

109TH CONGRESS
1ST SESSION

S. 1304

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 SENATE OF THE UNITED STATES

JUNE 23, 2005

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. FEINGOLD, Mrs. BOXER, and Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 2005”.

1 **SEC. 2. PROPER ADMINISTRATION OF INTERNAL REVENUE**
 2 **LAWS AND NONDISCRIMINATION REQUIRE-**
 3 **MENTS.**

4 The Secretary of the Treasury shall apply section
 5 411(b)(1)(H) of the Internal Revenue Code of 1986 with-
 6 out regard to the portion of the preamble to Treasury De-
 7 cision 8360 (56 Fed. Reg. 47524–47603, September 19,
 8 1991) which relates to the allocation of interest adjust-
 9 ments through normal retirement age under a cash bal-
 10 ance plan, as such preamble is and has been since its
 11 adoption without the force of law.

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

14 (a) **ELECTION TO MAINTAIN RATE OF ACCRUAL IN**
 15 **EFFECT BEFORE PLAN AMENDMENT.—**

16 (1) **AMENDMENT TO ERISA.—**Section 204(b)(1)
 17 of the Employee Retirement Income Security Act of
 18 1974 (29 U.S.C. 1054(b)(1)) is amended by adding
 19 at the end the following new subparagraph:

20 “(I)(i) Notwithstanding the preceding subpara-
 21 graphs, in the case of a plan amendment to a defined ben-
 22 efit plan—

23 “(I) which has the effect of converting the plan
 24 to a plan under which the accrued benefit is ex-
 25 pressed to participants and beneficiaries as an
 26 amount other than an annual benefit commencing at

1 normal retirement age (or which has a similar effect
2 as determined under regulations issued under clause
3 (iv)), and

4 “(II) which has the effect of reducing the rate
5 of future benefit accrual of 1 or more participants,
6 such plan shall be treated as not satisfying the require-
7 ments of this paragraph unless such plan meets the re-
8 quirements of clause (ii).

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

14 “(I) notice of the plan amendment indicating
15 that it has such effect, including a comparison of the
16 present and projected values of the accrued benefit
17 determined both with and without regard to the plan
18 amendment, and

19 “(II) an election upon retirement to either re-
20 ceive benefits under the terms of the plan as in ef-
21 fect at the time of retirement or to receive benefits
22 under the terms of the plan as in effect immediately
23 before the effective date of such plan amendment
24 (taking into account all benefit accruals under such
25 terms since such date).

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

8 “(iv) The Secretary of the Treasury shall issue regu-
 9 lations under which any plan amendment which has an
 10 effect similar to the effect described in clause (i)(I) shall
 11 be treated as a plan amendment described in clause (i)(I).
 12 Such regulations may provide that if a plan sponsor rep-
 13 resents in communications to participants and bene-
 14 ficiaries that a plan amendment has an effect described
 15 in the preceding sentence, such plan amendment shall be
 16 treated as a plan amendment described in clause (i)(I).”.

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

22 “(I) ELECTION TO MAINTAIN RATE OF AC-
 23 CRUAL IN EFFECT BEFORE CERTAIN PLAN
 24 AMENDMENTS.—

1 “(i) IN GENERAL.—Notwithstanding
2 the preceding subparagraphs, in the case
3 of a plan amendment to a defined benefit
4 plan—

5 “(I) which has the effect of con-
6 verting the plan to a plan under which
7 the accrued benefit is expressed to
8 participants and beneficiaries as an
9 amount other than an annual benefit
10 commencing at normal retirement age
11 (or which has a similar effect as de-
12 termined under regulations issued
13 under clause (iv)), and

14 “(II) which has the effect of re-
15 ducing the rate of future benefit ac-
16 crual of 1 or more participants,
17 such plan shall be treated as not satisfying
18 the requirements of this paragraph unless
19 such plan meets the requirements of clause
20 (ii).

21 “(ii) REQUIREMENTS.—A plan meets
22 the requirements of this clause if the plan
23 provides each participant who has attained
24 40 years of age or 10 years of service (as
25 determined under subsection (a)) under

1 the plan at the time such amendment
2 takes effect with—

3 “(I) notice of the plan amend-
4 ment indicating that it has such ef-
5 fect, including a comparison of the
6 present and projected values of the
7 accrued benefit determined both with
8 and without regard to the plan
9 amendment, and

10 “(II) an election upon retirement
11 to either receive benefits under the
12 terms of the plan as in effect at the
13 time of retirement or to receive bene-
14 fits under the terms of the plan as in
15 effect immediately before the effective
16 date of such plan amendment (taking
17 into account all benefit accruals under
18 such terms since such date).

19 “(iii) TREATMENT OF EARLY RETIRE-
20 MENT BENEFITS AND RETIREMENT-TYPE
21 SUBSIDIES.—For purposes of clause (i), an
22 accrued benefit shall include any early re-
23 tirement benefit or retirement-type subsidy
24 (within the meaning of subsection
25 (d)(6)(B)(i)), but only with respect to a

1 participant who satisfies (either before or
2 after the effective date of the amendment)
3 the conditions for the benefit or subsidy
4 under the terms of the plan as in effect
5 immediately before such date.

6 “(iv) REGULATIONS.—The Secretary
7 shall issue regulations under which any
8 plan amendment which has an effect simi-
9 lar to the effect described in clause (i)(I)
10 shall be treated as a plan amendment de-
11 scribed in clause (i)(I). Such regulations
12 may provide that if a plan sponsor rep-
13 resents in communications to participants
14 and beneficiaries that a plan amendment
15 has an effect described in the preceding
16 sentence, such plan amendment shall be
17 treated as a plan amendment described in
18 clause (i)(I).”.

19 (b) EFFECTIVE DATE AND RELATED RULES.—

20 (1) IN GENERAL.—The amendments made by
21 this section apply to plan amendments taking effect
22 before, on, or after the date of the enactment of this
23 Act, except that such amendments shall not apply to
24 a plan amendment if the Internal Revenue Service
25 has issued on or before June 23, 2005, a determina-

1 tion letter which has the effect of approving the plan
2 amendment.

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

15 (A) the notice described in clause (i)(I) of
16 such section 204(b)(1)(I) and clause (i)(I) of
17 such section 411(b)(1)(I) in connection with
18 such plan amendment has been provided to
19 such participant, and

20 (B) the plan provides for the election de-
21 scribed in clause (i)(II) of such section
22 204(b)(1)(I) and clause (i)(II) of such section
23 411(b)(1)(I) in connection with such partici-
24 pant's retirement under the plan.

1 **SEC. 4. PREVENTION OF WEARING AWAY OF EMPLOYEE'S**
2 **ACCRUED BENEFIT.**

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

7 “(6)(A) For purposes of paragraph (1), an applicable
8 plan amendment adopted by a large defined benefit plan
9 shall be treated as reducing accrued benefits of a partici-
10 pant if, under the terms of the plan after the adoption
11 of the amendment, the accrued benefit of the participant
12 may at any time be less than the sum of—

13 “(i) the participant’s accrued benefit for years
14 of service before the effective date of the amend-
15 ment, determined under the terms of the plan as in
16 effect immediately before the effective date, plus

17 “(ii) the participant’s accrued benefit deter-
18 mined under the formula applicable to benefit accru-
19 als under the current plan as applied to years of
20 service after such effective date.

21 “(B) For purposes of this paragraph—

22 “(i) The term ‘applicable plan amendment’
23 means a plan amendment which has the effect of
24 converting the plan to a plan under which the ac-
25 crued benefit is expressed to participants and bene-
26 ficiaries as an amount other than an annual benefit

1 commencing at normal retirement age (or which has
 2 a similar effect as determined under regulations of
 3 the Secretary of the Treasury under subsection
 4 (b)(1)(I)(iv)).

5 “(ii) The term ‘large defined benefit plan’
 6 means any defined benefit plan which had 100 or
 7 more participants who had accrued a benefit under
 8 the plan (whether or not vested) as of the last day
 9 of the plan year preceding the plan year in which
 10 the plan amendment becomes effective.

11 “(iii) An accrued benefit shall include any early
 12 retirement benefit or retirement-type subsidy (within
 13 the meaning of paragraph (2)(A)), but only with re-
 14 spect to a participant who satisfies (either before or
 15 after the effective date of the amendment) the condi-
 16 tions for the benefit or subsidy under the terms of
 17 the plan as in effect immediately before such date.”.

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

23 “(F) TREATMENT OF PLAN AMENDMENTS
 24 WEARING AWAY ACCRUED BENEFIT.—

1 “(i) IN GENERAL.—For purposes of
2 subparagraph (A), an applicable plan
3 amendment adopted by a large defined
4 benefit plan shall be treated as reducing
5 accrued benefits of a participant if, under
6 the terms of the plan after the adoption of
7 the amendment, the accrued benefit of the
8 participant may at any time be less than
9 the sum of—

10 “(I) the participant’s accrued
11 benefit for years of service before the
12 effective date of the amendment, de-
13 termined under the terms of the plan
14 as in effect immediately before the ef-
15 fective date, plus

16 “(II) the participant’s accrued
17 benefit determined under the formula
18 applicable to benefit accruals under
19 the current plan as applied to years of
20 service after such effective date.

21 “(ii) DEFINITIONS.—For purposes of
22 this subparagraph—

23 “(I) APPLICABLE PLAN AMEND-
24 MENT.—The term ‘applicable plan
25 amendment’ means a plan amendment

1 which has the effect of converting the
2 plan to a plan under which the ac-
3 crued benefit is expressed to partici-
4 pants and beneficiaries as an amount
5 other than an annual benefit com-
6 mencing at normal retirement age (or
7 which has a similar effect as deter-
8 mined under regulations of the Sec-
9 retary under subsection (b)(1)(I)(iv)).

10 “(II) LARGE DEFINED BENEFIT
11 PLAN.—The term ‘large defined ben-
12 efit plan’ means any defined benefit
13 plan which had 100 or more partici-
14 pants who had accrued a benefit
15 under the plan (whether or not vest-
16 ed) as of the last day of the plan year
17 preceding the plan year in which the
18 plan amendment becomes effective.

19 “(III) PROTECTED ACCRUED
20 BENEFIT.—An accrued benefit shall
21 include any early retirement benefit or
22 retirement-type subsidy (within the
23 meaning of subparagraph (B)(i)), but
24 only with respect to a participant who
25 satisfies (either before or after the ef-

1 fective date of the amendment) the
2 conditions for the benefit or subsidy
3 under the terms of the plan as in ef-
4 fect immediately before such date.”.

5 (c) EFFECTIVE DATE AND RELATED RULES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 apply to plan amendments taking effect before, on,
9 or after the date of the enactment of this Act, except
10 that such amendments shall not apply to a plan
11 amendment if the Internal Revenue Service has
12 issued on or before June 23, 2005, a determination
13 letter which has the effect of approving the plan
14 amendment.

15 (2) SPECIAL RULE.—Notwithstanding para-
16 graph (1), the amendments made by this section
17 shall not apply in connection with any participant
18 with respect to any plan amendment which has
19 taken effect before 90 days after the date of the en-
20 actment of this Act if, as of the end of such 90-day
21 period, the plan provides that the participant’s ac-
22 crued benefit shall at no time be less than the sum
23 described in section 204(g)(6)(A) of the Employee
24 Retirement Income Security Act of 1974 (as added
25 by this section) or section 411(d)(6)(F)(i) of the In-

1 ternal Revenue Code of 1986 (as added by this sec-
2 tion) in connection with such plan amendment.

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