsible Retirement Plan Management Act of  
7       2002” or the “INFORM Act of 2002”.

1 (b) TABLE OF CONTENTS.—The table of contents is  
2 as follows:

Sec. 1. Short title and table of contents.

#### TITLE I—IMPROVEMENTS IN DISCLOSURE

Sec. 101. Pension benefit information.

Sec. 102. Provision to participants and beneficiaries of material investment information in accurate form.

#### TITLE II—DIVERSIFICATION

Sec. 201. Participant risk acknowledgement forms.

Sec. 202. Study relating to caps on investment of individual account plan assets in employer securities.

#### TITLE III—APPROPRIATE ACCESS TO INDIVIDUAL ACCOUNTS

Sec. 301. Additional fiduciary protections relating to lockdowns.

Sec. 302. Employers liable for any excessive losses on employer securities during lockdowns.

#### TITLE IV—INCREASED ACCOUNTABILITY

Sec. 401. Bonding or insurance adequate to protect interest of participants and beneficiaries.

Sec. 402. Participation of participants in trusteeship of individual account plans.

Sec. 403. Liability for breach of fiduciary duty.

Sec. 404. Preservation of rights or claims.

Sec. 405. Office of Pension Participant Advocacy.

Sec. 406. Study regarding insurance system for individual account plans.

#### TITLE V—GENERAL PROVISIONS

Sec. 501. General effective date.

Sec. 502. Plan amendments.

## 3 **TITLE I—IMPROVEMENTS IN** 4 **DISCLOSURE**

### 5 **SEC. 101. PENSION BENEFIT INFORMATION.**

6 (a) PENSION BENEFIT STATEMENTS REQUIRED ON  
7 PERIODIC BASIS.—

8 (1) IN GENERAL.—Subsection (a) of section  
9 105 of the Employee Retirement Income Security  
10 Act of 1974 (29 U.S.C. 1025) is amended—

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

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

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

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

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

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

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

7           “(3) the amount or percentage of any reduction  
8           due to integration of the benefit with the partici-  
9           pant’s Social Security benefits or similar govern-  
10          mental benefits,

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

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

1           “(6) information on how to contact the Social  
2           Security Administration to obtain a participant’s  
3           personal earnings and benefit estimate statement,

4           “(7) information on early retirement benefit  
5           and joint and survivor annuity reductions, and

6           “(8) a notice advising participants and bene-  
7           ficiaries of the importance of diversifying the invest-  
8           ment of the assets in their accounts.”.

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

12          “(d) Each administrator of a plan to which more than  
13          1 unaffiliated employer is required to contribute shall fur-  
14          nish a statement described in subsection (a) to any plan  
15          participant or beneficiary upon written request of the par-  
16          ticipant or beneficiary.”.

17          (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

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

20                          (A) by redesignating subsections (b), (c),  
21                          (d), and (e) as subsections (c), (d), (e), and (f),  
22                          respectively; and

23                          (B) by inserting after subsection (a) the  
24                          following new subsection:

1 “(b)(1) In the case of a participant or beneficiary who  
2 is entitled to a distribution of a benefit under an employee  
3 pension benefit plan, the administrator of such plan shall  
4 provide to the participant or beneficiary the information  
5 described in paragraph (2) upon written request of the  
6 participant or beneficiary.

7 “(2) The information described in this paragraph  
8 includes—

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

12 “(B) upon written request of the participant or  
13 beneficiary, any documents relating to the calcula-  
14 tion (if available), and

15 “(C) such other information as the Secretary  
16 may prescribe.

17 Any information provided under this paragraph shall be  
18 in a form calculated to be understood by the average plan  
19 participant.”.

20 (2) CONFORMING AMENDMENTS.—

21 (A) Section 101(a)(2) of such Act (29  
22 U.S.C. 1021(a)(2)) is amended by striking  
23 “105(a) and (c)” and inserting “105(a), (b),  
24 and (d)”.

1 (B) Section 105(c) of such Act (as redesignated by paragraph (1)(A) of this subsection) is  
2 amended by inserting “or (b)” after “subsection  
3 (a)”.

4 (C) Section 106(b) of such Act (29 U.S.C.  
5 1026(b)) is amended by striking “sections  
6 105(a) and 105(c)” and inserting “subsections  
7 (a), (b), and (d) of section 105”.

8  
9 **SEC. 102. PROVISION TO PARTICIPANTS AND BENEFICIARIES OF MATERIAL INVESTMENT INFORMATION IN ACCURATE FORM.**  
10  
11

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

16 “(4) The plan sponsor and plan administrator of a  
17 pension plan described in paragraph (1) shall have a fiduciary duty to ensure that each participant and beneficiary  
18 under the plan, in connection with the investment by the  
19 participant or beneficiary of plan assets in the exercise of  
20 his or her control over assets in his account, is provided  
21 with all material investment information regarding investment of such assets to the extent that the provision of  
22 such information is generally required to be disclosed by  
23 the plan sponsor to investors in connection with such an  
24  
25

1 investment under applicable securities laws. The provision  
 2 by the plan sponsor or plan administrator of any mis-  
 3 leading investment information shall be treated as a viola-  
 4 tion of this paragraph.”.

5 (b) ENFORCEMENT.—

6 (1) IN GENERAL.—Section 502(c) of such Act  
 7 (29 U.S.C. 1132(c)) is amended—

8 (A) by redesignating paragraph (7) as  
 9 paragraph (8); and

10 (B) by inserting after paragraph (6) the  
 11 following new paragraph:

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

17 (2) CONFORMING AMENDMENT.—Section  
 18 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is  
 19 amended by striking “(5), or (6)” and inserting  
 20 “(5), (6), or (7)”.

## 21 **TITLE II—DIVERSIFICATION**

### 22 **SEC. 201. PARTICIPANT RISK ACKNOWLEDGEMENT FORMS.**

23 Section 404(c) of the Employee Retirement Income  
 24 Security Act of 1974 (29 U.S.C. 1104(c)), as amended



1 by section 102, is amended by adding at the end the fol-  
2 lowing new paragraph:

3           “(5)(A) Paragraph (1) shall not apply to a pen-  
4 sion plan unless the plan provides that if the per-  
5 centage of assets in the individual account of a par-  
6 ticipant or beneficiary that consists of employer se-  
7 curities and employer real property exceeds 30 per-  
8 cent of the total assets in the account, then—

9                   “(i) the plan shall notify the participant or  
10 beneficiary of the percentage, and

11                   “(ii) the plan shall provide that no em-  
12 ployer contributions (or earnings thereon) may  
13 be invested in employer securities or employer  
14 real property after such notice unless the par-  
15 ticipant or beneficiary files with the plan a form  
16 provided by the plan which is signed by the par-  
17 ticipant or beneficiary and which acknowledges  
18 the potential risks of not diversifying the invest-  
19 ment of retirement assets.

20           “(B) The determination of any percentage  
21 under subparagraph (A) shall be made as of the  
22 most recent valuation date of the plan.

23           “(C) In this paragraph:

24                   “(i) An employer contribution shall not in-  
25 clude any elective deferral (within the meaning

1 of section 402(g)(3) of the Internal Revenue  
2 Code of 1986).

3 “(ii) The terms ‘employer securities’ and  
4 ‘employer real property’ have the meanings  
5 given such terms by sections 407(d) (1) and  
6 (2), respectively.”

7 **SEC. 202. STUDY RELATING TO CAPS ON INVESTMENT OF**  
8 **INDIVIDUAL ACCOUNT PLAN ASSETS IN EM-**  
9 **PLOYER SECURITIES.**

10 (a) IN GENERAL.—As soon as practicable after the  
11 date of the enactment of this Act, the Secretary of Labor,  
12 in consultation with the Secretary of the Treasury and the  
13 Securities and Exchange Commission, shall undertake a  
14 study relating to investment of plan assets of individual  
15 account plans in stock or other securities issued by the  
16 employer.

17 (b) MATTERS TO BE STUDIED.—In conducting the  
18 study pursuant to subsection (a), the Secretary shall—

19 (1) consider the feasibility of statutory limits on  
20 the extent to which plan assets under individual ac-  
21 count plans may be invested in stock or other securi-  
22 ties issued by the employer, and

23 (2) analyze such feasibility with respect to a  
24 range of possible statutory limits.

1 (c) REPORT.—Not later than 180 days after the date  
 2 of the enactment of this Act, the Secretary shall submit  
 3 a report to each House of the Congress setting forth the  
 4 results of the study required under subsection (a). Such  
 5 report shall include such recommendations for statutory  
 6 or administrative changes as the Secretary of Labor, in  
 7 consultation with the Secretary of the Treasury and the  
 8 Securities and Exchange Commission, has determined to  
 9 be appropriate.

10 **TITLE III—APPROPRIATE AC-**  
 11 **CESS TO INDIVIDUAL AC-**  
 12 **COUNTS**

13 **SEC. 301. ADDITIONAL FIDUCIARY PROTECTIONS RELAT-**  
 14 **ING TO LOCKDOWNS.**

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

19 “(e)(1) Except as provided in paragraph (2), in the  
 20 case of any eligible individual account plan (as defined in  
 21 section 407(d)(3))—

22 “(A) no lockdown may take effect until at least  
 23 60 days after written notice of such lockdown is pro-  
 24 vided by the plan administrator to all participants or  
 25 beneficiaries and to the Secretary, and

1           “(B) any lockdown may not continue for a pe-  
2           riod in excess of 10 consecutive business days.

3           “(2)(A) The Secretary may delay the beginning of  
4 any lockdown if the Secretary notifies the plan adminis-  
5 trator of the delay at least 48 hours before the lockdown  
6 was scheduled to begin.

7           “(B) The Secretary shall prescribe procedures under  
8 which—

9           “(i) in the case of a lockdown outside of the  
10 control of a plan sponsor or administrator, the re-  
11 quirement of paragraph (1)(A) shall be treated as  
12 met if notice is provided as soon as reasonably pos-  
13 sible under the circumstances, and

14           “(ii) the Secretary may extend the 10-day pe-  
15 riod under paragraph (1)(B) for good cause shown.

16           “(3) For purposes of this subsection, the term  
17 ‘lockdown’ means any temporary lockdown, blackout, or  
18 freeze with respect to, suspension of, or similar limitation  
19 on the ability of a participant or beneficiary (who has met  
20 minimum participation requirements applicable in accord-  
21 ance with section 202) to exercise control over the assets  
22 in his or her account as otherwise generally provided  
23 under the plan (as determined under regulations of the  
24 Secretary).”.

25           (b) ENFORCEMENT.—

1           (1) IN GENERAL.—Section 502(e) of such Act  
 2           (29 U.S.C. 1132(c)), as amended by section 102(b),  
 3           is amended—

4                   (A) by redesignating paragraph (8) as  
 5           paragraph (9); and

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

8           “(8) In the case of 1 or more failures by a person  
 9           to provide notice under section 404(e)(1)(A) to any partic-  
 10          ipant or beneficiary, the Secretary may assess a civil pen-  
 11          alty against such person of up to \$100 a day for each  
 12          such failure from the date of the failure until such failure  
 13          or refusal is corrected.”

14           (2) CONFORMING AMENDMENT.—Section  
 15          502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is  
 16          amended by striking “(6), or (7)” and inserting  
 17          “(6), (7), or (8)”.

18          **SEC. 302. EMPLOYERS LIABLE FOR ANY EXCESSIVE LOSSES**  
 19                           **ON EMPLOYER SECURITIES DURING**  
 20                           **LOCKDOWNS.**

21          Section 404 of the Employee Retirement Income Se-  
 22          curity Act of 1974 (29 U.S.C. 1104), as amended by sec-  
 23          tion 301, is amended by adding at the end the following  
 24          new subsection:

25          “(f)(1) If—

1           “(A) there is a lockdown of an eligible indi-  
2           vidual account plan which holds employer securities  
3           readily tradable on an established securities market,  
4           and

5           “(B)(i) there is a reduction in the fair market  
6           value of the securities during the period beginning  
7           on the first day of the lockdown and ending on the  
8           first day after the lockdown a participant or bene-  
9           ficiary is able to divest his or her account of the se-  
10          curities, and

11          “(ii) the reduction in the value of such securi-  
12          ties is, with respect to any period during which there  
13          was also a reduction in the Standard and Poor’s 500  
14          Stock Index, at least 10 percent greater than the re-  
15          duction in such stock index,

16 then the plan sponsor shall be liable for payment of the  
17 amount determined under paragraph (2) to a participant  
18 or beneficiary who, as of such first day after the lockdown,  
19 divests his or her account of any portion of the employer  
20 securities held immediately before the lockdown.

21          “(2) The amount determined under this paragraph  
22 with respect to any employer securities is the excess (if  
23 any) of the fair market value of such securities imme-  
24 diately before the lockdown over the fair market value of

1 such securities when divested by the participant or bene-  
2 ficiary.

3 “(3) In this subsection:

4 “(A) The term ‘eligible individual account plan’  
5 has the meaning given such term by section  
6 407(d)(3).

7 “(B) The terms ‘employer securities’ and ‘em-  
8 ployer real property’ has the meanings given such  
9 terms by sections 407(d) (1) and (2), respectively.”

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

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

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

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

1 **SEC. 402. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**  
2 **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

3 (a) IN GENERAL.—Section 403(a) of the Employee  
4 Retirement Income Security Act of 1974 (29 U.S.C.  
5 1103(a)) is amended—

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

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

9 (3) by adding at the end the following new  
10 paragraph:

11 “(2)(A) Subject to subparagraph (B), the assets of  
12 a single-employer plan which is an individual account plan  
13 and under which some or all of the assets are derived from  
14 employee contributions shall be held in trust by a joint  
15 board of trustees, which shall consist of two or more trust-  
16 ees representing on an equal basis the interests of the em-  
17 ployer or employers maintaining the plan and the interests  
18 of the participants and their beneficiaries.

19 “(B) This paragraph shall apply for any plan year  
20 only if a majority of the participants of the individual ac-  
21 count plan indicates to the plan administrator, in such  
22 form and manner as shall be prescribed in regulations of  
23 the Secretary, its intention to have this paragraph so  
24 apply.

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



1 collective bargaining agreements between one or more em-  
2 ployee organizations and one or more employers, the trust-  
3 ees representing the interests of the participants and their  
4 beneficiaries shall be designated by such employee organi-  
5 zations.

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

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

1 ployee (as defined in section 414(q) of the Internal Rev-  
2 enue Code of 1986).

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

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

13 **SEC. 403. LIABILITY FOR BREACH OF FIDUCIARY DUTY.**

14 (a) LIABILITY FOR PARTICIPATING IN OR CON-  
15 CEALING FIDUCIARY BREACH.—

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

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

24 (B) by inserting “and to each participant  
25 and beneficiary of the plan” after “plan” the

1 second place it appears, and by inserting “or  
2 such participant or beneficiary” after “plan”  
3 the third place it appears;

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

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

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

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

24 (c) EXPANSION OF AVAILABLE REMEDIES.—Para-  
25 graphs (3) and (5) of section 502(a) of the Employee Re-

1 tirement Income Security Act of 1974 (29 U.S.C.  
2 1132(a)(3), (5)) are each amended by inserting after “eq-  
3 uitable relief” the following: “and such additional relief  
4 as a court of equity might have awarded in a case involv-  
5 ing the enforcement or administration of a trust”.

6 **SEC. 404. PRESERVATION OF RIGHTS OR CLAIMS.**

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

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

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

20 **SEC. 405. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

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

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

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

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

11                   “(B) be selected by the Secretary after  
12 consultation with pension participant advocacy  
13 organizations.

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

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

22                   “(1) evaluate the efforts of the Federal Govern-  
23 ment, business, and financial, professional, retiree,  
24 labor, women’s, and other appropriate organizations

1 in assisting and protecting pension plan participants,  
2 including—

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

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

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

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

21 “(A) enlisting the cooperation of the public  
22 and private sectors in disseminating informa-  
23 tion, and

1           “(B) forming private-public partnerships  
2           and other efforts to assist pension plan partici-  
3           pants in receiving their benefits,

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

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

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

16          “(6) pursuing claims on behalf of participants  
17          and beneficiaries and providing appropriate assist-  
18          ance in the resolution of disputes between partici-  
19          pants and beneficiaries and pension plans, including  
20          assistance 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          pant 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 than 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 represent the views and interests of  
10 pension plan participants before any Federal agency,  
11 including, upon request of a participant, in any pro-  
12 ceeding involving the participant.

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

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

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

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

“Subtitle C—Office of Pension Participant Advocacy

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

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

3 **SEC. 406. 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, and  
12 (2) options for developing such a system.

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

20 **TITLE V—GENERAL PROVISIONS**

21 **SEC. 501. GENERAL EFFECTIVE DATE.**

22 (a) **IN GENERAL.**—Except as otherwise provided in  
23 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. 502. 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 the effective date specified in section 501, 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 accordance with  
4           the requirements of such amendment made by this  
5           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.

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