

106TH CONGRESS
1ST SESSION

S. 1640

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 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 with respect to amendments resulting in defined benefit plans becoming cash balance plans.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 1999

Mr. WELLSTONE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 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 with respect to amendments resulting in defined benefit plans becoming cash balance plans.

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 “Pension Benefits Pro-
3 tection and Preservation Act of 1999”.

4 **SEC. 2. NOTICE REQUIREMENTS FOR PENSION PLANS OF**
5 **100 OR MORE PARTICIPANTS SIGNIFICANTLY**
6 **REDUCING FUTURE PENSION BENEFIT AC-**
7 **CRUALS.**

8 (a) **PLAN REQUIREMENT.**—Section 401(a) of the In-
9 ternal Revenue Code of 1986 (relating to qualified pen-
10 sion, profit-sharing, and stock bonus plans) is amended
11 by inserting after paragraph (34) the following new para-
12 graph:

13 “(35) **NOTICE REQUIREMENTS FOR DEFINED**
14 **BENEFIT PLANS OF 100 OR MORE PARTICIPANTS SIG-**
15 **NIFICANTLY REDUCING FUTURE BENEFIT ACCRU-**
16 **ALS.**—

17 “(A) **IN GENERAL.**—If a large defined ben-
18 efit plan adopts an amendment which has the
19 effect of significantly reducing the rate of fu-
20 ture benefit accrual of 1 or more participants,
21 a trust which is part of such plan shall not con-
22 stitute a qualified trust under this section un-
23 less, after adoption of such amendment and not
24 less than 45 days before its effective date, the
25 plan administrator provides—

1 “(i) a written statement of benefit
2 change described in subparagraph (B) to
3 each applicable individual, and

4 “(ii) a written notice setting forth the
5 plan amendment and its effective date to
6 each employee organization representing
7 participants in the plan.

8 Any such notice may be provided to a person
9 designated, in writing, by the person to which
10 it would otherwise be provided. The plan ad-
11 ministrator shall not be treated as failing to
12 meet the requirements of this subparagraph
13 merely because the statement or notice is pro-
14 vided before the adoption of the plan amend-
15 ment if no material modification of the amend-
16 ment occurs before the amendment is adopted.

17 “(B) STATEMENT OF BENEFIT CHANGE.—
18 A statement of benefit change described in this
19 subparagraph shall—

20 “(i) be written in a manner calculated
21 to be understood by the average plan par-
22 ticipant, and

23 “(ii) include the information described
24 in subparagraph (C).

1 “(C) INFORMATION CONTAINED IN STATE-
2 MENT OF BENEFIT CHANGE.—The information
3 described in this subparagraph includes the fol-
4 lowing:

5 “(i) Notice setting forth the plan
6 amendment and its effective date.

7 “(ii) A comparison of the following
8 amounts under the plan with respect to an
9 applicable individual, determined both with
10 and without regard to the plan amend-
11 ment:

12 “(I) The accrued benefit and the
13 present value of the accrued benefit as
14 of the effective date.

15 “(II) The projected accrued ben-
16 efit and the projected present value of
17 the accrued benefit as of the date
18 which is 3 years, 5 years, and 10
19 years from the effective date and as of
20 the normal retirement age.

21 “(iii) A table of all annuity factors
22 used to calculate benefits under the plan,
23 presented in the form provided in section
24 72 and the regulations thereunder.

Benefits described in clause (ii) shall be stated separately and shall be calculated by using the applicable mortality table and the applicable interest rate under section 417(e)(3)(A).

“(D) LARGE DEFINED BENEFIT PLAN; APPLICABLE INDIVIDUAL.—For purposes of this paragraph—

“(i) LARGE DEFINED BENEFIT PLAN.—The term ‘large defined benefit plan’ means any defined benefit plan which had 100 or more participants who had accrued a benefit under the plan (whether or not vested) as of the last day of the plan year preceding the plan year in which the plan amendment becomes effective.

“(ii) APPLICABLE INDIVIDUAL.—The term ‘applicable individual’ means—

“(I) each participant in the plan,
and

“(II) each beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)).

“(E) ACCRUED BENEFIT; PROJECTED RETIREMENT BENEFIT.—For purposes of this paragraph—

“(i) PRESENT VALUE OF ACCRUED BENEFIT.—The present value of an accrued benefit of any applicable individual shall be calculated as if the accrued benefit were in the form of a single life annuity commencing at the participant’s normal retirement age (and by taking into account any early retirement subsidy).

“(ii) PROJECTED ACCRUED BENEFIT.—

“(I) IN GENERAL.—The projected accrued benefit of any applicable individual shall be calculated as if the benefit were payable in the form of a single life annuity commencing at the participant’s normal retirement age (and by taking into account any early retirement subsidy).

“(II) COMPENSATION AND OTHER ASSUMPTIONS.—Such benefit shall be calculated by assuming that compensation and all other benefit

1 factors would increase for each plan
 2 year beginning after the effective date
 3 of the plan amendment at a rate equal
 4 to the median average of the CPI in-
 5 crease percentage (as defined in sec-
 6 tion 215(i) of the Social Security Act)
 7 for the 5 calendar years immediately
 8 preceding the calendar year before the
 9 calendar year in which such effective
 10 date occurs.

11 “(III) BENEFIT FACTORS.—For
 12 purposes of subclause (II), the term
 13 ‘benefit factors’ means social security
 14 benefits and all other relevant factors
 15 under section 411(b)(1)(A) used to
 16 compute benefits under the plan
 17 which had increased from the 2d plan
 18 year preceding the plan year in which
 19 the effective date of the plan amend-
 20 ment occurs to the 1st such preceding
 21 plan year.

22 “(iii) NORMAL RETIREMENT AGE.—
 23 The term ‘normal retirement age’ means
 24 the later of—

1 “(I) the date determined under
2 section 411(a)(8), or

3 “(II) the date a plan participant
4 attains age 62.”.

5 (b) AMENDMENTS TO ERISA.—

6 (1) BENEFIT STATEMENT REQUIREMENT.—Sec-
7 tion 204(h) of the Employee Retirement Income Se-
8 curity Act of 1974 (29 U.S.C. 1054(h)) is amended
9 by adding at the end the following new paragraphs:

10 “(3)(A) If paragraph (1) applies to the adop-
11 tion of a plan amendment by a large defined benefit
12 plan, the plan administrator shall, after adoption of
13 such amendment and not less than 45 days before
14 its effective date, provide with the notice under para-
15 graph (1) a written statement of benefit change de-
16 scribed in subparagraph (B) to each applicable indi-
17 vidual.

18 “(B) A statement of benefit change described in
19 this subparagraph shall—

20 “(i) be written in a manner calculated to
21 be understood by the average plan participant,
22 and

23 “(ii) include the information described in
24 subparagraph (C).

1 “(C) The information described in this subpara-
2 graph includes the following:

3 “(i) A comparison of the following amounts
4 under the plan with respect to an applicable in-
5 dividual, determined both with and without re-
6 gard to the plan amendment:

7 “(I) The accrued benefit and the
8 present value of the accrued benefit as of
9 the effective date.

10 “(II) The projected accrued benefit
11 and the projected present value of the ac-
12 crued benefit as of the date which is 3
13 years, 5 years, and 10 years from the ef-
14 fective date and as of the normal retire-
15 ment age.

16 “(ii) A table of all annuity factors used to
17 calculate benefits under the plan, presented in
18 the form provided in section 72 of the Internal
19 Revenue Code of 1986 and the regulations
20 thereunder.

21 Benefits described in clause (i) shall be stated sepa-
22 rately and shall be calculated by using the applicable
23 mortality table and the applicable interest rate
24 under section 417(e)(3)(A) of such Code.

25 “(D) For purposes of this paragraph—

1 “(i) The term ‘large defined benefit plan’
2 means any defined benefit plan which had 100
3 or more participants who had accrued a benefit
4 under the plan (whether or not vested) as of the
5 last day of the plan year preceding the plan
6 year in which the plan amendment becomes ef-
7 fective.

8 “(ii) The term ‘applicable individual’
9 means an individual described in subparagraph
10 (A) or (B) of paragraph (1).

11 “(E) For purposes of this paragraph—

12 “(i) The present value of an accrued ben-
13 efit of any applicable individual shall be cal-
14 culated as if the accrued benefit were in the
15 form of a single life annuity commencing at the
16 participant’s normal retirement age (and by
17 taking into account any early retirement sub-
18 sidy).

19 “(ii)(I) The projected accrued benefit of
20 any applicable individual shall be calculated as
21 if the benefit were payable in the form of a sin-
22 gle life annuity commencing at the participant’s
23 normal retirement age (and by taking into ac-
24 count any early retirement subsidy).

1 “(II) Such benefit shall be calculated by
2 assuming that compensation and all other ben-
3 efit factors would increase for each plan year
4 beginning after the effective date of the plan
5 amendment at a rate equal to the median aver-
6 age of the CPI increase percentage (as defined
7 in section 215(i) of the Social Security Act) for
8 the 5 calendar years immediately preceding the
9 calendar year before the calendar year in which
10 such effective date occurs.

11 “(III) For purposes of subclause (II), the
12 term ‘benefit factors’ means social security ben-
13 efits and all other relevant factors under section
14 204(b)(1)(A) used to compute benefits under
15 the plan which had increased from the 2d plan
16 year preceding the plan year in which the effec-
17 tive date of the plan amendment occurs to the
18 1st such preceding plan year.

19 “(iii) The term ‘normal retirement age’
20 means the later of—

21 “(I) the date determined under sec-
22 tion 3(24), or

23 “(II) the date a plan participant at-
24 tains age 62.

1 “(4) A plan administrator shall not be treated
 2 as failing to meet the requirements of this sub-
 3 section merely because the notice or statement is
 4 provided before the adoption of the plan amendment
 5 if no material modification of the amendment occurs
 6 before the amendment is adopted.”.

7 (2) CONFORMING AMENDMENT.—Section
 8 204(h)(1) of such Act (29 U.S.C. 1054(h)(1)) is
 9 amended by inserting “(including any written state-
 10 ment of benefit change if required by paragraph
 11 (3))” after “written notice”.

12 (c) EFFECTIVE DATES.—

13 (1) IN GENERAL.—The amendments made by
 14 this section shall apply to plan amendments taking
 15 effect in plan years beginning after December 31,
 16 1998.

17 (2) SPECIAL RULE.—The period for providing
 18 any notice required by the amendments made by this
 19 section shall not end before the date which is 3
 20 months after the date of the enactment of this Act.

21 **SEC. 3. AGE-BASED REDUCTIONS IN THE RATE AT WHICH**
 22 **BENEFITS ACCRUE UNDER A CASH BALANCE**
 23 **PLAN VIOLATE AGE DISCRIMINATION RULE.**

24 (a) DIRECTIVE.—The Secretary of the Treasury shall
 25 apply section 411(b)(1)(H) of the Internal Revenue Code

1 of 1986 without regard to the portion of the preamble to
 2 Treasury Decision 8360 (56 Fed. Reg. 47524–47603,
 3 September 19, 1991) which relates to the allocation of in-
 4 terest adjustments through normal retirement age under
 5 a cash balance plan, as such preamble is and has been
 6 since its adoption without the force of law.

7 (b) SAFE HARBOR IF NOTICE AND ELECTION TO
 8 CONTINUE BENEFIT ACCRUALS UNDER FORMER DE-
 9 FINED BENEFIT PLAN INSTEAD OF UNDER CASH BAL-
 10 ANCE PLAN.—

11 (1) AMENDMENT TO INTERNAL REVENUE
 12 CODE.—Paragraph (1) of section 411(b) of the In-
 13 ternal Revenue Code of 1986 (relating to defined
 14 benefit plans) is amended by adding at the end the
 15 following new subparagraph:

16 “(I) ELECTION TO CONTINUE BENEFIT AC-
 17 CRUALS UNDER FORMER DEFINED BENEFIT
 18 PLAN INSTEAD OF UNDER CASH BALANCE
 19 PLAN.—

20 “(i) IN GENERAL.—A large defined
 21 benefit plan that adopts an amendment
 22 which results in such plan becoming a cash
 23 balance plan shall be treated as not meet-
 24 ing the requirements of this paragraph un-

1 less such plan provides each participant
2 with—

3 “(I) notice and a written state-
4 ment of benefit change which meets
5 the requirements of section
6 401(a)(35), and

7 “(II) an election to continue to
8 accrue benefits under such plan, de-
9 termined under the terms of such plan
10 as in effect immediately before the ef-
11 fective date of such plan amendment.

12 “(ii) PROTECTED ACCRUED BEN-
13 EFIT.—For purposes of clause (i), an ac-
14 crued benefit shall include any early retire-
15 ment benefit or retirement-type subsidy
16 (within the meaning of subsection
17 (d)(6)(B)(i)), but only with respect to a
18 participant who satisfies (either before or
19 after the effective date of the amendment)
20 the conditions for the benefit or subsidy
21 under the terms of the plan as in effect
22 immediately before such date.

23 “(iii) TIMING OF ELECTION.—Except
24 as provided in regulations, the election re-
25 quired by clause (i)(II) shall be provided

1 within a reasonable time before the effec-
 2 tive date of the amendment resulting in
 3 the plan becoming a cash balance plan.

4 “(iv) CASH BALANCE PLAN.—For pur-
 5 poses of this paragraph, the term ‘cash
 6 balance plan’ means a defined benefit plan
 7 under which the rate of benefit accrual of
 8 any 1 participant for a year of service is
 9 reduced as the years of service of such par-
 10 ticipant increase.”.

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

15 “(4)(A) For purposes of paragraph (1), in the case
 16 of a plan amendment adopted by a large defined benefit
 17 plan (as defined in subsection (h)(3)) which results in such
 18 plan becoming a cash balance plan, such defined benefit
 19 plan shall be treated as not satisfying the requirements
 20 of this section unless such plan provides each participant
 21 with—

22 “(i) notice and a written statement of benefit
 23 change which meets the requirements of subsection
 24 (h)(3), and

1 “(ii) an election to continue to accrue benefits
2 under such plan, determined under the terms of
3 such plan as in effect immediately before the effective
4 date of such plan amendment.

5 “(B) For purposes of subparagraph (A), an accrued
6 benefit shall include any early retirement benefit or retirement-type
7 subsidy (within the meaning of paragraph
8 (2)(A)), but only with respect to a participant who satisfies
9 (either before or after the effective date of the amendment)
10 the conditions for the benefit or subsidy under the
11 terms of the plan as in effect immediately before such
12 date.

13 “(C) Except as provided in regulations, the election
14 required by subparagraph (A)(ii) shall be provided within
15 a reasonable time before the effective date of the amendment
16 resulting in the plan becoming a cash balance plan.

17 “(D) For purposes of this paragraph, the term ‘cash
18 balance plan’ means a defined benefit plan under which
19 the rate of benefit accrual of any 1 participant for a year
20 of service is reduced as the years of service of such participant
21 increase.”.

22 (c) EXCISE TAX ON FAILURE TO OFFER ELECTION.—
23 TION.—

24 (1) IN GENERAL.—Chapter 43 of subtitle D of
25 the Internal Revenue Code of 1986 (relating to

1 qualified pension, etc., plans) is amended by adding
 2 at the end the following new section:

3 **“SEC. 4980F. FAILURE TO OFFER ELECTION TO CONTINUE**
 4 **BENEFIT ACCRUALS UNDER FORMER DE-**
 5 **FINED BENEFIT PLAN IN EVENT OF SIGNIFI-**
 6 **CANT REDUCTIONS IN FUTURE BENEFIT AC-**
 7 **CRUALS.**

8 “(a) IMPOSITION OF TAX.—There is hereby imposed
 9 a tax on the failure of any applicable pension plan to meet
 10 the requirements of subsection (d).

11 “(b) AMOUNT OF TAX.—

12 “(1) IN GENERAL.—The amount of the tax im-
 13 posed by subsection (a) shall be 50 percent of the
 14 amount of the excess pension assets in such plan,
 15 determined as of the effective date of the amend-
 16 ment which has the effect of significantly reducing
 17 the rate of future benefit accrual of 1 or more par-
 18 ticipants.

19 “(2) EXCESS PENSION ASSETS.—For purposes
 20 of paragraph (1), the term ‘excess pension assets’
 21 has the meaning given to such term by section
 22 420(e)(2).

23 “(c) LIABILITY FOR TAX.—The following shall be lia-
 24 ble for the tax imposed by subsection (a):

1 “(1) In the case of a plan other than a multi-
2 employer plan, the employer.

3 “(2) In the case of a multiemployer plan, the
4 plan.

5 For purposes of the preceding sentence, all multiemployer
6 plans of which the same trust forms a part shall be treated
7 as 1 plan. For purposes of this paragraph, if not all per-
8 sons who are treated as a single employer for purposes
9 of this section have the same taxable year, the taxable
10 years taken into account shall be determined under prin-
11 ciples similar to the principles of section 1561.

12 “(d) ELECTION TO CONTINUE BENEFIT ACCRUALS
13 UNDER FORMER DEFINED BENEFIT PLAN IN EVENT OF
14 SIGNIFICANT REDUCTIONS IN FUTURE BENEFIT ACCRU-
15 ALS.—In the case that an applicable pension plan adopts
16 an amendment which has the effect of significantly reduc-
17 ing the rate of future benefit accrual of 1 or more partici-
18 pants, the requirements of this subsection are met if the
19 plan administrator provides each participant who has a
20 nonforfeitable right to 100 percent of his accrued benefits
21 with—

22 “(1) notice and a written statement of benefit
23 change which meets the requirements of section
24 401(a)(35), and

1 “(2) an election to continue to accrue benefits
2 under such plan, determined under the terms of
3 such plan as in effect immediately before the effec-
4 tive date of such plan amendment.

5 “(e) TIMING OF ELECTION.—Except as provided in
6 regulations, the election required by subsection (d) shall
7 be provided within a reasonable time before the effective
8 date of such amendment.

9 “(f) PROTECTED ACCRUED BENEFIT.—For purposes
10 of this section, an accrued benefit shall include any early
11 retirement benefit or retirement-type subsidy (within the
12 meaning of section 411(d)(6)(B)(i)), but only with respect
13 to a participant who satisfies (either before or after the
14 effective date of the amendment) the conditions for the
15 benefit or subsidy under the terms of the plan as in effect
16 immediately before such date.

“(g) APPLICABLE PENSION PLAN.—For purposes of
this section, the term ‘applicable pension plan’ means a
defined benefit plan that is subject to the notice require-
ments of section 401(a)(35).”.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of subtitle D of such Code is amended by adding at the end the following new item:

“Sec. 4980F. Failure to offer election to continue benefit accruals under former defined benefit plan in event of significant reductions in future benefit accruals.”.

1 (d) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall apply to plans and plan amend-
4 ments taking effect after December 31, 1998.

5 (2) SPECIAL RULE.—The period for providing
6 any notice required by the amendments made by this
7 section shall not end before the date which is 3
8 months after the date of the enactment of this Act.

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

11 (a) AMENDMENT TO INTERNAL REVENUE CODE.—
12 Section 411(d)(6) of the Internal Revenue Code of 1986
13 (relating to accrued benefit may not be decreased by
14 amendment) is amended by adding at the end the fol-
15 lowing new subparagraph:

16 “(D) TREATMENT OF PLAN AMENDMENTS
17 WEARING AWAY ACCRUED BENEFIT.—

18 “(i) IN GENERAL.—For purposes of
19 subparagraph (A), a plan amendment
20 adopted by a large defined benefit plan
21 shall be treated as reducing accrued bene-
22 fits of a participant if, under the terms of
23 the plan after the adoption of the amend-
24 ment, the accrued benefit of the partici-

1 pant may at any time be less than the sum
2 of—

3 “(I) the participant’s accrued
4 benefit for years of service before the
5 effective date of the amendment, de-
6 termined under the terms of the plan
7 as in effect immediately before the ef-
8 fective date, plus

9 “(II) the participant’s accrued
10 benefit determined under the formula
11 applicable to benefit accruals under
12 the current plan as applied to years of
13 service after such effective date.

14 “(ii) LARGE DEFINED BENEFIT
15 PLAN.—For purposes of this subpara-
16 graph, the term ‘large defined benefit plan’
17 means any defined benefit plan which had
18 100 or more participants who had accrued
19 a benefit under the plan (whether or not
20 vested) as of the last day of the plan year
21 preceding the plan year in which the plan
22 amendment becomes effective.

23 “(iii) PROTECTED ACCRUED BEN-
24 EFIT.—For purposes of this subparagraph,
25 an accrued benefit shall include any early

1 retirement benefit or retirement-type sub-
2 sidy (within the meaning of subparagraph
3 (B)(i)), but only with respect to a partici-
4 pant who satisfies (either before or after
5 the effective date of the amendment) the
6 conditions for the benefit or subsidy under
7 the terms of the plan as in effect imme-
8 diately before such date.”.

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

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

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

23 “(ii) the participant’s accrued benefit deter-
24 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, the term ‘large
 4 defined benefit plan’ means any defined benefit plan which
 5 had 100 or more participants who had accrued a benefit
 6 under the plan (whether or not vested) as of the last day
 7 of the plan year preceding the plan year in which the plan
 8 amendment becomes effective.

9 “(C) For purposes of this paragraph, an accrued ben-
 10 efit shall include any early retirement benefit or retire-
 11 ment-type subsidy (within the meaning of paragraph
 12 (2)(A)), but only with respect to a participant who satis-
 13 fies (either before or after the effective date of the amend-
 14 ment) the conditions for the benefit or subsidy under the
 15 terms of the plan as in effect immediately before such
 16 date.”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to plan amendments taking effect
 19 after December 31, 1998.

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