

107TH CONGRESS  
1ST SESSION

# H. R. 3509

To amend title I of the Employee Retirement Income Security Act of 1974 to provide additional fiduciary protections for participants and beneficiaries under employee stock ownership plans with respect to lockdowns placed on plan assets.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 18, 2001

Mr. BENTSEN introduced the following bill; which was referred to the  
Committee on Education and the Workforce

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide additional fiduciary protections for participants and beneficiaries under employee stock ownership plans with respect to lockdowns placed on plan assets.

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 “Retirement Account  
5       Protection Act of 2001”.

1 **SEC. 2. ADDITIONAL FIDUCIARY PROTECTIONS RELATING**  
2 **LOCKDOWNS UNDER EMPLOYEE STOCK OWN-**  
3 **ERSHIP PLANS.**

4 (a) IN GENERAL.—Section 402(a)(2) of the Em-  
5 ployee Retirement Income Security Act of 1974 (29  
6 U.S.C. 1104(a)(2)) is amended—

7 (1) by striking “In the case” and inserting  
8 “Subject to subparagraph (B), in the case”; and

9 (2) by adding at the end the following new sub-  
10 paragraph:

11 “(B)(i) In the case of any eligible individual account  
12 plan (as defined in section 407(d)(3))—

13 “(I) unless an exemption is obtained from the  
14 Secretary under clause (ii), no lockdown may be im-  
15 posed by the plan sponsor, administrator, or any  
16 other fiduciary in connection with the nonforfeitable  
17 accrued benefit of a participant or beneficiary, and

18 “(II) no lockdown may take effect until at least  
19 90 days after written notice (which may include no-  
20 tice by means of electronic communication) of such  
21 a waiver is provided by the plan administrator to  
22 such participant or beneficiary.

23 “(ii) The Secretary shall establish a procedure under  
24 which a plan administrator may apply for an exemption  
25 for purposes of clause (i). The Secretary may not grant

1 such exemption unless the Secretary finds that such ex-  
2 emption is—

3 “(I) administratively feasible,

4 “(II) in the interests of the plan and of its par-  
5 ticipants and beneficiaries, and

6 “(III) protective of the rights of participants  
7 and beneficiaries of the plan.

8 Before granting such an exemption, the Secretary shall  
9 publish notice in the Federal Register of the pendency of  
10 the exemption, shall require that adequate notice be given  
11 to interested persons, and shall afford interested persons  
12 opportunity to present views.

13 “(iii) Subparagraph (A) shall not apply in connection  
14 with any plan unless the plan provides for compliance with  
15 the requirements of clause (i).

16 “(iv) For purposes of this subparagraph, the term  
17 ‘lockdown’ means any lockdown, blackout, or freeze with  
18 respect to, suspension of, or similar limitation on the abil-  
19 ity of a participant or beneficiary (who has met minimum  
20 participation requirements applicable in accordance with  
21 section 202) to transfer some or all of the nonforfeitable  
22 accrued benefit of the participant or beneficiary from invest-  
23 ment in the form of qualifying employer securities (as de-  
24 fined in section 407(d)(5)) to another investment vehicle

1 otherwise available under the terms of the plan. Such term  
 2 does not include—

3 “(I) any permanent limitation which applies  
 4 only to benefits attributable to employer contribu-  
 5 tions, or

6 “(II) any reasonable restriction on the fre-  
 7 quency of transfers between investment vehicles,  
 8 subject to such regulations as the Secretary may  
 9 prescribe.”.

10 **SEC. 3. STUDY RELATING TO CAPS ON INVESTMENT OF IN-**  
 11 **DIVIDUAL ACCOUNT PLAN ASSETS IN EM-**  
 12 **PLOYER SECURITIES.**

13 (a) IN GENERAL.—As soon as practicable after the  
 14 date of the enactment of this Act, the Secretary of Labor,  
 15 in consultation with the Secretary of the Treasury and the  
 16 Securities and Exchange Commission, shall undertake a  
 17 study relating to investment of plan assets of individual  
 18 account plans in stock or other securities issued by the  
 19 employer.

20 (b) MATTERS TO BE STUDIED.—In conducting the  
 21 study pursuant to subsection (a), the Secretary shall—

22 (1) consider the feasibility of statutory limits on  
 23 the extent to which plan assets under individual ac-  
 24 count plans may be invested in stock or other securi-  
 25 ties issued by the employer, and

1           (2) analyze such feasibility with respect to a  
2       range of possible statutory limits.

3       (c) REPORT.—Not later than 180 days after the date  
4 of the enactment of this Act, the Secretary shall submit  
5 a report to each House of the Congress setting forth the  
6 results of the study required under subsection (a). Such  
7 report shall include such recommendations for statutory  
8 or administrative changes as the Secretary of Labor, in  
9 consultation with the Secretary of the Treasury and the  
10 Securities and Exchange Commission, has determined to  
11 be appropriate.

12 **SEC. 4. EFFECTIVE DATE AND RELATED RULES.**

13       (a) IN GENERAL.—Subject to subsection (b), the  
14 amendments made by this Act shall apply with respect to  
15 plan years beginning on or after January 1, 2002.

16       (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED  
17 PLANS.—In the case of a plan maintained pursuant to 1  
18 or more collective bargaining agreements between em-  
19 ployee representatives and 1 or more employers ratified  
20 on or before the date of the enactment of this Act, sub-  
21 section (a) shall be applied to benefits pursuant to, and  
22 individuals covered by, any such agreement by substituting  
23 for “January 1, 2002” the date of the commencement of  
24 the first plan year beginning on or after the earlier of—  
25           (1) the later of—

1 (A) January 1, 2003, or

2 (B) the date on which the last of such col-  
3 lective bargaining agreements terminates (de-  
4 termined without regard to any extension there-  
5 of after the date of the enactment of this Act),  
6 or

7 (2) January 1, 2004.

8 (c) PLAN AMENDMENTS.—If the amendments made  
9 by this Act require an amendment to any plan, such plan  
10 amendment shall not be required to be made before the  
11 first plan year beginning on or after January 1, 2004, if—

12 (1) during the period after such amendments  
13 made by this Act take effect and before such first  
14 plan year, the plan is operated in accordance with  
15 the requirements of such amendments made by this  
16 Act, and

17 (2) such plan amendment applies retroactively  
18 to the period after such amendments made by this  
19 Act take effect and before such first plan year.

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