H. R. 2425

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2013

Mr. Tierney (for himself, Mr. George Miller of California, Mr. Andrews, and Mr. Jones) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Earned Retiree Healthcare Benefits Protection Act of 2013”.

SEC. 2. FINDINGS AND PURPOSES.

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

(1) Retired participants of group health plans regulated by the Employee Retirement Income Secu-
rity Act of 1974 (ERISA) have been severely harmed by the virtually unchecked practices of sponsors of such plans involving the post-retirement cancellation or reduction of earned health benefits contrary to assurances retirees received prior to retirement that such benefits would be with them for life.

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

(A) have been unable to substitute individual coverage for the group coverage they lost, or, in order to obtain individual coverage, have jeopardized their economic security in retirement;

(B) because of preexisting medical conditions cannot obtain substitute coverage that they can afford without depleting their life savings or have been unable to obtain adequate medical care or medical care they had relied on to deal with serious illness;

(C) have sustained catastrophic illnesses or injuries or otherwise experienced a marked deterioration in their medical conditions or health as a result of post-retirement changes to their medical benefits;
(D) have been transferred indiscriminately into improperly or inadequately managed health maintenance organizations or other managed care entities, resulting in the worsening rather than improvement of prior medical conditions; and

(E) in many instances, have failed to obtain adequate relief in the courts due to highly restrictive judicial interpretations which are inconsistent with ERISA’s underlying protective purposes.

(3) The crisis in retiree healthcare generated by the plan sponsor practice of post-retirement cancellations or reductions of previously promised earned retiree health benefits has led to a widespread loss of confidence in the integrity of ERISA-regulated group health plans and the ability of ERISA itself to adequately protect retiree health benefits.

(4) A strong and dependable private sector retiree health system is a necessary component to the essential health of our Nation’s senior citizens.

(b) PURPOSES.—

(1) IN GENERAL.—The purposes of this Act are to ensure that the reasonable health benefit expecta-
tions of retirees from ERISA-regulated group health plans are fulfilled, to minimize the incidence of prolonged legal disputes arising out of the post-retirement cancellation or reduction of earned retiree health benefits from such plans, and to prevent further adverse effects on retiree health arising from such post-retirement changes.

(2) Future safeguards and enforceable obligations.—To carry out the purposes described in paragraph (1):

(A) The provisions of this Act safeguard retired participants of group health plans subject to ERISA from loss or reduction of their health benefits from such plans by barring plan sponsors from canceling or reducing such benefits after the dates such participants retire and when they no longer are able to absorb such losses or reductions without experiencing adverse effects on their health or finances.

(B) The provisions of this Act also establish an enforceable obligation on the part of sponsors of such group health plans to restore health benefits previously taken away from retired participants of such plans to the extent such benefits were cancelled or altered after the
dates such participants retired. The obligation
is limited to restoring healthcare benefits only
back to specified levels, and the obligation does
not apply if the plan sponsor would sustain sub-
stantial business hardship by restoring such
benefits.

SEC. 3. RETIREE HEALTH BENEFIT PROTECTIONS IN
GROUP HEALTH PLANS.

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

“PART 8—EMERGENCY RETIREE HEALTH
BENEFIT PROTECTIONS

“SEC. 801. PROHIBITION AGAINST POST-RETIREMENT RE-
DUCTIONS OF RETIREE HEALTH BENEFITS
BY GROUP HEALTH PLANS.

“(a) IN GENERAL.—Notwithstanding that a group
health plan described in subsection (b) may contain a pro-
vision reserving the general power to amend or terminate
the plan or a provision specifically authorizing the plan
to make post-retirement reductions in retiree health bene-
fits, the benefits provided to a retired participant or his
or her beneficiary under the terms of the plan may not
be reduced, whether through amendment or otherwise, if
such reduction of benefits occurs after the date the partici-
pant has retired for purposes of the plan and reduces benefits that were provided to the participant, or his or her beneficiary, as of the date the participant retired. Any group health plan provision which is purported to authorize the reduction of benefits in a manner inconsistent with the preceding sentence shall be void as against public policy.

“(b) Group Health Plan.—For purposes of this part, the term ‘group health plan’ has the same meaning as in section 607(1).

“(c) Prohibited Reduction of Benefits.—For purposes of this part, any reference to a reduction of benefits shall be construed to be a reference to any amendment to a group health plan, or to any other action, which has the effect of—

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

“(2) imposing or increasing out-of-pocket costs that a retired participant, or his or her beneficiary, must pay in order for benefits that were provided under the plan to the participant or beneficiary prior to the amendment or action to be provided to the participant or beneficiary after the amendment or action; or
“(3) modifying the manner by which medical services are delivered under the plan so that after the amendment or action a retired participant, or his or her beneficiary, has less ready access to the delivery of any such medical services than the participant or beneficiary had prior to the amendment or action.

“(d) TREATMENT OF PLAN TERMINATION.—

“(1) IN GENERAL.—Subject to paragraph (2), a termination of a group health plan shall be treated as a reduction in benefits prohibited under subsection (a) if, after the termination, the plan sponsor of the terminated plan fails to continue to provide to the participants who retired prior to the termination and to their beneficiaries the same retiree health benefits that were provided prior to the termination.

“(2) WAIVER.—Paragraph (1) shall not apply in the case of the termination of a group health plan if the Secretary issues a waiver under this paragraph in connection with such termination. The Secretary shall issue such a waiver if and only if the plan sponsor demonstrates to the satisfaction of the Secretary, in accordance with regulations prescribed by the Secretary, that such plan sponsor will be un-
able to continue in business unless such a waiver is
issued.

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

“Each group health plan which provides, as of the
date of a participant’s retirement under the plan, benefits
after such date with respect to such participant or his or
her beneficiaries shall contain a provision which expressly
bars any reduction in such benefits after such date, either
under the terms of the plan or by any fiduciary of the
plan.

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

“(a) In General.—The plan sponsor of each group
health plan shall provide, in accordance with this section,
benefit restoration under this section to each retired par-
ticipant that meets the following requirements:

“(1) The retired participant is entitled to ben-
efit coverage under the plan as of the date of the en-
actment of the Earned Retiree Healthcare Benefits
Protection Act of 2013.

“(2) The participant retired under the plan be-
fore the date of the enactment of such Act, and a
reduction in benefits, with respect to any benefit or
option provided to the retired participant under the plan as of the date the participant retired, took effect after the participant’s date of retirement and before the date of the enactment of such Act.

“(3) The retired participant has elected to restore benefits under the plan within the restoration period prescribed pursuant to subsection (b) and in accordance with such procedures as may be established under the plan pursuant to regulations of the Secretary.

“(b) Restoration Period.—For purposes of this section, the term ‘restoration period’ means a period which shall be prescribed by the Secretary and which—

“(1) begins not later than 1 year after the date of the enactment of the Earned Retiree Healthcare Benefits Protection Act of 2013;

“(2) ends before the end of the 2-year period beginning with such date, or such longer period as may result from a suspension of such 2-year period by the Secretary pursuant to section 804(g); and

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

“(c) Applicable Standards for Restoration of Benefits.—
“(1) In general.—For purposes of this section, reduced benefits shall be deemed restored under this section—

“(A) in the case of a participant who retired under the plan before the plan year beginning with or during 1991, if the benefits which were subjected to reduction are restored to the level of such benefits which was in effect for the plan year beginning with or during 1991; and

“(B) in the case of a participant who retired under the plan after the plan year beginning with or during 1990 and before the date of the enactment of the Earned Retiree Healthcare Benefits Protection Act of 2013, if the benefits which were subjected to reduction are restored to the level of such benefits which was in effect immediately prior to the reduction.

“(2) Level of benefits.—For purposes of paragraph (1), restoration of benefits to a level required under paragraph (1) occurs if—

“(A) any cancellation, decrease, or limitation with respect to the amount, type, or form of any benefit or option which resulted in the reduction in benefits is rescinded or lessened so as to result in the amount, type, and form of
benefits in effect for the plan year beginning with or during 1991 (in the case of a participant described in paragraph (1)(A)) or as of immediately prior to the reduction (in the case of a participant described in paragraph (1)(B));

“(B) any imposition or increase in out-of-pocket costs that the participant, or his or her beneficiary, must pay which resulted in the reduction in benefits is rescinded or lessened so as to result in the level of out-of-pocket costs in effect for the plan year beginning with or during 1991 (in the case of a participant described in paragraph (1)(A)) or as of immediately prior to the reduction (in the case of a participant described in paragraph (1)(B)); and

“(C) any modification in the manner by which medical services are delivered under the plan which resulted in the reduction in benefits is rescinded or amended so as to result in a manner by which medical services are delivered under the plan which is substantially equivalent to the manner by which medical services are delivered in effect for the plan year beginning with or during 1991 (in the case of a participant described in paragraph (1)(A)) or as of
immediately prior to the reduction (in the case of a participant described in paragraph (1)(B)).

“(d) Exception for Certain Plans.—In accordance with regulations prescribed by the Secretary, in the case of any group health plan which has less than 100 participants as of the date of the enactment of the Earned Retiree Healthcare Benefits Protection Act of 2013, subsection (a) shall apply to such plan only if, at any time during the period described in subsection (b)(2) (including any extension thereof), such plan has more than 100 participants.

“(e) Notice Requirements Concerning Restoration of Benefits.—In accordance with such regulations as may be prescribed by the Secretary, the plan administrator of each group health plan subject to the requirements of subsection (a) shall, within 30 days prior to the commencement of the plan’s restoration period, provide written notice to each retired participant of the plan who meets the requirements of subsection (a) of the following:

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

“(2) The administrative procedure established under the plan which may be used to submit a claim for the restoration of any benefits.
“(3) An itemization of the value of each benefit the retired participant is entitled to have restored, as determined in accordance with the regulations of the Secretary, and the total value of all such benefits.

“(4) A description of any post-retirement increases in retiree health benefits the retired participant received which the plan sponsor could rescind if the retired participant asserts a claim for the restoration of benefits.

“(5) An itemization of the value of each retiree health benefit that the plan sponsor could rescind, as determined in accordance with the regulations of the Secretary, and the total value of all such benefits.

“(6) If the plan sponsor has filed an application for a substantial business hardship exemption under section 804, the date on which such application was filed, the date on which notice of such application was given to retired participants entitled to submit a claim for the restoration of benefits, and the status of such application as of the date of the notice sent pursuant to this subsection.
“(7) Such other information in such form and
detail as may be prescribed by the Secretary to carry
out the purposes of this part.

“(f) DEADLINE FOR RESTORATION OF BENEFITS.—
All benefits required to be restored under this section shall
be restored before the end of the 2-year period beginning
with the date of the enactment of the Earned Retiree
Healthcare Benefits Protection Act of 2013, subject to
any suspension of such period under section 804(g).

“SEC. 804. EXEMPTION FROM RESTORATION OF BENEFITS

REQUIREMENTS.

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

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

“(1) be adverse to the interests of plan participants in the aggregate;

“(2) not be administratively feasible; and

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

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

“(1) the plan sponsor is operating at an economic loss;

“(2) compliance with the restoration of benefits requirements would necessitate substantial future reductions in health benefits provided to participants under the plan or cause a substantial decline in employment with the plan sponsor; and

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

“(d) REQUIREMENT OF SATISFACTORY EVIDENCE.—

“(1) IN GENERAL.—The Secretary shall, before granting a waiver or variance under this section, require each applicant to provide evidence satisfactory
to the Secretary that the applicant has provided timely written notice of the filing of an application for such waiver or variance to each retired participant entitled to submit a claim for the restoration of benefits under the applicant’s plan.

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

“(3) Information required.—The notice referred to in paragraph (1) shall include information with respect to the specific relief that will be sought by the plan sponsor’s application, the period of time for which relief is sought, and such other relevant information as the Secretary may prescribe.

“(e) Participation in Proceedings by Retired Plan Participants.—Each retired participant entitled to submit a claim for the restoration of benefits within the meaning of this section shall be provided a reasonable opportunity to submit comments or otherwise participate in any proceeding established by the Secretary to determine whether to grant or deny an application for a waiver or variance filed by the retired participant’s plan sponsor.
“(f) EXCEPTIONS FOR CERTAIN APPLICATIONS.—In any case in which the plan sponsor of the group health plan also maintains a pension plan which provides pension benefits with respect to any retired participant entitled to submit a claim for the restoration of benefits within the meaning of this section, the Secretary may not grant any application for a waiver or variance purporting to satisfy the requirements of subsection (b) if the requirements of paragraph (1) or (2) of this subsection are met.

“(1) FAILURE TO TRANSFER EXCESS PENSION ASSETS.—The requirements of this paragraph are met if—

“(A) within the 5-year period preceding the date of the plan sponsor’s application for the waiver or variance, the plan sponsor could have transferred excess assets of such pension plan to a health benefits account in accordance with section 420 of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of the Tax Relief Extension Act of 1999) but did not do so; and

“(B) such health benefits account forms a part of the group health plan with respect to which the plan sponsor is submitting the application.
“(2) No ad hoc COLAs provided under well-funded pension plan providing for such COLAS.—

“(A) In general.—The requirements of this paragraph are met if—

“(i)(I) no employer contributions were made to such pension plan during any of the 5 plan years preceding the date of the application for the waiver or variance; and

“(II) despite such lack of employer contributions, the minimum funding standard under section 302 of this Act and section 412 of the Internal Revenue Code of 1986 was satisfied with respect to such pension plan for each of such 5 plan years and the average funded ratio of the plan for such 5 plan years was greater than 120 percent; and

“(ii)(I) the pension plan provided for ad hoc cost-of-living adjustments in benefits throughout such 5 plan years; and

“(II) no such ad hoc cost-of-living adjustment in benefits was provided under such pension plan during such 5 plan years.
“(B) Funded ratio.—For purposes of subparagraph (A)(i)(II), the funded ratio of a pension plan for a plan year is the ratio, expressed as a percentage, of—

“(i) the assets of the plan as of the end of such plan year; to

“(ii) the liabilities of the plan as of the end of such plan year.

“(g) Running of 2-Year Deadline Period Suspended.—The submission of an application for a waiver or variance pursuant to this section during the 2-year period referred to in section 803(f) shall suspend the running of such period. If determined appropriate by the Secretary, the Secretary may direct that the running of such period be resumed upon the final conclusion of proceedings to determine whether an application should be granted or denied.

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

“(a) Definitions.—For purposes of this section—

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

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

“(b) ESTABLISHMENT OF EMERGENCY RETIREE
HEALTH LOAN GUARANTEE PROGRAM.—There is estab-
lished the Retiree Health Loan Guarantee Program, to be
administered by the Board, the purpose of which is to pro-
vide loan guarantees to eligible plan sponsors in accord-
ance with this section.

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

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

“(2) the Secretary of Commerce;

“(3) the Secretary of the Treasury;

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

“(5) the Chairman of the Council of Economic
Advisers.
“(d) Retiree Health Loan Guarantee Program.—

“(1) Authority.—The Program may guarantee loans provided by private banking and investment institutions to eligible plan sponsors for purposes of assisting such plan sponsors to meet their obligations under section 803. Such loan guarantees shall be provided to the extent provided in advance in appropriation Acts pursuant to paragraph (4) and only in accordance with the procedures, rules, and regulations established by the Board.

“(2) Total Guarantee Limit.—The aggregate amount of loans guaranteed and outstanding at any time under this section may not exceed $5,000,000,000.

“(3) Individual Guarantee Limit.—The aggregate amount of loans guaranteed under this section with respect to a single eligible plan sponsor may not exceed $5,000,000.

“(4) Additional Costs.—For the additional cost of loans guaranteed under this subsection, including the costs of modifying the loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), there is authorized to be ap-
appropriated $200,000,000, to remain available until expended.

“(e) Requirements for Loan Guarantees.—A loan guarantee may be issued under this section upon application to the Board by an eligible plan sponsor pursuant to an agreement to provide a loan to that eligible plan sponsor by a private bank or investment company, if the Board determines that—

“(1) credit is not otherwise available to that eligible plan sponsor under reasonable terms and conditions sufficient to meet its financing needs with respect to the restoration of retiree health benefits, as reflected in the financial and business plans of that eligible plan sponsor;

“(2) the prospective earning power of that eligible plan sponsor, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

“(3) the loan to be guaranteed bears interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of such loan;
“(4) the loan to be guaranteed will materially assist that eligible plan sponsor to discharge its obligation to comply with the restoration of benefits requirements contained in section 803; and

“(5) the eligible plan sponsor has agreed to an audit by the Government Accountability Office prior to the issuance of the loan guarantee and annually while any such guaranteed loan is outstanding.

“(f) Terms and Conditions of Loan Guarantee.—

“(1) Loan Duration.—All loans guaranteed under this section shall be payable in full not later than December 31, 2021, and the terms and conditions of each such loan shall provide that the loan may not be amended or any provision thereof waived without the consent of the Board.

“(2) Loan Security.—Any commitment to issue a loan guarantee under this section shall contain such affirmative and negative covenants and other protective provisions that the Board determines are appropriate.

“(3) Fees.—An eligible plan sponsor receiving a guarantee under this section shall pay a fee in an amount equal to 0.5 percent of the outstanding prin-
principal balance of the guaranteed loan to the Department of the Treasury.

“(g) REPORTS TO CONGRESS.—The Secretary of Labor shall submit annually to each House of the Congress a full report of the activities of the Board under this section during 2014 and 2015, and annually thereafter during such period as any loan guaranteed under this section is outstanding. Such report shall be submitted not later than January 31 of each year (beginning in 2014).

“(h) SALARIES AND ADMINISTRATIVE EXPENSES.—For necessary expenses to administer the Program, there is authorized to be appropriated to the Department of Labor (and to be transferred to the Office of the Assistant Secretary for Pension and Welfare Benefits Administration) $10,000,000, to remain available until expended.

“(i) TERMINATION OF GUARANTEE AUTHORITY.—The authority of the Board to make commitments to guarantee any loan under this section shall terminate on December 31, 2019.

“(j) REGULATORY ACTION.—The Board shall issue such final procedures, rules, and regulations as may be necessary to carry out this section not later than 90 days after the date of enactment of the Earned Retiree Healthcare Benefits Protection Act of 2013. In no event
shall the Board issue a procedure, rule, or regulation which authorizes it to approve or deny any application for a loan guarantee in more than 270 days after receipt of such application.

“SEC. 806. EFFECT ON OTHER CLAIMS.

“(a) OTHER CLAIMS UNAFFECTED.—Nothing in this part shall be construed to alter, impair, or eliminate any claim for retiree health benefits based on conduct alleged to violate the terms of a group health plan, any provision of this Act (other than this part), or both, regardless of whether such conduct occurred prior to, on, or after the date of the enactment of the Earned Retiree Healthcare Benefits Protection Act of 2013.

“(b) OTHER CAUSES OF ACTION NOT AUTHORIZED.—Nothing contained in this part shall be construed to authorize any action for recovery of retiree health benefits unless the conduct giving rise to the claim for recovery is alleged to violate the provisions of this part.

“SEC. 807. REGULATIONS.

“The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this part. The Secretary may promulgate any interim final rules as the Secretary deems are appropriate to carry out this part.”.
(b) CIVIL PENALTY.—Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended—

(1) by redesignating the second paragraph (10) (relating to consultation between the Secretary of Labor and the Secretary of Health and Human Services) as paragraph (12); and

(2) by inserting after the first paragraph (10) the following new paragraph:

"(11) The Secretary may assess any person a civil penalty of not more than $20,000 with respect to each failure by such person to meet the requirements of section 801, 802, or 803 with respect to each participant or beneficiary aggrieved by such failure."

(c) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 734 the following new items:

"PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

"Sec. 801. Prohibition against post-retirement reductions of retiree health benefits 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 retirement.
"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. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act, except that section 802 of the Employee Retirement Income Security Act of 1974 (as added by section 3 of this Act) shall apply with respect to plan years beginning after 180 days after the date of the enactment of this Act. Compliance with the requirements of part 8 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 with respect to a group health plan shall not be treated as a failure to comply with the terms of such plan.