

[COMMITTEE PRINT]

JUNE 20, 2000

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3462
OFFERED BY MR. BOEHNER**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Wealth Through the
3 Workplace Act of 2000”.

4 **SEC. 2. STOCK OPTION 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 option arrangement’, as used
10 in paragraph (1) and sections 105(e), 414, 502(a)(10),
11 502(c)(3)(B), and 514(b)(9), means any arrangement
12 which—

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

1 ployee of an option granted under the terms of the
2 arrangement to the employee, and

3 “(B) is expressly designated in the terms gov-
4 erning the arrangement as a stock option arrange-
5 ment intended to meet the requirements of section
6 414(b).”.

7 (b) TREATMENT AS EMPLOYEE WELFARE BENEFIT
8 PLAN.—Paragraph (1) of section 3 of such Act (29 U.S.C.
9 1002(1)) is amended by adding at the end the following
10 new sentence: “Solely for purposes of sections 105(e), 414,
11 502(a)(10), and 502(c)(3)(B) and the other provisions of
12 this title necessary to carry out such sections, a stock op-
13 tion arrangement shall be deemed to be an employee wel-
14 fare benefit plan and any employee covered under such
15 an arrangement shall be deemed to be a participant there-
16 under.”.

17 **SEC. 3. STOCK OPTION ARRANGEMENTS.**

18 (a) IN GENERAL.—Part 4 of subtitle B of title I of
19 the Employee Retirement Income Security Act of 1974 is
20 amended—

21 (1) by redesignating section 414 (29 U.S.C.
22 1114) as section 415; and

23 (2) by inserting after section 413 (29 U.S.C.
24 1113) the following new section:

1 “STOCK OPTION ARRANGEMENTS

2 “SEC. 414. (a) IN GENERAL.—A transaction which
3 constitutes an option or transfer described in section 3(42)
4 under a stock option arrangement shall be treated as a
5 practice in violation of the requirements of this title, un-
6 less such stock option arrangement meets the require-
7 ments of subsection (b).

8 “(b) REQUIREMENTS.—A stock option arrangement
9 meets the requirements of this subsection if the following
10 requirements are met thereunder with respect to options
11 and transfers described in section 3(42):

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

15 “(A) options are to be granted only to em-
16 ployees of the employer corporation or of its
17 parent or subsidiary corporation to purchase
18 stock in the employer corporation or any other
19 such corporation, and

20 “(B) no option that has been granted to an
21 employee can be exercised unless, at all times
22 during the period beginning with the date of the
23 granting of the option to the employee and end-
24 ing on the day 6 months before the date of the
25 exercise of such option by the employee, the em-

1 employee is an employee of the employer corpora-
2 tion, of a parent or subsidiary corporation of
3 the employer corporation, or of a corporation
4 (or a parent or subsidiary corporation of such
5 corporation) issuing or assuming a stock option
6 in a transaction to which subsection (c) applies.

7 “(2) APPROVAL.—Such arrangement is ap-
8 proved by the board of directors of the granting cor-
9 poration (or, if required by the bylaws of such cor-
10 poration, by its shareholders), in writing indicating
11 that the arrangement is intended to meet the re-
12 quirements of this section, within 12 months before
13 or after the date such arrangement is adopted.

14 “(3) LARGER SHAREHOLDERS EXCLUDED.—
15 Under the terms of the arrangement, no employee
16 can be granted an option if such employee, imme-
17 diately after the option is granted, owns stock pos-
18 sessing 5 percent or more of the total combined vot-
19 ing power or value of all classes of stock of the em-
20 ployer corporation or of its parent or subsidiary cor-
21 poration. For purposes of this paragraph, the rules
22 of subsection (d) shall apply in determining the
23 stock ownership of an employee, and stock which the
24 employee may purchase under outstanding options
25 shall be treated as stock owned by the employee.

1 “(4) PARTICIPATION.—

2 “(A) 70 PERCENT FLOOR.—

3 “(i) IN GENERAL.—Such options are
4 granted during each fiscal year of the ar-
5 rangement to at least 70 percent of all in-
6 dividuals who are employees of the em-
7 ployer corporation and, if any employee of
8 a parent or subsidiary corporation of the
9 employer corporation is covered under the
10 arrangement, 70 percent of the individuals
11 who are employees of such parent or sub-
12 sidiary corporation.

13 “(iii) EXCEPTION.—If the arrange-
14 ment provides for the exclusion of
15 individuals—

16 “(I) who have been employed less
17 than 1 year,

18 “(II) whose customary employ-
19 ment is 20 hours or less per week,

20 “(III) whose customary employ-
21 ment is for not more than 5 months
22 in any calendar year, or

23 “(IV) who are nonresident aliens
24 and who receive no earned income
25 (within the meaning of section

1 911(d)(2) of the Internal Revenue
2 Code of 1986) from the employer
3 which constitutes income from sources
4 within the United States (within the
5 meaning of section 861(a)(3) of such
6 Code).

7 then subparagraph (A) shall be applied
8 after first disregarding all such excluded
9 individuals.

10 “(B) EXCLUSION OF 5 TOP PAID EMPLOY-
11 EES AND OF BOARD MEMBERS.—The arrange-
12 ment provides for the exclusion of—

13 “(i) the individuals consisting of the
14 top 5 employees of the employer corpora-
15 tion and of each of its parent and sub-
16 sidiary corporations, when ranked on the
17 basis of compensation paid for the pre-
18 ceding fiscal year of the arrangement, and

19 “(ii) all individuals who are members
20 of the board of directors of the employer
21 corporation or of any of its parent or sub-
22 sidiary corporations.

23 “(5) UNIFORM RIGHTS AND PRIVILEGES.—

24 “(A) IN GENERAL.—Except as otherwise
25 provided in this paragraph, all employees grant-

1 ed such options shall have the same rights and
2 privileges, and such options shall be offered to
3 all such employees under uniform terms and
4 conditions.

5 “(B) UNIFORM RELATIONSHIP TO COM-
6 PENSATION.—The amount of stock which may
7 be purchased by any employee under such op-
8 tion may bear a uniform relationship to the
9 total compensation, or the basic or regular rate
10 of compensation, of such employee.

11 “(C) DIFFERENT TREATMENT ALLOWABLE
12 FOR EMPLOYEES INSIDE AND OUTSIDE THE
13 TOP-PAID GROUP.—

14 “(i) IN GENERAL.—Nothing in this
15 paragraph shall be construed to preclude
16 treatment of employees (in terms of the
17 amount of stock which may be purchased
18 under the option) for any fiscal year—

19 “(I) which is, in the case of em-
20 ployees who are in the top-paid group,
21 less favorable in relation to total com-
22 pensation, or the basic or regular rate
23 of compensation, than the treatment
24 which is generally applicable under

1 such arrangement to other employees
2 for such fiscal year, or

3 “(II) which is, in the case of em-
4 ployees who are not in the top-paid
5 group, more favorable in relation to
6 total compensation, or the basic or
7 regular rate of compensation, than the
8 treatment which is generally applica-
9 ble under such arrangement to other
10 employees for such fiscal year.

11 “(ii) TOP-PAID GROUP.—For purposes
12 of clause (i), an employee is in the top-paid
13 group of employees for any fiscal year of
14 the arrangement if such employee is in the
15 group consisting of the top 5 percent of
16 the employees of the employer corporation
17 or of any of its parent and subsidiary cor-
18 porations, when ranked on the basis of
19 compensation paid for the preceding fiscal
20 year of the arrangement.

21 “(D) REWARDS FOR EXCELLENCE IN
22 SERVICE.—Nothing in this paragraph shall be
23 construed to preclude a program under the ar-
24 rangement for rewards for excellence to employ-
25 ees constituting treatment under the arrange-

1 ment for any fiscal year which is more favorable
2 in relation to total compensation, or the basic
3 or regular rate of compensation, than the treat-
4 ment which is generally applicable under such
5 arrangement to other employees for such fiscal
6 year, if the implementation of such program
7 does not result in a substantial deviation from
8 the other requirements of this paragraph.

9 “(E) FIXED MAXIMUM ALLOWED.—The ar-
10 rangement may provide that no employee may
11 purchase more than a maximum amount of
12 stock fixed under the arrangement.

13 “(6) VALUATION REQUIREMENTS.—Under the
14 terms of the arrangement, the option price is not
15 less than the lesser of—

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

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

23 “(7) LIMITED TRANSFERABILITY.—Under the
24 terms of the arrangement, such option is not trans-
25 ferable by the employee otherwise than by will or the

1 laws of descent and distribution, and is exercisable,
2 during his lifetime, only by him.

3 “(8) STOCK REGISTERED BY SECURITIES AND EX-
4 CHANGE COMMISSION.—The class of shares of stock
5 with respect to which the option is granted is a class
6 of shares of stock which are registered with the Se-
7 curities and Exchange Commission.

8 “(9) RATE OF CASH COMPENSATION MUST BE
9 UNAFFECTED.—The grant of any options under the
10 arrangement may not be directly linked with a sys-
11 tematic reduction in the annual rate at which basic
12 or regular cash compensation is paid to employees
13 under the arrangement, as determined under regula-
14 tions prescribed by the Secretary of the Treasury in
15 consultation with other appropriate agencies.

16 “(c) CORPORATE REORGANIZATIONS, LIQUIDATIONS,
17 ETC.—For purposes of this section, the term ‘issuing or
18 assuming a stock option in a transaction to which sub-
19 section (c) applies’ means a substitution of a new option
20 for the old option, or an assumption of the old option,
21 by the employer corporation, or by a parent or subsidiary
22 of the employer corporation, by reason of a corporate
23 merger, consolidation, acquisition of property or stock sep-
24 aration, reorganization, or liquidation, if—

1 “(1) the excess of the aggregate fair market
2 value of the shares subject to the option immediately
3 after the substitution or assumption over the aggregate
4 option priced of such shares is not more than
5 the excess of the aggregate fair market value of all
6 shares subject to the option immediately before such
7 substitution or assumption over the aggregate option
8 price of such shares, and

9 “(2) the new option or the assumption of the
10 old option does not give the employee additional benefits
11 which he did not have under the old option.

12 For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such
13 transaction under this subsection.

15 “(d) **ATTRIBUTION OF STOCK OWNERSHIP.**—For
16 purposes of this section, in applying the percentage limitations of subsection (b)(3)—

18 “(1) the employee with respect to whom such
19 limitation is being determined shall be considered as
20 owning the stock owned, directly or indirectly, by or
21 for his brothers and sisters (whether by the whole or
22 half blood), spouse, ancestors, and lineal descendants,
23 and

24 “(2) stock owned, directly or indirectly, by or
25 for a corporation, partnership, estate, or trust, shall

1 be considered as being owned proportionately by or
2 for its shareholders, partners, or beneficiaries.

3 “(e) DEFINITIONS AND ADDITIONAL RULES.—

4 “(1) PARENT CORPORATION.—For purposes of
5 this section, the term ‘parent corporation’ means
6 any corporation (other than the employer corpora-
7 tion) in an unbroken chain of corporations ending
8 with the employer corporation if, at the time of the
9 granting of the option, each of the corporations
10 other than the employer corporation owns stock pos-
11 sessed 50 percent or more of the total combined
12 voting power of all classes of stock in one of the
13 other corporations in such chain.

14 “(2) SUBSIDIARY CORPORATION.—For purposes
15 of this section, the term ‘subsidiary corporation’
16 means any corporation (other than the employer cor-
17 poration) in an unbroken chain of corporations be-
18 ginning with the employer corporation if, at the time
19 of the granting of the option, each of the corpora-
20 tions other than the last corporation in the unbroken
21 chain owns stock possessing 50 percent or more of
22 the total combined voting power of all classes of
23 stock in one of the other corporations in such chain.

24 “(3) SPECIAL RULE FOR APPLYING PARA-
25 GRAPHS (1) AND (2).—In applying paragraphs (1)

1 and (2) for purposes of subsection (b)(1)(B), there
2 shall be substituted for the term ‘employer corpora-
3 tion’ wherever it appears in paragraphs (1) and (2)
4 the term ‘grantor corporation’ or the term ‘corpora-
5 tion issuing or assuming a stock option in a trans-
6 action to which subsection (c) applies’ as the case
7 may be.

8 “(f) MODIFICATION, EXTENSION, OR RENEWAL OF
9 OPTION.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, if the terms of any option to purchase stock are
12 modified, extended, or renewed, such modification,
13 extension, or renewal shall be considered as the
14 granting of a new option.

15 “(2) SPECIAL RULES.—In the case of the trans-
16 fer of stock pursuant to the exercise of an option
17 which has been so modified, extended, or renewed,
18 the fair market value of such stock at the time of
19 the granting of such option shall be considered as
20 whichever of the following is the highest:

21 “(A) the fair market value of such stock
22 on the date of the original granting of the op-
23 tion,

1 “(B) the fair market value of such stock
2 on the date of the making of such modification,
3 extension, or renewal, or

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

7 “(3) DEFINITION OF MODIFICATION.—The
8 term ‘modification’ means any change in the terms
9 of the option which gives the employee additional
10 benefits under the option, but such term shall not
11 include a change in the terms of the option—

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

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

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

19 “(g) DIRECTOR OR STOCKHOLDER APPROVAL.—For
20 purposes of this section, if the grant of an option is subject
21 to approval by directors or stockholders, the date of grant
22 of the option shall be determined as if the option had not
23 been subject to such approval.

24 “(h) LIMITED EFFECT ON TAX PROVISIONS.—The
25 provisions of this section shall not be construed to alter,

1 amend, modify, invalidate, impair, or supersede any provi-
2 sion of section 421 or 423 of the Internal Revenue Code
3 of 1986, except as provided in section 421(d) of such
4 Code.”.

5 (b) ENFORCEMENT.—

6 (1) CONTINUED APPLICABILITY OF STATE
7 LAW.—Section 514(b) of such Act (29 U.S.C.
8 1144(b)) is amended—

9 (A) by redesignating paragraph (9) as
10 paragraph (10); and

11 (B) by inserting after paragraph (8) the
12 following new paragraph:

13 “(9) Subsection (a) shall not apply to stock option
14 arrangements.”.

15 (2) FEDERAL ENFORCEMENT OF NOTICE RE-
16 QUIREMENT.—

17 (A) IN GENERAL.—Section 502(a) of such
18 Act (29 U.S.C. 1132(a)) is amended—

19 (i) in paragraph (8), by striking “or”
20 at the end;

21 (ii) in paragraph (9), by striking the
22 period at the end and inserting “; or”; and

23 (iii) by adding at the end the fol-
24 lowing new paragraph:

1 “(10) by a participant in a stock option ar-
2 rangement for the relief provided in subsection
3 (c)(3)(B) in connection with such arrangement.”.

4 (B) PENALTY.—Section 502(c)(3) of such
5 Act (29 U.S.C. 1132(c)(3)) is amended—

6 (i) by inserting “(A)” after “(3)”; and

7 (ii) by adding at the end the following
8 new subparagraph:

9 “(B) Any employer maintaining a stock option ar-
10 rangement who fails to meet the notice requirement of sec-
11 tion 105(e) with respect to an employee may in the court’s
12 discretion be liable to such employee in the amount of up
13 to \$100 a day from the date of such failure, and the court
14 may in its discretion order such other relief as it deems
15 proper.”.

16 (c) CLERICAL AMENDMENT.—The table of contents
17 in section 1 of such Act is amended by striking the item
18 relating to section 414 and inserting the following new
19 items:

 “Sec. 414. Stock option arrangements.

 “Sec. 415. Effective date.”.

20 **SEC. 4. NOTICE REQUIREMENT.**

21 Section 105 of the Employee Retirement Income Se-
22 curity Act of 1974 (29 U.S.C. 1025) is amended by adding
23 at the end the following new subsection:

1 “(e) The administrator of a stock option arrangement
2 shall provide employees offered an option to purchase
3 stock with a summary of the terms and conditions of the
4 stock option arrangement, written in a manner calculated
5 to be understood by the average participant. Such sum-
6 mary shall be provided to employees within a reasonable
7 period of time following their enrollment under the ar-
8 rangement and after the adoption of any amendment to
9 the arrangement. Such summary shall be sufficiently accu-
10 rate and comprehensive to reasonably apprise employees
11 of the terms and conditions of the arrangement and their
12 rights and obligations thereunder, including a description
13 of the disclosure statements available from the Securities
14 and Exchange Commission and any financial statements
15 related to the arrangement and how to obtain such state-
16 ments.”.

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.