

107TH CONGRESS
2^D SESSION

H. R. 5110

To provide for improved pension plan security, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2002

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, Financial Services, the Judiciary, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for improved pension plan security, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Omnibus Corporate Reform and Restoration Act of
6 2002”.

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

Sec. 1. Short title and table of contents.

- Sec. 2. 20-percent limitation on employer stock and real property held by participant in certain individual account plans.
- Sec. 3. Improvements in ability of employees to diversify assets in ESOPs.
- Sec. 4. Reduction in deduction for employer matching contributions to defined contribution plans made in employer securities.
- Sec. 5. Prohibited transaction exemption for the provision of investment advice.
- Sec. 6. Plan investment committee.
- Sec. 7. Study regarding insurance system for individual account plans.
- Sec. 8. Improvement of accounting standards for special purpose entities.
- Sec. 9. Periodic pension benefits statements.
- Sec. 10. Report to participants and beneficiaries of trades in employer securities.
- Sec. 11. Prohibition on loans to officers and directors.
- Sec. 12. Priority of certain claims in bankruptcy cases.
- Sec. 13. Criminal penalties for altering documents.
- Sec. 14. Effective dates.

1 **SEC. 2. 20-PERCENT LIMITATION ON EMPLOYER STOCK**
 2 **AND REAL PROPERTY HELD BY PARTICIPANT**
 3 **IN CERTAIN INDIVIDUAL ACCOUNT PLANS.**

4 (a) IN GENERAL.—Section 407 of the Employee Re-
 5 tirement Income Security Act of 1974 (29 U.S.C. 1107)
 6 is amended by adding at the end the following:

7 “(g) DIVERSIFICATION REQUIREMENTS APPLICABLE
 8 TO CERTAIN INDIVIDUAL ACCOUNT PLANS.—

9 “(1) IN GENERAL.—An applicable individual ac-
 10 count plan shall not be treated as an eligible indi-
 11 vidual account plan (as defined in subsection (d)(3))
 12 unless the plan meets—

13 “(A) the acquisition and holding require-
 14 ments of paragraph (2), and

15 “(B) the divestment requirement of para-
 16 graph (3).

17 “(2) ACQUISITION AND HOLDING REQUIRE-
 18 MENTS.—

1 “(A) IN GENERAL.—A plan meets the re-
2 quirements of this paragraph only if—

3 “(i) the plan may not acquire quali-
4 fying employer securities or qualifying em-
5 ployer real property to the extent that, im-
6 mediately after the acquisition, the fair
7 market value of all qualifying employer se-
8 curities and qualifying employer real prop-
9 erty allocated (or to be allocated) to any
10 participant or beneficiary would exceed 20
11 percent of the fair market value of all as-
12 sets allocated (or to be allocated) to such
13 participant or beneficiary under the plan,
14 and

15 “(ii) as of the last day of any calendar
16 quarter, the fair market value of all quali-
17 fying employer securities and qualifying
18 employer real property allocated (or to be
19 allocated) to any participant or beneficiary
20 does not exceed 20 percent of the fair mar-
21 ket value of all assets allocated (or to be
22 allocated) to such participant or bene-
23 ficiary.

24 “(B) ELECTION TO WAIVE REQUIRE-
25 MENTS.—The requirements of subparagraph

1 (A) shall not apply in connection with the indi-
2 vidual account of a participant or beneficiary
3 upon the filing by such participant or bene-
4 ficiary with the plan administrator (in such
5 form and manner as shall be prescribed in reg-
6 ulations of the Secretary) a written and signed
7 notice waiving such requirements, until such
8 time as the participant or beneficiary files with
9 the plan administrator (in such form and man-
10 ner as shall be prescribed in such regulations)
11 a written and signed notice revoking such waiv-
12 er.

13 “(3) OPPORTUNITY FOR EMPLOYEE TO DIVEST
14 EMPLOYER SECURITIES.—A plan meets the require-
15 ments of this paragraph if each employee who has
16 a nonforfeitable right to 100 percent of the employ-
17 ee’s accrued benefit derived from employer contribu-
18 tions may, at any time after the 90th day following
19 the allocation of any qualifying employer securities
20 or qualifying employer real property to the employee
21 under the plan, direct the plan to divest the employ-
22 ee’s account of such securities or property and rein-
23 vest an equivalent amount in other assets.

24 “(4) DIVESTITURE.—

1 “(A) IN GENERAL.—The Secretary shall
2 prescribe regulations under which—

3 “(i) a plan is given a reasonable pe-
4 riod of time to divest itself of qualifying
5 employer securities and qualifying em-
6 ployer real property in order to meet the
7 requirements of this subsection, and

8 “(ii) in the case of a plan in which a
9 participant or beneficiary exercises control
10 over assets in an account, the participant
11 is given reasonable notice of the require-
12 ment, and a reasonable period of time, to
13 make such divestiture.

14 “(B) WAIVER IN DE MINIMIS CASES.—The
15 Secretary may by regulations waive the applica-
16 tion of paragraph (2)(B) in cases where the
17 failure with respect to any participant or bene-
18 ficiary is de minimis and due solely to market
19 fluctuation.

20 “(5) DEFINITIONS AND SPECIAL RULES.—For
21 purposes of this subsection—

22 “(A) APPLICABLE INDIVIDUAL ACCOUNT
23 PLAN.—The term ‘applicable individual account
24 plan’ means an individual account plan other
25 than an employee stock ownership plan as de-

1 fined in section 4975(e)(7) of the Internal Rev-
2 enue Code of 1986.

3 “(B) AGGREGATION.—All applicable indi-
4 vidual account plans (other than multiemployer
5 plans) maintained by the same employer shall
6 be treated as a single plan.

7 “(6) TRANSITION RULES.—

8 “(A) IN GENERAL.—If, as of December 31,
9 2002, the fair market value of qualifying em-
10 ployer securities and qualifying employer real
11 property allocated (or to be allocated) under
12 any plan to any one participant or beneficiary
13 exceeds 20 percent of the fair market value of
14 all assets so allocated (or to be allocated), the
15 plan shall be treated as meeting the require-
16 ments of paragraph (2)(B). This subparagraph
17 shall cease to apply if any such securities or
18 property are allocated after December 31,
19 2002, to the participant or beneficiary without
20 the requirements of paragraph (2)(A) or sub-
21 paragraph (B) being met.

22 “(B) CONTRACTUAL REQUIREMENTS.—If
23 qualifying employer securities or qualifying em-
24 ployer real property are acquired after Decem-
25 ber 31, 2002, pursuant to a contract in effect

1 on the date of enactment of this subsection and
2 at all times thereafter, the fair market value of
3 such securities or property as of December 31,
4 2002, shall be taken into account under sub-
5 paragraph (A).”

6 (b) CONFORMING AMENDMENT.—Section 407(b)(1)
7 of such Act (29 U.S.C. 1107(b)(1)) is amended by striking
8 “Subsection (a)” and inserting “Subject to subsection (g),
9 subsection (a)”.

10 **SEC. 3. IMPROVEMENTS IN ABILITY OF EMPLOYEES TO DI-**
11 **VERSIFY ASSETS IN ESOPS.**

12 (a) IN GENERAL.—Subparagraph (B)(iii) of section
13 401(a)(28) of the Internal Revenue Code of 1986 (relating
14 to additional requirements for employee stock ownerships
15 plans) is amended—

16 (1) by striking “10 years” and inserting “5
17 years”, and

18 (2) by striking “age 55” and inserting “age
19 35”.

20 (b) TRUSTEE-TO-TRUSTEE TRANSFER REQUIRED.—
21 Clause (ii) of section 401(a)(28)(B) of such Code is
22 amended by adding at the end the following new flush sen-
23 tence:

24 “In the case of a qualified participant who
25 has not attained the age of 55 on or before

1 the date of any distribution described in
2 subclause (I), a plan shall be treated as
3 meeting the requirements of subclause (I)
4 only if such distribution is made in the
5 form of a direct trustee-to-trustee transfer
6 to an eligible retirement plan (as defined
7 in paragraph (31)(D)) specified by the
8 participant.”

9 **SEC. 4. REDUCTION IN DEDUCTION FOR EMPLOYER**
10 **MATCHING CONTRIBUTIONS TO DEFINED**
11 **CONTRIBUTION PLANS MADE IN EMPLOYER**
12 **SECURITIES.**

13 Section 404(a) of the Internal Revenue Code of 1986
14 (relating to deduction for contributions of an employer to
15 an employee trust, etc.) is amended by adding at the end
16 the following:

17 “(12) LIMITATIONS ON DEDUCTIONS FOR EM-
18 PLOYER MATCHING CONTRIBUTIONS MADE IN EM-
19 PLOYER SECURITIES.—In the case of an employer
20 matching contribution of employer securities (as de-
21 fined in section 409(l)) to a defined contribution
22 plan other than an employee stock ownership plan
23 (as defined in section 4975(e)(7)), the amount of the
24 deduction allowed shall be equal to 50 percent of the
25 amount allowable without regard to this paragraph.”

1 **SEC. 5. PROHIBITED TRANSACTION EXEMPTION FOR THE**
2 **PROVISION OF INVESTMENT ADVICE.**

3 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
4 INCOME SECURITY ACT OF 1974.—

5 (1) EXEMPTION FROM PROHIBITED TRANS-
6 ACTIONS.—Section 408(b) of the Employee Retire-
7 ment Income Security Act of 1974 (29 U.S.C.
8 1108(b)) is amended by adding at the end the fol-
9 lowing new paragraph:

10 “(14)(A) Any transaction described in subpara-
11 graph (B) in connection with the provision of invest-
12 ment advice described in section 3(21)(A)(ii), in any
13 case in which—

14 “(i) the investment of assets of the plan is
15 subject to the direction of plan participants or
16 beneficiaries,

17 “(ii) the advice is provided to the plan or
18 a participant or beneficiary of the plan by a fi-
19 duciary adviser in connection with any sale, ac-
20 quisition, or holding of a security or other prop-
21 erty for purposes of investment of plan assets,
22 and

23 “(iii) the requirements of subsection (g)
24 are met in connection with the provision of the
25 advice.

1 “(B) The transactions described in this sub-
2 paragraph are the following:

3 “(i) the provision of the advice to the plan,
4 participant, or beneficiary;

5 “(ii) the sale, acquisition, or holding of a
6 security or other property (including any lend-
7 ing of money or other extension of credit associ-
8 ated with the sale, acquisition, or holding of a
9 security or other property) pursuant to the ad-
10 vice; and

11 “(iii) the direct or indirect receipt of fees
12 or other compensation by the fiduciary adviser
13 or an affiliate thereof (or any employee, agent,
14 or registered representative of the fiduciary ad-
15 viser or affiliate) in connection with the provi-
16 sion of the advice or in connection with a sale,
17 acquisition, or holding of a security or other
18 property pursuant to the advice.”.

19 (2) REQUIREMENTS.—Section 408 of such Act
20 is amended further by adding at the end the fol-
21 lowing new subsection:

22 “(g) REQUIREMENTS RELATING TO PROVISION OF
23 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

24 “(1) IN GENERAL.—The requirements of this
25 subsection are met in connection with the provision

1 of investment advice referred to in section
2 3(21)(A)(ii), provided to an employee benefit plan or
3 a participant or beneficiary of an employee benefit
4 plan by a fiduciary adviser with respect to the plan
5 in connection with any sale, acquisition, or holding
6 of a security or other property for purposes of in-
7 vestment of amounts held by the plan, if—

8 “(A) in the case of the initial provision of
9 the advice with regard to the security or other
10 property by the fiduciary adviser to the plan,
11 participant, or beneficiary, the fiduciary adviser
12 provides to the recipient of the advice, at a time
13 reasonably contemporaneous with the initial
14 provision of the advice, a written notification
15 (which may consist of notification by means of
16 electronic communication)—

17 “(i) of all fees or other compensation
18 relating to the advice that the fiduciary ad-
19 viser or any affiliate thereof is to receive
20 (including compensation provided by any
21 third party) in connection with the provi-
22 sion of the advice or in connection with the
23 sale, acquisition, or holding of the security
24 or other property,

1 “(ii) of any material affiliation or con-
2 tractual relationship of the fiduciary ad-
3 viser or affiliates thereof in the security or
4 other property,

5 “(iii) of any limitation placed on the
6 scope of the investment advice to be pro-
7 vided by the fiduciary adviser with respect
8 to any such sale, acquisition, or holding of
9 a security or other property,

10 “(iv) of the types of services provided
11 by the fiduciary advisor in connection with
12 the provision of investment advice by the
13 fiduciary adviser,

14 “(v) that the adviser is acting as a fi-
15 duciary of the plan in connection with the
16 provision of the advice, and

17 “(vi) that a recipient of the advice
18 may separately arrange for the provision of
19 advice by another adviser, that could have
20 no material affiliation with and receive no
21 fees or other compensation in connection
22 with the security or other property.

23 “(B) the fiduciary adviser provides appro-
24 priate disclosure, in connection with the sale,
25 acquisition, or holding of the security or other

1 property, in accordance with all applicable secu-
2 rities laws,

3 “(C) the sale, acquisition, or holding oc-
4 curs solely at the direction of the recipient of
5 the advice,

6 “(D) the compensation received by the fi-
7 duciary adviser and affiliates thereof in connec-
8 tion with the sale, acquisition, or holding of the
9 security or other property is reasonable, and

10 “(E) the terms of the sale, acquisition, or
11 holding of the security or other property are at
12 least as favorable to the plan as an arm’s
13 length transaction would be.

14 “(2) STANDARDS FOR PRESENTATION OF IN-
15 FORMATION.—

16 “(A) IN GENERAL.—The notification re-
17 quired to be provided to participants and bene-
18 ficiaries under paragraph (1)(A) shall be writ-
19 ten in a clear and conspicuous manner and in
20 a manner calculated to be understood by the av-
21 erage plan participant and shall be sufficiently
22 accurate and comprehensive to reasonably ap-
23 prise such participants and beneficiaries of the
24 information required to be provided in the noti-
25 fication.

1 “(B) MODEL FORM FOR DISCLOSURE OF
2 FEES AND OTHER COMPENSATION.—The Sec-
3 retary shall issue a model form for the disclo-
4 sure of fees and other compensation required in
5 paragraph (1)(A)(i) which meets the require-
6 ments of subparagraph (A).

7 “(3) EXEMPTION CONDITIONED ON CONTINUED
8 AVAILABILITY OF REQUIRED INFORMATION ON RE-
9 QUEST FOR 1 YEAR.—The requirements of para-
10 graph (1)(A) shall be deemed not to have been met
11 in connection with the initial or any subsequent pro-
12 vision of advice described in paragraph (1) to the
13 plan, participant, or beneficiary if, at any time dur-
14 ing the provision of advisory services to the plan,
15 participant, or beneficiary, the fiduciary adviser fails
16 to maintain the information described in clauses (i)
17 through (iv) of subparagraph (A) in currently accu-
18 rate form and in the manner described in paragraph
19 (2) or fails—

20 “(A) to provide, without charge, such cur-
21 rently accurate information to the recipient of
22 the advice no less than annually,

23 “(B) to make such currently accurate in-
24 formation available, upon request and without
25 charge, to the recipient of the advice, or

1 “(C) in the event of a material change to
2 the information described in clauses (i) through
3 (iv) of paragraph (1)(A), to provide, without
4 charge, such currently accurate information to
5 the recipient of the advice at a time reasonably
6 contemporaneous to the material change in in-
7 formation.

8 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
9 OF COMPLIANCE.—A fiduciary adviser referred to in
10 paragraph (1) who has provided advice referred to in
11 such paragraph shall, for a period of not less than
12 6 years after the provision of the advice, maintain
13 any records necessary for determining whether the
14 requirements of the preceding provisions of this sub-
15 section and of subsection (b)(14) have been met. A
16 transaction prohibited under section 406 shall not be
17 considered to have occurred solely because the
18 records are lost or destroyed prior to the end of the
19 6-year period due to circumstances beyond the con-
20 trol of the fiduciary adviser.

21 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
22 TAIN OTHER FIDUCIARIES.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), a plan sponsor or other person who
25 is a fiduciary (other than a fiduciary adviser)

1 shall not be treated as failing to meet the re-
2 quirements of this part solely by reason of the
3 provision of investment advice referred to in
4 section 3(21)(A)(ii) (or solely by reason of con-
5 tracting for or otherwise arranging for the pro-
6 vision of the advice), if—

7 “(i) the advice is provided by a fidu-
8 ciary adviser pursuant to an arrangement
9 between the plan sponsor or other fidu-
10 ciary and the fiduciary adviser for the pro-
11 vision by the fiduciary adviser of invest-
12 ment advice referred to in such section,

13 “(ii) the terms of the arrangement re-
14 quire compliance by the fiduciary adviser
15 with the requirements of this subsection,
16 and

17 “(iii) the terms of the arrangement
18 include a written acknowledgment by the
19 fiduciary adviser that the fiduciary adviser
20 is a fiduciary of the plan with respect to
21 the provision of the advice.

22 “(B) CONTINUED DUTY OF PRUDENT SE-
23 LECTION OF ADVISER AND PERIODIC REVIEW.—
24 Nothing in subparagraph (A) shall be construed
25 to exempt a plan sponsor or other person who

1 is a fiduciary from any requirement of this part
2 for the prudent selection and periodic review of
3 a fiduciary adviser with whom the plan sponsor
4 or other person enters into an arrangement for
5 the provision of advice referred to in section
6 3(21)(A)(ii). The plan sponsor or other person
7 who is a fiduciary has no duty under this part
8 to monitor the specific investment advice given
9 by the fiduciary adviser to any particular recipi-
10 ent of the advice.

11 “(C) AVAILABILITY OF PLAN ASSETS FOR
12 PAYMENT FOR ADVICE.—

13 “(i) IN GENERAL.—Nothing in this
14 part shall be construed to preclude the use
15 of plan assets to pay for reasonable ex-
16 penses in providing investment advice re-
17 ferred to in section 3(21)(A)(ii).

18 “(ii) REIMBURSEMENT FOR ADVICE
19 SECURED BY PARTICIPANT OR BENE-
20 FICIARY.—In accordance such regulations
21 as may be prescribed by the Secretary, the
22 plan shall reimburse any participant or
23 beneficiary for reasonable expenses in-
24 curred by the participant or beneficiary in
25 securing investment advice referred to in

1 section 3(21)(A)(ii) from a fiduciary
2 adviser—

3 “(iii) on at least one occasion during
4 the participant’s employment with the em-
5 ployer maintaining the plan, and

6 “(iv) at the time of retirement or sep-
7 aration from service under the plan.

8 “(7) DEFINITIONS.—For purposes of this sub-
9 section and subsection (b)(14)—

10 “(A) FIDUCIARY ADVISER.—The term ‘fi-
11 duciary adviser’ means, with respect to a plan,
12 a person who is a fiduciary of the plan by rea-
13 son of the provision of investment advice by the
14 person to the plan or to a participant or bene-
15 ficiary and who is—

16 “(i) registered as an investment ad-
17 viser under the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–1 et seq.) or under
19 the laws of the State in which the fiduciary
20 maintains its principal office and place of
21 business,

22 “(ii) a bank or similar financial insti-
23 tution referred to in section 408(b)(4), but
24 only if the advice is provided through a
25 trust department of the bank or similar fi-

1 nancial institution which is subject to peri-
2 odic examination and review by Federal or
3 State banking authorities,

4 “(iii) an insurance company qualified
5 to do business under the laws of a State,

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

9 “(v) an affiliate of a person described
10 in any of clauses (i) through (iv), or

11 “(vi) an employee, agent, or registered
12 representative of a person described in any
13 of clauses (i) through (v) who satisfies the
14 requirements of applicable insurance,
15 banking, and securities laws relating to the
16 provision of the advice.

17 “(B) AFFILIATE.—The term ‘affiliate’ of
18 another entity means an affiliated person of the
19 entity (as defined in section 2(a)(3) of the In-
20 vestment Company Act of 1940 (15 U.S.C.
21 80a-2(a)(3))).

22 “(C) REGISTERED REPRESENTATIVE.—
23 The term ‘registered representative’ of another
24 entity means a person described in section
25 3(a)(18) of the Securities Exchange Act of

1 1934 (15 U.S.C. 78c(a)(18)) (substituting the
2 entity for the broker or dealer referred to in
3 such section) or a person described in section
4 202(a)(17) of the Investment Advisers Act of
5 1940 (15 U.S.C. 80b-2(a)(17)) (substituting
6 the entity for the investment adviser referred to
7 in such section).”.

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

10 (1) EXEMPTION FROM PROHIBITED TRANS-
11 ACTIONS.—Subsection (d) of section 4975 of the In-
12 ternal Revenue Code of 1986 (relating to exemptions
13 from tax on prohibited transactions) is amended—

14 (A) in paragraph (14), by striking “or” at
15 the end;

16 (B) in paragraph (15), by striking the pe-
17 riod at the end and inserting “; or”; and

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

20 “(16) any transaction described in subsection
21 (f)(7)(A) in connection with the provision of invest-
22 ment advice described in subsection (e)(3)(B), in
23 any case in which—

1 “(A) the investment of assets of the plan
2 is subject to the direction of plan participants
3 or beneficiaries,

4 “(B) the advice is provided to the plan or
5 a participant or beneficiary of the plan by a fi-
6 duciary adviser in connection with any sale, ac-
7 quisition, or holding of a security or other prop-
8 erty for purposes of investment of plan assets,
9 and

10 “(C) the requirements of subsection
11 (f)(7)(B) are met in connection with the provi-
12 sion of the advice.”.

13 (2) ALLOWED TRANSACTIONS AND REQUIRE-
14 MENTS.—Subsection (f) of such section 4975 (relat-
15 ing to other definitions and special rules) is amended
16 by adding at the end the following new paragraph:

17 “(7) PROVISIONS RELATING TO INVESTMENT
18 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

19 “(A) TRANSACTIONS ALLOWABLE IN CON-
20 NECTION WITH INVESTMENT ADVICE PROVIDED
21 BY FIDUCIARY ADVISERS.—The transactions re-
22 ferred to in subsection (d)(16), in connection
23 with the provision of investment advice by a fi-
24 duciary adviser, are the following:

1 “(i) the provision of the advice to the
2 plan, participant, or beneficiary;

3 “(ii) the sale, acquisition, or holding
4 of a security or other property (including
5 any lending of money or other extension of
6 credit associated with the sale, acquisition,
7 or holding of a security or other property)
8 pursuant to the advice; and

9 “(iii) the direct or indirect receipt of
10 fees or other compensation by the fiduciary
11 adviser or an affiliate thereof (or any em-
12 ployee, agent, or registered representative
13 of the fiduciary adviser or affiliate) in con-
14 nection with the provision of the advice or
15 in connection with a sale, acquisition, or
16 holding of a security or other property pur-
17 suant to the advice.

18 “(B) REQUIREMENTS RELATING TO PROVI-
19 SION OF INVESTMENT ADVICE BY FIDUCIARY
20 ADVISERS.—The requirements of this subpara-
21 graph (referred to in subsection (d)(16)(C)) are
22 met in connection with the provision of invest-
23 ment advice referred to in subsection (e)(3)(B),
24 provided to a plan or a participant or bene-
25 ficiary of a plan by a fiduciary adviser with re-

1 spect to the plan in connection with any sale,
2 acquisition, or holding of a security or other
3 property for purposes of investment of amounts
4 held by the plan, if—

5 “(i) in the case of the initial provision
6 of the advice with regard to the security or
7 other property by the fiduciary adviser to
8 the plan, participant, or beneficiary, the fi-
9 duciary adviser provides to the recipient of
10 the advice, at a time reasonably contem-
11 poraneous with the initial provision of the
12 advice, a written notification (which may
13 consist of notification by means of elec-
14 tronic communication)—

15 “(I) of all fees or other com-
16 pensation relating to the advice that
17 the fiduciary adviser or any affiliate
18 thereof is to receive (including com-
19 pensation provided by any third
20 party) in connection with the provi-
21 sion of the advice or in connection
22 with the sale, acquisition, or holding
23 of the security or other property,

24 “(II) of any material affiliation
25 or contractual relationship of the fidu-

1 ciary adviser or affiliates thereof in
2 the security or other property,

3 “(III) of any limitation placed on
4 the scope of the investment advice to
5 be provided by the fiduciary adviser
6 with respect to any such sale, acquisi-
7 tion, or holding of a security or other
8 property,

9 “(IV) of the types of services
10 provided by the fiduciary advisor in
11 connection with the provision of in-
12 vestment advice by the fiduciary ad-
13 viser, and

14 “(V) that the adviser is acting as
15 a fiduciary of the plan in connection
16 with the provision of the advice,

17 “(ii) the fiduciary adviser provides ap-
18 propriate disclosure, in connection with the
19 sale, acquisition, or holding of the security
20 or other property, in accordance with all
21 applicable securities laws,

22 “(iii) the sale, acquisition, or holding
23 occurs solely at the direction of the recipi-
24 ent of the advice,

1 “(iv) the compensation received by the
2 fiduciary adviser and affiliates thereof in
3 connection with the sale, acquisition, or
4 holding of the security or other property is
5 reasonable, and

6 “(v) the terms of the sale, acquisition,
7 or holding of the security or other property
8 are at least as favorable to the plan as an
9 arm’s length transaction would be.

10 “(C) STANDARDS FOR PRESENTATION OF
11 INFORMATION.—The notification required to be
12 provided to participants and beneficiaries under
13 subparagraph (B)(i) shall be written in a clear
14 and conspicuous manner and in a manner cal-
15 culated to be understood by the average plan
16 participant and shall be sufficiently accurate
17 and comprehensive to reasonably apprise such
18 participants and beneficiaries of the information
19 required to be provided in the notification.

20 “(D) EXEMPTION CONDITIONED ON MAK-
21 ING REQUIRED INFORMATION AVAILABLE ANNU-
22 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
23 TERIAL CHANGE.—The requirements of sub-
24 paragraph (B)(i) shall be deemed not to have
25 been met in connection with the initial or any

1 subsequent provision of advice described in sub-
2 paragraph (B) to the plan, participant, or bene-
3 ficiary if, at any time during the provision of
4 advisory services to the plan, participant, or
5 beneficiary, the fiduciary adviser fails to main-
6 tain the information described in subclauses (I)
7 through (IV) of subparagraph (B)(i) in cur-
8 rently accurate form and in the manner re-
9 quired by subparagraph (C), or fails—

10 “(i) to provide, without charge, such
11 currently accurate information to the re-
12 cipient of the advice no less than annually,

13 “(ii) to make such currently accurate
14 information available, upon request and
15 without charge, to the recipient of the ad-
16 vice, or

17 “(iii) in the event of a material
18 change to the information described in
19 subclauses (I) through (IV) of subpara-
20 graph (B)(i), to provide, without charge,
21 such currently accurate information to the
22 recipient of the advice at a time reasonably
23 contemporaneous to the material change in
24 information.

1 “(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser
2 referred to in subparagraph (B) who has provided advice referred to in such subparagraph
3 shall, for a period of not less than 6 years after the provision of the advice, maintain any
4 records necessary for determining whether the requirements of the preceding provisions of this
5 paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection
6 (e)(1) shall not be considered to have occurred solely because the records are lost or destroyed
7 prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary
8 adviser.
9

10 “(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor
11 or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as fail-
12 ing to meet the requirements of this section solely by reason of the provision of investment
13 advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise
14 arranging for the provision of the advice), if—
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1 “(i) the advice is provided by a fidu-
2 ciary adviser pursuant to an arrangement
3 between the plan sponsor or other fidu-
4 ciary and the fiduciary adviser for the pro-
5 vision by the fiduciary adviser of invest-
6 ment advice referred to in such section,

7 “(ii) the terms of the arrangement re-
8 quire compliance by the fiduciary adviser
9 with the requirements of this paragraph,

10 “(iii) the terms of the arrangement
11 include a written acknowledgment by the
12 fiduciary adviser that the fiduciary adviser
13 is a fiduciary of the plan with respect to
14 the provision of the advice, and

15 “(iv) the requirements of part 4 of
16 subtitle B of title I of the Employee Re-
17 tirement Income Security Act of 1974 are
18 met in connection with the provision of
19 such advice.

20 “(G) DEFINITIONS.—For purposes of this
21 paragraph and subsection (d)(16)—

22 “(i) FIDUCIARY ADVISER.—The term
23 ‘fiduciary adviser’ means, with respect to a
24 plan, a person who is a fiduciary of the
25 plan by reason of the provision of invest-

1 ment advice by the person to the plan or
2 to a participant or beneficiary and who
3 is—

4 “(I) registered as an investment
5 adviser under the Investment Advisers
6 Act of 1940 (15 U.S.C. 80b–1 et seq.)
7 or under the laws of the State in
8 which the fiduciary maintains its prin-
9 cipal office and place of business,

10 “(II) a bank or similar financial
11 institution referred to in subsection
12 (d)(4),

13 “(III) an insurance company
14 qualified to do business under the
15 laws of a State,

16 “(IV) a person registered as a
17 broker or dealer under the Securities
18 Exchange Act of 1934 (15 U.S.C. 78a
19 et seq.),

20 “(V) an affiliate of a person de-
21 scribed in any of subclauses (I)
22 through (IV), or

23 “(VI) an employee, agent, or reg-
24 istered representative of a person de-
25 scribed in any of subclauses (I)

1 through (V) who satisfies the require-
2 ments of applicable insurance, bank-
3 ing, and securities laws relating to the
4 provision of the advice.

5 “(ii) AFFILIATE.—The term ‘affiliate’
6 of another entity means an affiliated per-
7 son of the entity (as defined in section
8 2(a)(3) of the Investment Company Act of
9 1940 (15 U.S.C. 80a–2(a)(3))).

10 “(iii) REGISTERED REPRESENTA-
11 TIVE.—The term ‘registered representa-
12 tive’ of another entity means a person de-
13 scribed in section 3(a)(18) of the Securi-
14 ties Exchange Act of 1934 (15 U.S.C.
15 78c(a)(18)) (substituting the entity for the
16 broker or dealer referred to in such sec-
17 tion) or a person described in section
18 202(a)(17) of the Investment Advisers Act
19 of 1940 (15 U.S.C. 80b–2(a)(17)) (sub-
20 stituting the entity for the investment ad-
21 viser referred to in such section).”.

22 **SEC. 6. PLAN INVESTMENT COMMITTEE.**

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

1 “(e) An individual account plan shall provide (in ac-
2 cordance with such regulations as the Secretary may pre-
3 scribe) for a plan investment committee, the members of
4 which shall be elected by plan participants. Such com-
5 mittee shall be currently informed by the plan adminis-
6 trator of all decisions regarding investment of plan assets.
7 All fiduciaries of the plan whose duties include authority
8 or control respecting management or disposition of plan
9 assets shall regularly consult with the committee (in ac-
10 cordance with such regulations) regarding plan policies
11 and decisions affecting investment of plan assets.”.

12 **SEC. 7. STUDY REGARDING INSURANCE SYSTEM FOR INDI-**
13 **VIDUAL ACCOUNT PLANS.**

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

- 20 (1) the feasibility of such a system, and
21 (2) options for developing such a system.

22 (b) SPECIFIC MATTERS TO BE ADDRESSED.—Among
23 the matters to be considered by the Corporation in its
24 study, the Corporation shall consider—

1 (1) the appropriate insurable event in connec-
2 tion with such an insurance system;

3 (2) the manner in which insurable loss should
4 be determined;

5 (3) the parties who should bear the burden of
6 the cost of coverage; and

7 (4) the manner in which applicable premiums
8 should be measured and whether premiums should
9 be variable in relation to particular groups of plans,
10 based on the extent of investment diversification or
11 other factors.

12 (c) 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 of the Senate.

19 **SEC. 8. IMPROVEMENT OF ACCOUNTING STANDARDS FOR**
20 **SPECIAL PURPOSE ENTITIES.**

21 (a) COMMISSION ACTION REQUIRED.—Within 60
22 days after the date of enactment of this Act, the Securities
23 and Exchange Commission shall direct the Financial Ac-
24 counting Standards Board to revise the accounting stand-
25 ards applicable to a special purpose entity to require the

1 assets and liabilities of any such entity to be included on
2 a consolidated basis on the financial statements of the
3 sponsoring issuer unless one or more independent third
4 parties own and control at least 10 percent of the total
5 debt and equity of such entity.

6 (b) DEFINITION OF SPECIAL PURPOSE ENTITY.—

7 The term “special purpose entity”—

8 (1) means an entity that is created solely to
9 carry out an activity or series of transactions di-
10 rectly related to a specific purpose;

11 (2) may take on any legal form including a cor-
12 poration, a partnership, a limited liability company,
13 or a trust;

14 (3) are commonly used—

15 (A) as financing vehicles to which a spon-
16 soring issuer sells assets in exchange for cash
17 or other assets;

18 (B) to acquire, construct, or manufacture
19 assets that are used by another entity under
20 leases, management contracts, or other arrange-
21 ments;

22 (C) to reduce the credit risk or other risks
23 for lenders or investors and, thus, lower financ-
24 ing costs; or

1 (D) to may create certain tax advantages
2 for the participating parties.

3 **SEC. 9. PERIODIC PENSION BENEFITS STATEMENTS.**

4 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
5 INCOME SECURITY ACT OF 1974.—

6 (1) REQUIREMENTS.—

7 (A) IN GENERAL.—Section 105(a) of the
8 Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1025(a)) is amended to read
10 as follows:

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

13 “(i) to each plan participant at least annually,

14 “(ii) to each plan beneficiary upon written re-
15 quest, and

16 “(iii) in the case of an applicable individual ac-
17 count plan, to each plan participant (and to each
18 beneficiary with a right to direct investments) at
19 least quarterly.

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

22 “(i) at least once every 3 years to each partici-
23 pant with a nonforfeitable accrued benefit who is
24 employed by the employer maintaining the plan at

1 the time the statement is furnished to participants,
2 and

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

5 “(2) A pension benefit statement under paragraph
6 (1)—

7 “(A) shall indicate, on the basis of the latest
8 available information—

9 “(i) the total benefits accrued, and

10 “(ii) the nonforfeitable pension benefits, if
11 any, which have accrued, or the earliest date on
12 which benefits will become nonforfeitable,

13 “(B) shall be written in a manner calculated to
14 be understood by the average plan participant, and

15 “(C) may be provided in written form or in
16 electronic or other appropriate form to the extent
17 that such form is reasonably accessible to the recipi-
18 ent.

19 “(3) In the case of an applicable individual account
20 plan, the requirements of paragraph (1)(A) shall be treat-
21 ed as met if the quarterly statement (together with the
22 information required in subparagraphs (A) and (B) of
23 subsection (d)(1)) is available electronically in reasonably
24 accessible form, and the participant or beneficiary is pro-
25 vided at least once each year a notice that such statement

1 (together with such information) is available in such form.
2 Such notice shall be in written, electronic, or other appro-
3 priate form.

4 “(4)(A) In the case of a defined benefit plan, the re-
5 quirements of paragraph (1)(B)(i) shall be treated as met
6 with respect to a participant if the administrator provides
7 the participant at least once each year with notice of the
8 availability of the pension benefit statement and the ways
9 in which the participant may obtain such statement. Such
10 notice shall be provided in written, electronic, or other ap-
11 propriate form, and may be included with other commu-
12 nications to the participant if done in a manner reasonably
13 designed to attract the attention of the participant.

14 “(B) The Secretary may provide that years in which
15 no employee or former employee benefits (within the
16 meaning of section 410(b) of the Internal Revenue Code
17 of 1986) under the plan need not be taken into account
18 in determining the 3-year period under paragraph
19 (1)(B)(i).”.

20 (B) CONFORMING AMENDMENTS.—

21 (i) Section 105 of the Employee Re-
22 tirement Income Security Act of 1974 (29
23 U.S.C. 1025) is amended by striking sub-
24 section (d).

1 (ii) Section 105(b) of such Act (29
2 U.S.C. 1025(b)) is amended to read as fol-
3 lows:

4 “(b) In no case shall a participant or beneficiary of
5 a plan be entitled to more than one statement described
6 in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)
7 or (ii) of subsection (a)(1)(B), whichever is applicable, in
8 any 12-month period. If such report is required under sub-
9 section (a) to be furnished at least quarterly, the require-
10 ments of the preceding sentence shall be applied with re-
11 spect to each quarter in lieu of the 12-month period.”.

12 (2) INFORMATION REQUIRED FROM APPLICA-
13 BLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of
14 such Act (as amended by paragraph (1)) is amended
15 further by adding at the end the following new sub-
16 section:

17 “(d)(1) The statements required to be provided at
18 least quarterly under subsection (a) shall include (together
19 with the information required in subsection (a)) the fol-
20 lowing:

21 “(A) the value of investments allocated to the
22 individual account, including the value of any assets
23 held in the form of employer securities, without re-
24 gard to whether such securities were contributed by
25 the plan sponsor or acquired at the direction of the

1 plan or of the participant or beneficiary, and an ex-
2 planation of any limitations or restrictions on the
3 right of the participant or beneficiary to direct an
4 investment; and

5 “(B) an explanation, written in a manner cal-
6 culated to be understood by the average plan partici-
7 pant, of the importance, for the long-term retire-
8 ment security of participants and beneficiaries, of a
9 well-balanced and diversified investment portfolio,
10 including a discussion of the risk of holding more
11 than 25 percent of a portfolio in the security of any
12 one entity, such as employer securities.

13 “(2) The value of any employer securities that are
14 not readily tradable on an established securities market
15 that is required to be reported under paragraph (1)(A)
16 may be determined by using the most recent valuation of
17 the employer securities.

18 “(3) The Secretary shall issue guidance and model
19 notices which meet the requirements of this subsection.”.

20 (3) DEFINITION OF APPLICABLE INDIVIDUAL
21 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.
22 1002) is amended by adding at the end the following
23 new paragraph:

24 “(42)(A) The term ‘applicable individual account
25 plan’ means any individual account plan, except that such

1 term does not include an employee stock ownership plan
2 (within the meaning of section 4975(e)(7) of the Internal
3 Revenue Code of 1986) unless there are any contributions
4 to such plan (or earnings thereunder) held within such
5 plan that are subject to subsection (k)(3) or (m)(2) of sec-
6 tion 401 of the Internal Revenue Code of 1986. Such term
7 shall not include a one-participant retirement plan.

8 “(B) The term ‘one-participant retirement plan’
9 means a retirement plan that—

10 “(i) on the first day of the plan year—

11 “(I) covered only the employer (and the
12 employer’s spouse) and the employer owned the
13 entire business (whether or not incorporated),
14 or

15 “(II) covered only one or more partners
16 (and their spouses) in a business partnership
17 (including partners in an S or C corporation),

18 “(ii) meets the minimum coverage requirements
19 of section 410(b) of the Internal Revenue Code of
20 1986 (as in effect on the date of the enactment of
21 this paragraph) without being combined with any
22 other plan of the business that covers the employees
23 of the business,

1 “(iii) does not provide benefits to anyone except
2 the employer (and the employer’s spouse) or the
3 partners (and their spouses),

4 “(iv) does not cover a business that is a mem-
5 ber of an affiliated service group, a controlled group
6 of corporations, or a group of businesses under com-
7 mon control, and

8 “(v) does not cover a business that leases em-
9 ployees.”.

10 (4) CIVIL PENALTIES FOR FAILURE TO PRO-
11 VIDE QUARTERLY BENEFIT STATEMENTS.—Section
12 502 of such Act (29 U.S.C. 1132) is amended—

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

15 (B) by redesignating paragraph (7) of sub-
16 section (c) as paragraph (8); and

17 (C) by inserting after paragraph (6) of
18 subsection (c) the following new paragraph:

19 “(7) The Secretary may assess a civil penalty against
20 any plan administrator of up to \$1,000 a day from the
21 date of such plan administrator’s failure or refusal to pro-
22 vide participants or beneficiaries with a benefit statement
23 on at least a quarterly basis in accordance with section
24 105(a)(1)(A)(iii).”.

1 (5) MODEL STATEMENTS.—The Secretary of
2 Labor shall, not later than January 1, 2003, issue
3 initial guidance and a model benefit statement, writ-
4 ten in a manner calculated to be understood by the
5 average plan participant, that may be used by plan
6 administrators in complying with the requirements
7 of section 105 of the Employee Retirement Income
8 Security Act of 1974. Not later than 75 days after
9 the date of the enactment of this Act, the Secretary
10 shall promulgate interim final rules necessary to
11 carry out the amendments made by this subsection.

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

14 (1) PROVISION OF INVESTMENT EDUCATION
15 NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—
16 Section 414 of the Internal Revenue Code of 1986
17 (relating to definitions and special rules) is amended
18 by adding at the end the following:

19 “(w) PROVISION OF INVESTMENT EDUCATION NO-
20 TICES TO PARTICIPANTS IN CERTAIN PLANS.—

21 “(1) IN GENERAL.—The plan administrator of
22 an applicable pension plan shall provide to each ap-
23 plicable individual an investment education notice
24 described in paragraph (2) at the time of the enroll-

1 ment of the applicable individual in the plan and not
2 less often than annually thereafter.

3 “(2) INVESTMENT EDUCATION NOTICE.—An in-
4 vestment education notice is described in this para-
5 graph if such notice contains—

6 “(A) an explanation, for the long-term re-
7 tirement security of participants and bene-
8 ficiaries, of generally accepted investment prin-
9 ciples, including principles of risk management
10 and diversification, and

11 “(B) a discussion of the risk of holding
12 substantial portions of a portfolio in the secu-
13 rity of any one entity, such as employer securi-
14 ties.

15 “(3) UNDERSTANDABILITY.—Each notice re-
16 quired by paragraph (1) shall be written in a man-
17 ner calculated to be understood by the average plan
18 participant and shall provide sufficient information
19 (as determined in accordance with guidance provided
20 by the Secretary) to allow recipients to understand
21 such notice.

22 “(4) FORM AND MANNER OF NOTICES.—The
23 notices required by this subsection shall be in writ-
24 ing, except that such notices may be in electronic or
25 other form (or electronically posted on the plan’s

1 website) to the extent that such form is reasonably
2 accessible to the applicable individual.

3 “(5) DEFINITIONS.—For purposes of this
4 subsection—

5 “(A) APPLICABLE INDIVIDUAL.—The term
6 ‘applicable individual’ means—

7 “(i) any participant in the applicable
8 pension plan,

9 “(ii) any beneficiary who is an alter-
10 nate payee (within the meaning of section
11 414(p)(8)) under a qualified domestic rela-
12 tions order (within the meaning of section
13 414(p)(1)(A)), and

14 “(iii) any beneficiary of a deceased
15 participant or alternate payee.

16 “(B) APPLICABLE PENSION PLAN.—The
17 term ‘applicable pension plan’ means—

18 “(i) a plan described in clause (i), (ii),
19 or (iv) of section 219(g)(5)(A), and

20 “(ii) an eligible deferred compensation
21 plan (as defined in section 457(b)) of an
22 eligible employer described in section
23 457(e)(1)(A), which permits any partici-
24 pant to direct the investment of some or
25 all of his account in the plan or under

1 which the accrued benefit of any partici-
2 pant depends in whole or in part on hypo-
3 thetical investments directed by the partici-
4 pant. Such term shall not include a one-
5 participant retirement plan or a plan to
6 which section 105 of the Employee Retire-
7 ment Income Security Act of 1974 applies.

8 “(C) ONE-PARTICIPANT RETIREMENT
9 PLAN DEFINED.—The term ‘one-participant re-
10 tirement plan’ means a retirement plan that—

11 “(i) on the first day of the plan
12 year—

13 “(I) covered only the employer
14 (and the employer’s spouse) and the
15 employer owned the entire business
16 (whether or not incorporated), or

17 “(II) covered only one or more
18 partners (and their spouses) in a busi-
19 ness partnership (including partners
20 in an S or C corporation),

21 “(ii) meets the minimum coverage re-
22 quirements of section 410(b) without being
23 combined with any other plan of the busi-
24 ness that covers the employees of the busi-
25 ness,

1 “(iii) does not provide benefits to any-
 2 one except the employer (and the employ-
 3 er’s spouse) or the partners (and their
 4 spouses),

5 “(iv) does not cover a business that is
 6 a member of an affiliated service group, a
 7 controlled group of corporations, or a
 8 group of businesses under common control,
 9 and

10 “(v) does not cover a business that
 11 leases employees.

12 “(6) CROSS REFERENCE.—

**“For provisions relating to penalty for failure to
 provide the notice required by this section, see sec-
 tion 6652(m).”.**

13 (2) PENALTY FOR FAILURE TO PROVIDE NO-
 14 TICE.—Section 6652 of such Code (relating to fail-
 15 ure to file certain information returns, registration
 16 statements, etc.) is amended by redesignating sub-
 17 section (m) as subsection (n) and by inserting after
 18 subsection (l) the following new subsection:

19 “(m) FAILURE TO PROVIDE INVESTMENT EDU-
 20 CATION NOTICES TO PARTICIPANTS IN CERTAIN
 21 PLANS.—In the case of each failure to provide a written
 22 explanation as required by section 414(w) with respect to
 23 an applicable individual (as defined in such section), at
 24 the time prescribed therefor, unless it is shown that such

1 failure is due to reasonable cause and not to willful ne-
2 glect, there shall be paid, on notice and demand of the
3 Secretary and in the same manner as tax, by the person
4 failing to provide such notice, an amount equal to \$100
5 for each such failure, but the total amount imposed on
6 such person for all such failures during any calendar year
7 shall not exceed \$50,000.”.

8 **SEC. 10. REPORT TO PARTICIPANTS AND BENEFICIARIES**
9 **OF TRADES IN EMPLOYER SECURITIES.**

10 Section 104 of the Employee Retirement Income Se-
11 curity Act of 1974 (29 U.S.C. 1024) is amended—

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

14 (2) by inserting after subsection (c) the fol-
15 lowing new subsection:

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

21 “(A) such transaction is required under section
22 16 of the Securities Exchange Act of 1934 to be re-
23 ported by such person to the Securities and Ex-
24 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 **SEC. 11. PROHIBITION ON LOANS TO OFFICERS AND DIREC-**
8 **TORS.**

9 Section 16 of the Securities Exchange Act of 1934
10 (15 U.S.C. 78p) is amended by adding at the end the fol-
11 lowing new subsection:

12 “(h) PROHIBITION ON LOANS TO OFFICERS AND DI-
13 RECTORS.—It shall be unlawful for any issuer of any eq-
14 uity security registered under section 12 to make any sub-
15 stantial loan or other extension of credit to any such bene-
16 ficial owner, officer, or director in violation of such regula-
17 tions as the Commission shall prescribe as necessary to
18 prevent self-dealing and for the protection of investors.
19 Such regulations may take into account different cir-
20 cumstances of such issuers, beneficial owners, officers, and
21 directors in defining whether a loan or other extension of
22 credit shall be considered to be substantial for the pur-
23 poses of the regulations under this subsection.”.

1 **SEC. 12. PRIORITY OF CERTAIN CLAIMS IN BANKRUPTCY**
2 **CASES.**

3 Section 507(a) of title 11 of the United States Code
4 is amended in paragraphs (3) and (4)(B)(ii) by striking
5 “\$4,000” and inserting “\$15,000”.

6 **SEC. 13. CRIMINAL PENALTIES FOR ALTERING DOCU-**
7 **MENTS.**

8 (a) IN GENERAL.—Chapter 73 of title 18, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

11 **“§ 1519. Destruction, alteration, or falsification of**
12 **records in Federal investigations and**
13 **bankruptcy**

14 “Whoever knowingly alters, destroys, mutilates, con-
15 ceals, covers up, falsifies, or makes a false entry in any
16 record, document, or tangible object with the intent to im-
17 pede, obstruct, or influence the investigation or proper ad-
18 ministration of any matter within the jurisdiction of any
19 department or agency of the United States or any case
20 filed under title 11, or in relation to or contemplation of
21 any such matter or case, shall be fined under this title,
22 imprisoned not more than 5 years, or both.

23 **“§ 1520. Destruction of corporate audit records**

24 “(a) Any accountant who conducts an audit of an
25 issuer of securities to which section 10A(a) of the Securi-
26 ties Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies,

1 shall maintain all documents (including electronic docu-
2 ments) sent, received, or created in connection with any
3 audit, review, or other engagement for such issuer for a
4 period of 5 years from the end of the fiscal period in which
5 the audit, review, or other engagement was concluded.

6 “(b) Whoever knowingly and willfully violates sub-
7 section (a) shall be fined under this title, imprisoned not
8 more than 5 years, or both.

9 “(c) Nothing in this section shall be deemed to dimin-
10 ish or relieve any person of any other duty or obligation,
11 imposed by Federal or State law or regulation, to main-
12 tain, or refrain from destroying, any document.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 73 of title 18, United States
15 Code, is amended by adding at the end the following new
16 items:

“1519. Destruction, alteration, or falsification of records in Federal investiga-
tions and bankruptcy.

“1520. Destruction of corporate audit records.”.

17 **SEC. 14. EFFECTIVE DATES.**

18 (a) IN GENERAL.—The amendments made by sec-
19 tions 2, 3, 4, 6, and 9 of this Act shall apply to plan years
20 beginning after December 31, 2002.

21 (b) COLLECTIVE BARGAINING AGREEMENTS.—In the
22 case of a plan maintained pursuant to one or more collec-
23 tive bargaining agreements between employee representa-
24 tives and one or more employers ratified by the date of

1 the enactment of this Act, the amendments made by sec-
2 tions 2, 3, 4, 6, and 9 of this Act shall not apply with
3 respect to employees covered by any such agreement for
4 plan years beginning before the earlier of—

5 (1) the later of—

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

10 (B) January 1, 2003, or

11 (2) January 1, 2005.

12 (c) AMENDMENTS RELATING TO INVESTMENT AD-
13 VICE.—The amendments made by section 5 shall apply
14 with respect to advice referred to in section 3(21)(A)(ii)
15 of the Employee Retirement Income Security Act of 1974
16 or section 4975(c)(3)(B) of the Internal Revenue Code of
17 1986 provided on or after January 1, 2003.

18 (d) AMENDMENTS RELATING TO REPORTS ON
19 TRADES IN EMPLOYER SECURITIES.—The amendments
20 made by section 10 shall apply with respect to trans-
21 actions occurring on or after October 1, 2002.

22 (e) AMENDMENT RELATING TO LOANS TO OFFICERS
23 AND DIRECTORS.—The amendment made by section 11
24 shall take effect on the date of the enactment of this Act.

1 (f) AMENDMENTS RELATING TO PRIORITY OF CER-
2 TAIN CLAIMS IN BANKRUPTCY CASES.—The amendments
3 made by section 12 shall apply with respect to cases under
4 title 11 of the United States Code pending on and after
5 the date of the enactment of this Act.

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