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Grassley Offers New Protections for Pensions

WASHINGTON – Sen. Chuck Grassley said today that he will introduce legislation that would tighten up protections for retirement plan participants in the future in light of the collapse of the Enron Corp., Global Crossing and other similarly situated companies.

Grassley's bill, the National Employee Savings and Trust Equity Guarantee Act or NESTEG, would make changes to various aspects of retirement plans as they relate to the Internal Revenue Code and certain components of the Employee Retirement Income Security Act that fall under the jurisdiction of the Senate Committee on Finance. Grassley is the ranking member of that committee.

“Millions of Americans have hundreds of billions of dollars invested in employer-sponsored retirement plans,” Grassley said. “My goal with this legislation is to make sure corporate missteps, including fiduciary mismanagement, aren't allowed to fester, especially when it comes to protecting workers' pensions.”

Grassley said his pension protection initiative is a natural outgrowth of his work over the last five years to make it easier for more working Americans to save for retirement through private pension plans. The President's 10-year tax relief bill enacted last June was shepherded through the Senate by Grassley and includes bipartisan measures he designed to expand coverage for employees of small businesses, increase participation in employer-sponsored retirement savings plans, and improve opportunities for workers to catch-up and prepare for retirement.

“It's been obvious for many years that better access to pension savings opportunities is key to a better quality of life in retirement, Grassley said. “Now it's also plain to see that workers need stronger protections for the hard-earned dollars they invest in pension plans.”

At a Capitol Hill news conference, Grassley unveiled the following proposal.

1. New Diversification Rights for Company Stock in Plans

Under current law, plan sponsors can restrict matching contributions made in employer stock for a specified period of time, such as until the worker reaches age 55 and has 10 years of service. Grassley said matching contributions in a 401(k) plan of a vested worker, a worker who has been with a company for three years, belong entirely to the worker rather than the company. The NESTEG would prohibit restrictions on diversification for those shares of stock. Employees also would be required to invest money in employer stock.

Grassley's rule would not apply to closely-held companies. Current law would still apply to closely-held companies because the stock is so difficult to value and too expensive for closely-held companies to redeem. Grassley's legislation also would not apply to any ESOP consisting solely of non-elective contributions, where there are no matching contributions or employee money, or any ESOP that is a separate plan. Non-elective contributions are contributions made by the employer voluntarily and which the employee cannot receive in cash.

2. New Disclosure for Transaction Suspension Periods or Blackouts

Under current law, fiduciaries are subject to ERISA's "Prudent Man Standard of Care" when operating a plan. Blackouts must be conducted in a manner that is solely in the best interest of the participants. A blackout occurs where participants cannot direct their investments for two or more business days.

Grassley's legislation requires 30 days advance notice of blackouts on paper or transmitted electronically. Exceptions would include emergencies and other extenuating circumstances specified in securities law or by regulations published by the secretary.

3. Fiduciary Liability During a Blackout

Under current law, a fiduciary must operate a retirement plan solely in the interest of the participants of the plan. There are no specific rules governing blackouts, and ERISA gives specific protections to a fiduciary for any loss resulting from a participant's account if the plan allows for participant direction of investments.

Grassley's legislation would extend fiduciary liability over the assets of the plan during a blackout. However, fiduciaries would not be liable for losses resulting from ordinary fluctuations of the value of stocks or bonds held in the plan. Grassley said the new standards for fiduciaries are aimed at bad actors who manipulate a blackout to enrich certain individuals or cover-up a breach of fiduciary duty. Grassley's bill would also direct the Labor Department to issue safe-harbor guidelines and make it easier for plan sponsors to comply with fiduciary responsibilities during a blackout.

4. Insider Trading During a Blackout

Under ERISA, executives are not restricted from trading securities during a blackout. Section 4999 of the Internal Revenue Code puts an excise tax on certain corporate transactions where insiders receive large payments in the form of golden parachutes, which let insiders bail out of a company with large bonuses and other benefits and leave workers and other investors to fend for themselves. Congress attempted in the 1980s to curb such corporate transactions by imposing a 20-percent excise tax on them.

Grassley's legislation would extend the golden parachute excise tax to certain sales of stock that occur during a blackout that prevented workers from selling or trading their own investments. It would apply only when the stock was acquired by the insider in connection with his or her employment. This restriction applies only during plan blackouts. The legislation would not change other securities restrictions on insider trading.

5. New Disclosure Through Periodic Benefit Statements and Retirement Savings Information

Under ERISA, plan administrators are required to furnish a benefit statement upon request once a year. Grassley's legislation would require that defined-contribution plans that allow participant direction of investments to receive quarterly benefit statements. For all other defined contribution plans, an annual benefit statement requirement would apply.

The quarterly benefit statements would have to say how much money is in company stock, what restrictions there were on the disposition of stock and provide any information important to maintaining a well-balanced and diversified portfolio, including a discussion of the risk of holding substantial portions of portfolio in security of any one entity such as employer securities.

Grassley's legislation also would require that defined-benefit plans provide an estimated benefit statement to each vested participant every three years. Participants could request annual statements.

Grassley said he will introduce his proposal tomorrow as the Finance Committee turns its attention to pension security. Chairman Max Baucus of Montana has a hearing scheduled for Wednesday afternoon.

Statement of Sen. Chuck Grassley
the *National Employee Savings and Trust Equity Guarantee (NESTEG) Act*
Tuesday, Feb. 26, 2002

I've spent a lot of years trying to help Americans save more money for retirement. As a group, we just don't save enough. So it's a real shock, and a real shame, that thousands of Americans who tried to do everything right and save for retirement lost their investment because of their employer's actions. This happened with the Enron Corp. and with Global Crossing. It could happen with other companies in the future if Congress doesn't act. Tomorrow, I plan to introduce legislation to help prevent employees from losing their retirement savings through their employers.

My bill is the *National Employee Savings and Trust Equity Guarantee Act*, or for short, NEST EG(G). My bill has two themes: Better information for workers, and tighter restrictions on company stock in retirement plans. A lack of information, or misleading information, is what led employees of Enron and Global Crossing into ruin. Those employees lacked accurate information about their employers' bad financial state. If those employees had known what they were getting into, they probably would have done things a lot differently. Key disclosure improvements in my bill include: First, a new requirement that employers give employees a 30-day notice of a black-out. A black-out is when a plan is shut down for a period to allow, for example, change to another plan administrator. Second, new disclosure to employees through periodic benefit statements and retirement savings information. These vary, depending on the kind of plan.

My bill has tighter restrictions on what employers can do with employee stock given to workers. Obviously current laws leave room for mischief. Some of the changes in my bill include: First, greater freedom for employees to diversify the stock in their retirement plans. Second, restoring company responsibility for losses from mismanagement during a black-out.

My bill has a lot of similarities with President Bush's pension reform proposal, and other proposals on Capitol Hill. One key difference between my bill and some other bills is investment advice. My bill has retirement education but not investment advice. That's because investment advice is controversial. There's a lot of disagreement over how to get advice to the workers who

need help. I hope my approach bridges the controversy and accomplishes the same goal of those who want an investment advice piece. That goal is giving workers the best possible tools to build a secure retirement plan.

I think my bill is a consensus proposal that has a very good chance of bipartisan success in the Finance Committee. I look forward to working with Chairman Baucus, and other committee members, to try to act on this measure as soon as possible.

The Finance Committee has jurisdiction over the Internal Revenue Code, which gives generous tax incentives to employers to start up and keep retirement plans. If employers abuse the rules, it's our job to fix the rules. And when companies accept tax breaks to offer retirement plans, they're obligated to deliver.

National Employee Savings and Trust Equity Guarantee (NESTEG) Act
by Senator Chuck Grassley

1. **New Diversification Rights Regarding Company Stock in Plans.**

Current law. Plan sponsors can restrict matching contributions made in employer stock for a specified period of time, such as until the worker reaches age 55 and has 10 years of service.

NESTEG. Matching contributions in the 401(k) plan of a vested worker (meaning the worker has been with the company for three years) belong entirely to the worker. Restrictions on diversification cannot be placed on those shares of stock. No money contributed by the employees can be required to be invested in employer stock.

The rule will not apply for:

Closely-held companies. This rule does not apply to closely-held companies. These companies will continue to be subjected to current law. The stock in a non-publicly traded company is frequently too difficult to value and expensive for closely-held companies to redeem. In addition, the cash obligation can make aspects of the business, including securing lending, more difficult.

Stand-alone employee stock ownership plans. The rule does not apply to any employee stock ownership plan consisting solely of so-called non-elective contributions (no matching contributions and no employee money) and which is a separate plan. Non-elective contributions are contributions that the employer makes voluntarily and which the employee could not choose to receive in cash.

2. **New Disclosure for Transaction Suspension Periods (Black-outs).**

Current law. Fiduciaries are subject to the *Employee Retirement Income Security Act's* (ERISA's) "Prudent Man Standard of Care" when operating their plan. Black-outs must be conducted in a manner that is solely in the best interest of the participants. A black-out occurs when investment rights are suspended or reduced for two or more business days.

NESTEG. 30-day advance notice of black-outs. Written, or otherwise electronically

transmitted, notice 30 days in advance of a black-out will be required.

Exceptions. Exceptions for emergencies, mergers and acquisitions, other black-out periods such as those specified in securities laws, or specified in regulations prescribed by the secretary of the Treasury.

3. **Fiduciary Liability During a Black-out.**

Current law. A fiduciary has a duty to operate a retirement plan solely in the interest of the participants of the plan. However, there are no specific rules governing black-outs. ERISA 404(c)(1)(B) states that if the plan permits participant direction of investments the fiduciary shall not be liable for any loss that results in a participant's account.

NESTEG. NESTEG clarifies that employers have fiduciary responsibility over the assets of a plan during a black-out, because during a black-out, participants cannot control their investment. NESTEG directs the Department of Labor to issue safe harbor guidelines making it easier for plan sponsors to comply with their fiduciary responsibilities during a black-out.

4. **Insider Trading During a Black-out.**

Current law. ERISA does not restrict executives from trading securities during a black-out. Section 4999 of the Internal Revenue Code places an excise tax on certain corporate transactions in which insiders receive large payments called "golden parachutes." They are called golden parachutes because they were alleged to enable insiders to "bail out" of the company with large bonuses, leaving its workers (and other investors) to fend for themselves. In the 1980s, Congress enacted legislation to respond to these corporate transactions and imposed a 20 percent excise tax on them.

NESTEG. The golden parachute excise tax would be extended to sales of stock (solely to stock acquired by the insider in connection with his or her employment) sold during the black-out of a plan where workers were unable to sell or trade their own investments. This restriction applies only to black-outs of the plan. Other securities restrictions on insider trading are not changed.

5. **New Disclosure through Periodic Benefit Statements and Retirement Savings Information.**

Current law. ERISA requires plan administrators to furnish a benefit statement upon request, though no more often than once annually. Many plans provide an annual benefit statement now. Language requiring periodic benefit statements was "Byrded out" of last year's tax relief bill, the *Economic Growth and Tax Relief Reconciliation Act of 2001* (EGTRRA), Public Law 107-16.

NESTEG. Defined contribution plans generally. All individual account plans would be required to provide an annual benefit statement to workers.

Defined contribution plans that allow participant direction of investments. Plans that allow participants to direct investments would be required to provide quarterly benefit statements.

Statements would be required to include information regarding how much money, if any, is invested in company stock, any restrictions on the disposition of the stock and information on the importance to long-term retirement security of having a well-balanced and diversified portfolio (including a discussion of the risk of holding substantial portions of one's portfolio in any one entity such as employer securities).

Defined benefit plans. Defined benefit plans would be required to provide an estimated benefit statement to each vested participant once every three years. Participants could still request a statement annually.