

106TH CONGRESS
1ST SESSION

H. R. 3462

To amend title I of the Employee Retirement Income Security Act of 1974 to establish certain requirements enforceable under such title relating to certain stock purchase arrangements maintained by employers for employees, and to amend the Internal Revenue Code of 1986 to provide favorable treatment for such arrangements meeting such requirements, subject to certain restrictions on disposition of transferred shares.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1999

Mr. BOEHNER (for himself, Mr. OXLEY, and Mr. PORTMAN) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, 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 amend title I of the Employee Retirement Income Security Act of 1974 to establish certain requirements enforceable under such title relating to certain stock purchase arrangements maintained by employers for employees, and to amend the Internal Revenue Code of 1986 to provide favorable treatment for such arrangements meeting such requirements, subject to certain restrictions on disposition of transferred shares.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wealth Through the
3 Workplace Act of 1999”.

4 **SEC. 2. STOCK PURCHASE ARRANGEMENTS.**

5 (a) IN GENERAL.—Section 3 of the Employee Retire-
6 ment Income Security Act of 1974 (29 U.S.C. 1002) is
7 amended by adding at the end the following new para-
8 graph:

9 “(42) The term ‘stock purchase arrangement’, as
10 used in paragraph (1) and sections 105(e) and 414, means
11 any arrangement which—

12 “(A) is maintained by an employer corporation
13 for the purpose of transferring, directly or indirectly,
14 to the employees covered under the arrangement
15 shares of stock pursuant to the exercise by the em-
16 ployee of an option granted under the terms of the
17 arrangement to the employee, and

18 “(B) is expressly designated in the terms gov-
19 erning the arrangement as a stock purchase ar-
20 rangement intended to meet the requirements of sec-
21 tion 414(b).”.

22 (b) TREATMENT AS EMPLOYEE WELFARE BENEFIT
23 PLAN.—Paragraph (1) of section 3 of such Act (29 U.S.C.
24 1002(1)) is amended by adding at the end the following
25 new sentence: “Solely for purposes of sections 105(e) and
26 414 and part 5 (as applicable with respect to such sec-

1 tions), a stock purchase arrangement shall be deemed to
 2 be an employee welfare benefit plan and any employee cov-
 3 ered under such an arrangement shall be deemed to be
 4 a participant thereunder.”.

5 **SEC. 3. STOCK PURCHASE ARRANGEMENTS.**

6 (a) IN GENERAL.—Part 4 of subtitle B of title I of
 7 the Employee Retirement Income Security Act of 1974 is
 8 amended—

9 (1) by redesignating section 414 (29 U.S.C.
 10 1114) as section 415; and

11 (2) by inserting after section 413 (29 U.S.C.
 12 1113) the following new section:

13 “STOCK PURCHASE ARRANGEMENTS

14 “SEC. 414. (a) IN GENERAL.—A transaction which
 15 constitutes an option or transfer described in section 3(42)
 16 under a stock purchase arrangement shall be treated, sole-
 17 ly for purposes of paragraph (5) of section 502(a) (and
 18 part 5 as it relates to such paragraph), as a practice in
 19 violation of the requirements of this title, unless such
 20 stock purchase arrangement meets the requirements of
 21 subsection (b).

22 “(b) REQUIREMENTS.—An allowable stock purchase
 23 arrangement meets the requirements of this subsection if
 24 the following requirements are met thereunder with re-
 25 spect to options and transfers described in section 3(42):

1 “(1) EMPLOYMENT STATUS REQUIRED IN RELA-
2 TION TO EXERCISE OF OPTION.—Under the terms of
3 the arrangement—

4 “(A) options are to be granted only to em-
5 ployees of the employer corporation or of its
6 parent or subsidiary corporation (including
7 members of the board of directors of any such
8 corporation) to purchase stock in the employer
9 corporation or any other such corporation, and

10 “(B) no option that has been granted to an
11 employee can be exercised unless, at all times
12 during the period beginning with the date of the
13 granting of the option to the employee and end-
14 ing on the day 6 months before the date of the
15 exercise of such option by the employee, the em-
16 ployee is an employee of the employer corpora-
17 tion, of a parent or subsidiary corporation of
18 the employer corporation, or of a corporation
19 (or a parent or subsidiary corporation of such
20 corporation) issuing or assuming a stock option
21 in a transaction to which subsection (c) applies.

22 “(2) APPROVAL.—Such arrangement is ap-
23 proved by the board of directors of the granting cor-
24 poration (or, if required by the bylaws of such cor-
25 poration, by its shareholders), in writing indicating

1 that the arrangement is intended to meet the re-
2 quirements of this section, within 12 months before
3 or after the date such arrangement is adopted.

4 “(3) LARGER SHAREHOLDERS EXCLUDED.—

5 Under the terms of the arrangement, no employee
6 can be granted an option if such employee, imme-
7 diately after the option is granted, owns stock pos-
8 sessing 5 percent or more of the total combined vot-
9 ing power or value of all classes of stock of the em-
10 ployer corporation or of its parent or subsidiary cor-
11 poration. For purposes of this paragraph, the rules
12 of subsection (d) shall apply in determining the
13 stock ownership of an employee, and stock which the
14 employee may purchase under outstanding options
15 shall be treated as stock owned by the employee.

16 “(4) PARTICIPATION.—

17 “(A) GENERAL RULE.—Such options are
18 granted during each fiscal year of the arrange-
19 ment to at least 50 percent of all individuals
20 who are employees of the employer corporation
21 and, if any employee of a parent or subsidiary
22 corporation of the employer corporation is cov-
23 ered under the arrangement, 50 percent of the
24 individuals who are employees of such parent or
25 subsidiary corporation.

1 “(B) EXCEPTION.—If the arrangement
2 provides for the exclusion of individuals—

3 “(i) who have been employed less than
4 2 years,

5 “(ii) whose customary employment is
6 20 hours or less per week,

7 “(iii) whose customary employment is
8 for not more than 5 months in any cal-
9 endar year, or

10 “(iv) who are not United States citi-
11 zens or lawful permanent residents of the
12 United States (as defined in section
13 7701(b)(6) of the Internal Revenue Code
14 of 1986),

15 then subparagraph (A) shall be applied after
16 first disregarding all such excluded individuals.

17 “(5) UNIFORM RIGHTS AND PRIVILEGES.—All
18 employees granted such options shall have the same
19 rights and privileges, except that the amount of
20 stock which may be purchased by any employee
21 under such option may bear a uniform relationship
22 to the total compensation, or the basic or regular
23 rate of compensation, of such employee, and the ar-
24 rangement may provide that no employee may pur-

1 chase more than a maximum amount of stock fixed
2 under the arrangement.

3 “(6) VALUATION REQUIREMENTS.—Under the
4 terms of the arrangement, the option price is not
5 less than the lesser of—

6 “(A) an amount equal to 85 percent of the
7 fair market value of the stock at the time such
8 option is granted, or

9 “(B) an amount which under the terms of
10 the arrangement may not be less than 85 per-
11 cent of the fair market value of the stock at the
12 time such option is exercised.

13 “(7) LIMITED TRANSFERABILITY.—Under the
14 terms of the arrangement, such option is not trans-
15 ferable by the employee otherwise than by will or the
16 laws of descent and distribution, and is exercisable,
17 during his lifetime, only by him.

18 “(8) PUBLICLY TRADED AND REGULATED
19 STOCK.—The class of shares of stock with respect to
20 which the option is granted is a class of shares of
21 stock which are publicly traded on an exchange reg-
22 ulated by the Securities and Exchange Commission.

23 “(9) RATE OF CASH COMPENSATION MUST BE
24 UNAFFECTED.—The grant of any options under the
25 arrangement may not be directly linked with a sys-

1 tematic reduction in the annual rate at which basic
2 or regular cash compensation is paid to employees
3 under the arrangement, as determined under regula-
4 tions prescribed by the Secretary of the Treasury.

5 “(c) CORPORATE REORGANIZATIONS, LIQUIDATIONS,
6 ETC.—For purposes of this section, the term ‘issuing or
7 assuming a stock option in a transaction to which sub-
8 section (c) applies’ means a substitution of a new option
9 for the old option, or an assumption of the old option,
10 by the employer corporation, or by a parent or subsidiary
11 of the employer corporation, by reason of a corporate
12 merger, consolidation, acquisition of property or stock sep-
13 aration, reorganization, or liquidation, if—

14 “(1) the excess of the aggregate fair market
15 value of the shares subject to the option immediately
16 after the substitution or assumption over the aggre-
17 gate option priced of such shares is not more than
18 the excess of the aggregate fair market value of all
19 shares subject to the option immediately before such
20 substitution or assumption over the aggregate option
21 price of such shares, and

22 “(2) the new option or the assumption of the
23 old option does not give the employee additional ben-
24 efits which he did not have under the old option.

1 For purposes of this subsection, the parent-subsidary re-
 2 lationship shall be determined at the time of any such
 3 transaction under this subsection.

4 “(d) **ATTRIBUTION OF STOCK OWNERSHIP.**—For
 5 purposes of this section, in applying the percentage limita-
 6 tions of subsection (b)(3)—

7 “(1) the employee with respect to whom such
 8 limitation is being determined shall be considered as
 9 owning the stock owned, directly or indirectly, by or
 10 for his brothers and sisters (whether by the whole or
 11 half blood), spouse, ancestors, and lineal descend-
 12 ants, and

13 “(2) stock owned, directly or indirectly, by or
 14 for a corporation, partnership, estate, or trust, shall
 15 be considered as being owned proportionately by or
 16 for its shareholders, partners, or beneficiaries.

17 “(e) **DEFINITIONS AND ADDITIONAL RULES.**—

18 “(1) **PARENT CORPORATION.**—For purposes of
 19 this section, the term ‘parent corporation’ means
 20 any corporation (other than the employer corpora-
 21 tion) in an unbroken chain of corporations ending
 22 with the employer corporation if, at the time of the
 23 granting of the option, each of the corporations
 24 other than the employer corporation owns stock pos-
 25 sessing 50 percent or more of the total combined

1 voting power of all classes of stock in one of the
2 other corporations in such chain.

3 “(2) SUBSIDIARY CORPORATION.—For purposes
4 of this section, the term ‘subsidiary corporation’
5 means any corporation (other than the employer cor-
6 poration) in an unbroken chain of corporations be-
7 ginning with the employer corporation if, at the time
8 of the granting of the option, each of the corpora-
9 tions other than the last corporation in the unbroken
10 chain owns stock possessing 50 percent or more of
11 the total combined voting power of all classes of
12 stock in one of the other corporations in such chain.

13 “(3) SPECIAL RULE FOR APPLYING PARA-
14 GRAPHS (1) AND (2).—In applying paragraphs (1)
15 and (2) for purposes of subsection (b)(1)(B), there
16 shall be substituted for the term ‘employer corpora-
17 tion’ wherever it appears in paragraphs (1) and (2)
18 the term ‘grantor corporation’ or the term ‘corpora-
19 tion issuing or assuming a stock option in a trans-
20 action to which subsection (c) applies’ as the case
21 may be.

22 “(f) MODIFICATION, EXTENSION, OR RENEWAL OF
23 OPTION.—

24 “(1) IN GENERAL.—For purposes of this sec-
25 tion, if the terms of any option to purchase stock are

1 modified, extended, or renewed, such modification,
2 extension, or renewal shall be considered as the
3 granting of a new option.

4 “(2) SPECIAL RULES.—In the case of the trans-
5 fer of stock pursuant to the exercise of an option
6 which has been so modified, extended, or renewed,
7 the fair market value of such stock at the time of
8 the granting of such option shall be considered as
9 whichever of the following is the highest:

10 “(A) the fair market value of such stock
11 on the date of the original granting of the op-
12 tion,

13 “(B) the fair market value of such stock
14 on the date of the making of such modification,
15 extension, or renewal, or

16 “(C) the fair market value of such stock at
17 the time of the making of any intervening modi-
18 fication, extension, or renewal.

19 “(3) DEFINITION OF MODIFICATION.—The
20 term ‘modification’ means any change in the terms
21 of the option which gives the employee additional
22 benefits under the option, but such term shall not
23 include a change in the terms of the option—

24 “(A) attributable to the issuance or as-
25 sumption of an option under subsection (c),

1 “(B) to permit the option to meet the re-
2 quirements of subsection (b)(7), or

3 “(C) in the case of an option not imme-
4 diately exercisable in full, to accelerate the time
5 at which the option may be exercised.

6 “(g) DIRECTOR OR STOCKHOLDER APPROVAL.—For
7 purposes of this section, if the grant of an option is subject
8 to approval by directors or stockholders, the date of grant
9 of the option shall be determined as if the option had not
10 been subject to such approval.

11 “(h) LIMITED EFFECT ON TAX PROVISIONS.—The
12 provisions of this section shall not be construed to alter,
13 amend, modify, invalidate, impair, or supersede any provi-
14 sion of section 421 or 423 of the Internal Revenue Code
15 of 1986, except as provided in section 421(d) of such
16 Code.”.

17 (b) CONFORMING AMENDMENT.—The table of con-
18 tents in section 1 of such Act is amended by striking the
19 item relating to section 414 and inserting the following
20 new items:

 “Sec. 414. Allowable stock purchase arrangements.

 “Sec. 415. Effective date.”.

21 **SEC. 4. NOTICE REQUIREMENT.**

22 (a) IN GENERAL.—Section 105 of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C. 1025)

1 is amended by adding at the end the following new sub-
2 section:

3 “(e) The employer corporation maintaining a stock
4 purchase arrangement shall provide at least annually to
5 employees who have been granted an option to purchase
6 stock under such arrangement a description of disclosure
7 statements regarding the stock that are available from the
8 Securities and Exchange Commission and the manner in
9 which such disclosure statements may be obtained from
10 such Commission. Descriptions under this subsection shall
11 be made in language that is easily understood by the typ-
12 ical employee.”.

13 (b) PENALTY OF \$100 A DAY FOR NONCOMPLI-
14 ANCE.—Section 502(c)(3) of such Act (29 U.S.C.
15 1132(c)(3)) is amended by inserting “or 105(e)” after
16 “section 101(e)(2)”.

17 **SEC. 5. TREATMENT UNDER INTERNAL REVENUE CODE OF**
18 **1986.**

19 Section 421 of the Internal Revenue Code of 1986
20 (relating to general rules for certain stock options) is
21 amended by adding at the end the following new sub-
22 section:

23 “(d) STOCK OPTIONS UNDER SECTION 414(b) OF
24 EMPLOYEE RETIREMENT INCOME SECURITY ACT OF
25 1974; DEDUCTION ALLOWED TO CORPORATION.—

1 “(1) IN GENERAL.—Except as otherwise pro-
2 vided in this subsection, subsection (a) (other than
3 paragraph (2) thereof) shall apply to any share of
4 stock transferred to an individual in a transfer in re-
5 spect of which the requirements of section 414(b) of
6 Employee Retirement Income Security Act of 1974
7 are met.

8 “(2) EFFECT OF DISQUALIFYING DISPOSI-
9 TION.—If—

10 “(A) any share of stock is transferred to
11 an individual in a transfer in respect of which
12 the requirements of section 414(b) of Employee
13 Retirement Income Security Act of 1974 are
14 met, and

15 “(B) such individual disposes of such share
16 within 2 years from the date of the granting of
17 the option or within 1 year after the transfer of
18 such share to such individual,
19 then any increase in the income of such individual
20 for the taxable year in which such exercise occurred
21 attributable to such disposition shall be treated as
22 an increase in income in the taxable year of such in-
23 dividual in which such disposition occurred.

24 “(3) LIMITATION ON EMPLOYER DEDUCTION.—
25 If—

1 “(A) any share of stock is transferred to
2 an individual in a transfer in respect of which
3 the requirements of section 414(b) of Employee
4 Retirement Income Security Act of 1974 are
5 met, and

6 “(B) such share is not disposed of in a dis-
7 position to which paragraph (2) applies,
8 the aggregate deduction allowed under section
9 162(a) to the corporations referred to in subsection
10 (a)(2) shall not exceed the excess (if any) of the fair
11 market value of such share at the time the option
12 is exercised over the fair market value of such share
13 at the time the option is granted.

14 “(4) OTHER RULES.—References in subsection
15 (c) to section 423 shall be treated as references to
16 the corresponding provisions of section 414(b) of
17 Employee Retirement Income Security Act of 1974.”

18 **SEC. 6. EFFECTIVE DATE.**

19 The amendments made by this Act shall take apply
20 with respect to options offered on or after January 1,
21 2000.

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