

107TH CONGRESS
1ST SESSION

S. 1838

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure that individual account plans protect workers by limiting the amount of employer stock each worker may hold and encouraging diversification of investment of plan assets, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 18, 2001

Mrs. BOXER (for herself and Mr. CORZINE) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure that individual account plans protect workers by limiting the amount of employer stock each worker may hold and encouraging diversification of investment of plan assets, 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.**

4 This Act may be cited as the “Pension Protection and
5 Diversification Act of 2001”.

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.—A plan meets the requirements of this
 19 paragraph only if—

20 “(A) the plan may not acquire qualifying
 21 employer securities or qualifying employer real
 22 property to the extent that, immediately after
 23 the acquisition, the fair market value of all
 24 qualifying employer securities and qualifying
 25 employer real property allocated (or to be allo-
 26 cated) to any participant or beneficiary would

1 exceed 20 percent of the fair market value of all
2 assets allocated (or to be allocated) to such par-
3 ticipant or beneficiary under the plan, and

4 “(B) as of the last day of any calendar
5 quarter, the fair market value of all qualifying
6 employer securities and qualifying employer real
7 property allocated (or to be allocated) to any
8 participant or beneficiary does not exceed 20
9 percent of the fair market value of all assets al-
10 located (or to be allocated) to such participant
11 or beneficiary.

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

23 “(4) DIVESTITURE.—

24 “(A) IN GENERAL.—The Secretary shall
25 prescribe regulations under which—

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

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

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

18 “(5) DEFINITIONS AND SPECIAL RULES.—For
19 purposes of this subsection—

20 “(A) APPLICABLE INDIVIDUAL ACCOUNT
21 PLAN.—The term ‘applicable individual account
22 plan’ means an individual account plan other
23 than an employee stock ownership plan as de-
24 fined in section 4975(e)(7) of the Internal Rev-
25 enue Code of 1986.

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

5 “(6) TRANSITION RULES.—

6 “(A) IN GENERAL.—If, as of December 31,
7 2002, the fair market value of qualifying em-
8 ployer securities and qualifying employer real
9 property allocated (or to be allocated) under
10 any plan to any one participant or beneficiary
11 exceeds 20 percent of the fair market value of
12 all assets so allocated (or to be allocated), the
13 plan shall be treated as meeting the require-
14 ments of paragraph (2)(B). This subparagraph
15 shall cease to apply if any such securities or
16 property are allocated after December 31,
17 2002, to the participant or beneficiary without
18 the requirements of paragraph (2)(A) or sub-
19 paragraph (B) being met.

20 “(B) CONTRACTUAL REQUIREMENTS.—If
21 qualifying employer securities or qualifying em-
22 ployer real property are acquired after Decem-
23 ber 31, 2002, pursuant to a contract in effect
24 on the date of enactment of this subsection and
25 at all times thereafter, the fair market value of

1 such securities or property as of December 31,
2 2002, shall be taken into account under sub-
3 paragraph (A).”

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

8 **SEC. 3. IMPROVEMENTS IN ABILITY OF EMPLOYEES TO DI-**
9 **VERSIFY ASSETS IN ESOPS.**

10 (a) IN GENERAL.—Subparagraph (B)(iii) of section
11 401(a)(28) of the Internal Revenue Code of 1986 (relating
12 to additional requirements for employee stock ownerships
13 plans) is amended—

14 (1) by striking “10 years” and inserting “5
15 years”, and

16 (2) by striking “age 55” and inserting “age
17 35”.

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

22 “In the case of a qualified participant who
23 has not attained the age of 55 on or before
24 the date of any distribution described in
25 subclause (I), a plan shall be treated as

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

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

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

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

1 **SEC. 5. EFFECTIVE DATES.**

2 (a) IN GENERAL.—The amendments made by this
3 Act shall apply to years beginning after December 31,
4 2002.

5 (b) COLLECTIVE BARGAINING AGREEMENTS.—In the
6 case of a plan maintained pursuant to one or more collec-
7 tive bargaining agreements between employee representa-
8 tives and one or more employers ratified by the date of
9 the enactment of this Act, the amendments made by this
10 Act shall not apply with respect to employees covered by
11 any such agreement for plan years beginning before the
12 earlier of—

13 (1) the later of—

14 (A) the date on which the last of such col-
15 lective bargaining agreements terminates (de-
16 termined without regard to any extension there-
17 of on or after such date of enactment), or

18 (B) January 1, 2003, or

19 (2) January 1, 2005.

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