

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4181

To amend the Internal Revenue Code of 1986 to prohibit pension plan amendments reducing the rate of future benefit accrual, subject to a safe harbor where the plan provides notice of the amendment and an election to continue benefit accruals under the former plan instead of the amended plan.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2002

Mr. GUTKNECHT (for himself, Mr. GILMAN, Mr. SWEENEY, Mr. SABO, Mr. SANDERS, and Mr. HASTINGS of Florida) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to prohibit pension plan amendments reducing the rate of future benefit accrual, subject to a safe harbor where the plan provides notice of the amendment and an election to continue benefit accruals under the former plan instead of the amended plan.

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 “Vested Worker Protec-  
5        tion Act of 2002”.

1 **SEC. 2. SAFE HARBOR IN EVENT OF REDUCTION IN FUTURE**  
2 **BENEFIT ACCRUALS WHERE PLAN PROVIDES**  
3 **NOTICE AND ELECTION TO CONTINUE BEN-**  
4 **EFIT ACCRUALS UNDER FORMER PLAN IN-**  
5 **STEAD OF AMENDED PLAN.**

6 (a) IN GENERAL.—Paragraph (1) of section 411(b)  
7 of the Internal Revenue Code of 1986 (relating to defined  
8 benefit plans) is amended by adding at the end the fol-  
9 lowing new subparagraph:

10 “(I) SAFE HARBOR UPON REDUCTION IN  
11 FUTURE BENEFIT ACCRUALS.—

12 “(i) IN GENERAL.—An applicable pen-  
13 sion plan that adopts an amendment which  
14 has the effect of reducing the rate of fu-  
15 ture benefit accrual of 1 or more partici-  
16 pants shall be treated as not meeting the  
17 requirements of this paragraph unless such  
18 plan provides each participant who is, as of  
19 the date of the adoption of the plan  
20 amendment, a fully vested participant  
21 with—

22 “(I) written notice which meets  
23 the requirements of section 4980F,  
24 and

25 “(II) an election to continue to  
26 accrue benefits under such plan, de-

1           terminated under the terms of such plan  
2           as in effect immediately before the ef-  
3           fective date of such plan amendment.

4           “(ii) PROTECTED ACCRUED BEN-  
5           EFIT.—For purposes of clause (i), an ac-  
6           crued benefit shall include any early retire-  
7           ment benefit or retirement-type subsidy  
8           (within the meaning of subsection  
9           (d)(6)(B)(i)), but only with respect to a  
10          participant who satisfies (either before or  
11          after the effective date of the amendment)  
12          the conditions for the benefit or subsidy  
13          under the terms of the plan as in effect  
14          immediately before such date.

15          “(iii) TIMING OF ELECTION.—Except  
16          as provided in regulations, the election re-  
17          quired by clause (i)(II) shall be provided at  
18          least 90 days before the effective date of  
19          the amendment.

20          “(iv) EXEMPTION UPON SHOWING OF  
21          DISTRESS CRITERIA.—This subparagraph  
22          shall not apply with respect to any plan  
23          amendment if the plan sponsor, prior to  
24          the date of the adoption of the amend-  
25          ment, demonstrates to the satisfaction of

1 the Secretary that, under regulations of  
2 the Secretary, requirements—

3 “(I) applicable with respect to  
4 the adoption of the plan amendment,  
5 and

6 “(II) similar to the requirements  
7 of clause (i), (ii), or (iii) of section  
8 4041(e)(2)(B) of the Employee Re-  
9 tirement Income Security Act of 1974  
10 applicable with respect to a distress  
11 termination,

12 are met by each employer required (under  
13 the terms of the plan as in effect imme-  
14 diately before the adoption of the plan  
15 amendment) to make contributions under  
16 the plan.

17 “(v) FULLY VESTED PARTICIPANT.—  
18 For purposes of this subparagraph, the  
19 term ‘fully vested participant’ means a  
20 participant who under the plan has a non-  
21 forfeitable right to the participant’s entire  
22 accrued benefit.

23 “(vi) APPLICABLE PENSION PLAN.—  
24 The term ‘applicable pension plan’  
25 means—

1                   “(I) a defined benefit plan, or  
2                   “(II) an individual account plan  
3                   which is subject to the funding stand-  
4                   ards of section 412,  
5                   which had 100 or more active participants  
6                   who had accrued a benefit under the plan  
7                   (whether or not vested) as of the last day  
8                   of the plan year preceding the plan year in  
9                   which the plan amendment becomes effec-  
10                  tive. Such term shall not include any gov-  
11                  ernmental plan (within the meaning of sec-  
12                  tion 414(d)) or any church plan (within  
13                  the meaning of section 414(e)) with re-  
14                  spect to which the election provided by sec-  
15                  tion 410(d) has not been made.”.

16           (b) EXCISE TAX ON FAILURE TO OFFER ELEC-  
17   TION.—

18           (1) IN GENERAL.—Chapter 43 of subtitle D of  
19   the Internal Revenue Code of 1986 (as amended by  
20   section 2 of this Act) is amended further by adding  
21   at the end the following new section:

1 **“SEC. 4980G. FAILURE TO OFFER ELECTION TO CONTINUE**  
2 **BENEFIT ACCRUALS UNDER FORMER APPLI-**  
3 **CABLE PENSION PLAN IN EVENT OF REDUC-**  
4 **TIONS IN FUTURE BENEFIT ACCRUALS.**

5 “(a) IMPOSITION OF TAX.—There is hereby imposed  
6 a tax on the failure of any applicable pension plan to meet  
7 the requirements of subsection (d).

8 “(b) AMOUNT OF TAX.—

9 “(1) IN GENERAL.—The amount of the tax im-  
10 posed by subsection (a) shall be 50 percent of the  
11 lesser of—

12 “(A) the reduction in the future employer  
13 benefit cost for the plan attributable to the plan  
14 amendment referred to in subsection (d) (deter-  
15 mined, as provided in regulations of the Sec-  
16 retary, as of the date of the adoption of such  
17 plan amendment), or

18 “(B) the amount of the excess pension as-  
19 sets in such plan, determined as of the effective  
20 date of the amendment.

21 “(2) FUTURE EMPLOYER BENEFIT COST.—For  
22 purposes of paragraph (1)(A), the term ‘future em-  
23 ployer benefit cost’ for a plan means the present  
24 value of future accruals, by current participants and  
25 beneficiaries, of benefits derived from employer con-  
26 tributions (within the meaning of section 411(c)(1)).

1           “(3) EXCESS PENSION ASSETS.—For purposes  
2           of paragraph (1), the term ‘excess pension assets’  
3           has the meaning given to such term by section  
4           420(e)(2).

5           “(c) LIABILITY FOR TAX.—The following shall be lia-  
6           ble for the tax imposed by subsection (a):

7           “(1) In the case of a plan other than a multi-  
8           employer plan, the employer.

9           “(2) In the case of a multiemployer plan, the  
10          plan.

11 For purposes of the preceding sentence, all multiemployer  
12 plans of which the same trust forms a part shall be treated  
13 as 1 plan. For purposes of this paragraph, if not all per-  
14 sons who are treated as a single employer for purposes  
15 of this section have the same taxable year, the taxable  
16 years taken into account shall be determined under prin-  
17 ciples similar to the principles of section 1561.

18          “(d) ELECTION TO CONTINUE BENEFIT ACCRUALS  
19 UNDER FORMER APPLICABLE PENSION PLAN IN EVENT  
20 OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—In  
21 the case that an applicable pension plan adopts an amend-  
22 ment which has the effect of reducing the rate of future  
23 benefit accrual of 1 or more participants, the requirements  
24 of this subsection are met if the plan administrator pro-  
25 vides each fully vested participant with—

1           “(1) written notice which meets the require-  
2           ments of section 4980F, and

3           “(2) an election to continue to accrue benefits  
4           under such plan, determined under the terms of  
5           such plan as in effect immediately before the effec-  
6           tive date of such plan amendment.

7           “(e) TIMING OF ELECTION.—Except as provided in  
8           regulations, the election required by subsection (d) shall  
9           be provided at least 90 days before the effective date of  
10          such amendment.

11          “(f) PROTECTED ACCRUED BENEFIT.—For purposes  
12          of this section, an accrued benefit shall include any early  
13          retirement benefit or retirement-type subsidy (within the  
14          meaning of section 411(d)(6)(B)(i)), but only with respect  
15          to a participant who satisfies (either before or after the  
16          effective date of the amendment) the conditions for the  
17          benefit or subsidy under the terms of the plan as in effect  
18          immediately before such date.

19          “(g) EXEMPTION UPON SHOWING OF DISTRESS CRI-  
20          TERIA.—This section shall not apply with respect to any  
21          plan amendment if the plan sponsor, prior to the date of  
22          the adoption of the amendment, demonstrates to the satis-  
23          faction of the Secretary that, under regulations of the Sec-  
24          retary, requirements—



1           “(1) applicable with respect to the adoption of  
2           the plan amendment, and

3           “(2) similar to the requirements of clause (i),  
4           (ii), or (iii) of section 4041(c)(2)(B) of the Employee  
5           Retirement Income Security Act of 1974 applicable  
6           with respect to a distress termination,

7           are met by each employer required (under the terms of  
8           the plan as in effect immediately before the adoption of  
9           the plan amendment) to make contributions under the  
10          plan.

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

12                  “(1) APPLICABLE PENSION PLAN.—The term  
13                  ‘applicable pension plan’ means—

14                          “(A) a defined benefit plan, or

15                          “(B) an individual account plan which is  
16                          subject to the funding standards of section 412,  
17                          which had 100 or more active participants who  
18                          had accrued a benefit under the plan (whether  
19                          or not vested) as of the last day of the plan  
20                          year preceding the plan year in which the plan  
21                          amendment becomes effective. Such term shall  
22                          not include any governmental plan (within the  
23                          meaning of section 414(d)) or any church plan  
24                          (within the meaning of section 414(e)) with re-

1 spect to which the election provided by section  
2 410(d) has not been made.

3 “(2) FULLY VESTED PARTICIPANT.—The term  
4 ‘fully vested participant’ means a participant who  
5 has under the plan a nonforfeitable right to the par-  
6 ticipant’s entire accrued benefit.”.

7 (2) CLERICAL AMENDMENT.—The table of sec-  
8 tions for chapter 43 of subtitle D of such Code (as  
9 amended by section 2 of this Act) is amended fur-  
10 ther by adding at the end the following new item:

“Sec. 4980G. Failure to offer election to continue benefit accruals under former  
applicable pension plan in event of reductions in future benefit  
accruals.”.

11 **SEC. 3. EFFECTIVE DATES.**

12 (a) IN GENERAL.—The amendments made by this  
13 Act shall apply to plans and plan amendments taking ef-  
14 fect after 60 days after the date of the enactment of this  
15 Act.

16 (b) SPECIAL RULE.—The period for providing any  
17 notice required by the amendments made by this Act shall  
18 not end before the date which is 90 days after the date  
19 of the enactment of this Act.

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