107TH CONGRESS  
2D SESSION  

S. 1969

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets, and to amend the Securities Exchange Act of 1934 to prohibit insider trades during any suspension of the ability of plan participants or beneficiaries to direct investment away from equity securities of the plan sponsor.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2002

Mr. HUTCHINSON (for himself, Mr. LOTT, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets, and to amend the Securities Exchange Act of 1934 to prohibit insider trades during any suspension of the ability of plan participants or beneficiaries to direct investment away from equity securities of the plan sponsor.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Pension Security Act
of 2002”.

SEC. 2. IMPROVED DISCLOSURE OF PENSION BENEFIT IN-
FORMATION BY INDIVIDUAL ACCOUNT
PLANS.

(a) Pension Benefit Statements Required on
Periodic Basis.—

(1) In general.—Subsection (a) of section
105 of the Employee Retirement Income Security
Act of 1974 (29 U.S.C. 1025) is amended by insert-
ing “and, in the case of an applicable individual ac-
count plan, shall furnish at least quarterly to each
plan participant (and to each beneficiary with a
right to direct investments),” after “who so requests
in writing;”.

(2) Information required from individual
account plans.—Section 105 of such Act (29
U.S.C. 1025) is amended by adding at the end the
following new subsection:

“(e)(1) The quarterly statements required under sub-
section (a) shall include (together with the information re-
quired in subsection (a)) the following:
“(A) the value of investments allocated to the individual account, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and an explanation of any limitations or restrictions on the right of the participant or beneficiary to direct an investment; and

“(B) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.”.

(3) Definition of applicable individual account plan.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new subsection:

“(42) The term ‘applicable individual account plan’ means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue...
Code of 1986) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986.”.

(b) **Civil Penalties for Failure To Provide Quarterly Benefit Statements.**—Section 502 of such Act (29 U.S.C. 1132) is amended—

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

(2) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(3) by inserting after paragraph (6) of subsection (c) the following new paragraph:

“(7) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day from the date of such plan administrator’s failure or refusal to provide participants or beneficiaries with a benefit statement on at least a quarterly basis in accordance with section 105(a).”.
SEC. 3. PROTECTION FROM SUSPENSIONS, LIMITATIONS, OR RESTRICTIONS ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT OR DIVERSIFY PLAN ASSETS.

(a) In General.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(1) by redesignating the second subsection (h) as subsection (j); and

(2) by inserting after the first subsection (h) the following new subsection:

“(i) Notice of Suspension, Limitation, or Restriction on Ability of Participant or Beneficiary to Direct Investments in Individual Account Plan.—

“(1) In General.—In the case of an applicable individual account plan, the administrator shall notify participants and beneficiaries of any action that would have the affect of suspending, limiting, or restricting the ability of participants or beneficiaries to direct or diversify assets credited to their accounts.

“(2) Notice Requirements.—

“(A) In General.—The notices described in paragraph (1) shall—

“(i) be written in a manner calculated to be understood by the average plan par-
participant and shall include the reasons for
the suspension, limitation, or restriction,
an identification of the investments af-
fected, and the expected period of the sus-
pension, limitation, or restriction, and

“(ii) be furnished at least 30 days in
advance of the action suspending, limiting,
or restricting the ability of the participants
or beneficiaries to direct or diversify as-
sets.

“(B) EXCEPTION TO 30-DAY NOTICE RE-
QUIREMENT.—In any case in which—

“(i) a fiduciary of the plan deter-
dines, in writing, that a deferral of the
suspension, limitation, or restriction would
violate the requirements of subparagraph
(A) or (B) of section 404(a)(1), or

“(ii) the inability to provide the 30-
day advance notice is due to circumstances
beyond the reasonable control of the plan
administrator,

subparagraph (A)(ii) shall not apply, and the
notice shall be furnished as soon as reasonably
possible under the circumstances.
“(3) Changes in expected period of suspension, limitation, or restriction.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the expected period of the suspension, limitation, or restriction on the right of a participant or beneficiary to direct or diversify assets, the administrator shall provide affected participants and beneficiaries advance notice of the change. Such notice shall meet the requirements of paragraph (2)(A)(i) in relation to the extended suspension, limitation, or restriction.”.

(b) Civil Penalties for Failure to Provide Notice.—Section 502 of such Act (as amended by section 2(b)) is amended—

(1) in subsection (a)(6), by striking “(6), or (7)” and inserting “(6), (7), or (8)”;

(2) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

(3) by inserting after paragraph (7) of subsection (c) the following new paragraph:

“(8) The Secretary may assess a civil penalty against any person of up to $100 a day from the date of the person’s failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to
any single participant or beneficiary, shall be treated as a separate violation.”.

(c) Inapplicability of Relief From Fiduciary Liability During Suspension of Ability of Participant or Beneficiary To Direct Investments.—Section 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is amended—

(1) in subparagraph (B), by inserting before the period the following: “, except that this subparagraph shall not apply for any period during which the ability of a participant or beneficiary to direct the investment of assets in his or her individual account is suspended by a plan sponsor or fiduciary”; and

(2) by adding at the end the following:

“Any limitation or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as a suspension referred to in subparagraph (B) to the extent such limitation or restriction is disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.”.

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SEC. 4. LIMITATIONS ON RESTRICTIONS OF INVESTMENTS IN EMPLOYER SECURITIES.

(a) Amendments to the Employee Retirement Income Security Act of 1974.—Section 407 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107) is amended by adding at the end the following new subsection:

“(g)(1) An applicable individual account plan may not acquire or hold any employer securities with respect to which there is any restriction on divestment by a participant or beneficiary on or after the date on which the participant has completed 3 years of participation (as defined in section 204(b)(4)) under the plan or (if the plan so provides) 3 years of service (as defined in section 203(b)(2)) with the employer.

“(2) For purposes of paragraph (1), the term ‘restriction on divestment’ includes—

“(A) any failure to offer at least 3 diversified investment options in which a participant or beneficiary may direct the proceeds from the divestment of employer securities, and

“(B) any restriction on the ability of a participant or beneficiary to choose from all otherwise available investment options in which such proceeds may be so directed.”.
(b) Amendments to the Internal Revenue Code of 1986.—

(1) In general.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (34) the following new paragraph:

"(35) Limitations on restrictions under applicable defined contribution plans on investments in employer securities.—

"(A) In general.—A trust forming a part of an applicable defined contribution plan shall not constitute a qualified trust under this subsection if the plan acquires or holds any employer securities with respect to which there is any restriction on divestment by a participant or beneficiary on or after the date on which the participant has completed 3 years of participation (as defined in section 411(b)(4)) under the plan or (if the plan so provides) 3 years of service (as defined in section 411(a)(5)) with the employer.

"(B) Definitions.—For purposes of subparagraph (A)—
“(i) Applicable Defined Contribution Plan.—The term ‘applicable defined contribution plan’ means any defined contribution plan, except that such term does not include an employee stock ownership plan (as defined in section 4975(e)(7)) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsections (k)(3) or (m)(2).

“(ii) Restriction on Divestment.—The term ‘restriction on divestment’ includes—

“(I) any failure to offer at least 3 diversified investment options in which a participant or beneficiary may direct the proceeds from the divestment of employer securities, and

“(II) any restriction on the ability of a participant or beneficiary to choose from all otherwise available investment options in which such proceeds may be so directed.”.

(2) Conforming Amendment.—Section 401(a)(28)(B) of such Code (relating to diversifica-
tion of investments) is amended by adding at the end the following new clause:

“(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(B)(i)).”.

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

(a) Amendments to the Employee Retirement Income Security Act of 1974.—

(1) Exemption from prohibited transactions.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

“(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

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

“(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, ac-
quisition, or holding of a security or other property for purposes of investment of plan assets, and

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

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

“(i) The provision of the advice to the plan, participant, or beneficiary.

“(ii) The sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice.

“(iii) The direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.”.
(2) Requirements.—Section 408 of such Act is amended by adding at the end the following new subsection:

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(g) Requirements Relating to Provision of Investment Advice by Fiduciary Advisers.—

“(1) In general.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(i), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

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

“(i) of all fees or other compensation relating to the advice that the fiduciary ad-
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viser or any affiliate thereof is to receive
(including compensation provided by any
third party) in connection with the provi-

dition of the advice or in connection with the
sale, acquisition, or holding of the security
or other property,

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

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

“(iv) of the types of services provided
by the fiduciary adviser in connection with
the provision of investment advice by the
fiduciary adviser, and

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

“(B) the fiduciary adviser provides appro-
priate disclosure, in connection with the sale,
acquisition, or holding of the security or other
property, in accordance with all applicable securities laws,

“(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

“(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

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

“(2) Standards for Presentation of Information.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

“(3) Exemption Conditioned on Continued Availability of Required Information on Re-
QUEST FOR 1 YEAR.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

“(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

“(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

“(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.
“(4) Maintenance for 6 years of evidence of compliance.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

“(5) Exemption for plan sponsor and certain other fiduciaries.—

“(A) In general.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—
“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

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

“(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person
who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

“(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

“(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

“(A) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

“(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,
“(ii) a bank or similar financial institution referred to in section 408(b)(4),

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

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

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

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

“(B) AFFILIATE.—The term ‘affiliate’ of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

“(C) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the
entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”.

(b) Amendments to the Internal Revenue Code of 1986.—

(1) Exemption from prohibited transactions.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

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

(B) in paragraph (15), by striking the period at the end and inserting “; or”; and

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

“(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B), in any case in which—

“(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,
“(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

“(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.”.

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

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

“(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

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

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

“(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

“(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—
“(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

“(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

“(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

“(III) of any limitation placed on the scope of the investment advice to
be provided by the fiduciary adviser
with respect to any such sale, acquisition, or holding of a security or other
property,

“(IV) of the types of services
provided by the fiduciary adviser in
connection with the provision of in-
vestment advice by the fiduciary ad-
viser, and

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

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

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

“(iv) the compensation received by the
fiduciary adviser and affiliates thereof in
connection with the sale, acquisition, or
holding of the security or other property is
reasonable, and
“(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm’s length transaction would be.

“(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

“(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to main-
tain the information described in subclauses (I)
through (IV) of subparagraph (B)(i) in cur-
rently accurate form and in the manner re-
quired by subparagraph (C), or fails—

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

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

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

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

“(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,
“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

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

“(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

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

“(i) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

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

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

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

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

“(V) an affiliate of a person described in any of subclauses (I) through (IV), or

“(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

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

“(iii) Registered representative.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”.

SEC. 6. INSIDER TRADES DURING PENSION PLAN SUSPENSION PERIODS PROHIBITED.

Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following new subsection:

“(h) INSIDER TRADES DURING PENSION PLAN SUSPENSION PERIODS PROHIBITED.—

“(1) Prohibition.—It shall be unlawful for any such beneficial owner, director, or officer of an issuer, directly or indirectly, to purchase (or other-
wise acquire) or sell (or otherwise transfer) any eq-

uity security of such issuer (other than an exempted

security), during any pension plan suspension period

with respect to such equity security.

“(2) REMEDY.—Any profit realized by such

beneficial owner, director, or officer from any pur-

chase (or other acquisition) or sale (or other trans-

fer) in violation of this subsection shall inure to and

be recoverable by the issuer irrespective of any in-
tention on the part of such beneficial owner, direc-
tor, or officer in entering into the transaction.

“(3) RULEMAKING PERMITTED.—The Commis-

sion may issue rules to clarify the application of this

subsection, to ensure adequate notice to all persons

affected by this subsection, and to prevent evasion

thereof.

“(4) DEFINITIONS.—For purposes of this

subsection—

“(A) PENSION PLAN SUSPENSION PE-

RIOD.—The term ‘pension plan suspension pe-

riod’ means, with respect to an equity security,

any period during which the ability of a partici-
pant or beneficiary under an applicable indi-

vidual account plan maintained by the issuer to
direct the investment of assets in his or her in-
dividual account away from such equity security
is suspended by the issuer or a fiduciary of the
plan. Such term does not include any limitation
or restriction that may govern the frequency of
transfers between investment vehicles to the ex-
tent such limitation and restriction is disclosed
to participants and beneficiaries through the
summary plan description or materials describ-
ing specific investment alternatives under the
plan.

“(B) APPlicable individual account
plan.—The term ‘applicable individual account
plan’ has the meaning provided such term in
section 3(42) of the Employee Retirement In-
come Security Act of 1974.”.

SEC. 7. EFFECTIVE DATES AND RELATED RULES.

(a) In General.—Except as provided in subsection
(b), the amendments made by sections 2, 3, 4, and 6 shall
apply with respect to plan years beginning on or after Jan-
uary 1, 2003.

(b) Special Rule for Collectively Bargained
Plans.—In the case of a plan maintained pursuant to 1
or more collective bargaining agreements between em-
ployee representatives and 1 or more employers ratified
on or before the date of the enactment of this Act, sub-
section (a) shall be applied to benefits pursuant to, and
individuals covered by, any such agreement by substituting
for “January 1, 2003” the date of the commencement of
the first plan year beginning on or after the earlier of—
(1) the later of—
(A) January 1, 2004, or
(B) the date on which the last of such col-
lective bargaining agreements terminates (de-
termined without regard to any extension there-
of after the date of the enactment of this Act),
or
(2) January 1, 2005.
(c) PLAN AMENDMENTS.—If the amendments made
by sections 2, 3, and 4 of this Act require an amendment
to any plan, such plan amendment shall not be required
to be made before the first plan year beginning on or after
January 1, 2005, if—
(1) during the period after such amendments
made by this Act take effect and before such first
plan year, the plan is operated in accordance with
the requirements of such amendments made by this
Act, and
(2) such plan amendment applies retroactively
to the period after such amendments made by this
Act take effect and before such first plan year.