

108TH CONGRESS
1ST SESSION

H. R. 1677

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2003

Mr. SANDERS (for himself, Mr. GEORGE MILLER of California, Mr. VIS-CLOSKY, Mr. EMANUEL, Mr. SERRANO, Mr. ENGEL, Mr. GRIJALVA, Mr. ORTIZ, Mr. BROWN of Ohio, Mr. PETRI, Mr. OBERSTAR, Mr. TAYLOR of Mississippi, Mr. HINCHEY, Mr. TOWNS, Mr. ROSS, Mr. DELAHUNT, Mr. OLVER, Mr. PAYNE, Mr. ANDREWS, Mr. WYNN, Ms. SCHAKOWSKY, Mr. STRICKLAND, Mr. GUTIERREZ, Ms. NORTON, Ms. SOLIS, Mr. WEXLER, Mr. SCHIFF, Ms. SLAUGHTER, Mr. MEEHAN, Mr. NADLER, Mr. RAHALL, Mr. GOODE, Mr. BACA, Mr. KUCINICH, Mr. COSTELLO, Mr. MARKEY, Ms. KILPATRICK, Ms. LEE, Mr. OBEY, Mr. GREEN of Texas, Mr. DEUTSCH, Mr. MICHAUD, Mrs. JONES of Ohio, Mr. UDALL of New Mexico, Mr. WEINER, Mr. DEFazio, Mr. PALLONE, Mr. MCGOVERN, Mrs. NAPOLITANO, Mr. THOMPSON of Mississippi, Mr. JEFFERSON, Mr. REYES, Mr. CUMMINGS, Mr. OWENS, Ms. HOOLEY of Oregon, Ms. MILLENDER-MCDONALD, Mr. DOGGETT, Ms. WOOLSEY, Mr. PASCRELL, Ms. BALDWIN, Ms. BORDALLO, Mr. RYAN of Ohio, Ms. DELAURO, Mr. FRANK of Massachusetts, Mr. ABERCROMBIE, Mr. RODRIGUEZ, Ms. JACKSON-LEE of Texas, Ms. CARSON of Indiana, Mr. DAVIS of Illinois, Mr. FILNER, Mr. HOEFFEL, Mr. LANGEVIN, Mr. LYNCH, Mr. HASTINGS of Florida, Mr. SCOTT of Georgia, Mr. CAPUANO, Mr. BISHOP of New York, Mr. DINGELL, Ms. MCCOLLUM, Mr. TIERNEY, Mr. KENNEDY of Rhode Island, Mr. RUSH, Mr. SPRATT, Mr. KILDEE, Mr. BERRY, Mr. LAMPSON, Mr. SCOTT of Virginia, Ms. KAPTUR, Mr. CROWLEY, Ms. ESHOO, Mrs. MALONEY, Mr. UDALL of Colorado, Mrs. MCCARTHY of New York, Mr. INSLEE, Mr. CONYERS, Mr. LANTOS, Mr. MCINTYRE, Mr. HOLT, Mr. BLUMENAUER, Mr. MEEK of Florida, Mr. BOEHLERT, Mr. FARR, Mr. HOLDEN, Mr. ACKERMAN, Ms. LINDA T. SÁNCHEZ of California, Mrs. CHRISTENSEN, Mr. ROTHMAN, Mr. MURTHA, Ms. MCCARTHY of Missouri, Mrs. DAVIS of California, Ms. VELÁZQUEZ, Mrs. CAPPS, Mr. DOYLE, Mr. MENENDEZ, Mr. CASE, Mr. ALLEN, and Mr. BERMAN) 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 the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to protect pension benefits of employees in defined benefit plans and to direct the Secretary of the Treasury to enforce the age discrimination requirements of the Internal Revenue Code of 1986.

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 “Pension Benefits Pro-
 5 tection Act of 2003”.

6 **SEC. 2. PROPER ADMINISTRATION OF INTERNAL REVENUE**

7 **LAWS AND NONDISCRIMINATION REQUIRE-**
 8 **MENTS.**

9 (a) IN GENERAL.—The Employee Retirement Income
 10 Security Act of 1974, the Internal Revenue Code of 1986,
 11 and the Age Discrimination in Employment Act of 1967
 12 shall be applied and administered without regard to pro-
 13 posed regulations of the Secretary of the Treasury, in-
 14 cluded in proposed regulations published in the Federal
 15 Register on December 11, 2002 (relating to reductions of

1 accruals and allocations because of the attainment of any
2 age; application of nondiscrimination cross-testing rules to
3 cash balance plans) (67 FR 76123), which pertain to plan
4 amendments adopting a cash balance formula, and with-
5 out regard to any other regulation which reaches the same
6 or a similar result. The Secretary of the Treasury shall
7 take no action in contravention of section 204(b)(1)(G),
8 204(b)(1)(H)(i), or 204(g) of the Employee Retirement
9 Income Security Act of 1974, section 411(b)(1)(G),
10 411(b)(1)(H)(i), or 411(d)(6) of the Internal Revenue
11 Code of 1986, or section 4(i)(1)(A) of the Age Discrimina-
12 tion in Employment Act of 1967.

13 (b) DIRECTIVE.—The Secretary of the Treasury shall
14 apply section 411(b)(1)(H) of the Internal Revenue Code
15 of 1986 without regard to the portion of the preamble to
16 Treasury Decision 8360 (56 Fed. Reg. 47524–47603,
17 September 19, 1991) which relates to the allocation of in-
18 terest adjustments through normal retirement age under
19 a cash balance plan, as such preamble is and has been
20 since its adoption without the force of law.

21 **SEC. 3. PROTECTION OF PARTICIPANTS FROM CONVER-**
22 **SIONS TO HYBRID DEFINED BENEFIT PLANS.**

23 (a) ELECTION TO MAINTAIN RATE OF ACCRUAL IN
24 EFFECT BEFORE PLAN AMENDMENT.—

1 (1) AMENDMENT TO ERISA.—Section
2 204(b)(1) of the Employee Retirement Income Secu-
3 rity Act of 1974 (29 U.S.C. 1054(b)(1)) is amended
4 by adding at the end the following new subpara-
5 graph:

6 “(I)(i) Notwithstanding the preceding subpara-
7 graphs, in the case of a plan amendment to a defined ben-
8 efit plan—

9 “(I) which has the effect of converting the plan
10 to a plan under which the accrued benefit is ex-
11 pressed to participants and beneficiaries as an
12 amount other than an annual benefit commencing at
13 normal retirement age (or which has a similar effect
14 as determined under regulations issued under clause
15 (iv)), and

16 “(II) which has the effect of reducing the rate
17 of future benefit accrual of 1 or more participants,
18 such plan shall be treated as not satisfying the require-
19 ments of this paragraph unless such plan meets the re-
20 quirements of clause (ii).

21 “(ii) A plan meets the requirements of this clause if
22 the plan provides each participant who has attained 40
23 years of age or 10 years of service (as determined under
24 section 203) under the plan at the time such amendment
25 takes effect with—

1 “(I) notice of the plan amendment indicating
2 that it has such effect, including a comparison of the
3 present and projected values of the accrued benefit
4 determined both with and without regard to the plan
5 amendment, and

6 “(II) an election upon retirement to either re-
7 ceive benefits under the terms of the plan as in ef-
8 fect at the time of retirement or to receive benefits
9 under the terms of the plan as in effect immediately
10 before the effective date of such plan amendment
11 (taking into account all benefit accruals under such
12 terms since such date).

13 “(iii) For purposes of clause (i), an accrued benefit
14 shall include any early retirement benefit or retirement-
15 type subsidy (within the meaning of subsection (g)(2)(A)),
16 but only with respect to a participant who satisfies (either
17 before or after the effective date of the amendment) the
18 conditions for the benefit or subsidy under the terms of
19 the plan as in effect immediately before such date.

20 “(iv) The Secretary shall issue regulations under
21 which any plan amendment which has an effect similar
22 to the effect described in clause (i)(I) shall be treated as
23 a plan amendment described in clause (i)(I). Such regula-
24 tions may provide that if a plan sponsor represents in com-
25 munications to participants and beneficiaries that a plan

1 amendment has an effect described in the preceding sen-
2 tence, such plan amendment shall be treated as a plan
3 amendment described in clause (i)(I).”.

4 (2) AMENDMENT TO INTERNAL REVENUE
5 CODE.—Section 411(b)(1) of the Internal Revenue
6 Code of 1986 (relating to accrued benefit require-
7 ments for defined benefit plans) is amended by add-
8 ing at the end the following new subparagraph:

9 “(I) ELECTION TO MAINTAIN RATE OF AC-
10 CRUAL IN EFFECT BEFORE CERTAIN PLAN
11 AMENDMENTS.—

12 “(i) IN GENERAL.—Notwithstanding
13 the preceding subparagraphs, in the case
14 of a plan amendment to a defined benefit
15 plan—

16 “(I) which has the effect of con-
17 verting the plan to a plan under which
18 the accrued benefit is expressed to
19 participants and beneficiaries as an
20 amount other than an annual benefit
21 commencing at normal retirement age
22 (or which has a similar effect as de-
23 termined under regulations issued
24 under clause (iv)), and

1 “(II) which has the effect of re-
2 ducing the rate of future benefit ac-
3 crual of 1 or more participants,
4 such plan shall be treated as not satisfying
5 the requirements of this paragraph unless
6 such plan meets the requirements of clause
7 (ii).

8 “(ii) REQUIREMENTS.—A plan meets
9 the requirements of this clause if the plan
10 provides each participant who has attained
11 40 years of age or 10 years of service (as
12 determined under subsection (a)) under
13 the plan at the time such amendment
14 takes effect with—

15 “(I) notice of the plan amend-
16 ment indicating that it has such ef-
17 fect, including a comparison of the
18 present and projected values of the
19 accrued benefit determined both with
20 and without regard to the plan
21 amendment, and

22 “(II) an election upon retirement
23 to either receive benefits under the
24 terms of the plan as in effect at the
25 time of retirement or to receive bene-

1 fits under the terms of the plan as in
2 effect immediately before the effective
3 date of such plan amendment (taking
4 into account all benefit accruals under
5 such terms since such date).

6 “(iii) TREATMENT OF EARLY RETIRE-
7 MENT BENEFITS AND RETIREMENT-TYPE
8 SUBSIDIES.—For purposes of clause (i), an
9 accrued benefit shall include any early re-
10 tirement benefit or retirement-type subsidy
11 (within the meaning of subsection
12 (d)(6)(B)(i)), but only with respect to a
13 participant who satisfies (either before or
14 after the effective date of the amendment)
15 the conditions for the benefit or subsidy
16 under the terms of the plan as in effect
17 immediately before such date.

18 “(iv) REGULATIONS.—The Secretary
19 shall issue regulations under which any
20 plan amendment which has an effect simi-
21 lar to the effect described in clause (i)(I)
22 shall be treated as a plan amendment de-
23 scribed in clause (i)(I). Such regulations
24 may provide that if a plan sponsor rep-
25 resents in communications to participants

1 and beneficiaries that a plan amendment
2 has an effect described in the preceding
3 sentence, such plan amendment shall be
4 treated as a plan amendment described in
5 clause (i)(I).”.

6 (b) EFFECTIVE DATE AND RELATED RULES.—

7 (1) IN GENERAL.—The amendments made by
8 this section apply to plan amendments taking effect
9 before, on, or after the date of the enactment of this
10 Act.

11 (2) SPECIAL RULE.—In the case of a plan
12 amendment taking effect before 90 days after the
13 date of the enactment of this Act, the requirements
14 of section 204(b)(1)(I) of the Employee Retirement
15 Income Security Act of 1974 (as added by this sec-
16 tion) and section 411(b)(1)(I) of the Internal Rev-
17 enue Code of 1986 (as added by this section) shall
18 be treated as satisfied in connection with such plan
19 amendment, in the case of any participant described
20 in such sections 204(b)(1)(I) and 411(b)(1)(I) in
21 connection with such plan amendment, if, as of the
22 end of such 90-day period—

23 (A) the notice described in clause (i)(I) of
24 such section 204(b)(1)(I) and clause (i)(I) of
25 such section 411(b)(1)(I) in connection with

1 such plan amendment has been provided to
2 such participant, and

3 (B) the plan provides for the election de-
4 scribed in clause (i)(II) of such section
5 204(b)(1)(I) and clause (i)(II) of such section
6 411(b)(1)(I) in connection with such partici-
7 pant's retirement under the plan.

8 **SEC. 4. PREVENTION OF WEARING AWAY OF EMPLOYEE'S**
9 **ACCRUED BENEFIT.**

10 (a) AMENDMENT TO ERISA.—Section 204(g) of the
11 Employee Retirement Income Security Act of 1974 (29
12 U.S.C. 1054(g)) is amended by adding at the end the fol-
13 lowing new paragraph:

14 “(6)(A) For purposes of paragraph (1), an applicable
15 plan amendment adopted by a large defined benefit plan
16 shall be treated as reducing accrued benefits of a partici-
17 pant if, under the terms of the plan after the adoption
18 of the amendment, the accrued benefit of the participant
19 may at any time be less than the sum of—

20 “(i) the participant's accrued benefit for years
21 of service before the effective date of the amend-
22 ment, determined under the terms of the plan as in
23 effect immediately before the effective date, plus

24 “(ii) the participant's accrued benefit deter-
25 mined under the formula applicable to benefit accru-

1 als under the current plan as applied to years of
2 service after such effective date.

3 “(B) For purposes of this paragraph—

4 “(i) The term ‘applicable plan amendment’
5 means a plan amendment which has the effect of
6 converting the plan to a plan under which the ac-
7 crued benefit is expressed to participants and bene-
8 ficiaries as an amount other than an annual benefit
9 commencing at normal retirement age (or which has
10 a similar effect as determined under regulations of
11 the Secretary).

12 “(ii) The term ‘large defined benefit plan’
13 means any defined benefit plan which had 100 or
14 more participants who had accrued a benefit under
15 the plan (whether or not vested) as of the last day
16 of the plan year preceding the plan year in which
17 the plan amendment becomes effective.

18 “(iii) An accrued benefit shall include any early
19 retirement benefit or retirement-type subsidy (within
20 the meaning of paragraph (2)(A)), but only with re-
21 spect to a participant who satisfies (either before or
22 after the effective date of the amendment) the condi-
23 tions for the benefit or subsidy under the terms of
24 the plan as in effect immediately before such date.”.

1 (b) AMENDMENT TO INTERNAL REVENUE CODE.—
2 Section 411(d)(6) of the Internal Revenue Code of 1986
3 (relating to accrued benefit may not be decreased by
4 amendment) is amended by adding at the end the fol-
5 lowing new subparagraph:

6 “(F) TREATMENT OF PLAN AMENDMENTS
7 WEARING AWAY ACCRUED BENEFIT.—

8 “(i) IN GENERAL.—For purposes of
9 subparagraph (A), an applicable plan
10 amendment adopted by a large defined
11 benefit plan shall be treated as reducing
12 accrued benefits of a participant if, under
13 the terms of the plan after the adoption of
14 the amendment, the accrued benefit of the
15 participant may at any time be less than
16 the sum of—

17 “(I) the participant’s accrued
18 benefit for years of service before the
19 effective date of the amendment, de-
20 termined under the terms of the plan
21 as in effect immediately before the ef-
22 fective date, plus

23 “(II) the participant’s accrued
24 benefit determined under the formula
25 applicable to benefit accruals under

1 the current plan as applied to years of
2 service after such effective date.

3 “(ii) DEFINITIONS.—For purposes of
4 this subparagraph—

5 “(I) APPLICABLE PLAN AMEND-
6 MENT.—The term ‘applicable plan
7 amendment’ means a plan amendment
8 which has the effect of converting the
9 plan to a plan under which the ac-
10 crued benefit is expressed to partici-
11 pants and beneficiaries as an amount
12 other than an annual benefit com-
13 mencing at normal retirement age (or
14 which has a similar effect as deter-
15 mined under regulations of the Sec-
16 retary).

17 “(II) LARGE DEFINED BENEFIT
18 PLAN.—The term ‘large defined ben-
19 efit plan’ means any defined benefit
20 plan which had 100 or more partici-
21 pants who had accrued a benefit
22 under the plan (whether or not vest-
23 ed) as of the last day of the plan year
24 preceding the plan year in which the
25 plan amendment becomes effective.

1 “(III) PROTECTED ACCRUED
2 BENEFIT.—An accrued benefit shall
3 include any early retirement benefit or
4 retirement-type subsidy (within the
5 meaning of subparagraph (B)(i)), but
6 only with respect to a participant who
7 satisfies (either before or after the ef-
8 fective date of the amendment) the
9 conditions for the benefit or subsidy
10 under the terms of the plan as in ef-
11 fect immediately before such date.”.

12 (c) EFFECTIVE DATE AND RELATED RULES.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the amendments made by this section
15 apply to plan amendments taking effect before, on,
16 or after the date of the enactment of this Act.

17 (2) SPECIAL RULE.—Notwithstanding para-
18 graph (1), the amendments made by this section
19 shall not apply in connection with any participant
20 with respect to any plan amendment which has
21 taken effect before 90 days after the date of the en-
22 actment of this Act if, as of the end of such 90-day
23 period, the plan provides that the participant’s ac-
24 crued benefit shall at no time be less than the sum
25 described in section 204(g)(6)(A) of the Employee

1 Retirement Income Security Act of 1974 (as added
2 by this section) or section 411(d)(6)(F)(i) of the In-
3 ternal Revenue Code of 1986 (as added by this sec-
4 tion) in connection with such plan amendment.

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