

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3762, AS REPORTED
OFFERED BY MR. MILLER OF CALIFORNIA AND
MR. RANGEL OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Employee Pension Freedom Act of 2002”.

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN DISCLOSURE

Sec. 101. Pension benefit information.

Sec. 102. Immediate warning of excessive stock holdings.

Sec. 103. Additional fiduciary protections relating to lockdowns.

Sec. 104. Report to participants and beneficiaries of trades in employer securities.

Sec. 105. Provision to participants and beneficiaries of material investment information in accurate form.

Sec. 106. Enforcement of information and disclosure requirements.

TITLE II—DIVERSIFICATION REQUIREMENTS

Sec. 201. Freedom to make investment decisions with plan assets.

Sec. 202. Effective date of title.

TITLE III—EMPLOYEE REPRESENTATION

Sec. 301. Participation of participants in trusteeship of individual account plans.

TITLE IV—EXECUTIVE PARITY

Sec. 401. Inclusion in gross income of funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.

Sec. 402. Insider trades during pension fund blackout periods prohibited.

TITLE V—INCREASED ACCOUNTABILITY

- Sec. 501. Bonding or insurance adequate to protect interest of participants and beneficiaries.
- Sec. 502. Liability for breach of fiduciary duty.
- Sec. 503. Preservation of rights or claims.
- Sec. 504. Office of Pension Participant Advocacy.
- Sec. 505. Additional criminal penalties.
- Sec. 506. Study regarding insurance system for individual account plans.

TITLE VI—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES

- Sec. 601. Independent investment advice.
- Sec. 602. Tax treatment of qualified retirement planning services.

TITLE VII—GENERAL PROVISIONS

- Sec. 701. General effective date.
- Sec. 702. Plan amendments.

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

3 **SEC. 101. PENSION BENEFIT INFORMATION.**

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

6 (1) IN GENERAL.—Subsection (a) of section
7 105 of the Employee Retirement Income Security
8 Act of 1974 (29 U.S.C. 1025) is amended—

9 (A) by striking “shall furnish to any plan
 10 participant or beneficiary who so requests in
 11 writing,” and inserting “shall furnish at least
 12 once every 3 years, in the case of a participant
 13 in a defined benefit plan who has attained age
 14 35, and annually, in the case of an individual
 15 account plan, to each plan participant, and
 16 shall furnish to any plan participant or bene-
 17 ficiary who so requests,” and

1 (B) by adding at the end the following
2 flush sentence:

3 “Information furnished under the preceding sentence to
4 a participant in a defined benefit plan (other than at the
5 request of the participant) may be based on reasonable
6 estimates determined under regulations prescribed by the
7 Secretary.”.

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

11 “(e)(1) The Secretary of Labor shall develop a model
12 benefit statement which shall be used by plan administra-
13 tors in complying with the requirements of subsection (a).
14 Such statement shall include—

15 “(A) the amount of nonforfeitable accrued ben-
16 efits as of the statement date which is payable at
17 normal retirement age under the plan,

18 “(B) the amount of accrued benefits which are
19 forfeitable but which may become nonforfeitable
20 under the terms of the plan,

21 “(C) the amount or percentage of any reduction
22 due to integration of the benefit with the partici-
23 pant’s Social Security benefits or similar govern-
24 mental benefits,

1 “(D) information on early retirement benefit
2 and joint and survivor annuity reductions, and

3 “(E) the percentage of the net return on invest-
4 ment of plan assets for the preceding plan year (or,
5 with respect to investments directed by the partici-
6 pant, the net return on investment of plan assets for
7 such year so directed), itemized with respect to each
8 type of investment, and, stated separately, the ad-
9 ministrative and transaction fees incurred in connec-
10 tion with each such type of investment, and

11 “(F) in the case of an individual account plan,
12 the amount and percentage of assets in the indi-
13 vidual account that consists of employer securities
14 and employer real property (as defined in para-
15 graphs (1) and (2), respectively, of section 407(d)),
16 as determined as of the most recent valuation date
17 of the plan.

18 “(2) The Secretary shall also develop a separate no-
19 tice, which shall be included by the plan administrator
20 with the information furnished pursuant to subsection (a),
21 which advises participants and beneficiaries of generally
22 accepted investment principles, including principles of risk
23 management and diversification for long-term retirement
24 security and the risks of holding substantial assets in a
25 single asset such as employer securities.”.

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

4 “(d) Each administrator of a plan to which more than
5 1 unaffiliated employer is required to contribute shall fur-
6 nish to any plan participant or beneficiary who so requests
7 in writing, a statement described in subsection (a).”.

8 (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

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

11 (A) by redesignating subsections (b), (c),
12 (d), and (e) as subsections (c), (d), (e), and (f),
13 respectively; and

14 (B) by inserting after subsection (a) the
15 following new subsection:

16 “(b)(1) In the case of a participant or beneficiary who
17 is entitled to a distribution of a benefit under an employee
18 pension benefit plan, the administrator of such plan shall
19 provide to the participant or beneficiary the information
20 described in paragraph (2) upon the written request of
21 the participant or beneficiary.

22 “(2) The information described in this paragraph
23 includes—

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

4 “(B) upon written request of the participant or
5 beneficiary, any documents relating to the calcula-
6 tion (if available), and

7 “(C) such other information as the Secretary
8 may prescribe.

9 Any information provided under this paragraph shall be
10 in a form calculated to be understood by the average plan
11 participant.”.

12 (2) CONFORMING AMENDMENTS.—

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

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

21 (C) Section 106(b) of such Act (29 U.S.C.
22 1026(b)) is amended by striking “sections
23 105(a) and 105(c)” and inserting “subsections
24 (a), (b), and (d) of section 105”.

1 (c) AMENDMENTS TO INTERNAL REVENUE CODE OF
2 1986.—

3 (1) EXCISE TAX ON FAILURE OF DEFINED CON-
4 TRIBUTION PLANS TO PROVIDE NOTICE OF GEN-
5 ERALLY ACCEPTED INVESTMENT PRINCIPLES.—

6 Chapter 43 of the Internal Revenue Code of 1986
7 (relating to qualified pension, etc., plans) is amend-
8 ed by adding at the end the following new section:

9 **“SEC. 4980I. FAILURE OF DEFINED CONTRIBUTION PLANS**
10 **TO PROVIDE NOTICE OF GENERALLY AC-**
11 **CEPTED INVESTMENT PRINCIPLES.**

12 “(a) IMPOSITION OF TAX.—There is hereby imposed
13 a tax on the failure of any defined contribution plan to
14 meet the requirements of subsection (e) with respect to
15 any participant or beneficiary.

16 “(b) AMOUNT OF TAX.—The amount of the tax im-
17 posed by subsection (a) on any failure with respect to any
18 participant or beneficiary shall be \$1,000 for each day on
19 which such failure is not corrected.

20 “(c) LIMITATIONS ON AMOUNT OF TAX.—

21 “(1) TAX NOT TO APPLY TO FAILURES COR-
22 RECTED AS SOON AS REASONABLY PRACTICABLE.—
23 No tax shall be imposed by subsection (a) on any
24 failure if—

1 “(A) any person subject to liability for the
2 tax under subsection (d) exercised reasonable
3 diligence to meet the requirements of subsection
4 (e), and

5 “(B) such person provides the notice de-
6 scribed in subsection (e) as soon as reasonably
7 practicable after the first date such person
8 knew, or exercising reasonable diligence should
9 have known, that such failure existed.

10 “(2) OVERALL LIMITATION FOR UNINTEN-
11 TIONAL FAILURES.—

12 “(A) IN GENERAL.—If the person subject
13 to liability for tax under subsection (d) exer-
14 cised reasonable diligence to meet the require-
15 ments of subsection (e), the tax imposed by
16 subsection (a) for failures during the taxable
17 year of the employer (or, in the case of a multi-
18 employer plan, the taxable year of the trust
19 forming part of the plan) shall not exceed
20 \$500,000. For purposes of the preceding sen-
21 tence, all multiemployer plans of which the
22 same trust forms a part shall be treated as 1
23 plan.

24 “(B) TAXABLE YEARS IN THE CASE OF
25 CERTAIN CONTROLLED GROUPS.—For purposes

1 of this paragraph, if all persons who are treated
2 as a single employer for purposes of this section
3 do not have the same taxable year, the taxable
4 years taken into account shall be determined
5 under principles similar to the principles of sec-
6 tion 1561.

7 “(3) WAIVER BY SECRETARY.—In the case of a
8 failure which is due to reasonable cause and not to
9 willful neglect, the Secretary may waive part or all
10 of the tax imposed by subsection (a) to the extent
11 that the payment of such tax would be excessive or
12 otherwise inequitable relative to the failure involved.

13 “(d) LIABILITY FOR TAX.—The following shall be lia-
14 ble for the tax imposed by subsection (a):

15 “(1) In the case of a plan other than a multi-
16 employer plan, the employer.

17 “(2) In the case of a multiemployer plan, the
18 plan.

19 “(e) REQUIREMENTS RELATING TO NOTICE OF GEN-
20 ERALLY ACCEPTED INVESTMENT PRINCIPLES.—The plan
21 administrator of any defined contribution plan shall pro-
22 vide annually a separate notice which advises participants
23 and beneficiaries of generally accepted investment prin-
24 ciples, including principles of risk management and diver-
25 sification for long-term retirement security and the risks

1 of holding substantial assets in a single asset such as em-
2 ployer securities.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for chapter 43 of such Code is amended by
5 adding at the end the following new item:

“Sec. 4980I. Failure of defined contribution plans to provide no-
tice of generally accepted investment principles.”.

6 **SEC. 102. IMMEDIATE WARNING OF EXCESSIVE STOCK**
7 **HOLDINGS.**

8 Section 105 of the Employee Retirement Income Se-
9 curity Act of 1974 (29 U.S.C. 1025) (as amended by sec-
10 tion 101 of this Act) is amended further by adding at the
11 end the following new subsection:

12 “(g)(1) Upon receipt of information by the plan ad-
13 ministrator of an individual account plan indicating that
14 the individual account of any participant which had not
15 been excessively invested in employer securities is exces-
16 sively invested in such securities (or that such account,
17 as initially invested, is excessively invested in employer se-
18 curities), the plan administrator shall immediately provide
19 to the participant a separate, written statement—

20 “(A) indicating that the participant’s account
21 has become excessively invested in employer securi-
22 ties,

23 “(B) setting forth the notice described in sub-
24 section (e)(7), and

1 “(C) referring the participant to investment
2 education materials and investment advice which
3 shall be made available by or under the plan.

4 In any case in which such a separate, written statement
5 is required to be provided to a participant under this para-
6 graph, each statement issued to such participant pursuant
7 to subsection (a) thereafter shall also contain such sepa-
8 rate, written statement until the plan administrator is
9 made aware that such participant’s account has ceased to
10 be excessively invested in employer securities or the em-
11 ployee, in writing, waives the receipt of the notice and ac-
12 knowledges understanding the importance of diversifica-
13 tion.

14 “(2) Each notice required under this subsection shall
15 be provided in a form and manner which shall be pre-
16 scribed in regulations of the Secretary. Such regulations
17 shall provide for inclusion in the notice a prominent ref-
18 erence to the risks of large losses in assets available for
19 retirement from excessive investment in employer securi-
20 ties.

21 “(3) For purposes of paragraph (1), a participant’s
22 account is ‘excessively invested’ in employer securities if
23 more than 10 percent of the balance in such account is
24 invested in employer securities (as defined in section
25 407(d)(1)).”.

1 **SEC. 103. ADDITIONAL FIDUCIARY PROTECTIONS RELAT-**
2 **ING TO LOCKDOWNS.**

3 (a) AMENDMENT TO EMPLOYEE RETIREMENT IN-
4 COME SECURITY ACT OF 1974.—Section 404 of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1104) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(e)(1) In the case of any eligible individual account
9 plan (as defined in section 407(d)(3)) no lockdown may
10 take effect until at least 30 days after written notice of
11 such lockdown is provided by the plan administrator to
12 such participant or beneficiary (and to each employee or-
13 ganization representing any such participant).

14 “(2) Subject to such regulations as the Secretary may
15 prescribe, the requirements of paragraph (1) shall not
16 apply in cases of emergency.

17 “(3) A plan described in paragraph (1) shall provide
18 that each participant and beneficiary required to receive
19 a notice under paragraph (1)(A) is entitled to direct the
20 plan to divest within 3 business days (but in no event later
21 than the beginning of the lockdown) any security or other
22 property in which any assets allocated to the account of
23 such individual are invested and to reinvest such assets
24 in any other investment option offered under the plan.

25 “(4) For purposes of this subsection, the term
26 ‘lockdown’ means any temporary lockdown, blackout, or

1 freeze with respect to, suspension of, or similar limitation
2 on the ability of a participant or beneficiary to exercise
3 control over the assets in his or her account as otherwise
4 generally provided under the plan (as determined under
5 regulations of the Secretary), including the ability to di-
6 rect investments, obtain loans, or obtain distributions.”.

7 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
8 1986.—

9 (1) EXCISE TAX ON FAILURES WITH RESPECT
10 TO LOCKDOWNS.—Chapter 43 of the Internal Rev-
11 enue Code of 1986 (relating to qualified pension,
12 etc., plans) is amended by adding at the end the fol-
13 lowing new section:

14 **“SEC. 4980G. FAILURE OF DEFINED CONTRIBUTION PLANS**
15 **WITH RESPECT TO LOCKDOWNS.**

16 “(a) IMPOSITION OF TAX.—There is hereby imposed
17 a tax on the failure of any defined contribution plan to
18 meet the requirements of subsection (e) with respect to
19 any participant or beneficiary.

20 “(b) AMOUNT OF TAX.—The amount of the tax im-
21 posed by subsection (a) on any failure with respect to any
22 participant or beneficiary shall be \$100.

23 “(c) LIMITATIONS ON AMOUNT OF TAX.—

24 “(1) TAX NOT TO APPLY TO FAILURES COR-
25 RECTED AS SOON AS REASONABLY PRACTICABLE.—

1 No tax shall be imposed by subsection (a) on any
2 failure if—

3 “(A) any person subject to liability for the
4 tax under subsection (d) exercised reasonable
5 diligence to meet the requirements of subsection
6 (e), and

7 “(B) such person meets the requirements
8 of subsection (e) as soon as reasonably prac-
9 ticable after the first date such person knew, or
10 exercising reasonable diligence should have
11 known, that such failure existed.

12 “(2) OVERALL LIMITATION FOR UNINTEN-
13 TIONAL FAILURES.—

14 “(A) IN GENERAL.—If the person subject
15 to liability for tax under subsection (d) exer-
16 cised reasonable diligence to meet the require-
17 ments of subsection (e), the tax imposed by
18 subsection (a) for failures during the taxable
19 year of the employer (or, in the case of a multi-
20 employer plan, the taxable year of the trust
21 forming part of the plan) shall not exceed
22 \$500,000. For purposes of the preceding sen-
23 tence, all multiemployer plans of which the
24 same trust forms a part shall be treated as 1
25 plan.

1 “(B) TAXABLE YEARS IN THE CASE OF
2 CERTAIN CONTROLLED GROUPS.—For purposes
3 of this paragraph, if all persons who are treated
4 as a single employer for purposes of this section
5 do not have the same taxable year, the taxable
6 years taken into account shall be determined
7 under principles similar to the principles of sec-
8 tion 1561.

9 “(3) WAIVER BY SECRETARY.—In the case of a
10 failure which is due to reasonable cause and not to
11 willful neglect, the Secretary may waive part or all
12 of the tax imposed by subsection (a) to the extent
13 that the payment of such tax would be excessive or
14 otherwise inequitable relative to the failure involved.

15 “(d) LIABILITY FOR TAX.—The following shall be lia-
16 ble for the tax imposed by subsection (a):

17 “(1) In the case of a plan other than a multi-
18 employer plan, the employer.

19 “(2) In the case of a multiemployer plan, the
20 plan.

21 “(e) REQUIREMENTS RELATING TO LOCKDOWNS.—

22 “(1) IN GENERAL.—In the case of any defined
23 contribution plan no lockdown may take effect until
24 at least 30 days after written notice of such
25 lockdown is provided by the plan administrator to

1 each participant or beneficiary (and to each em-
2 ployee organization representing any such partici-
3 pant).

4 “(2) EXCEPTION FOR EMERGENCY.—Subject to
5 such regulations as the Secretary may prescribe, the
6 requirements of paragraph (1) shall not apply in
7 cases of emergency.

8 “(3) REQUIREMENT RELATING TO DIVEST-
9 MENT.—A plan described in paragraph (1) shall pro-
10 vide that each participant and beneficiary required
11 to receive a notice under paragraph (1)(A) is enti-
12 tled to direct the plan to divest within 3 business
13 days (but in no event later than the beginning of the
14 lockdown) any security or other property in which
15 any assets allocated to the account of such indi-
16 vidual are invested and to reinvest such assets in
17 any other investment option offered under the plan.

18 “(4) LOCKDOWN DEFINED.—For purposes of
19 this subsection, the term ‘lockdown’ means any tem-
20 porary lockdown, blackout, or freeze with respect to,
21 suspension of, or similar limitation on the ability of
22 a participant or beneficiary to exercise control over
23 the assets in his or her account as otherwise gen-
24 erally provided under the plan (as determined under
25 regulations of the Secretary), including the ability to

1 direct investments, obtain loans, or obtain distribu-
2 tions.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for chapter 43 of such Code is amended by
5 adding at the end the following new item:

“Sec. 4980G. Failure of defined contribution plans with respect
to lockdowns.”.

6 **SEC. 104. REPORT TO PARTICIPANTS AND BENEFICIARIES**
7 **OF TRADES IN EMPLOYER SECURITIES.**

8 (a) IN GENERAL.—Section 104 of the Employee Re-
9 tirement Income Security Act of 1974 (29 U.S.C. 1024)
10 is amended—

11 (1) by redesignating subsection (d) as sub-
12 section (e); and

13 (2) by inserting after subsection (e) the fol-
14 lowing new subsection:

15 “(d)(1) In any case in which assets in the individual
16 account of a participant or beneficiary under an individual
17 account plan include employer securities, if any person en-
18 gages in a transaction constituting a direct or indirect
19 purchase or sale of employer securities and—

20 “(A) such transaction is required under section
21 16 of the Securities Exchange Act of 1934 to be re-
22 ported by such person to the Securities and Ex-
23 change Commission, or

1 “(B) such person is a named fiduciary of the
2 plan,
3 such person shall comply with the requirements of para-
4 graph (2).

5 “(2) A person described in paragraph (1) complies
6 with the requirements of this paragraph in connection
7 with a transaction described in paragraph (1) if such per-
8 son provides to the plan administrator of the plan a writ-
9 ten notification of the transaction not later than 1 busi-
10 ness day after the date of the transaction.

11 “(3)(A) If the plan administrator is made aware, on
12 the basis of notifications received pursuant to paragraph
13 (2) or otherwise, that the proceeds from any transaction
14 described in paragraph (1), constituting direct or indirect
15 sales of employer securities by any person described in
16 paragraph (1), exceed \$100,000, the plan administrator
17 of the plan shall provide to each participant and bene-
18 ficiary a notification of such transaction. Such notification
19 shall be in writing, except that such notification may be
20 in electronic or other form to the extent that such form
21 is reasonably accessible to the participant or beneficiary.

22 “(B) In any case in which the proceeds from any
23 transaction described in paragraph (1) (with respect to
24 which a notification has not been provided pursuant to
25 this paragraph), together with the proceeds from any

1 other such transaction or transactions described in para-
2 graph (1) occurring during the preceding one-year period,
3 constituting direct or indirect sales of employer securities
4 by any person described in paragraph (1), exceed (in the
5 aggregate) \$100,000, such series of transactions by such
6 person shall be treated as a transaction described in sub-
7 paragraph (A) by such person.

8 “(C) Each notification required under this paragraph
9 shall be provided as soon as practicable, but not later than
10 3 business days after receipt of the written notification
11 or notifications indicating that the transaction (or series
12 of transactions) requiring such notice has occurred.

13 “(4) Each notification required under paragraph (2)
14 or (3) shall be made in such form and manner as may
15 be prescribed in regulations of the Secretary and shall in-
16 clude the number of shares involved in each transaction
17 and the price per share, and the notification required
18 under paragraph (3) shall be written in language designed
19 to be understood by the average plan participant. The Sec-
20 retary may provide by regulation, in consultation with the
21 Securities and Exchange Commission, for exemptions
22 from the requirements of this subsection with respect to
23 specified types of transactions to the extent that such ex-
24 emptions are consistent with the best interests of plan par-
25 ticipants and beneficiaries. Such exemptions may relate to

1 transactions involving reinvestment plans, stock splits,
2 stock dividends, qualified domestic relations orders, and
3 similar matters.

4 “(5) For purposes of this subsection, the term ‘em-
5 ployer security’ has the meaning provided in section
6 407(d)(1).”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to transactions occur-
9 ring on or after July 1, 2002.

10 **SEC. 105. PROVISION TO PARTICIPANTS AND BENE-**
11 **FICIARIES OF MATERIAL INVESTMENT IN-**
12 **FORMATION IN ACCURATE FORM.**

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

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

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 **SEC. 106. ENFORCEMENT OF INFORMATION AND DISCLO-**
6 **SURE REQUIREMENTS.**

7 (a) IN GENERAL.—Section 502(c) of the Employee
8 Retirement Income Security Act of 1974 (29 U.S.C.
9 1132(c)) is amended—

10 (1) by redesignating paragraph (7) as para-
11 graph (8); and

12 (2) by inserting after paragraph (6) the fol-
13 lowing new paragraph:

14 “(7) The Secretary may assess a civil penalty against
15 any person required to provide any notification under the
16 provisions of section 104(d), any statement under the pro-
17 visions of subsection (a), (d), or (f) of section 105, any
18 information under the provisions of section 404(c)(4), or
19 any notice under the provisions of section 404(f)(1) of up
20 to \$1,000 a day from the date of any failure by such per-
21 son to provide such notification, statement, information,
22 or notice in accordance with such provisions.”.

23 (b) CONFORMING AMENDMENT.—Section 502(a)(6)
24 of such Act (29 U.S.C. 1132(a)(6)) (as amended by sec-

1 tion 102(b)) is amended further by striking “(5), or (6)”
2 and inserting “(5), (6), or (7)”.

3 **TITLE II—DIVERSIFICATION**
4 **REQUIREMENTS**

5 **SEC. 201. FREEDOM TO MAKE INVESTMENT DECISIONS**
6 **WITH PLAN ASSETS.**

7 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
8 INCOME SECURITY ACT OF 1974.—Section 404 of the
9 Employee Retirement Income Security Act of 1974 (29
10 U.S.C. 1104) (as amended by section 103) is amended
11 further by adding at the end the following new subsection:

12 “(f)(1)(A)(i) Subject to clause (ii), an individual ac-
13 count plan under which a participant or beneficiary is per-
14 mitted to exercise control over assets in his or her account
15 shall provide that—

16 “(I) any such participant or beneficiary has the
17 right to allocate all assets in his or her account (and
18 any portion thereof) attributable to employee con-
19 tributions to any investment option provided under
20 the plan, and

21 “(II) any such participant who has completed 3
22 years of service (as defined in section 203(b)(2))
23 with the employer, or any such beneficiary of such
24 a participant, has the right to allocate all assets in
25 his or her account (and any portion thereof) attrib-

1 utable to employer contributions to any investment
2 option provided under the plan.

3 The application of any penalty or any restriction based
4 on age or years of service in connection with any exercise
5 of such right as provided under this clause shall be con-
6 strued as a violation of this clause.

7 “(ii) Clause (i) shall apply only to so much of a non-
8 forfeitable accrued benefit as consists of employer securi-
9 ties which are readily tradable on an established securities
10 market.

11 “(B)(i) Except as provided in clause (ii), within 5
12 days after the date of any election by a participant or ben-
13 efiary allocating his or her nonforfeitable accrued benefit
14 to any investment option provided under the plan, the plan
15 administrator shall take such actions as are necessary to
16 effectuate such allocation.

17 “(ii) In any case in which the plan provides for elec-
18 tions periodically during prescribed periods, the 5-day pe-
19 riod described in clause (i) shall commence at the end of
20 each such prescribed period.

21 “(C) Nothing in this paragraph shall be construed to
22 limit the authority of a plan to impose limitations on the
23 portion of plan assets in any account which may be in-
24 vested in employer securities to the extent that any such

1 limitation is consistent with this title and not more restric-
2 tive than is permitted under this title.

3 “(2) Not later than 30 days prior to the date on
4 which the right of a participant under an individual ac-
5 count plan to his or her accrued benefit becomes non-
6 forfeitable, the plan administrator shall provide to such
7 participant and his or her beneficiaries a written notice—

8 “(A) setting forth their rights under this sec-
9 tion with respect to the accrued benefit, and

10 “(B) describing the importance of diversifying
11 the investment of account assets.”.

12 (b) AMENDMENTS TO THE INTERNAL REVENUE
13 CODE OF 1986.—

14 (1) EXCISE TAX ON FAILURE TO PERMIT DI-
15 VERSIFICATION OF EMPLOYER SECURITIES.—Chapter
16 ter 43 of the Internal Revenue Code of 1986 (relat-
17 ing to qualified pension, etc., plans) is amended by
18 adding at the end the following new section:

19 **“SEC. 4980H. FAILURE OF DEFINED CONTRIBUTION PLANS**
20 **TO PERMIT DIVERSIFICATION OF EMPLOYER**
21 **SECURITIES.**

22 “(a) IMPOSITION OF TAX.—There is hereby imposed
23 a tax on the failure of any defined contribution plan to
24 meet the requirements of subsection (e) with respect to
25 any participant or beneficiary.

1 “(b) AMOUNT OF TAX.—The amount of the tax im-
2 posed by subsection (a) on any failure with respect to any
3 participant or beneficiary shall be \$1,000 for each day for
4 which the failure is not corrected.

5 “(c) LIMITATIONS ON AMOUNT OF TAX.—

6 “(1) TAX NOT TO APPLY TO FAILURES COR-
7 RECTED AS SOON AS REASONABLY PRACTICABLE.—
8 No tax shall be imposed by subsection (a) on any
9 failure if—

10 “(A) any person subject to liability for the
11 tax under subsection (d) exercised reasonable
12 diligence to meet the requirements of subsection
13 (e), and

14 “(B) such person meets the requirements
15 of subsection (e) as soon as reasonably prac-
16 ticable after the first date such person knew, or
17 exercising reasonable diligence should have
18 known, that such failure existed.

19 “(2) OVERALL LIMITATION FOR UNINTEN-
20 TIONAL FAILURES.—

21 “(A) IN GENERAL.—If the person subject
22 to liability for tax under subsection (d) exer-
23 cised reasonable diligence to meet the require-
24 ments of subsection (e), the tax imposed by
25 subsection (a) for failures during the taxable

1 year of the employer (or, in the case of a multi-
2 employer plan, the taxable year of the trust
3 forming part of the plan) shall not exceed
4 \$500,000. For purposes of the preceding sen-
5 tence, all multiemployer plans of which the
6 same trust forms a part shall be treated as 1
7 plan.

8 “(B) TAXABLE YEARS IN THE CASE OF
9 CERTAIN CONTROLLED GROUPS.—For purposes
10 of this paragraph, if all persons who are treated
11 as a single employer for purposes of this section
12 do not have the same taxable year, the taxable
13 years taken into account shall be determined
14 under principles similar to the principles of sec-
15 tion 1561.

16 “(3) WAIVER BY SECRETARY.—In the case of a
17 failure which is due to reasonable cause and not to
18 willful neglect, the Secretary may waive part or all
19 of the tax imposed by subsection (a) to the extent
20 that the payment of such tax would be excessive or
21 otherwise inequitable relative to the failure involved.

22 “(d) LIABILITY FOR TAX.—The following shall be lia-
23 ble for the tax imposed by subsection (a):

24 “(1) In the case of a plan other than a multi-
25 employer plan, the employer.

1 “(2) In the case of a multiemployer plan, the
2 plan.

3 “(e) REQUIREMENTS RELATING TO DIVERSIFICA-
4 TION OF EMPLOYER SECURITY.—

5 “(1) IN GENERAL.—The requirements of this
6 subsection are the requirements of paragraphs (2),
7 (3), and (4).

8 “(2) RIGHT TO DIRECT INVESTMENTS.—

9 “(A) IN GENERAL.—Subject to subpara-
10 graph (B), a plan meets the requirements of
11 this paragraph if, under the plan—

12 “(i) any participant or beneficiary
13 who is permitted to exercise control over
14 assets in his or her account has the right
15 to allocate all assets in his or her account
16 (and any portion thereof) attributable to
17 employee contributions to any investment
18 option provided under the plan, and

19 “(ii) any such participant who has
20 completed 3 years of service (as defined in
21 section 411(a)(5)) with the employer, or
22 any such beneficiary of such a participant,
23 has the right to allocate all assets in his or
24 her account (and any portion thereof) at-

1 tributable to employer contributions to any
2 investment option provided under the plan.
3 The application of any penalty or any restric-
4 tion based on age or years of service in connec-
5 tion with any exercise of such right as provided
6 under this clause shall be construed as a viola-
7 tion of this clause.

8 “(B) LIMITATION TO READILY TRADABLE
9 EMPLOYER SECURITIES.—Subparagraph (A)
10 shall apply only to so much of a nonforfeitable
11 accrued benefit as consists of employer securi-
12 ties which are readily tradable on an established
13 securities market.

14 “(3) PROMPT COMPLIANCE WITH DIRECTIONS
15 TO ALLOCATE INVESTMENTS.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), a plan meets the require-
18 ments of this paragraph if the plan provides
19 that, within 5 days after the date of any elec-
20 tion by a participant or beneficiary allocating
21 his or her nonforfeitable accrued benefit to any
22 investment option provided under the plan, the
23 plan administrator shall take such actions as
24 are necessary to effectuate such allocation.

1 “(B) SPECIAL RULE FOR PERIODIC ELEC-
2 TIONS.—In any case in which the plan provides
3 for elections periodically during prescribed peri-
4 ods, the 5-day period described in subparagraph
5 (A) shall commence at the end of each such
6 prescribed period.

7 “(4) NOTICE OF RIGHTS AND OF IMPORTANCE
8 OF DIVERSIFICATION.—A plan meets the require-
9 ments of this paragraph if the plan provides that,
10 not later than 30 days prior to the date on which
11 the right of a participant under the plan to his or
12 her accrued benefit becomes nonforfeitable, the plan
13 administrator shall provide to such participant and
14 his or her beneficiaries a written notice—

15 “(A) setting forth their rights under this
16 section with respect to the accrued benefit, and

17 “(B) describing the importance of diversi-
18 fying the investment of account assets.

19 “(5) PRESERVATION OF AUTHORITY OF PLAN
20 TO LIMIT INVESTMENT.—Nothing in this subsection
21 shall be construed to limit the authority of a plan to
22 impose limitations on the portion of plan assets in
23 any account which may be invested in employer se-
24 curities.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
2 tions for chapter 43 of such Code is amended by
3 adding at the end the following new item:

 “Sec. 4980H. Failure of defined contribution plans to permit di-
 versification of employer securities.”.

4 (c) RECOMMENDATIONS RELATING TO NON-PUB-
5 LICLY TRADED STOCK.—Within 1 year after the date of
6 the enactment of this Act, the Secretary of Labor and the
7 Secretary of the Treasury shall jointly transmit to the
8 Committee on Education and the Workforce and the Com-
9 mittee on Ways and Means of the House of Representa-
10 tives and the Committee on Health, Education, Labor,
11 and Pensions and the Committee on Finance of the Senate
12 their recommendations regarding legislative changes relat-
13 ing to treatment, under section 404(e) of the Employee
14 Retirement Income Security Act of 1974 and section
15 401(a)(35) of the Internal Revenue Code of 1986 (as
16 added by this section), of individual account plans under
17 which a participant or beneficiary is permitted to exercise
18 control over assets in his or her account, in cases in which
19 such assets do not include employer securities which are
20 readily tradable under an established securities market.

21 **SEC. 202. EFFECTIVE DATE OF TITLE.**

22 (a) IN GENERAL.—Subject to subsection (b), the
23 amendments made by this title shall apply with respect
24 to plan years beginning on or after January 1, 2003.

1 (b) DELAYED EFFECTIVE DATE FOR EXISTING
2 HOLDINGS.—In any case in which a portion of the non-
3 forfeitable accrued benefit of a participant or beneficiary
4 is held in the form of employer securities (as defined in
5 section 407(d)(1) of the Employee Retirement Income Se-
6 curity Act of 1974) immediately before the first date of
7 the first plan year to which the amendments made by this
8 title apply, such portion shall be taken into account only
9 with respect to plan years beginning on or after January
10 1, 2004.

11 **TITLE III—EMPLOYEE** 12 **REPRESENTATION**

13 **SEC. 301. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-** 14 **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

15 (a) IN GENERAL.—Section 403(a) of the Employee
16 Retirement Income Security Act of 1974 (29 U.S.C.
17 1103(a)) is amended—

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

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

21 (3) by adding at the end the following new
22 paragraph:

23 “(2)(A) The assets of a single-employer plan which
24 is an individual account plan and under which some or
25 all of the assets are derived from employee contributions

1 shall be held in trust by a joint board of trustees, which
2 shall consist of two or more trustees representing on an
3 equal basis the interests of the employer or employers
4 maintaining the plan and the interests of the participants
5 and their beneficiaries and having equal voting rights.

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

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

19 “(iii) In any case in which clause (i) does not apply
20 with respect to a single-employer plan because the plan
21 is not described in clause (i) or because of a waiver filed
22 pursuant to clause (ii), the trustee or trustees representing
23 the interests of the participants and their beneficiaries
24 shall be selected by the plan participants in accordance
25 with regulations of the Secretary.

1 “(C) An individual shall not be treated as ineligible
2 for selection as trustee solely because such individual is
3 an employee of the plan sponsor, except that the employee
4 so selected may not be a highly compensated employee (as
5 defined in section 414(q) of the Internal Revenue Code
6 of 1986).

7 “(D) The Secretary shall provide by regulation for
8 the appointment of a neutral individual, in accordance
9 with the procedures under section 203(f) of the Labor
10 Management Relations Act, 1947 (29 U.S.C. 173(f)), to
11 cast votes as necessary to resolve tie votes by the trust-
12 ees.”.

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

1 **TITLE IV—EXECUTIVE PARITY**

2 **SEC. 401. INCLUSION IN GROSS INCOME OF FUNDED DE-**
3 **FERRED COMPENSATION OF CORPORATE IN-**
4 **SIDERS IF CORPORATION FUNDS DEFINED**
5 **CONTRIBUTION PLAN WITH EMPLOYER**
6 **STOCK.**

7 (a) IN GENERAL.—Subpart A of part I of subchapter
8 D of chapter 1 of the Internal Revenue Code of 1986 is
9 amended by adding at the end the following new section:

10 **“SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED**
11 **COMPENSATION OF CORPORATE INSIDERS IF**
12 **CORPORATION FUNDS DEFINED CONTRIBU-**
13 **TION PLAN WITH EMPLOYER STOCK.**

14 “(a) IN GENERAL.—If an employer maintains a de-
15 fined contribution plan to which employer contributions
16 are made in the form of employer stock and such employer
17 maintains a funded deferred compensation plan—

18 “(1) compensation of any corporate insider
19 which is deferred under such funded deferred com-
20 pensation plan shall be included in the gross income
21 of the insider or beneficiary for the 1st taxable year
22 in which there is no substantial risk of forfeiture of
23 the rights to such compensation, and

24 “(2) the tax treatment of any amount made
25 available under the plan to a corporate insider or

1 beneficiary shall be determined under section 72 (re-
2 lating to annuities, etc.).

3 “(b) FUNDED DEFERRED COMPENSATION PLAN.—

4 For purposes of this section—

5 “(1) IN GENERAL.—The term ‘funded deferred
6 compensation plan’ means any plan providing for the
7 deferral of compensation unless—

8 “(A) the employee’s rights to the com-
9 pensation deferred under the plan are no great-
10 er than the rights of a general creditor of the
11 employer, and

12 “(B) all amounts set aside (directly or in-
13 directly) for purposes of paying the deferred
14 compensation, and all income attributable to
15 such amounts, remain (until made available to
16 the participant or other beneficiary) solely the
17 property of the employer (without being re-
18 stricted to the provision of benefits under the
19 plan), and

20 “(C) the amounts referred to in subpara-
21 graph (B) are available to satisfy the claims of
22 the employer’s general creditors at all times
23 (not merely after bankruptcy or insolvency).

24 Such term shall not include a qualified employer
25 plan.

1 “(2) SPECIAL RULES.—

2 “(A) EMPLOYEE’S RIGHTS.—A plan shall
3 be treated as failing to meet the requirements
4 of paragraph (1)(A) unless, under the written
5 terms of the plan—

6 “(i) the compensation deferred under
7 the plan is paid only upon separation from
8 service, death, or at a specified time (or
9 pursuant to a fixed schedule), and

10 “(ii) the plan does not permit the ac-
11 celeration of the time such deferred com-
12 pensation is paid by reason of any event.

13 If the employer and employee agree to a modi-
14 fication of the plan that accelerates the time for
15 payment of any deferred compensation, then all
16 compensation previously deferred under the
17 plan shall be includible in gross income for the
18 taxable year during which such modification
19 takes effect and the taxpayer shall pay interest
20 at the underpayment rate on the underpay-
21 ments that would have occurred had the de-
22 ferred compensation been includible in gross in-
23 come in the taxable years deferred.

24 “(B) CREDITOR’S RIGHTS.—A plan shall
25 be treated as failing to meet the requirements

1 of paragraph (1)(B) with respect to amounts
2 set aside in a trust unless—

3 “(i) the employee has no beneficial in-
4 terest in the trust,

5 “(ii) assets in the trust are available
6 to satisfy claims of general creditors at all
7 times (not merely after bankruptcy or in-
8 solvency), and

9 “(iii) there is no factor (such as the
10 location of the trust outside the United
11 States) that would make it more difficult
12 for general creditors to reach the assets in
13 the trust than it would be if the trust as-
14 sets were held directly by the employer in
15 the United States.

16 “(c) CORPORATE INSIDER.—For purposes of this sec-
17 tion, the term ‘corporate insider’ means, with respect to
18 a corporation, any individual who is subject to the require-
19 ments of section 16(a) of the Securities Exchange Act of
20 1934 with respect to such corporation.

21 “(d) OTHER DEFINITIONS.—For purposes of this
22 section—

23 “(1) PLAN INCLUDES ARRANGEMENTS, ETC.—
24 The term ‘plan’ includes any agreement or arrange-
25 ment.

1 “(2) SUBSTANTIAL RISK OF FORFEITURE.—The
2 rights of a person to compensation are subject to a
3 substantial risk of forfeiture if such person’s rights
4 to such compensation are conditioned upon the fu-
5 ture performance of substantial services by any indi-
6 vidual.”

7 (b) CLERICAL AMENDMENT.—The table of sections
8 for such subpart A is amended by adding at the end the
9 following new item:

 “Sec. 409A. Denial of deferral for funded deferred compensation
 of corporate insiders if corporation funds defined
 contribution plan with employer stock.”

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to amounts deferred after the date
12 of the enactment of this Act.

13 **SEC. 402. INSIDER TRADES DURING PENSION FUND BLACK-**
14 **OUT PERIODS PROHIBITED.**

15 (a) PROHIBITION.—It shall be unlawful for any per-
16 son who is directly or indirectly the beneficial owner of
17 more than 10 percent of any class of any equity security
18 (other than an exempted security) which is registered
19 under section 12 of the Securities Exchange Act of 1934
20 (15 U.S.C. 78l) or who is a director or an officer of the
21 issuer of such security, directly or indirectly, to purchase
22 (or otherwise acquire) or sell (or otherwise transfer) any
23 equity security of any issuer (other than an exempted se-

1 curity), during any blackout period with respect to such
2 equity security.

3 (b) REMEDY.—Any profit realized by such beneficial
4 owner, director, or officer from any purchase (or other ac-
5 quisition) or sale (or other transfer) in violation of this
6 section shall inure to and be recoverable by the issuer irre-
7 spective of any intention on the part of such beneficial
8 owner, director, or officer in entering into the transaction.
9 Suit to recover such profit may be instituted at law or
10 in equity in any court of competent jurisdiction by the
11 issuer, or by the owner of any security of the issuer in
12 the name and in behalf of the issuer if the issuer shall
13 fail or refuse to bring such suit within 60 days after re-
14 quest or shall fail diligently to prosecute the same there-
15 after; but no such suit shall be brought more than 2 years
16 after the date such profit was realized. This subsection
17 shall not be construed to cover any transaction where such
18 beneficial owner was not such both at the time of the pur-
19 chase and sale, or the sale and purchase, of the security
20 or security-based swap (as defined in section 206B of the
21 Gramm-Leach-Bliley Act) involved, or any transaction or
22 transactions which the Commission by rules and regula-
23 tions may exempt as not comprehended within the pur-
24 poses of this subsection.

1 (c) RULEMAKING PERMITTED.—The Commission
2 may issue rules to clarify the application of this sub-
3 section, to ensure adequate notice to all persons affected
4 by this subsection, and to prevent evasion thereof.

5 (d) As used in this section:

6 (1) BENEFICIAL OWNER.—The term “beneficial
7 owner” has the meaning provided such term in rules
8 or regulations issued by the Commission under sec-
9 tion 16 of the Securities Exchange Act of 1934 (15
10 U.S.C. 78p).

11 (2) BLACKOUT PERIOD.—The term “blackout
12 period” with respect to the equity securities of any
13 issuer—

14 (A) means any period during which the
15 ability of at least fifty percent of the partici-
16 pants or beneficiaries under all applicable indi-
17 vidual account plans maintained by the issuer
18 to purchase (or otherwise acquire) or sell (or
19 otherwise transfer) an interest in any equity of
20 such issuer is suspended by the issuer or a fidu-
21 ciary of the plan; but

22 (B) does not include—

23 (i) a period in which the employees of
24 an issuer may not allocate their interests

1 in the individual account plan due to an
2 express investment restriction—

3 (I) incorporated into the indi-
4 vidual account plan; and

5 (II) timely disclosed to employees
6 before joining the individual account
7 plan or as a subsequent amendment
8 to the plan;

9 (ii) any suspension described in sub-
10 paragraph (A) that is imposed solely in
11 connection with persons becoming partici-
12 pants or beneficiaries, or ceasing to be par-
13 ticipants or beneficiaries, in an applicable
14 individual account plan by reason of a cor-
15 porate merger, acquisition, divestiture, or
16 similar transaction.

17 (3) COMMISSION.—The term “Commission”
18 means the Securities and Exchange Commission.

19 (4) INDIVIDUAL ACCOUNT PLAN.—The term
20 “individual account plan” has the meaning provided
21 such term in section 3(34) of the Employee Retirement
22 Income Security Act of 1974 (29 U.S.C.
23 1002(34)).

1 (5) ISSUER.—The term “issuer” shall have the
2 meaning set forth in section 2(a)(4) of the Securities
3 Act of 1933 (15 U.S.C. 77b(a)(4)).

4 **TITLE V—INCREASED**
5 **ACCOUNTABILITY**

6 **SEC. 501. BONDING OR INSURANCE ADEQUATE TO PRO-**
7 **TECT INTEREST OF PARTICIPANTS AND**
8 **BENEFICIARIES.**

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

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

19 **SEC. 502. LIABILITY FOR BREACH OF FIDUCIARY DUTY.**

20 (a) **LIABILITY FOR PARTICIPATING IN OR CON-**
21 **CEALING FIDUCIARY BREACH.—**

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

24 (A) **IN GENERAL.—**Part 4 of subtitle B of
25 title I of the Employee Retirement Income Se-

1 curity Act of 1974 (29 U.S.C. 1101 et seq.) is
2 amended by adding after section 409 the fol-
3 lowing new section:

4 **“SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN**
5 **401(k) PLANS.**

6 “(a) Any person who is a fiduciary with respect to
7 an individual account plan that includes a qualified cash
8 or deferred arrangement under section 401(k) of the In-
9 ternal Revenue Code of 1986 who breaches any of the re-
10 sponsibilities, obligations, or duties imposed upon fidu-
11 ciaries by this title shall be personally liable to make good
12 to each participant and beneficiary of the plan any losses
13 to such participant or beneficiary resulting from each such
14 breach, and to restore to such participant or beneficiary
15 any profits of such fiduciary which have been made
16 through use of assets of the plan by the fiduciary, and
17 shall be subject to such other equitable or remedial relief
18 as the court may deem appropriate, including removal of
19 such fiduciary. A fiduciary may also be removed for a vio-
20 lation of section 411 of this Act.

21 “(b) The right of participants and beneficiaries under
22 subsection (a) to sue for breach of fiduciary duty with re-
23 spect to an individual account plan that includes a quali-
24 fied cash or deferred arrangement under section 401(k)
25 of such Code shall be in addition to all existing rights that

1 participants and beneficiaries have under section 409, sec-
2 tion 502, and any other provision of this title, and shall
3 not be construed to give rise to any inference that such
4 rights do not already exist under section 409, section 502,
5 or any other provision of this title.

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

10 (B) CONFORMING AMENDMENT.—The
11 table of contents for part 4 of subtitle B of title
12 I of such Act is amended by inserting the fol-
13 lowing new item after the item relating to sec-
14 tion 409:

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

15 (2) INSIDER LIABILITY.—

16 (A) IN GENERAL.—Section 409 of the Em-
17 ployee Retirement Income Security Act of 1974
18 (29 U.S.C. 1109) is amended by redesignating
19 subsection (b) as subsection (c) and by insert-
20 ing after subsection (a) the following new sub-
21 section:

22 “(b)(1)(A) If an insider with respect to the plan spon-
23 sor of an employer individual account plan that holds em-

1 ployer securities that are readily tradable on an estab-
2 lished securities market—

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

6 “(ii) knowingly undertakes to conceal such a
7 breach,

8 such insider shall be personally liable under this sub-
9 section for such breach in the same manner as the fidu-
10 ciary who commits such breach.

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

14 “(i) any officer or director with respect to the
15 plan sponsor, or

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

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

20 “(A) to an individual account plan shall inure
21 to the individual accounts of the affected partici-
22 pants or beneficiaries, and

23 “(B) to a participant or beneficiary shall be
24 payable to the individual account plan on behalf of

1 such participant or beneficiary unless such plan has
2 been terminated.”

3 (B) CONFORMING AMENDMENT.—Section
4 409(c) of such Act (29 U.S.C. 1109(c)), as re-
5 designated by subparagraph (A), is amended by
6 inserting before the period the following:
7 “, unless such liability arises under subsection
8 (b)”.

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

15 **SEC. 503. PRESERVATION OF RIGHTS OR CLAIMS.**

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

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

23 “(2) Paragraph (1) shall not apply to an agreement
24 providing for arbitration or participation in any other non-
25 judicial procedure to resolve a dispute if the agreement

1 is entered into knowingly and voluntarily by the parties
2 involved after the dispute has arisen or is pursuant to the
3 terms of a collective bargaining agreement.”.

4 **SEC. 504. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(6) pursuing claims on behalf of participants
22 and beneficiaries and providing appropriate assist-
23 ance in the resolution of disputes between partici-
24 pants and beneficiaries and pension plans, including
25 assistance in obtaining settlement agreements.

1 “(c) REPORTS.—

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

10 “(A) identify significant problems the Ad-
11 vocate has identified,

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

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

16 The Advocate shall submit a copy of such report to
17 the Secretary and any other appropriate official at
18 the same time it is submitted to the committees of
19 Congress.

20 “(2) SPECIFIC REPORTS.—The Pension Partici-
21 pant Advocate shall report to the Secretary or any
22 other appropriate official any time the Advocate
23 identifies a problem which may be corrected by the
24 Secretary or such official.

1 “(3) REPORTS TO BE SUBMITTED DIRECTLY.—

2 The report required under paragraph (1) shall be
3 provided directly to the committees of Congress
4 without any prior review or comment than the Sec-
5 retary or any other Federal officer or employee.

6 “(d) SPECIFIC POWERS.—

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

14 “(2) APPEARANCES.—The Pension Participant
15 Advocate may represent the views and interests of
16 pension plan participants before any Federal agency,
17 including, upon request of a participant, in any pro-
18 ceeding involving the participant.

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

23 “(A) contract with any person to acquire
24 statistical information with respect to pension
25 plan participants, and

1 “(B) conduct direct surveys of pension
2 plan participants.”

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

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

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

8 **SEC. 505. ADDITIONAL CRIMINAL PENALTIES.**

9 Section 501 of the Employee Retirement Income Se-
10 curity Act of 1974 (29 U.S.C. 1131) is amended—

11 (1) by inserting “(a)” after “SEC. 501.”;

12 (2) by striking “\$5,000” and inserting
13 “\$50,000” and by striking “\$100,000” and insert-
14 ing “\$500,000”;

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

17 “(b) Any person described in subsection (a) of 402
18 of the Employee Pension Freedom Act of 2002 who will-
19 fully violates such section or section 104(d) or causes an
20 individual account plan to fail to meet the requirements
21 of section 409A of the Internal Revenue Code of 1986
22 shall upon conviction be fined not more than \$500,000
23 or imprisoned not more than one year, or both.”.

1 **SEC. 506. STUDY REGARDING INSURANCE SYSTEM FOR IN-**
2 **DIVIDUAL ACCOUNT PLANS.**

3 (a) STUDY.—As soon as practicable after the date of
4 the enactment of this Act, the Pension Benefit Guaranty
5 Corporation shall contract to carry out a study relating
6 to the establishment of an insurance system for individual
7 account plans. In conducting such study, the Corporation
8 shall consider—

- 9 (1) the feasibility and impact of such a system,
10 and
11 (2) options for developing such a system.

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

20 **TITLE VI—INVESTMENT ADVICE**
21 **FOR PARTICIPANTS AND**
22 **BENEFICIARIES**

23 **SEC. 601. INDEPENDENT INVESTMENT ADVICE.**

24 (a) IN GENERAL.—SECTION 404(C)(1) OF THE EM-
25 PLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (29

1 U.S.C. 1104(C)(1)) (AS AMENDED BY SECTION 102(C)) IS
2 AMENDED FURTHER—

3 (1) by redesignating subparagraphs (A) and
4 (B) as clauses (i) and (ii), respectively, and by in-
5 serting “(A)” after “(c)(1)”; and

6 (2) by adding at the end the following new sub-
7 paragraphs:

8 “(B)(i) In the case of a pension plan described in sub-
9 paragraph (A) which provides investment in employer se-
10 curities as at least one option for investment of plan assets
11 at the direction of the participant or beneficiary, such plan
12 shall make available to the participant or beneficiary the
13 services of a qualified fiduciary adviser for purposes of
14 providing investment advice described in section
15 3(21)(A)(ii) regarding investment in such securities.

16 “(ii) No person who is otherwise a fiduciary shall be
17 liable by reason of any investment advice provided by a
18 qualified fiduciary adviser pursuant to a request under
19 clause (i) if—

20 “(I) the plan provides for selection and moni-
21 toring of such adviser in a prudent and effective
22 manner, and

23 “(II) such adviser is a named fiduciary under
24 the plan in connection with the provision of such ad-
25 vice.

1 “(C) For purposes of subparagraph (B)—

2 “(i) The term ‘qualified fiduciary adviser’
3 means, with respect to a plan, a person who—

4 “(I) is a fiduciary of the plan by reason of
5 the provision of qualified investment advice by
6 such person to a participant or beneficiary,

7 “(II) has no material interest in, and no
8 material affiliation or contractual relationship
9 with any third party having a material interest
10 in, the security or other property with respect
11 to which the person is providing the advice,

12 “(III) meets the qualifications of clause
13 (ii), and

14 “(IV) meets the additional requirements of
15 clause (iii).

16 “(ii) A person meets the qualifications of this
17 subparagraph if such person—

18 “(I) is registered as an investment ad-
19 viser under the Investment Advisers Act of
20 1940 (15 U.S.C. 80b–1 et seq.),

21 “(II) if not registered as an invest-
22 ment adviser under such Act by reason of
23 section 203A(a)(1) of such Act (15 U.S.C.
24 80b–3a(a)(1)), is registered under the laws
25 of the State in which the fiduciary main-

1 tains its principal office and place of busi-
2 ness, and, at the time the fiduciary last
3 filed the registration form most recently
4 filed by the fiduciary with such State in
5 order to maintain the fiduciary's registra-
6 tion under the laws of such State, also
7 filed a copy of such form with the Sec-
8 retary,

9 “(III) is registered as a broker or
10 dealer under the Securities Exchange Act
11 of 1934 (15 U.S.C. 78a et seq.),

12 “(IV) is a bank or similar financial in-
13 stitution referred to in section 408(b)(4),

14 “(V) is an insurance company quali-
15 fied to do business under the laws of a
16 State, or

17 “(VI) is any other comparable entity
18 which satisfies such criteria as the Sec-
19 retary determines appropriate.

20 “(iii) A person meets the additional re-
21 quirements of this clause if every individual who
22 is employed (or otherwise compensated) by such
23 person and whose scope of duties includes the
24 provision of qualified investment advice on be-

1 half of such person to any participant or bene-
2 ficiary is—

3 “(I) a registered representative of
4 such person,

5 “(II) an individual described in sub-
6 clause (I), (II), or (III) of clause (i), or

7 “(III) such other comparable qualified
8 individual as may be designated in regula-
9 tions of the Secretary.”.

10 (b) MAINTENANCE OF FIDUCIARY LIABILITY.—Sec-
11 tion 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B))
12 is amended by inserting before the period the following:
13 “, except that this subparagraph shall not be construed
14 to exempt any fiduciary from liability for any violation of
15 this section”.

16 **SEC. 602. TAX TREATMENT OF QUALIFIED RETIREMENT**
17 **PLANNING SERVICES.**

18 (a) IN GENERAL.—Subsection (m) of section 132 of
19 the Internal Revenue Code of 1986 (defining qualified re-
20 tirement services) is amended by adding at the end the
21 following new paragraph:

22 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
23 shall be included in the gross income of any em-
24 ployee solely because the employee may choose be-
25 tween any qualified retirement planning services pro-

1 vided by a qualified investment advisor and com-
2 pensation which would otherwise be includible in the
3 gross income of such employee. The preceding sen-
4 tence shall apply to highly compensated employees
5 only if the choice described in such sentence is avail-
6 able on substantially the same terms to each mem-
7 ber of the group of employees normally provided
8 education and information regarding the employer's
9 qualified employer plan.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 403(b)(3)(B) of such Code is
12 amended by inserting “132(m)(4),” after
13 “132(f)(4),”.

14 (2) Section 414(s)(2) of such Code is amended
15 by inserting “132(m)(4),” after “132(f)(4),”.

16 (3) Section 415(c)(3)(D)(ii) of such Code is
17 amended by inserting “132(m)(4),” after
18 “132(f)(4),”.

19 (c) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years beginning after
21 December 31, 2002.

1 **TITLE VII—GENERAL**
2 **PROVISIONS**

3 **SEC. 701. GENERAL EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as otherwise provided in
5 this Act, the amendments made by this Act shall apply
6 with respect to plan years beginning on or after January
7 1, 2003.

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

17 (1) the later of—

18 (A) January 1, 2004, or

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

23 or

24 (2) January 1, 2005.

1 **SEC. 702. PLAN AMENDMENTS.**

2 If any amendment made by this Act requires an
3 amendment to any plan, such plan amendment shall not
4 be required to be made before the first plan year beginning
5 on or after the effective date specified in section 601, if—

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

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