

105TH CONGRESS
2D SESSION

S. 2475

To amend title IV of the Employee Retirement Income Security Act of 1974 to protect the rights of participants and beneficiaries of terminated pension plans.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1998

Mr. D'AMATO introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend title IV of the Employee Retirement Income Security Act of 1974 to protect the rights of participants and beneficiaries of terminated pension plans.

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 Plan Partici-
5 pant Protection Act of 1998”.

1 **SEC. 2. DUTIES OF THE PENSION BENEFIT GUARANTY COR-**
2 **PORATION WHILE SERVING AS TRUSTEE OF**
3 **TERMINATED PLAN.**

4 (a) IN GENERAL.—Section 4042(d)(3) of the Em-
5 ployee Retirement Income Security Act of 1974 (29
6 U.S.C. 1342(d)(3)) is amended—

7 (1) by inserting “(A)” after “(3)”; and

8 (2) by adding at the end the following new sub-
9 paragraphs:

10 “(B) The corporation is subject to the same require-
11 ments of reporting and disclosure in connection with a
12 pension plan for which the corporation is serving as trust-
13 ee pursuant to this section as those of any plan adminis-
14 trator of an employee pension benefit plan under part 1
15 of subtitle B of title I.

16 “(C) The corporation is subject to the same fiduciary
17 duties in connection with a pension plan for which the cor-
18 poration is serving as trustee pursuant to this section, in-
19 cluding the determination and payment of plan benefits,
20 as those of any fiduciary of an employee pension benefit
21 plan under part 1 of subtitle B of title I. The corporation
22 shall maintain such separate books and records and retain
23 such separate counsel on its behalf as may be necessary
24 for carrying out such duties.

1 “(D) For purposes of applying part 5 of subtitle B
2 of title I in the enforcement of subparagraphs (B) and
3 (C)—

4 “(i) any civil monetary penalty which may be
5 assessed by the Secretary of Labor against the cor-
6 poration under any provision of section 502(c) shall
7 be assessed in the full amount specified in such pro-
8 vision,

9 “(ii) a civil action against the corporation as fi-
10 duciary under section 502(a)(2) for relief under sec-
11 tion 409 may be brought by any affected party, and,
12 in any such action by an affected party in which the
13 corporation is removed as trustee, the replacement
14 trustee shall be selected by the court from any list
15 of qualified candidates which may be provided by
16 such affected party, and

17 “(iii) any review under section 502 by a district
18 court of the United States of a benefit determination
19 by the corporation shall be de novo.

20 “(E) In any case in which the corporation serves as
21 trustee for a terminated pension plan pursuant to this sec-
22 tion, the corporation shall issue its final determination re-
23 garding any benefit payable under the plan not later than
24 one year after the date of the corporation’s appointment
25 as trustee. Any failure by the corporation to comply with

1 the requirements of this subparagraph shall be deemed an
 2 action of the corporation upon which a cause of action may
 3 be brought against the corporation under section
 4 4003(f)(1).”.

5 (b) CONFORMING AMENDMENT.—Section 4023 of
 6 such Act (29 U.S.C. 1323) is amended—

7 (1) by inserting “(a)” after “SEC. 4023.”; and

8 (2) by adding at the end the following new sub-
 9 section:

10 “(b) Subsection (a) shall not apply with respect to
 11 the corporation while the corporation is serving in its fidu-
 12 ciary capacity in accordance with section 4042(d)(3)(B).”.

13 **SEC. 3. PARTICIPANTS’ COMMITTEES.**

14 (a) IN GENERAL.—Subtitle C of title IV of the Em-
 15 ployee Retirement Income Security Act of 1974 is amend-
 16 ed by inserting after section 4048 (29 U.S.C. 1348) the
 17 following new section:

18 “PARTICIPANTS’ COMMITTEES

19 “SEC. 4049. (a) IN GENERAL.—

20 “(1) APPOINTMENT OF COMMITTEE.—Except
 21 as provided in paragraph (3), as soon as practicable
 22 after the appointment of a trustee under section
 23 4042, the trustee shall appoint a committee of par-
 24 ticipants under the plan.

25 “(2) REQUESTS FOR ADEQUATE REPRESENTA-
 26 TION.—On request of an affected party, the court

1 may order the appointment of additional committees
2 of participants if necessary to assure adequate rep-
3 resentation of participants. The trustee shall appoint
4 any such committee.

5 “(3) SMALL BUSINESSES.—On request of an af-
6 fected party in a case in which the plan sponsor is
7 a small business and for cause, the court may order
8 that a committee of participants not be appointed.

9 “(b) MEMBERSHIP.—A committee of participants ap-
10 pointed under subsection (a) shall ordinarily consist of the
11 persons, willing to serve, that were in pay status under
12 the plan as of the date of the termination of the plan and
13 have the seven largest nonforfeitable benefits under the
14 plan, or of the members of a committee organized by par-
15 ticipants before such date, if such committee was fairly
16 chosen and is representative of the participants of the
17 plan.

18 “(c) POWERS AND DUTIES OF COMMITTEES.—

19 “(1) APPOINTMENT OF ATTORNEYS, ACCOUNT-
20 ANTS, ETC.—At a scheduled meeting of a committee
21 appointed under subsection (a), at which a majority
22 of the members of such committee are present, and
23 with the court’s approval, such committee may select
24 and authorize the employment by such committee of

one or more attorneys, accountants, or other agents
to represent or perform services for such committee.

“(2) PRECLUSION OF CONFLICTS OF INTEREST.—An attorney or accountant employed to represent a committee appointed under subsection (a) may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation of one or more participants of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

“(3) SPECIFIC POWERS.—A committee appointed under subsection (a) may—

“(A) consult with the trustee concerning the administration of the case,

“(B) investigate the acts, conduct, assets, liabilities, and financial condition of the plan, the operation of the plan sponsor’s financial operations, and the desirability of the continuance of the plan, and any other matter relevant to the case,

“(C) participate in the formulation of the plan for distribution of plan assets, advise those represented by such committee of such committee’s determinations as to any plan for distribu-

1 tion of the plan’s assets, and collect and file
 2 with the court acceptances or rejections of the
 3 plan for distribution of plan assets,

4 “(D) request the court for the appointment
 5 of the committee or any other person as an al-
 6 ternative trustee, and

7 “(E) perform such other services as are in
 8 the interest of plan participants and bene-
 9 ficiaries.

10 “(4) MEETING WITH TRUSTEE.—As soon as
 11 practicable after the appointment of a committee
 12 under subsection (a), the trustee shall meet with
 13 such committee to transact such business as may be
 14 necessary and proper.”.

15 (b) CONFORMING AMENDMENT.—The table of con-
 16 tents in section 1 of such Act is amended by inserting
 17 after the item relating to section 4048 the following new
 18 item:

“Sec. 4049. Participants’ committees.”.

19 **SEC. 4. TRUSTEESHIP OF TERMINATED PLANS.**

20 (a) IN GENERAL.—Section 4042(c) of the Employee
 21 Retirement Income Security Act of 1974 (29 U.S.C.
 22 1342(c)) is amended—

23 (1) by inserting “(1)” after “(c)”; and

24 (2) by inserting before paragraph (3) the fol-
 25 lowing new paragraph:

1 “(2) The court may appoint the corporation, a par-
 2 ticipants’ committee, or any other person to serve as trust-
 3 ee under paragraph (1). Upon the application of any two
 4 or more of the foregoing to serve as trustee, the deter-
 5 mination of the court of which to appoint shall be based
 6 on its determination of which applicant is most qualified
 7 to carry out the fiduciary duties of the trustee with respect
 8 to participants and beneficiaries without conflicts of inter-
 9 est.”.

10 (b) PAYMENT OR REIMBURSEMENT OF REASONABLE
 11 FEES AND EXPENSES.—Section 4042(h) of such Act (29
 12 U.S.C. 1342(h)) is amended by adding at the end the fol-
 13 lowing new paragraph:

14 “(3) The reasonable fees and expenses of a trustee
 15 appointed under this section (other than the corporation),
 16 of any participants’ committee, and of any counsel, ac-
 17 countants, actuaries, and other professional service per-
 18 sonnel shall be paid, directly or by means of reimburse-
 19 ment, from the assets of the terminated plan.”.

20 **SEC. 5. PARTICIPANT’S ADVOCATE.**

21 (a) IN GENERAL.—Subtitle D of title IV of the Em-
 22 ployee Retirement Income Security Act of 1974 is amend-
 23 ed by adding after section 4071 (29 U.S.C. 1371) the fol-
 24 lowing new section:

1 “OFFICE OF PARTICIPANT’S ADVOCATE

2 “(a) IN GENERAL.—The Secretary of Labor shall es-
3 tablish in the Department of Labor an Office of Partici-
4 pant’s Advocate, to be headed by a Participant’s Advocate.

5 “(b) FUNCTIONS.—The Participant’s Advocate shall,
6 upon request of participants of terminated pension
7 plans—

8 “(1) counsel participants and beneficiaries of
9 such plans in connection with their rights to benefits
10 thereunder, and

11 “(2) provide legal representation before the cor-
12 poration and in court to such participants who have
13 been denied benefits by the corporation.

14 “(c) FEES.—The Office shall require only such fees
15 for its services as may be prescribed in regulations of the
16 Secretary of Labor.

17 “(d) STAFF.—The Participant’s Advocate shall ap-
18 point such attorneys, actuaries, and accountants as may
19 be necessary to assist the Participant’s Advocate in carry-
20 ing out the functions of the Office, and may appoint such
21 additional personnel as may be necessary to provide ade-
22 quate support for the Office.

23 “(e) NOTICE.—Each notice of a benefit determina-
24 tion issued by the corporation to a participant or bene-
25 ficiary under a terminated pension plan shall include a no-

1 tice (in such form as shall be prescribed in regulations
 2 of the Secretary of Labor) describing the services of the
 3 Participant’s Advocate’s Office.”.

4 (b) CONFORMING AMENDMENT.—The table of con-
 5 tents in section 1 of such Act is amended by inserting
 6 after the item relating to section 4071 the following new
 7 item:

“Sec. 4071. Office of Participant’s Advocate.”.

8 (c) EFFECTIVE DATE.—The Secretary of Labor shall
 9 establish the Office of Participant’s Advocate pursuant to
 10 the amendments made by this section not later than one
 11 year after the date of the enactment of this Act.

12 **SEC. 6. RULES GOVERNING TRUSTEESHIP BY THE COR-**
 13 **PORATION.**

14 (a) IN GENERAL.—Section 4042 of the Employee Re-
 15 tirement Income Security Act of 1974 (29 U.S.C. 1342)
 16 is amended by adding at the end the following new sub-
 17 section:

18 “(i) In any case in which the corporation serves as
 19 trustee of a terminated pension plan under this section—

20 “(1) the corporation shall segregate assets of
 21 the terminated plan from the assets of any other
 22 plan or any other assets held by the corporation,

23 “(2) the corporation may not use any assets of
 24 the plan for any purpose other than payment of ben-
 25 efits or reasonable administrative expenses directly

1 attributable to the termination and administration of
2 the plan, excluding any generally applicable overhead
3 expenses of the corporation, and

4 “(3) the corporation shall obtain the services of
5 independent contractors in connection with the ter-
6 mination or administration of the plan only through
7 a competitive bidding process.”.

8 **SEC. 7. EFFECTIVE DATE.**

9 The amendments made by this Act shall apply with
10 respect to plan terminations—

11 (1) the termination date for which occurs on or
12 after January 1, 1990, and

13 (2) for which the final distribution of assets oc-
14 curs on or after the date of the enactment of this
15 Act.

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