

109TH CONGRESS  
1ST SESSION

# H. R. 1322

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

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IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mr. TIERNEY introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

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

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 “Emergency Retiree  
5 Health Benefits Protection Act of 2005”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

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

8 (1) Retired participants of group health plans  
9 regulated by the Employee Retirement Income Secu-  
10 rity Act of 1974 (ERISA) have been severely

1       harmed by the virtually unchecked practices of spon-  
2       sors of such plans involving the post-retirement can-  
3       cellation or reduction of health benefits which retir-  
4       ees counted on receiving for their lifetimes.

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

8                       (A) have been unable to substitute indi-  
9       vidual coverage for the group coverage they  
10      lost, or, in order to obtain individual coverage,  
11      have jeopardized their economic security in re-  
12      tirement;

13                      (B) because of preexisting medical condi-  
14      tions cannot obtain substitute coverage that  
15      they can afford without depleting their life sav-  
16      ings or have been unable to obtain adequate  
17      medical care or medical care they had relied on  
18      to deal with serious illness;

19                      (C) have sustained catastrophic illnesses or  
20      injuries or otherwise experienced a marked de-  
21      terioration in their medical conditions or health  
22      as a result of post-retirement changes to their  
23      medical benefits;

24                      (D) have been transferred indiscriminately  
25      into improperly or inadequately managed health

1 maintenance organizations or other managed  
2 care entities, resulting in the worsening rather  
3 than improvement of prior medical conditions;  
4 and

5 (E) in many instances, have failed to ob-  
6 tain adequate relief in the courts due to highly  
7 restrictive judicial interpretations which are in-  
8 consistent with ERISA's underlying protective  
9 purposes.

10 (3) The crisis in retirees healthcare generated  
11 by the plan sponsor practice of post-retirement can-  
12 cellations or reductions of previously promised re-  
13 tiree health benefits has led to a widespread loss of  
14 confidence in the integrity of ERISA-regulated  
15 group health plans and the ability of ERISA itself  
16 to adequately protect retiree health benefits.

17 (4) A strong and dependable private sector re-  
18 tiree health system is necessary to the essential  
19 health of our Nation's senior citizens.

20 (b) PURPOSES.—The purposes of this Act are to en-  
21 sure that the reasonable health benefit expectations of re-  
22 tirees from ERISA-regulated group health plans are ful-  
23 filled, to minimize the incidence of prolonged legal dis-  
24 putes arising out of the post-retirement cancellation or re-  
25 duction of retiree health benefits from such plans, and to

1 prevent further adverse effects on retiree health arising  
2 from such post-retirement changes. To this end, the pur-  
3 poses of this Act also include the following:

4           (1) to safeguard retired participants of group  
5 health plans subject to the Employee Retirement In-  
6 come Security Act of 1974 (29 U.S.C. 1001 et seq.)  
7 from loss or reduction of their health benefits from  
8 such plans by barring plan sponsors from canceling  
9 or reducing such benefits after the dates such par-  
10 ticipants retire and when they no longer are able to  
11 absorb such losses or reductions without experi-  
12 encing adverse effects on their health or finances;

13           (2) to establish an enforceable obligation on the  
14 part of sponsors of such group health plans to re-  
15 store health benefits previously taken away from re-  
16 tired participants of such plans to the extent such  
17 benefits were canceled or altered after the dates  
18 such participants retired and the plan sponsor would  
19 not sustain substantial business hardship by restor-  
20 ing such benefits; and

21           (3) to establish an Emergency Retiree Health  
22 Loan Guarantee Program to assist sponsors of  
23 group health plans subject to the obligation to re-  
24 store retiree health benefits under this Act to obtain  
25 credit to assist them in discharging such obligations

1 by providing retiree health loan guarantees that  
2 would encourage the availability of such credit.

3 **SEC. 3. AMENDMENT OF EMPLOYEE RETIREMENT INCOME**  
4 **SECURITY ACT OF 1974 TO PROVIDE RETIREE**  
5 **HEALTH BENEFIT PROTECTIONS IN GROUP**  
6 **HEALTH PLANS.**

7 (a) IN GENERAL.—Subtitle B of title I of the Em-  
8 ployee Retirement Income Security Act of 1974 is amend-  
9 ed by adding at the end a new part 8 as follows:

10 **“PART 8—EMERGENCY RETIREE HEALTH**  
11 **BENEFIT PROTECTIONS**

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

15 “(a) IN GENERAL.—Notwithstanding that a group  
16 health plan described in subsection (b) may contain a pro-  
17 vision reserving the general power to amend or terminate  
18 the plan or a provision specifically authorizing the plan  
19 to make post-retirement reductions in retiree health bene-  
20 fits, it shall be prohibited for any group health plan,  
21 whether through amendment or otherwise, to reduce the  
22 benefits provided to a retired participant or his or her ben-  
23 efiary under the terms of the plan if such reduction of  
24 benefits occurs after the date the participant retired for  
25 purposes of the plan and reduces benefits that were pro-

1 vided to the participant, or his or her beneficiary, as of  
2 the date the participant retired. Any group health plan  
3 provision which purports to authorize the reduction of  
4 benefits in a manner inconsistent with the foregoing prohi-  
5 bition shall be void as against public policy.

6 “(b) GROUP HEALTH PLAN.—The term ‘group  
7 health plan’ shall have the same meaning as in section  
8 607(1).

9 “(c) PROHIBITED REDUCTION OF BENEFITS.—As  
10 used in this section, references to a prohibited reduction  
11 of benefits means any group health plan amendment or  
12 other action which has the effect of—

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

16 “(2) imposing or increasing the out-of-pocket  
17 costs a retired participant, or his or her beneficiary,  
18 must pay in order to keep or obtain any benefits  
19 that were provided to the participant or beneficiary  
20 prior to the amendment or action; or

21 “(3) modifying the manner by which medical  
22 services are delivered under the plan so that after  
23 the amendment or action a retired participant, or  
24 his or her beneficiary, has less ready access to the  
25 delivery of any such medical services than the partic-

1 participant or beneficiary had prior to the amendment or  
2 action.

3 “(d) TREATMENT OF PLAN TERMINATION.—

4 “(1) IN GENERAL.—Subject to paragraph (2), a  
5 termination of a group health plan shall be treated  
6 as violating the prohibition contained in this section  
7 if, after the termination, the plan sponsor of the ter-  
8 minated plan fails to continue to provide to the par-  
9 ticipants who retired prior to the termination and to  
10 their beneficiaries the same retiree health benefits  
11 that were provided prior to the termination.

12 “(2) WAIVER.—Paragraph (1) shall not apply  
13 in the case of the termination of a group health plan  
14 if the Secretary issues a waiver under this para-  
15 graph in connection with such termination. The Sec-  
16 retary shall issue such a waiver if and only if the  
17 plan sponsor demonstrates to the satisfaction of the  
18 Secretary, in accordance with regulations prescribed  
19 by the Secretary, that such plan sponsor will be un-  
20 able to continue in business unless such a waiver is  
21 issued.

22 “(e) CONSENT OR AUTHORIZATION BY PARTICI-  
23 PANT.—A reduction of benefits shall not be treated as pro-  
24 hibited by this section if such reduction is consented to  
25 in writing by any retired participant or is authorized with

1 respect to the retired participant under the terms of one  
2 or more agreements which the Secretary finds to be collec-  
3 tive bargaining agreements between one or more employee  
4 representatives who were representing such participant at  
5 the time of the entry into such agreement and one or more  
6 employers.

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

10 “Every group health plan shall contain a provision  
11 which expressly bars the plan, or any fiduciary of the plan,  
12 from reducing the benefits provided under the plan to a  
13 retired participant, or his or her beneficiary, if such reduc-  
14 tion affects the benefits provided to the participant or ben-  
15 eficiary as of the date the participant retired for purposes  
16 of the plan and such reduction occurs after the partici-  
17 pant’s retirement.

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

20 “(a) IN GENERAL.—The plan sponsor of each group  
21 health plan shall provide, in accordance with this section,  
22 the option of benefit restoration to each retired participant  
23 that meets the following requirements:

24 “(1) The retired participant is entitled to ben-  
25 efit coverage under the plan as of the date of enact-

1       ment of the Emergency Retiree Health Benefits Pro-  
2       tection Act of 2005.

3           “(2) The amount, type, level, or form of any  
4       benefits or option provided to the retired participant  
5       under the plan as of the date the participant retired  
6       was reduced after the participant’s date of retire-  
7       ment. For purposes of the preceding sentence, the  
8       term ‘reduced’ has the same meaning as in section  
9       801(c).

10          “(3) The retired participant has elected to re-  
11       store benefits under the plan within the restoration  
12       period prescribed by subsection (c) and in accord-  
13       ance with such procedures established by the plan  
14       pursuant to regulations of the Secretary.

15          “(b) EXCEPTION FOR CERTAIN PLANS.—In accord-  
16       ance with regulations prescribed by the Secretary, sub-  
17       section (a) shall not apply to any group health plan with  
18       less than 100 participants both on and after the date of  
19       enactment of the Emergency Retiree Health Benefits Pro-  
20       tection Act of 2005.

21          “(c) RESTORATION PERIOD.—The term ‘restoration  
22       period’ means the period which—

23           “(1) begins not later than 1 year after the date  
24       of enactment of the Emergency Retiree Health Ben-  
25       efits Protection Act of 2005;

1           “(2) ends before 2 years from such date, unless  
2           extended by the Secretary pursuant to section  
3           804(g); and

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

5           “(d) NOTICE REQUIREMENTS CONCERNING RES-  
6           Toration of Benefits.—In accordance with regulations  
7           prescribed by the Secretary, each group health plan sub-  
8           ject to the requirements of subsection (a) shall, within no  
9           less than 30 days prior to the commencement of the plan’s  
10          restoration of benefits period, provide written notice to  
11          each retired participant of the plan who meets the require-  
12          ments of subsection (a) of the following:

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

15           “(2) The administrative procedure established  
16          under the plan which may be used to submit a claim  
17          for the restoration of any benefits.

18           “(3) An itemization of the value of each benefit  
19          the retired participant is entitled to have restored,  
20          as determined in accordance with regulations of the  
21          Secretary, and the total value of all such benefits.

22           “(4) A description of any post-retirement in-  
23          creases in retiree health benefits the retired partici-  
24          pant received which the plan sponsor could rescind

1 if the retired participant asserts a claim for the res-  
2 toration of benefits.

3 “(5) An itemization of the value of each retiree  
4 health benefit the plan sponsor could rescind, as de-  
5 termined in accordance with regulations of the Sec-  
6 retary, and the total value of all such benefits.

7 “(6) If the plan sponsor has filed an application  
8 for a substantial business hardship exemption under  
9 section 804, the date such application was filed, the  
10 date notice of such application was given to retired  
11 participants entitled to submit a claim for the res-  
12 toration of benefits, and the status of such applica-  
13 tion as of the date of the notice sent pursuant to  
14 this subsection.

15 “(7) Such other information in such form and  
16 detail as may be prescribed by the Secretary to carry  
17 out the purposes of this part.

18 “(e) DEADLINE FOR RESTORATION OF BENEFITS.—  
19 Regardless of any extension that may be granted by the  
20 Secretary pursuant to section 804(g), all benefits required  
21 to be restored under this section shall be restored within  
22 no more than 3 years from the date of enactment of the  
23 Emergency Retiree Health Benefits Protection Act of  
24 2005, or the date the plan sponsor files an application for  
25 an exemption under section 804, whichever comes last.

1 **“SEC. 804. EXEMPTION FROM RESTORATION OF BENEFITS**  
2 **REQUIREMENTS.**

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

9 “(b) AUTHORITY FOR WAIVER OR VARIANCE.—In re-  
10 sponse to an application filed by a plan sponsor pursuant  
11 to subsection (a), the Secretary may waive or vary the re-  
12 quirements of section 803 with respect to any or all of  
13 such requirements, including postponing for reasonable  
14 periods of time the obligation of the plan sponsor to re-  
15 store reduced benefits, if the Secretary finds that compli-  
16 ance by the plan sponsor with the requirements of section  
17 803 would—

18 “(1) be adverse to the interests of plan partici-  
19 pants in the aggregate;

20 “(2) not be administratively feasible; and

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

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

1           “(1) the plan sponsor is operating at an eco-  
2           nomic loss;

3           “(2) compliance with the restoration of benefits  
4           requirements would necessitate substantial future re-  
5           ductions in health benefits provided to participants  
6           under the plan or cause a substantial decline in em-  
7           ployment with the plan sponsor;

8           “(3) it is reasonable to expect that the plan will  
9           be continued only if a waiver or appropriate variance  
10          is granted; and

11          “(4) the provisions of the Retiree Health Loan  
12          Guarantee Program established under section 805  
13          are unavailable to the plan sponsor submitting the  
14          application, or, if available, still would not provide a  
15          sufficient basis for denying a waiver or variance.

16          “(d) REQUIREMENT OF SATISFACTORY EVIDENCE.—

17                 “(1) IN GENERAL.—The Secretary shall, before  
18                 granting a waiver or variance under this section, re-  
19                 quire each applicant to provide evidence satisfactory  
20                 to the Secretary that the applicant has provided  
21                 timely written notice of the filing of an application  
22                 for such waiver or variance to each retired partici-  
23                 pant entitled to submit a claim for the restoration  
24                 of benefits under the applicant’s plan.

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

6           “(3) INFORMATION REQUIRED.—The notice re-  
7           ferred to in paragraph (1) shall include information  
8           with respect to the specific relief that will be sought  
9           by the plan sponsor’s application, the period of time  
10          for which relief is sought, and such other relevant  
11          information as the Secretary may prescribe.

12          “(e) PARTICIPATION IN PROCEEDINGS BY RETIRED  
13          PLAN PARTICIPANTS.—Each retired participant entitled  
14          to submit a claim for the restoration of benefits within  
15          the meaning of this section shall be provided a reasonable  
16          opportunity to submit comments or otherwise participate  
17          in any proceeding established by the Secretary to deter-  
18          mine whether to grant or deny an application for a waiver  
19          or variance filed by the retired participant’s plan sponsor.

20          “(f) EXCEPTION FOR CERTAIN APPLICATIONS.—The  
21          Secretary shall not be authorized to grant any application  
22          for a waiver or variance purporting to satisfy the require-  
23          ments of subsection (b) if—

24                  “(1) within the 5-year period preceding the date  
25                  of the plan sponsor’s application the plan sponsor

1 could have transferred excess pension assets to a  
2 health benefits account within the meaning of sec-  
3 tion 420 of the Internal Revenue Code of 1986 (as  
4 in effect on the date of the enactment of the Tax  
5 Relief Extension Act of 1999) but failed to do so,  
6 and the plan sponsor is submitting an application on  
7 behalf of such retiree health account; or

8 “(2) the plan sponsor submitting the applica-  
9 tion also maintains a fully funded pension plan with  
10 respect to which—

11 “(A) retired participants eligible to submit  
12 a claim for the restoration of benefits under  
13 section 803 are also eligible to receive ad hoc  
14 cost-of-living adjustment benefits;

15 “(B) the assets of the fully funded pension  
16 plan, over the past 5 years preceding the date  
17 of application for a waiver or variance, on aver-  
18 age have exceeded 120 percent of the plan’s li-  
19 abilities;

20 “(C) the plan had no minimum funding re-  
21 quirement to satisfy within the 5 years pre-  
22 ceding the date of application for the waiver or  
23 variance and the plan sponsor submitting the  
24 application made no minimum funding con-

1           tribution to the fully funded pension plan dur-  
2           ing such 5-year period; and

3           “(D) the plan sponsor submitting the ap-  
4           plication for a waiver or variance failed to pro-  
5           vide an ad hoc cost-of-living adjustment benefit  
6           from the fully funded pension plan during the  
7           5-year period preceding the date of application  
8           for the waiver or variance.

9           “(g) **RUNNING OF RESTORATION PERIOD SUS-**  
10 **PENDED.**—The submission of an application for a waiver  
11 or variance pursuant to this section shall suspend the run-  
12 ning of any relevant restoration period as specified in sub-  
13 section (c). Where appropriate, the Secretary shall direct  
14 the reopening of any relevant restoration period upon the  
15 final conclusion of proceedings to determine whether an  
16 application should be granted or denied.

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

19           “(a) **DEFINITIONS.**—For purposes of this section—

20           “(1) **BOARD.**—The term ‘Board’ means the  
21 Emergency Retiree Health Loan Guarantee Board  
22 established under subsection (c).

23           “(2) **PROGRAM.**—The term ‘Program’ means  
24 the Emergency Retiree Health Loan Guarantee Pro-  
25 gram established under subsection (b).

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

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

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

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

17           “(2) the Secretary of Commerce;

18           “(3) the Secretary of the Treasury;

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

21           “(5) the Chairman of the Council of Economic  
22           Advisers.

23          “(d) Retiree Health Loan Guarantee Program—

24           “(1) AUTHORITY.—The Program may guar-  
25           antee loans provided by private banking and invest-

1       ment institutions to eligible plan sponsors for pur-  
2       poses of assisting such plan sponsors to meet their  
3       obligations under section 803. Such loan guarantees  
4       shall be provided to the extent provided in advance  
5       in appropriation Acts pursuant to paragraph (4) and  
6       only in accordance with the procedures, rules, and  
7       regulations established by the Board.

8               “(2) TOTAL GUARANTEE LIMIT.—The aggre-  
9       gate amount of loans guaranteed and outstanding at  
10      any time under this section may not exceed  
11      \$5,000,000,000.

12              “(3) INDIVIDUAL GUARANTEE LIMIT.—The ag-  
13      gregate amount of loans guaranteed under this sec-  
14      tion with respect to a single eligible plan sponsor  
15      may not exceed \$5,000,000.

16              “(4) ADDITIONAL COSTS.—For the additional  
17      cost of loans guaranteed under this subsection, in-  
18      cluding the costs of modifying the loans, as defined  
19      in section 502 of the Congressional Budget Act of  
20      1974 (2 U.S.C. 661a), there is authorized to be ap-  
21      propriated \$200,000,000, to remain available until  
22      expended.

23              “(e) REQUIREMENTS FOR LOAN GUARANTEES.—A  
24      loan guarantee may be issued under this section upon ap-  
25      plication to the Board by an eligible plan sponsor pursuant

1 to an agreement to provide a loan to that eligible plan  
2 sponsor by a private bank or investment company, if the  
3 Board determines that—

4           “(1) credit is not otherwise available to that eli-  
5 gible plan sponsor under reasonable terms and con-  
6 ditions sufficient to meet its financing needs with re-  
7 spect to the restoration of retiree health benefits, as  
8 reflected in the financial and business plans of that  
9 eligible plan sponsor;

10           “(2) the prospective earning power of that eligi-  
11 ble plan sponsor, together with the character and  
12 value of the security pledged, furnish reasonable as-  
13 surance of repayment of the loan to be guaranteed  
14 in accordance with its terms;

15           “(3) the loan to be guaranteed bears interest at  
16 a rate determined by the Board to be reasonable,  
17 taking into account the current average yield on out-  
18 standing obligations of the United States with re-  
19 maining periods of maturity comparable to the ma-  
20 turity of such loan;

21           “(4) the loan to be guaranteed will materially  
22 assist that eligible plan sponsor to discharge its obli-  
23 gation to comply with the restoration of benefits re-  
24 quirements contained in section 803; and

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

5           “(f) TERMS AND CONDITIONS OF LOAN GUAR-  
6 ANTEE.—

7           “(1) LOAN DURATION.—All loans guaranteed  
8           under this section shall be payable in full not later  
9           than December 31, 2013, and the terms and condi-  
10          tions of each such loan shall provide that the loan  
11          may not be amended or any provision thereof waived  
12          without the consent of the Board.

13          “(2) LOAN SECURITY.—Any commitment to  
14          issue a loan guarantee under this section shall con-  
15          tain such affirmative and negative covenants and  
16          other protective provisions that the Board deter-  
17          mines are appropriate.

18          “(3) FEES.—An eligible plan sponsor receiving  
19          a guarantee under this section shall pay a fee in an  
20          amount equal to 0.5 percent of the outstanding prin-  
21          cipal balance of the guaranteed loan to the Depart-  
22          ment of the Treasury.

23          “(g) REPORTS TO CONGRESS.—The Secretary of  
24          Labor shall submit annually to each House of the Con-  
25          gress a full report of the activities of the Board under

1 this section during 2006 and 2007, and annually there-  
2 after during such period as any loan guaranteed under  
3 this section is outstanding. Such report shall be submitted  
4 not later than January 31, of each year (beginning in  
5 2006).

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

12 “(i) TERMINATION OF GUARANTEE AUTHORITY.—  
13 The authority of the Board to make commitments to guar-  
14 antee any loan under this section shall terminate on De-  
15 cember 31, 2009.

16 “(j) REGULATORY ACTION.—The Board shall issue  
17 such final procedures, rules, and regulations as may be  
18 necessary to carry out this section not later than 90 days  
19 after the date of enactment of the Emergency Retiree  
20 Health Benefits Protection Act of 2005. In no event shall  
21 the Board issue a procedure, rule, or regulation which au-  
22 thORIZES it to approve or deny any application for a loan  
23 guarantee in more than 270 days after receipt of such ap-  
24 plication.

1       “(k) EMERGENCY DESIGNATION.—The entire  
2 amount made available to carry out this section—

3               “(1) is designated by Congress as an emergency  
4 requirement pursuant to section 251(b)(2)(A) of the  
5 Balanced Budget and Emergency Deficit Control  
6 Act of 1985 (2 U.S.C. 901(b)(2)(A)); and

7               “(2) shall be available only to the extent that  
8 an official budget request that includes designation  
9 of the entire amount as an emergency requirement  
10 (as defined in the Balanced Budget and Emergency  
11 Deficit Control Act of 1985) is transmitted by the  
12 President to the Congress.

13 **“SEC. 806. EFFECT ON OTHER CLAIMS.**

14       “(a) OTHER CLAIMS UNAFFECTED.—Nothing con-  
15 tained in this part shall be construed to alter, impair, or  
16 eliminate any claim for retiree health benefits based on  
17 conduct alleged to violate the terms of a group health plan,  
18 any provision of this Act (other than this part), or both,  
19 regardless of whether such conduct occurred prior to, on,  
20 or after, the effective date of this part.

21       “(b) OTHER CAUSES OF ACTION NOT AUTHOR-  
22 IZED.—Unless the conduct giving rise to a claim for re-  
23 tiree health benefits is alleged to violate the provisions of  
24 this part, nothing contained in this part shall be construed

1 to authorize any other cause of action for the recovery of  
2 retiree health benefits.

3 **“SEC. 807. REGULATIONS.**

4 “The Secretary may promulgate such regulations as  
5 may be necessary to carry out the provisions of this part.  
6 The Secretary may promulgate any interim final rules as  
7 the Secretary deems are appropriate to carry out this part.

8 **“SEC. 808. ENFORCEMENT.**

9 “The enforcement provisions of sections 501 and 502  
10 shall be applicable to this part.”.

11 (b) CIVIL PENALTY SECTION.—Section 502(c) of the  
12 Employee Retirement Income Security Act of 1974 (29  
13 U.S.C. 1132(e)) is amended—

14 (1) by redesignating paragraph (8) as para-  
15 graph (9); and

16 (2) by inserting after paragraph (7) the fol-  
17 lowing new paragraph:

18 “(8) The Secretary may assess a civil penalty of not  
19 more than \$1,000 for each separate violation of section  
20 801, 802, or 803 by any person individually with respect  
21 to each participant or beneficiary aggrieved by such viola-  
22 tion.”.

23 (c) CONFORMING AMENDMENT.—The table of con-  
24 tents in section 1 of such Act is amended by inserting

1 after the item relating to section 734 the following new  
 2 items:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

- “801. Prohibition against post-retirement reductions of retiree health benefits by group health plans.  
 “802. Adoption by group health plans of provision barring post-retirement reductions in retiree health benefits.  
 “803. Restoration by group health plans of benefits reduced after retirement.  
 “804. Exemption from restoration of benefits requirements.  
 “805. Establishment of emergency retiree health loan guarantee program.  
 “806. Effect on other claims.  
 “807. Regulations.  
 “808. Enforcement.”.

3 **SEC. 4. SEPARABILITY OF PROVISIONS.**

4 The provisions of section 509 of the Employee Retirement  
 5 Income Security Act of 1974 (29 U.S.C. 1139) shall  
 6 be applicable to this Act and the amendments made there-  
 7 by.

8 **SEC. 5. EFFECTIVE DATE.**

9 The amendments made by this Act shall take effect  
 10 on the date of the enactment of this Act.

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