

1 **REPORTED VERSION OF S. 1992**
2 **DISCUSSION DRAFT**

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.

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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 Employee Retire-
8 ment Income Security Act of 1974 (29 U.S.C. 1104) is
9 amended by adding at the end the following new sub-
10 section:

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

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

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

23 “(iii) provide that a participant or beneficiary
24 has the right after no more than 3 years of service
25 to reinvest any employer contributions (other than

1 elective deferrals) of employer securities or employer
2 real property (and earnings thereon) in any other in-
3 vestment option provided by the plan, and

4 “(iv) meet the requirements of section
5 409(e)(2) of the Internal Revenue Code of 1986
6 with respect to employer securities held by the plan
7 which are readily tradable on an established securi-
8 ties market.

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

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

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

23 “(ii) In any case in which the plan provides for elec-
24 tions to reinvest periodically during prescribed time peri-

1 ods, the 30-day period described in clause (i) shall com-
2 mence at the end of each such prescribed period.

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

8 “(i) setting forth such right under this para-
9 graph, and

10 “(ii) describing the importance of diversifying
11 the investment of retirement account assets.

12 The Secretary shall prescribe a model notice for purposes
13 of satisfying the requirements of this subparagraph which
14 shall be in a form calculated to be understood by the aver-
15 age plan participant. The notice required by this subpara-
16 graph may be provided in written, electronic, or other ap-
17 propriate form to the extent that such form is reasonably
18 accessible to the participant or beneficiary.

19 “(2) For purposes of this subsection—

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

23 “(B) the term ‘employee stock ownership plan’
24 has the meaning given such term by section
25 4975(e)(7) of such Code,

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

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

6 (b) RECOMMENDATIONS RELATING TO NONPUB-
7 LICLY TRADED STOCK.—Within 1 year after the date of
8 the enactment of this Act, the Secretary of Labor shall
9 transmit to the Committee on Education and the Work-
10 force of the House of Representatives and the Committee
11 on Health, Education, Labor, and Pensions of the Senate
12 the Secretary’s recommendations as to—

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

18 (2) if the Secretary recommends that such sec-
19 tion apply to such securities, any legislative changes
20 necessary to reflect differences between such securi-
21 ties and employer securities which are readily
22 tradable on 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
4 Security Act of 1974 (29 U.S.C. 1104), as added by sec-
5 tion 101, is amended by redesignating paragraph (2) as
6 paragraph (3) and by adding after paragraph (1) the fol-
7 lowing 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 elec-
16 tive deferrals to be invested in employer securities or em-
17 ployer 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 meet-
25 ing the requirements of subparagraph (A) unless the plan
26 provides that such option may not be used to purchase

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

3 “(ii) A plan shall not be treated as failing to meet
4 the requirements of subparagraph (A) merely because
5 elective 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
8 investment vehicle is an investment option of the plan
9 which is comprised of plan assets and which is not de-
10 signed to invest primarily in employer securities or em-
11 ployer real property.

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

18 “(II) with respect to which the accrued benefit
19 of each participant, payable at normal retirement
20 age under the plan, is not less than a benefit which
21 is actuarially equivalent to a percentage of the par-
22 ticipant’s final average pay equal to 1.5 percent mul-
23 tiplied 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
4 to the actuarial equivalent of the normal retirement ben-
5 efit under the plan.

6 “(ii) In applying subclause (II) of clause (i) to a de-
7 fined 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
16 are also covered by the individual account plan
17 meets 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 add-
24 ing at the end the following new subsection:

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

7 “(A) shall be deemed to have satisfied the re-
8 quirements under this section for the prudent des-
9 ignation and periodic review of an investment ad-
10 viser with whom the plan sponsor or other person
11 who is a fiduciary enters into an arrangement for
12 the provision of advice referred to in section
13 3(21)(A)(ii),

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

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

23 “(2)(A) For purposes of this section, the term ‘quali-
24 fied investment adviser’ means, with respect to a plan, a
25 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 ad-
10 viser maintains the principal office and place of
11 business of such adviser, but only if such State
12 has an examination requirement to qualify for
13 such registration,

14 “(III) is a bank or similar financial institu-
15 tion 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 Sec-
20 retary determines appropriate, consistent with
21 the purposes 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)

1 by a person described in subparagraph (A)(ii) who pro-
2 vides investment advice on behalf of such person to any
3 plan participant 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)
12 of the Investment Advisers Act of 1940 (15 U.S.C.
13 80b–2(a)(17)), or

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

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 to
14 any participant or beneficiary, consider any em-
15 ployer securities or employer real property allo-
16 cated 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
21 a 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
10 number of plan participants or beneficiaries have
11 raised concerns about the services being provided by
12 the investment adviser.

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

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

20 “(B) A disclosure as to any fees or other com-
21 pensation 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
12 this section shall apply with respect to advisers designated
13 after 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 ac-
23 count plan shall furnish a pension benefit statement—

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

1 permits a participant or beneficiary to exercise con-
2 trol over the assets in his or her account, and

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

5 “(B) The administrator of a defined benefit plan
6 shall 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 par-
12 ticipant (other than at the request of the participant) may
13 be based on reasonable estimates determined under regu-
14 lations 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
18 reasonably 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 in-
7 clude (together with the information required in subpara-
8 graph (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
12 acquired at the direction of the plan or of the partic-
13 ipant 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 retire-
19 ment security of participants and beneficiaries, of a
20 diversified investment portfolio, including a state-
21 ment of the risk of holding substantial portions of
22 a portfolio in the securities of any 1 entity, such as
23 employer securities, 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
2 real property (as defined in paragraphs (1) and (2),
3 respectively, of section 407(d)), as determined as of
4 the most recent valuation date of the plan, exceeds
5 20 percent of the total account, a warning that the
6 account may be overinvested in employer securities
7 and employer real property.

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

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

17 (A) in subsection (a)(6), by striking “(5),
18 or (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
22 subsection (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
5 Act (29 U.S.C. 1025), is amended by adding at the
6 end 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
11 the average plan participant.”

12 (4) CONFORMING AMENDMENT.—Section
13 105(b) of such Act (29 U.S.C. 1025(b)) is amended
14 to read 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
2 following 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
7 the availability of, and the right to request, the in-
8 formation 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),
2 and (d)”.

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

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

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

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

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 secu-
24 rities, 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 informa-
6 tion 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
10 (7)” and inserting “(6), (7), or (8)”;

11 (2) by redesignating paragraph (8) of sub-
12 section (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
17 person’s failure or refusal to comply with the requirements
18 of section 404(c)(4) until such failure or refusal is cor-
19 rected.”

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

21 Section 101 of the Employee Retirement Income Se-
22 curity Act of 1974 (29 U.S.C. 1021) is amended by redesi-
23 gnating the second subsection (h) as subsection (j) and
24 by inserting after the first subsection (h) the following new
25 subsection:

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

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

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

11 the issuer shall, within 2 business days after disclosure
12 to the Commission, make such disclosure available on any
13 individual 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 ac-
17 cess to such a website, the information required to be pro-
18 vided under this paragraph shall be provided to the par-
19 ticipants and beneficiaries in written, electronic, or other
20 appropriate form to the extent that such form is reason-
21 ably accessible 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
6 in section 3 of the Securities Exchange Act of 1934,
7 and

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

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

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

15 Section 404 of the Employee Retirement Income Se-
16 curity Act of 1974 (as amended by this Act) is amended
17 by adding at the end the following new subsection:

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

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

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

1 “(2) The notice required by this subsection may be
2 provided in written, electronic, or other appropriate form
3 to the extent that such form is reasonably accessible to
4 the participant 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
10 terms of the plan (as determined under regulations of the
11 Secretary). Any limitation or restriction that may govern
12 the frequency of transfers between investment vehicles
13 shall not be treated as a suspension referred to in the pre-
14 ceding sentence to the extent such limitation or restriction
15 is disclosed to participants or beneficiaries through the
16 summary plan description or materials describing specific
17 investment alternatives under the plan.”

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

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

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

1 or beneficiary for any period during which the ability
2 of the participant or beneficiary to direct the invest-
3 ment of assets in his or her individual account is
4 suspended 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
8 be treated as a suspension referred to in subparagraph
9 (B) to the extent such limitation or restriction is disclosed
10 to participants or beneficiaries through the summary plan
11 description or materials describing specific investment al-
12 ternatives 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
18 Retirement Income Security Act of 1974 does not apply
19 by 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)
5 is amended by adding at the end the following new sub-
6 section:

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

13 (b) **EFFECTIVE DATES.**—

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

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

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

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

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

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

11 **“SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN**
12 **401(k) PLANS.**

13 “(a) Any person who is a fiduciary with respect to
14 an individual account plan that includes a qualified cash
15 or deferred arrangement under section 401(k) of the In-
16 ternal Revenue Code of 1986 who breaches any of the re-
17 sponsibilities, obligations, or duties imposed upon fidu-
18 ciaries by this title shall be personally liable to make good
19 to each participant and beneficiary of the plan any losses
20 to such participant or beneficiary resulting from each such
21 breach, and to restore to such participant or beneficiary
22 any profits of such fiduciary which have been made
23 through use of assets of the plan by the fiduciary, and
24 shall be subject to such other equitable or remedial relief
25 as the court may deem appropriate, including removal of

1 such fiduciary. A fiduciary may also be removed for a vio-
2 lation of section 411 of this Act.

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

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

17 (B) CONFORMING AMENDMENT.—The
18 table of contents for part 4 of subtitle B of title
19 I of such Act is amended by inserting the fol-
20 lowing new item after the item relating to sec-
21 tion 409:

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

22 (2) INSIDER LIABILITY.—

23 (A) IN GENERAL.—Section 409 of the Em-
24 ployee Retirement Income Security Act of 1974

1 (29 U.S.C. 1109) is amended by redesignating
2 subsection (b) as subsection (c) and by insert-
3 ing after subsection (a) the following new sub-
4 section:

5 “(b)(1)(A) If an insider with respect to the plan spon-
6 sor of an employer individual account plan that holds em-
7 ployer securities that are readily tradable on an estab-
8 lished securities market—

9 “(i) knowingly participates in a breach of fidu-
10 ciary responsibility to which subsection (a) applies,
11 or

12 “(ii) knowingly undertakes to conceal such a
13 breach,

14 such insider shall be personally liable under this sub-
15 section for such breach in the same manner as the fidu-
16 ciary who commits such breach.

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

20 “(i) any officer or director with respect to the
21 plan sponsor, or

22 “(ii) any independent qualified public account-
23 ant of the plan or of the plan sponsor.

24 “(3) Any relief provided under this subsection or sec-
25 tion 409A—

1 “(A) to an individual account plan shall inure
2 to the individual accounts of the affected partici-
3 pants or beneficiaries, and

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

8 (B) CONFORMING AMENDMENT.—Section
9 409(c) of such Act (29 U.S.C. 1109(c)), as re-
10 designated by subparagraph (A), is amended by
11 inserting before the period the following:
12 “, unless such liability arises under subsection
13 (b)”.

14 (b) MAINTENANCE OF FIDUCIARY LIABILITY.—Sec-
15 tion 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(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 such employee organi-
19 zations.

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 PENSION 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 pension rights under this title (including
6 the right to maintain a civil action) may not be waived,
7 deferred, 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 relating to a pen-
12 sion plan under this title if the agreement is entered into
13 knowingly and voluntarily by the parties involved after the
14 dispute has arisen or is pursuant to the terms of a collec-
15 tive bargaining agreement.”

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

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

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

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

23 “(a) ESTABLISHMENT.—

24 “(1) IN GENERAL.—There is established in the
25 Department of Labor an office to be known as the
26 ‘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 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 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. PROVISIONS RELATING TO WHISTLEBLOWER AC-**
5 **TIONS INVOLVING PENSION PLANS.**

6 (a) **AUTHORITY TO BRING ACTIONS.**—Section
7 502(a) of the Employee Retirement Income Security Act
8 of 1974 (29 U.S.C. 1132(a)) is amended by striking “or”
9 at the end of paragraph (8), by striking the period at the
10 end of paragraph (9) and inserting “; and”, and by adding
11 at the end the following new paragraph:

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

14 “(A) to enjoin any act or practice which
15 violates section 510 in connection with a pen-
16 sion plan, or

17 “(B) to obtain appropriate equitable or
18 legal relief to redress such violation or to en-
19 force section 510 in connection with a pension
20 plan.”

21 (b) **ADDITIONAL ACTIONS WHICH MAY BE**
22 **BROUGHT.**—The second sentence of section 510 of the
23 Employee Retirement Income Security Act of 1974 (29
24 U.S.C. 1140) is amended by striking “person because he”
25 and inserting “other person because such other person has

1 opposed any practice in connection with a pension plan
2 that is made unlawful by this title or”.

3 **SEC. 311. PLANS REQUIRED TO PROVIDE ADEQUATE IN-**
4 **FORMATION TO INDIVIDUALS OFFERED**
5 **CHOICE OF LUMP SUM DISTRIBUTION.**

6 Section 205 of the Employee Retirement Income Se-
7 curity Act of 1974 (29 U.S.C. 1055) is amended by adding
8 at the end the following new subsection:

9 “(1)(1) If a pension plan with more than 100 partici-
10 pants provides a participant, spouse, or surviving spouse
11 with the option to elect to have any nonforfeitable benefit
12 paid in the form of a lump sum distribution, or provides
13 for other optional forms of benefits, the plan administrator
14 shall provide, within a reasonable period of time before
15 the individual is required to make the election, a statement
16 comparing the relative values of each form of benefit pay-
17 ment.

18 “(2) The statement under paragraph (1) shall include
19 such information as the Secretary of the Treasury deter-
20 mines appropriate to enable a participant, spouse, or sur-
21 viving spouse to make an informed decision as to what
22 form of benefit to elect. Such information shall be provided
23 in a form calculated to be understood by the average plan
24 participant and shall include—

1 “(A) the interest rate and mortality assump-
2 tions used in determining the relative values, an ex-
3 planation of how such assumptions compare to the
4 assumptions used under subsection (g) or to any
5 other assumptions specified by the Secretary, and
6 one or more illustrations using dollar amounts to
7 show the relative values of the benefits on a com-
8 parable basis, and

9 “(B) any factors (including early retirement
10 subsidies) which are taken into account in deter-
11 mining the value of one form of payment but not
12 taken into account in determining the other form of
13 payment.”

14 **TITLE IV—GENERAL**
15 **PROVISIONS**

16 **SEC. 401. GENERAL EFFECTIVE DATE.**

17 (a) **IN GENERAL.**—Except as otherwise provided in
18 this Act, the amendments made by this Act shall apply
19 with respect to plan years beginning on or after January
20 1, 2003.

21 (b) **SPECIAL RULE FOR COLLECTIVELY BARGAINED**
22 **PLANS.**—In the case of a plan maintained pursuant to 1
23 or more collective bargaining agreements between em-
24 ployee representatives and 1 or more employers ratified
25 on or before the date of the enactment of this Act, sub-

1 section (a) shall be applied to benefits pursuant to, and
2 individuals covered by, any such agreement by substituting
3 for “January 1, 2003” the date of the commencement of
4 the first plan year beginning on or after the earlier of—

5 (1) the later of—

6 (A) January 1, 2004, or

7 (B) the date on which the last of such col-
8 lective bargaining agreements terminates (de-
9 termined without regard to any extension there-
10 of after the date of the enactment of this Act),

11 or

12 (2) January 1, 2005.

13 **SEC. 402. PLAN AMENDMENTS.**

14 If any amendment made by this Act requires an
15 amendment to any plan, such plan amendment shall not
16 be required to be made before the first plan year beginning
17 on or after January 1, 2005, if—

18 (1) during the period after such amendment
19 made by this Act takes effect and before such first
20 plan year, the plan is operated in good faith compli-
21 ance with the requirements of such amendment
22 made by this Act, and

23 (2) such plan amendment applies retroactively
24 to the period after such amendment made by this
25 Act takes effect and before such first plan year.