

106TH CONGRESS  
1ST SESSION

# H. R. 2759

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to prevent the wearing away of an employee's accrued benefit under a defined benefit plan by the adoption of a plan amendment reducing future accruals and to require notice with respect to such reduced future accruals and an election opportunity to continue benefit accruals without regard to such plan amendment.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1999

Mr. HINCHEY (for himself and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, 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

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## A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to prevent the wearing away of an employee's accrued benefit under a defined benefit plan by the adoption of a plan amendment reducing future accruals and to require notice with respect to such reduced future accruals and an election opportunity to continue benefit accruals without regard to such plan amendment.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Older Workers Pension  
3 Protection Act of 1999”.

4 **SEC. 2. NOTICE AND ELECTION TO CONTINUE BENEFIT AC-**  
5 **CRUALS UNDER FORMER DEFINED BENEFIT**  
6 **PLAN INSTEAD OF UNDER CASH BALANCE**  
7 **PLAN.**

8       (a) AMENDMENT TO INTERNAL REVENUE CODE.—  
9 Paragraph (6) of section 411(d) of the Internal Revenue  
10 Code of 1986 (relating to accrued benefit may not be de-  
11 creased by amendment) is amended by adding at the end  
12 the following new subparagraph:

13               “(D) TREATMENT OF PLAN AMENDMENTS  
14 WEARING AWAY ACCRUED BENEFIT.—

15               “(i) IN GENERAL.—For purposes of  
16 subparagraph (A), a plan amendment  
17 adopted by a large defined benefit plan  
18 shall be treated as reducing accrued bene-  
19 fits of a participant if, under the terms of  
20 the plan after the adoption of the amend-  
21 ment, the accrued benefit of the partici-  
22 pant may at any time be less than the sum  
23 of—

24               “(I) the participant’s accrued  
25 benefit for years of service before the  
26 effective date of the amendment, de-

1           terminated under the terms of the plan  
2           as in effect immediately before the ef-  
3           fective date, plus

4                   “(II) the participant’s accrued  
5           benefit determined under the formula  
6           applicable to benefit accruals under  
7           the current plan as applied to years of  
8           service after such effective date.

9                   “(ii) ELECTION TO CONTINUE BEN-  
10          EFIT ACCRUALS UNDER FORMER DEFINED  
11          BENEFIT PLAN INSTEAD OF UNDER CASH  
12          BALANCE PLAN.—

13                   “(I) IN GENERAL.—For purposes  
14          of subparagraph (A), in the case of a  
15          plan amendment adopted by a defined  
16          benefit plan that reduces accrued ben-  
17          efits of a participant (determined  
18          without regard to clause (i)), such de-  
19          fined benefit plan shall be treated as  
20          not satisfying the requirements of this  
21          section unless such plan provides each  
22          participant who has a nonforfeitable  
23          right to 100 percent of his accrued  
24          benefits with notice which meets the  
25          requirements of subclause (II) and an

1 election to continue to accrue benefits  
2 under such plan, determined under  
3 the terms of such plan as in effect im-  
4 mediately before the effective date of  
5 such plan amendment.

6 “(II) NOTICE REQUIREMENTS.—

7 For purposes of subclause (I), a no-  
8 tice meets the requirements of this  
9 subclause if the notice is written in a  
10 manner calculated to be understood  
11 by the average plan participant, pro-  
12 vides sufficient information (as deter-  
13 mined in accordance with regulations  
14 prescribed by the Secretary) to allow  
15 applicable individuals to understand  
16 the effect of the plan amendment, and  
17 is provided within a reasonable time  
18 before the effective date of the plan  
19 amendment. Notice shall not be treat-  
20 ed as failing to meet the requirements  
21 of the preceding sentence merely be-  
22 cause notice is provided before the  
23 adoption of the plan amendment if no  
24 material modification of the amend-

1                   ment occurs before the amendment is  
2                   adopted.

3                   “(iii) LARGE DEFINED BENEFIT  
4                   PLAN.—For purposes of this subpara-  
5                   graph, the term ‘large defined benefit plan’  
6                   means any defined benefit plan which had  
7                   100 or more participants who had accrued  
8                   a benefit under the plan (whether or not  
9                   vested) as of the last day of the plan year  
10                  preceding the plan year in which the plan  
11                  amendment becomes effective.

12                  “(iv) PROTECTED ACCRUED BEN-  
13                  EFIT.—For purposes of this subparagraph,  
14                  an accrued benefit shall include any early  
15                  retirement benefit or retirement-type sub-  
16                  sidy (within the meaning of subparagraph  
17                  (B)(i)), but only with respect to a partici-  
18                  pant who satisfies (either before or after  
19                  the effective date of the amendment) the  
20                  conditions for the benefit or subsidy under  
21                  the terms of the plan as in effect imme-  
22                  diately before such date.”

23                  (b) AMENDMENT OF ERISA.—Section 204(g) of the  
24                  Employee Retirement Income Security Act of 1974 is

1 amended by adding at the end the following new para-  
2 graph:

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

9 “(i) the participant’s accrued benefit for years  
10 of service before the effective date of the amend-  
11 ment, determined under the terms of the plan as in  
12 effect immediately before the effective date, plus

13 “(ii) the participant’s accrued benefit deter-  
14 mined under the formula applicable to benefit accru-  
15 als under the current plan as applied to years of  
16 service after such effective date.

17 “(B)(i) For purposes of paragraph (1), in the case  
18 of a plan amendment adopted by a defined benefit plan  
19 that reduces accrued benefits of a participant (determined  
20 without regard to subparagraph (A)), such defined benefit  
21 plan shall be treated as not satisfying the requirements  
22 of this section unless such plan provides each participant  
23 who has a nonforfeitable right to 100 percent of his ac-  
24 crued benefits with notice which meets the requirements  
25 of clause (ii) and an election to continue to accrue benefits

1 under such plan, determined under the terms of such plan  
2 as in effect immediately before the effective date of such  
3 plan amendment.

4 “(ii) For purposes of clause (i), a notice meets the  
5 requirements of this clause if the notice is written in a  
6 manner calculated to be understood by the average plan  
7 participant, provides sufficient information (as determined  
8 in accordance with regulations prescribed by the Sec-  
9 retary) to allow applicable individuals to understand the  
10 effect of the plan amendment, and is provided within a  
11 reasonable time before the effective date of the plan  
12 amendment. Notice shall not be treated as failing to meet  
13 the requirements of the preceding sentence merely because  
14 notice is provided before the adoption of the plan amend-  
15 ment if no material modification of the amendment occurs  
16 before the amendment is adopted.

17 “(C) For purposes of this paragraph, the term ‘large  
18 defined benefit plan’ means any defined benefit plan which  
19 had 100 or more participants who had accrued a benefit  
20 under the plan (whether or not vested) as of the last day  
21 of the plan year preceding the plan year in which the plan  
22 amendment becomes effective.

23 “(D) For purposes of this paragraph, an accrued ben-  
24 efit shall include any early retirement benefit or retire-  
25 ment-type subsidy (within the meaning of paragraph

1 (2)(A)), but only with respect to a participant who satis-  
2 fies (either before or after the effective date of the amend-  
3 ment) the conditions for the benefit or subsidy under the  
4 terms of the plan as in effect immediately before such  
5 date.”

6 (c) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to plan amendments adopted after  
8 June 29, 1999.

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