

107TH CONGRESS  
1ST SESSION

# H. R. 1322

To amend title I of the Employee Retirement Income Security Act of 1974 to provide emergency protection for retiree health benefits.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2001

Mr. TIERNEY (for himself, Mr. ANDREWS, Mr. KILDEE, Mrs. MCCARTHY of New York, Mr. MCGOVERN, Mr. FRANK, Mr. MURTHA, Mr. OBERSTAR, Mr. HILLIARD, Mr. FROST, Mr. KUCINICH, Mr. HINCHEY, Mrs. MINK of Hawaii, Mr. GEORGE MILLER of California, Mr. CONYERS, Mr. BONIOR, Mrs. CHRISTENSEN, Mr. SANDERS, Mr. CAPUANO, Mr. DEFazio, Mr. BORSKI, Mr. OLVER, Mr. LEWIS of Georgia, Mr. EVANS, Mr. HOLDEN, Mr. FATTAH, Mr. TOWNS, Mr. DELAHUNT, Mr. WAXMAN, Mr. GONZALEZ, Mr. PAYNE, Ms. HOOLEY of Oregon, Ms. MILLENDER-MCDONALD, Mr. HASTINGS of Florida, Mr. MEEHAN, Mr. BRADY of Pennsylvania, Mr. FILNER, Ms. SCHAKOWSKY, Mrs. THURMAN, Mr. McDERMOTT, Ms. SANCHEZ, Mr. DINGELL, Mr. ABERCROMBIE, Mr. THOMPSON of Mississippi, Ms. NORTON, Mr. BROWN of Ohio, Ms. MCKINNEY, Mr. SHERMAN, Ms. KILPATRICK, Mr. DAVIS of Illinois, Mr. CROWLEY, Mr. MARKEY, Mr. OWENS, Mr. BERMAN, Mr. KLECZKA, Mr. UNDERWOOD, Mrs. MALONEY of New York, Mrs. NAPOLITANO, and Ms. LEE) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Budget, 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

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to provide emergency protection for retiree health benefits.

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 “Emergency Retiree  
5 Health Benefits Protection Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) Retired participants of group health plans  
9 regulated by the Employee Retirement Income Secu-  
10 rity Act of 1974 (ERISA) have been severely  
11 harmed by the virtually unchecked practices of spon-  
12 sors of such plans involving the post-retirement can-  
13 cellation or reduction of health benefits which retir-  
14 ees counted on receiving for their lifetimes.

15 (2) Such widespread post-retirement reductions  
16 in retiree health benefits has led to a crisis in retiree  
17 health care in which retirees—

18 (A) have been unable to substitute indi-  
19 vidual coverage for the group coverage they  
20 lost, or, in order to obtain individual coverage,  
21 have jeopardized their economic security in re-  
22 tirement;

23 (B) because of preexisting medical condi-  
24 tions cannot obtain substitute coverage that  
25 they can afford without depleting their life sav-

1           ings or have been unable to obtain adequate  
2           medical care or medical care they had relied on  
3           to deal with serious illness;

4           (C) have sustained catastrophic illnesses or  
5           injuries or otherwise experienced a marked de-  
6           terioration in their medical conditions or health  
7           as a result of post-retirement changes to their  
8           medical benefits;

9           (D) have been transferred indiscriminately  
10          into improperly or inadequately managed health  
11          maintenance organizations or other managed  
12          care entities, resulting in the worsening rather  
13          than improvement of prior medical conditions;  
14          and

15          (E) in many instances, have failed to ob-  
16          tain adequate relief in the courts due to highly  
17          restrictive judicial interpretations which are in-  
18          consistent with ERISA's underlying protective  
19          purposes.

20          (3) The crisis in retirees healthcare generated  
21          by the plan sponsor practice of post-retirement can-  
22          cellations or reductions of previously promised re-  
23          tiree health benefits has led to a widespread loss of  
24          confidence in the integrity of ERISA-regulated

1 group health plans and the ability of ERISA itself  
2 to adequately protect retiree health benefits.

3 (4) A strong and dependable private sector re-  
4 tiree health system is necessary to the essential  
5 health of our Nation's senior citizens.

6 (b) PURPOSES.—The purposes of this Act are to en-  
7 sure that the reasonable health benefit expectations of re-  
8 tirees from ERISA-regulated group health plans are ful-  
9 filled, to minimize the incidence of prolonged legal dis-  
10 putes arising out of the post-retirement cancellation or re-  
11 duction of retiree health benefits from such plans, and to  
12 prevent further adverse effects on retiree health arising  
13 from such post-retirement changes. To this end, the pur-  
14 poses of this Act also include the following:

15 (1) to safeguard retired participants of group  
16 health plans subject to the Employee Retirement In-  
17 come Security Act of 1974 (29 U.S.C. 1001 et seq.)  
18 from loss or reduction of their health benefits from  
19 such plans by barring plan sponsors from canceling  
20 or reducing such benefits after the dates such par-  
21 ticipants retire and when they no longer are able to  
22 absorb such losses or reductions without experi-  
23 encing adverse effects on their health or finances;

24 (2) to establish an enforceable obligation on the  
25 part of sponsors of such group health plans to re-

1 store health benefits previously taken away from re-  
2 tired participants of such plans to the extent such  
3 benefits were canceled or altered after the dates  
4 such participants retired and the plan sponsor would  
5 not sustain substantial business hardship by restor-  
6 ing such benefits; and

7 (3) to establish an Emergency Retiree Health  
8 Loan Guarantee Program to assist sponsors of  
9 group health plans subject to the obligation to re-  
10 store retiree health benefits under this Act to obtain  
11 credit to assist them in discharging such obligations  
12 by providing retiree health loan guarantees that  
13 would encourage the availability of such credit.

14 **SEC. 3. AMENDMENT OF EMPLOYEE RETIREMENT INCOME**  
15 **SECURITY ACT OF 1974 TO PROVIDE RETIREE**  
16 **HEALTH BENEFIT PROTECTIONS IN GROUP**  
17 **HEALTH PLANS.**

18 (a) IN GENERAL.—Subtitle B of title I of the Em-  
19 ployee Retirement Income Security Act of 1974 is amend-  
20 ed by adding at the end a new part 8 as follows:

1           **“PART 8—EMERGENCY RETIREE HEALTH**  
2                           **BENEFIT PROTECTIONS**  
3   **“SEC. 801. PROHIBITION AGAINST POST-RETIREMENT RE-**  
4                           **DUCTIONS OF RETIREE HEALTH BENEFITS**  
5                           **BY GROUP HEALTH PLANS.**

6           “(a) IN GENERAL.—Notwithstanding that a group  
7 health plan described in subsection (b) may contain a pro-  
8 vision reserving the general power to amend or terminate  
9 the plan or a provision specifically authorizing the plan  
10 to make post-retirement reductions in retiree health bene-  
11 fits, it shall be prohibited for any group health plan,  
12 whether through amendment or otherwise, to reduce the  
13 benefits provided to a retired participant or his or her ben-  
14 efiary under the terms of the plan if such reduction of  
15 benefits occurs after the date the participant retired for  
16 purposes of the plan and reduces benefits that were pro-  
17 vided to the participant, or his or her beneficiary, as of  
18 the date the participant retired. Any group health plan  
19 provision which purports to authorize the reduction of  
20 benefits in a manner inconsistent with the foregoing prohi-  
21 bition shall be void as against public policy.

22           “(b) GROUP HEALTH PLAN.—The term ‘group  
23 health plan’ shall have the same meaning as in section  
24 607(1).

25           “(c) PROHIBITED REDUCTION OF BENEFITS.—As  
26 used in this section, references to a prohibited reduction

1 of benefits means any group health plan amendment or  
2 other action which has the effect of—

3 “(1) canceling, decreasing or limiting the  
4 amount, type, level, or form of any benefit or option  
5 provided prior to the amendment or action;

6 “(2) imposing or increasing the out-of-pocket  
7 costs a retired participant, or his or her beneficiary,  
8 must pay in order to keep or obtain any benefits  
9 that were provided to the participant or beneficiary  
10 prior to the amendment or action; or

11 “(3) modifying the manner by which medical  
12 services are delivered under the plan so that after  
13 the amendment or action a retired participant, or  
14 his or her beneficiary, has less ready access to the  
15 delivery of any such medical services than the partic-  
16 ipant or beneficiary had prior to the amendment or  
17 action.

18 “(d) TREATMENT OF PLAN TERMINATION.—

19 “(1) IN GENERAL.—Subject to paragraph (2), a  
20 termination of a group health plan shall be treated  
21 as violating the prohibition contained in this section  
22 if, after the termination, the plan sponsor of the ter-  
23 minated plan fails to continue to provide to the par-  
24 ticipants who retired prior to the termination and to

1 their beneficiaries the same retiree health benefits  
2 that were provided prior to the termination.

3 “(2) WAIVER.—Paragraph (1) shall not apply  
4 in the case of the termination of a group health plan  
5 if the Secretary issues a waiver under this para-  
6 graph in connection with such termination. The Sec-  
7 retary shall issue such a waiver if and only if the  
8 plan sponsor demonstrates to the satisfaction of the  
9 Secretary, in accordance with regulations prescribed  
10 by the Secretary, that such plan sponsor will be un-  
11 able to continue in business unless such a waiver is  
12 issued.

13 “(e) CONSENT OR AUTHORIZATION BY PARTICI-  
14 PANT.—A reduction of benefits shall not be treated as pro-  
15 hibited by this section if such reduction is consented to  
16 in writing by any retired participant or is authorized with  
17 respect to the retired participant under the terms of one  
18 or more agreements which the Secretary finds to be collec-  
19 tive bargaining agreements between one or more employee  
20 representatives who were representing such participant at  
21 the time of the entry into such agreement and one or more  
22 employers.



1 **“SEC. 802. ADOPTION BY GROUP HEALTH PLANS OF PROVI-**  
2 **SION BARRING POST-RETIREMENT REDUC-**  
3 **TIONS IN RETIREE HEALTH BENEFITS.**

4 “Every group health plan shall contain a provision  
5 which expressly bars the plan, or any fiduciary of the plan,  
6 from reducing the benefits provided under the plan to a  
7 retired participant, or his or her beneficiary, if such reduc-  
8 tion affects the benefits provided to the participant or ben-  
9 efiary as of the date the participant retired for purposes  
10 of the plan and such reduction occurs after the partici-  
11 pant’s retirement.

12 **“SEC. 803. RESTORATION BY GROUP HEALTH PLANS OF**  
13 **BENEFITS REDUCED AFTER RETIREMENT.**

14 “(a) IN GENERAL.—The plan sponsor of each group  
15 health plan shall provide, in accordance with this section,  
16 the option of benefit restoration to each retired participant  
17 that meets the following requirements:

18 “(1) The retired participant is entitled to ben-  
19 efit coverage under the plan as of the date of enact-  
20 ment of the Emergency Retiree Health Benefits Pro-  
21 tection Act of 2001.

22 “(2) The amount, type, level, or form of any  
23 benefits or option provided to the retired participant  
24 under the plan as of the date the participant retired  
25 was reduced after the participant’s date of retire-  
26 ment. For purposes of the preceding sentence, the

1 term ‘reduced’ has the same meaning as in section  
2 801(c).

3 “(3) The retired participant has elected to re-  
4 store benefits under the plan within the restoration  
5 period prescribed by subsection (c) and in accord-  
6 ance with such procedures established by the plan  
7 pursuant to regulations of the Secretary.

8 “(b) EXCEPTION FOR CERTAIN PLANS.—In accord-  
9 ance with regulations prescribed by the Secretary, sub-  
10 section (a) shall not apply to any group health plan with  
11 less than 100 participants both on and after the date of  
12 enactment of the Emergency Retiree Health Benefits Pro-  
13 tection Act of 2001.

14 “(c) RESTORATION PERIOD.—The term ‘restoration  
15 period’ means the period which—

16 “(1) begins not later than 1 year after the date  
17 of enactment of the Emergency Retiree Health Ben-  
18 efits Protection Act of 2001;

19 “(2) ends before 2 years from such date, unless  
20 extended by the Secretary pursuant to section  
21 804(g); and

22 “(3) is of no less than 60 days duration.

23 “(d) NOTICE REQUIREMENTS CONCERNING RES-  
24 TINATION OF BENEFITS.—In accordance with regulations  
25 prescribed by the Secretary, each group health plan sub-

1 ject to the requirements of subsection (a) shall, within no  
2 less than 30 days prior to the commencement of the plan's  
3 restoration of benefits period, provide written notice to  
4 each retired participant of the plan who meets the require-  
5 ments of subsection (a) of the following:

6           “(1) A description of all benefits the retired  
7 participant is entitled to have restored.

8           “(2) The administrative procedure established  
9 under the plan which may be used to submit a claim  
10 for the restoration of any benefits.

11           “(3) An itemization of the value of each benefit  
12 the retired participant is entitled to have restored,  
13 as determined in accordance with regulations of the  
14 Secretary, and the total value of all such benefits.

15           “(4) A description of any post-retirement in-  
16 creases in retiree health benefits the retired partici-  
17 pant received which the plan sponsor could rescind  
18 if the retired participant asserts a claim for the res-  
19 toration of benefits.

20           “(5) An itemization of the value of each retiree  
21 health benefit the plan sponsor could rescind, as de-  
22 termined in accordance with regulations of the Sec-  
23 retary, and the total value of all such benefits.

24           “(6) If the plan sponsor has filed an application  
25 for a substantial business hardship exemption under

1 section 804, the date such application was filed, the  
2 date notice of such application was given to retired  
3 participants entitled to submit a claim for the res-  
4 toration of benefits, and the status of such applica-  
5 tion as of the date of the notice sent pursuant to  
6 this subsection.

7 “(7) Such other information in such form and  
8 detail as may be prescribed by the Secretary to carry  
9 out the purposes of this part.

10 “(e) DEADLINE FOR RESTORATION OF BENEFITS.—  
11 Regardless of any extension that may be granted by the  
12 Secretary pursuant to section 804(g), all benefits required  
13 to be restored under this section shall be restored within  
14 no more than 3 years from the date of enactment of the  
15 Emergency Retiree Health Benefits Protection Act of  
16 2001, or the date the plan sponsor files an application for  
17 an exemption under section 804, whichever comes last.

18 **“SEC. 804. EXEMPTION FROM RESTORATION OF BENEFITS**  
19 **REQUIREMENTS.**

20 “(a) APPLICATION FOR EXEMPTION.—Any plan  
21 sponsor of a group health plan that would sustain substan-  
22 tial business hardship if required to fulfill, in whole or in  
23 part, the restoration of benefits requirements contained in  
24 section 803, may file an application for an exemption with  
25 the Secretary from any or all of such requirements.

1       “(b) AUTHORITY FOR WAIVER OR VARIANCE.—In re-  
2 sponse to an application filed by a plan sponsor pursuant  
3 to subsection (a), the Secretary may waive or vary the re-  
4 quirements of section 803 with respect to any or all of  
5 such requirements, including postponing for reasonable  
6 periods of time the obligation of the plan sponsor to re-  
7 store reduced benefits, if the Secretary finds that compli-  
8 ance by the plan sponsor with the requirements of section  
9 803 would—

10           “(1) be adverse to the interests of plan partici-  
11 pants in the aggregate;

12           “(2) not be administratively feasible; and

13           “(3) cause substantial business hardship to the  
14 plan sponsor.

15       “(c) FACTORS TAKEN INTO ACCOUNT.—For pur-  
16 poses of this section, the factors to be taken into account  
17 in determining substantial business hardship shall include  
18 (but shall not be limited to) whether—

19           “(1) the plan sponsor is operating at an eco-  
20 nomic loss;

21           “(2) compliance with the restoration of benefits  
22 requirements would necessitate substantial future re-  
23 ductions in health benefits provided to participants  
24 under the plan or cause a substantial decline in em-  
25 ployment with the plan sponsor;

1           “(3) it is reasonable to expect that the plan will  
2           be continued only if a waiver or appropriate variance  
3           is granted; and

4           “(4) the provisions of the Retiree Health Loan  
5           Guarantee Program established under section 805  
6           are unavailable to the plan sponsor submitting the  
7           application, or, if available, still would not provide a  
8           sufficient basis for denying a waiver or variance.

9           “(d) REQUIREMENT OF SATISFACTORY EVIDENCE.—

10           “(1) IN GENERAL.—The Secretary shall, before  
11           granting a waiver or variance under this section, re-  
12           quire each applicant to provide evidence satisfactory  
13           to the Secretary that the applicant has provided  
14           timely written notice of the filing of an application  
15           for such waiver or variance to each retired partici-  
16           pant entitled to submit a claim for the restoration  
17           of benefits under the applicant’s plan.

18           “(2) TIMELINESS.—For purposes of paragraph  
19           (1), a written notice shall be considered timely if it  
20           is provided not later than 60 days prior to the date  
21           the plan sponsor files an application for a waiver or  
22           variance under this section.

23           “(3) INFORMATION REQUIRED.—The notice re-  
24           ferred to in paragraph (1) shall include information  
25           with respect to the specific relief that will be sought

1 by the plan sponsor’s application, the period of time  
2 for which relief is sought, and such other relevant  
3 information as the Secretary may prescribe.

4 “(e) PARTICIPATION IN PROCEEDINGS BY RETIRED  
5 PLAN PARTICIPANTS.—Each retired participant entitled  
6 to submit a claim for the restoration of benefits within  
7 the meaning of this section shall be provided a reasonable  
8 opportunity to submit comments or otherwise participate  
9 in any proceeding established by the Secretary to deter-  
10 mine whether to grant or deny an application for a waiver  
11 or variance filed by the retired participant’s plan sponsor.

12 “(f) EXCEPTION FOR CERTAIN APPLICATIONS.—The  
13 Secretary shall not be authorized to grant any application  
14 for a waiver or variance purporting to satisfy the require-  
15 ments of subsection (b) if—

16 “(1) within the 5-year period preceding the date  
17 of the plan sponsor’s application the plan sponsor  
18 could have transferred excess pension assets to a  
19 health benefits account within the meaning of sec-  
20 tion 420 of the Internal Revenue Code of 1986 (as  
21 in effect on the date of the enactment of the Tax  
22 Relief Extension Act of 1999) but failed to do so,  
23 and the plan sponsor is submitting an application on  
24 behalf of such retiree health account; or

1           “(2) the plan sponsor submitting the applica-  
2           tion also maintains a fully funded pension plan with  
3           respect to which—

4                   “(A) retired participants eligible to submit  
5                   a claim for the restoration of benefits under  
6                   section 803 are also eligible to receive ad hoc  
7                   cost-of-living adjustment benefits;

8                   “(B) the assets of the fully funded pension  
9                   plan, over the past 5 years preceding the date  
10                  of application for a waiver or variance, on aver-  
11                  age have exceeded 120 percent of the plan’s li-  
12                  abilities;

13                  “(C) the plan had no minimum funding re-  
14                  quirement to satisfy within the 5 years pre-  
15                  ceding the date of application for the waiver or  
16                  variance and the plan sponsor submitting the  
17                  application made no minimum funding con-  
18                  tribution to the fully funded pension plan dur-  
19                  ing such 5-year period; and

20                  “(D) the plan sponsor submitting the ap-  
21                  plication for a waiver or variance failed to pro-  
22                  vide an ad hoc cost-of-living adjustment benefit  
23                  from the fully funded pension plan during the  
24                  5-year period preceding the date of application  
25                  for the waiver or variance.



1       “(g) RUNNING OF RESTORATION PERIOD SUS-  
 2       PENDED.—The submission of an application for a waiver  
 3       or variance pursuant to this section shall suspend the run-  
 4       ning of any relevant restoration period as specified in sub-  
 5       section (c). Where appropriate, the Secretary shall direct  
 6       the reopening of any relevant restoration period upon the  
 7       final conclusion of proceedings to determine whether an  
 8       application should be granted or denied.

9       **“SEC. 805. ESTABLISHMENT OF EMERGENCY RETIREE**  
 10       **HEALTH LOAN GUARANTEE PROGRAM.**

11       “(a) DEFINITIONS.—For purposes of this section—

12               “(1) BOARD.—The term ‘Board’ means the  
 13       Emergency Retiree Health Loan Guarantee Board  
 14       established under subsection (c).

15               “(2) PROGRAM.—The term ‘Program’ means  
 16       the Emergency Retiree Health Loan Guarantee Pro-  
 17       gram established under subsection (b).

18               “(3) ELIGIBLE PLAN SPONSOR.—The term ‘eli-  
 19       gible plan sponsor’ means any plan sponsor as de-  
 20       fined in section 3(16)(B) that maintains a group  
 21       health plan subject to the retiree health benefits res-  
 22       toration requirements of section 803.

23       “(b) ESTABLISHMENT OF EMERGENCY RETIREE  
 24       HEALTH LOAN GUARANTEE PROGRAM.—There is estab-  
 25       lished the Retiree Health Loan Guarantee Program, to be

1 administered by the Board, the purpose of which is to pro-  
2 vide loan guarantees to eligible plan sponsors in accord-  
3 ance with this section.

4 “(c) RETIREE HEALTH LOAN GUARANTEE BOARD  
5 MEMBERSHIP.—There is established a Retiree Health  
6 Loan Guarantee Board, which shall be composed of—

7 “(1) the Secretary of Labor, who shall serve as  
8 Chairman of the Board;

9 “(2) the Secretary of Commerce;

10 “(3) the Secretary of the Treasury;

11 “(4) the Secretary of Health and Human Serv-  
12 ices; and

13 “(5) the Chairman of the Council of Economic  
14 Advisers.

15 “(d) RETIREE HEALTH LOAN GUARANTEE  
16 PROGRAM—

17 “(1) AUTHORITY.—The Program may guar-  
18 antee loans provided by private banking and invest-  
19 ment institutions to eligible plan sponsors for pur-  
20 poses of assisting such plan sponsors to meet their  
21 obligations under section 803. Such loan guarantees  
22 shall be provided to the extent provided in advance  
23 in appropriation Acts pursuant to paragraph (4) and  
24 only in accordance with the procedures, rules, and  
25 regulations established by the Board.

1           “(2) TOTAL GUARANTEE LIMIT.—The aggre-  
2           gate amount of loans guaranteed and outstanding at  
3           any time under this section may not exceed  
4           \$5,000,000,000.

5           “(3) INDIVIDUAL GUARANTEE LIMIT.—The ag-  
6           gregate amount of loans guaranteed under this sec-  
7           tion with respect to a single eligible plan sponsor  
8           may not exceed \$5,000,000.

9           “(4) ADDITIONAL COSTS.—For the additional  
10          cost of loans guaranteed under this subsection, in-  
11          cluding the costs of modifying the loans, as defined  
12          in section 502 of the Congressional Budget Act of  
13          1974 (2 U.S.C. 661a), there is authorized to be ap-  
14          propriated \$200,000,000, to remain available until  
15          expended.

16          “(e) REQUIREMENTS FOR LOAN GUARANTEES.—A  
17          loan guarantee may be issued under this section upon ap-  
18          plication to the Board by an eligible plan sponsor pursuant  
19          to an agreement to provide a loan to that eligible plan  
20          sponsor by a private bank or investment company, if the  
21          Board determines that—

22                 “(1) credit is not otherwise available to that eli-  
23                 gible plan sponsor under reasonable terms and con-  
24                 ditions sufficient to meet its financing needs with re-  
25                 spect to the restoration of retiree health benefits, as

1 reflected in the financial and business plans of that  
2 eligible plan sponsor;

3 “(2) the prospective earning power of that eligi-  
4 ble plan sponsor, together with the character and  
5 value of the security pledged, furnish reasonable as-  
6 surance of repayment of the loan to be guaranteed  
7 in accordance with its terms;

8 “(3) the loan to be guaranteed bears interest at  
9 a rate determined by the Board to be reasonable,  
10 taking into account the current average yield on out-  
11 standing obligations of the United States with re-  
12 maining periods of maturity comparable to the ma-  
13 turity of such loan;

14 “(4) the loan to be guaranteed will materially  
15 assist that eligible plan sponsor to discharge its obli-  
16 gation to comply with the restoration of benefits re-  
17 quirements contained in section 803; and

18 “(5) the eligible plan sponsor has agreed to an  
19 audit by the General Accounting Office prior to the  
20 issuance of the loan guarantee and annually while  
21 any such guaranteed loan is outstanding.

22 “(f) TERMS AND CONDITIONS OF LOAN GUAR-  
23 ANTEE.—

24 “(1) LOAN DURATION.—All loans guaranteed  
25 under this section shall be payable in full not later

1 than December 31, 2009, and the terms and condi-  
2 tions of each such loan shall provide that the loan  
3 may not be amended or any provision thereof waived  
4 without the consent of the Board.

5 “(2) LOAN SECURITY.—Any commitment to  
6 issue a loan guarantee under this section shall con-  
7 tain such affirmative and negative covenants and  
8 other protective provisions that the Board deter-  
9 mines are appropriate.

10 “(3) FEES.—An eligible plan sponsor receiving  
11 a guarantee under this section shall pay a fee in an  
12 amount equal to 0.5 percent of the outstanding prin-  
13 cipal balance of the guaranteed loan to the Depart-  
14 ment of the Treasury.

15 “(g) REPORTS TO CONGRESS.—The Secretary of  
16 Labor shall submit annually to each House of the Con-  
17 gress a full report of the activities of the Board under  
18 this section during 2002 and 2003, and annually there-  
19 after during such period as any loan guaranteed under  
20 this section is outstanding. Such report shall be submitted  
21 not later than January 31, of each year (beginning in  
22 2002).

23 “(h) SALARIES AND ADMINISTRATIVE EXPENSES.—  
24 For necessary expenses to administer the Program, there  
25 is authorized to be appropriated to the Department of

1 Labor (and to be transferred to the Office of the Assistant  
2 Secretary for Pension and Welfare Benefits Administra-  
3 tion) \$10,000,000, to remain available until expended.

4 “(i) TERMINATION OF GUARANTEE AUTHORITY.—  
5 The authority of the Board to make commitments to guar-  
6 antee any loan under this section shall terminate on De-  
7 cember 31, 2005.

8 “(j) REGULATORY ACTION.—The Board shall issue  
9 such final procedures, rules, and regulations as may be  
10 necessary to carry out this section not later than 90 days  
11 after the date of enactment of the Emergency Retiree  
12 Health Benefits Protection Act of 2001. In no event shall  
13 the Board issue a procedure, rule, or regulation which au-  
14 thORIZES it to approve or deny any application for a loan  
15 guarantee in more than 270 days after receipt of such ap-  
16 plication.

17 “(k) EMERGENCY DESIGNATION.—The entire  
18 amount made available to carry out this section—

19 “(1) is designated by Congress as an emergency  
20 requirement pursuant to section 251(b)(2)(A) of the  
21 Balanced Budget and Emergency Deficit Control  
22 Act of 1985 (2 U.S.C. 901(b)(2)(A)); and

23 “(2) shall be available only to the extent that  
24 an official budget request that includes designation  
25 of the entire amount as an emergency requirement

1 (as defined in the Balanced Budget and Emergency  
2 Deficit Control Act of 1985) is transmitted by the  
3 President to the Congress.

4 **“SEC. 806. EFFECT ON OTHER CLAIMS.**

5 “(a) OTHER CLAIMS UNAFFECTED.—Nothing con-  
6 tained in this part shall be construed to alter, impair, or  
7 eliminate any claim for retiree health benefits based on  
8 conduct alleged to violate the terms of a group health plan,  
9 any provision of this Act (other than this part), or both,  
10 regardless of whether such conduct occurred prior to, on,  
11 or after, the effective date of this part.

12 “(b) OTHER CAUSES OF ACTION NOT AUTHOR-  
13 IZED.—Unless the conduct giving rise to a claim for re-  
14 tiree health benefits is alleged to violate the provisions of  
15 this part, nothing contained in this part shall be construed  
16 to authorize any other cause of action for the recovery of  
17 retiree health benefits.

18 **“SEC. 807. REGULATIONS.**

19 “The Secretary may promulgate such regulations as  
20 may be necessary to carry out the provisions of this part.  
21 The Secretary may promulgate any interim final rules as  
22 the Secretary deems are appropriate to carry out this part.

23 **“SEC. 808. ENFORCEMENT.**

24 “The enforcement provisions of sections 501 and 502  
25 shall be applicable to this part.”.

1 (b) CIVIL PENALTY SECTION.—Section 502(c) of the  
 2 Employee Retirement Income Security Act of 1974 (29  
 3 U.S.C. 1132(e)) is amended by adding at the end the fol-  
 4 lowing new paragraph:

5 “(8) The Secretary may assess a civil penalty of not  
 6 more than \$1,000 for each separate violation of section  
 7 801, 802, or 803 by any person individually with respect  
 8 to each participant or beneficiary aggrieved by such viola-  
 9 tion.”.

10 (c) CONFORMING AMENDMENT.—The table of con-  
 11 tents in section 1 of such Act is amended by inserting  
 12 after the item relating to section 734 the following new  
 13 items:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

“Sec. 801. Prohibition against post-retirement reductions of retiree health ben-  
 efits by group health plans.

“Sec. 802. Adoption by group health plans of provision barring post-retirement  
 reductions in retiree health benefits.

“Sec. 803. Restoration by group health plans of benefits reduced after retire-  
 ment.

“Sec. 804. Exemption from restoration of benefits requirements.

“Sec. 805. Establishment of emergency retiree health loan guarantee program.

“Sec. 806. Effect on other claims.

“Sec. 807. Regulations.

“Sec. 808. Enforcement.”.

14 **SEC. 4. SEPARABILITY OF PROVISIONS.**

15 The provisions of section 509 of the Employee Retire-  
 16 ment Income Security Act of 1974 (29 U.S.C. 1139) shall  
 17 be applicable to this Act and the amendments made there-  
 18 by.



1 **SEC. 5. EFFECTIVE DATE.**

2       The amendments made by this Act shall take effect  
3 on the date of the enactment of this Act.

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