

109TH CONGRESS  
1ST SESSION

# S. 1304

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 23, 2005

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. FEINGOLD, Mrs. BOXER, and Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 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.

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 Benefits Pro-  
5 tection Act of 2005”.

1 **SEC. 2. PROPER ADMINISTRATION OF INTERNAL REVENUE**  
 2 **LAWS AND NONDISCRIMINATION REQUIRE-**  
 3 **MENTS.**

4 The Secretary of the Treasury shall apply section  
 5 411(b)(1)(H) of the Internal Revenue Code of 1986 with-  
 6 out regard to the portion of the preamble to Treasury De-  
 7 cision 8360 (56 Fed. Reg. 47524–47603, September 19,  
 8 1991) which relates to the allocation of interest adjust-  
 9 ments through normal retirement age under a cash bal-  
 10 ance plan, as such preamble is and has been since its  
 11 adoption without the force of law.

12 **SEC. 3. PROTECTION OF PARTICIPANTS FROM CONVER-**  
 13 **SIONS TO HYBRID DEFINED BENEFIT PLANS.**

14 (a) ELECTION TO MAINTAIN RATE OF ACCRUAL IN  
 15 EFFECT BEFORE PLAN AMENDMENT.—

16 (1) AMENDMENT TO ERISA.—Section 204(b)(1)  
 17 of the Employee Retirement Income Security Act of  
 18 1974 (29 U.S.C. 1054(b)(1)) is amended by adding  
 19 at the end the following new subparagraph:

20 “(I)(i) Notwithstanding the preceding subpara-  
 21 graphs, in the case of a plan amendment to a defined ben-  
 22 efit plan—

23 “(I) which has the effect of converting the plan  
 24 to a plan under which the accrued benefit is ex-  
 25 pressed to participants and beneficiaries as an  
 26 amount other than an annual benefit commencing at

1 normal retirement age (or which has a similar effect  
2 as determined under regulations issued under clause  
3 (iv)), and

4 “(II) which has the effect of reducing the rate  
5 of future benefit accrual of 1 or more participants,  
6 such plan shall be treated as not satisfying the require-  
7 ments of this paragraph unless such plan meets the re-  
8 quirements of clause (ii).

9 “(ii) A plan meets the requirements of this clause if  
10 the plan provides each participant who has attained 40  
11 years of age or 10 years of service (as determined under  
12 section 203) under the plan at the time such amendment  
13 takes effect with—

14 “(I) notice of the plan amendment indicating  
15 that it has such effect, including a comparison of the  
16 present and projected values of the accrued benefit  
17 determined both with and without regard to the plan  
18 amendment, and

19 “(II) an election upon retirement to either re-  
20 ceive benefits under the terms of the plan as in ef-  
21 fect at the time of retirement or to receive benefits  
22 under the terms of the plan as in effect immediately  
23 before the effective date of such plan amendment  
24 (taking into account all benefit accruals under such  
25 terms since such date).

1       “(iii) For purposes of clause (i), an accrued benefit  
 2 shall include any early retirement benefit or retirement-  
 3 type subsidy (within the meaning of subsection (g)(2)(A)),  
 4 but only with respect to a participant who satisfies (either  
 5 before or after the effective date of the amendment) the  
 6 conditions for the benefit or subsidy under the terms of  
 7 the plan as in effect immediately before such date.

8       “(iv) The Secretary of the Treasury shall issue regu-  
 9 lations under which any plan amendment which has an  
 10 effect similar to the effect described in clause (i)(I) shall  
 11 be treated as a plan amendment described in clause (i)(I).  
 12 Such regulations may provide that if a plan sponsor rep-  
 13 resents in communications to participants and bene-  
 14 ficiaries that a plan amendment has an effect described  
 15 in the preceding sentence, such plan amendment shall be  
 16 treated as a plan amendment described in clause (i)(I).”.

17       (2) AMENDMENT TO INTERNAL REVENUE  
 18 CODE.—Section 411(b)(1) of the Internal Revenue  
 19 Code of 1986 (relating to accrued benefit require-  
 20 ments for defined benefit plans) is amended by add-  
 21 ing at the end the following new subparagraph:

22               “(I) ELECTION TO MAINTAIN RATE OF AC-  
 23 CRUAL IN EFFECT BEFORE CERTAIN PLAN  
 24 AMENDMENTS.—

“(i) IN GENERAL.—Notwithstanding the preceding subparagraphs, in the case of a plan amendment to a defined benefit plan—

“(I) which has the effect of converting the plan to a plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age (or which has a similar effect as determined under regulations issued under clause (iv)), and

“(II) which has the effect of reducing the rate of future benefit accrual of 1 or more participants,

such plan shall be treated as not satisfying the requirements of this paragraph unless such plan meets the requirements of clause (ii).

“(ii) REQUIREMENTS.—A plan meets the requirements of this clause if the plan provides each participant who has attained 40 years of age or 10 years of service (as determined under subsection (a)) under

the plan at the time such amendment  
takes effect with—

“(I) notice of the plan amendment indicating that it has such effect, including a comparison of the present and projected values of the accrued benefit determined both with and without regard to the plan amendment, and

“(II) an election upon retirement to either receive benefits under the terms of the plan as in effect at the time of retirement or to receive benefits under the terms of the plan as in effect immediately before the effective date of such plan amendment (taking into account all benefit accruals under such terms since such date).

“(iii) TREATMENT OF EARLY RETIREMENT BENEFITS AND RETIREMENT-TYPE SUBSIDIES.—For purposes of clause (i), an accrued benefit shall include any early retirement benefit or retirement-type subsidy (within the meaning of subsection (d)(6)(B)(i)), but only with respect to a

1 participant who satisfies (either before or  
 2 after the effective date of the amendment)  
 3 the conditions for the benefit or subsidy  
 4 under the terms of the plan as in effect  
 5 immediately before such date.

6 “(iv) REGULATIONS.—The Secretary  
 7 shall issue regulations under which any  
 8 plan amendment which has an effect simi-  
 9 lar to the effect described in clause (i)(I)  
 10 shall be treated as a plan amendment de-  
 11 scribed in clause (i)(I). Such regulations  
 12 may provide that if a plan sponsor rep-  
 13 resents in communications to participants  
 14 and beneficiaries that a plan amendment  
 15 has an effect described in the preceding  
 16 sentence, such plan amendment shall be  
 17 treated as a plan amendment described in  
 18 clause (i)(I).”.

19 (b) EFFECTIVE DATE AND RELATED RULES.—

20 (1) IN GENERAL.—The amendments made by  
 21 this section apply to plan amendments taking effect  
 22 before, on, or after the date of the enactment of this  
 23 Act, except that such amendments shall not apply to  
 24 a plan amendment if the Internal Revenue Service  
 25 has issued on or before June 23, 2005, a determina-

tion letter which has the effect of approving the plan amendment.

(2) SPECIAL RULE.—In the case of a plan amendment taking effect before 90 days after the date of the enactment of this Act, the requirements of section 204(b)(1)(I) of the Employee Retirement Income Security Act of 1974 (as added by this section) and section 411(b)(1)(I) of the Internal Revenue Code of 1986 (as added by this section) shall be treated as satisfied in connection with such plan amendment, in the case of any participant described in such sections 204(b)(1)(I) and 411(b)(1)(I) in connection with such plan amendment, if, as of the end of such 90-day period—

(A) the notice described in clause (i)(I) of such section 204(b)(1)(I) and clause (i)(I) of such section 411(b)(1)(I) in connection with such plan amendment has been provided to such participant, and

(B) the plan provides for the election described in clause (i)(II) of such section 204(b)(1)(I) and clause (i)(II) of such section 411(b)(1)(I) in connection with such participant's retirement under the plan.



1 **SEC. 4. PREVENTION OF WEARING AWAY OF EMPLOYEE'S**  
 2 **ACCRUED BENEFIT.**

3 (a) AMENDMENT TO ERISA.—Section 204(g) of the  
 4 Employee Retirement Income Security Act of 1974 (29  
 5 U.S.C. 1054(g)) is amended by adding at the end the fol-  
 6 lowing new paragraph:

7 “(6)(A) For purposes of paragraph (1), an applicable  
 8 plan amendment adopted by a large defined benefit plan  
 9 shall be treated as reducing accrued benefits of a partici-  
 10 pant if, under the terms of the plan after the adoption  
 11 of the amendment, the accrued benefit of the participant  
 12 may at any time be less than the sum of—

13 “(i) the participant’s accrued benefit for years  
 14 of service before the effective date of the amend-  
 15 ment, determined under the terms of the plan as in  
 16 effect immediately before the effective date, plus

17 “(ii) the participant’s accrued benefit deter-  
 18 mined under the formula applicable to benefit accru-  
 19 als under the current plan as applied to years of  
 20 service after such effective date.

21 “(B) For purposes of this paragraph—

22 “(i) The term ‘applicable plan amendment’  
 23 means a plan amendment which has the effect of  
 24 converting the plan to a plan under which the ac-  
 25 crued benefit is expressed to participants and bene-  
 26 ficiaries as an amount other than an annual benefit

1       commencing at normal retirement age (or which has  
 2       a similar effect as determined under regulations of  
 3       the Secretary of the Treasury under subsection  
 4       (b)(1)(I)(iv)).

5           “(ii) The term ‘large defined benefit plan’  
 6       means any defined benefit plan which had 100 or  
 7       more participants who had accrued a benefit under  
 8       the plan (whether or not vested) as of the last day  
 9       of the plan year preceding the plan year in which  
 10      the plan amendment becomes effective.

11          “(iii) An accrued benefit shall include any early  
 12      retirement benefit or retirement-type subsidy (within  
 13      the meaning of paragraph (2)(A)), but only with re-  
 14      spect to a participant who satisfies (either before or  
 15      after the effective date of the amendment) the condi-  
 16      tions for the benefit or subsidy under the terms of  
 17      the plan as in effect immediately before such date.”.

18      (b) AMENDMENT TO INTERNAL REVENUE CODE.—  
 19      Section 411(d)(6) of the Internal Revenue Code of 1986  
 20      (relating to accrued benefit may not be decreased by  
 21      amendment) is amended by adding at the end the fol-  
 22      lowing new subparagraph:

23           “(F) TREATMENT OF PLAN AMENDMENTS  
 24      WEARING AWAY ACCRUED BENEFIT.—

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

10 “(I) the participant’s accrued  
 11 benefit for years of service before the  
 12 effective date of the amendment, de-  
 13 termined under the terms of the plan  
 14 as in effect immediately before the ef-  
 15 fective date, plus

16 “(II) the participant’s accrued  
 17 benefit determined under the formula  
 18 applicable to benefit accruals under  
 19 the current plan as applied to years of  
 20 service after such effective date.

21 “(ii) DEFINITIONS.—For purposes of  
 22 this subparagraph—

23 “(I) APPLICABLE PLAN AMEND-  
 24 MENT.—The term ‘applicable plan  
 25 amendment’ means a plan amendment

1 which has the effect of converting the  
2 plan to a plan under which the ac-  
3 crued benefit is expressed to partici-  
4 pants and beneficiaries as an amount  
5 other than an annual benefit com-  
6 mencing at normal retirement age (or  
7 which has a similar effect as deter-  
8 mined under regulations of the Sec-  
9 retary under subsection (b)(1)(I)(iv)).

10 “(II) LARGE DEFINED BENEFIT  
11 PLAN.—The term ‘large defined ben-  
12 efit plan’ means any defined benefit  
13 plan which had 100 or more partici-  
14 pants who had accrued a benefit  
15 under the plan (whether or not vest-  
16 ed) as of the last day of the plan year  
17 preceding the plan year in which the  
18 plan amendment becomes effective.

19 “(III) PROTECTED ACCRUED  
20 BENEFIT.—An accrued benefit shall  
21 include any early retirement benefit or  
22 retirement-type subsidy (within the  
23 meaning of subparagraph (B)(i)), but  
24 only with respect to a participant who  
25 satisfies (either before or after the ef-

1                   fective date of the amendment) the  
 2                   conditions for the benefit or subsidy  
 3                   under the terms of the plan as in ef-  
 4                   fect immediately before such date.”.

5           (c) EFFECTIVE DATE AND RELATED RULES.—

6                   (1) IN GENERAL.—Except as provided in para-  
 7                   graph (2), the amendments made by this section  
 8                   apply to plan amendments taking effect before, on,  
 9                   or after the date of the enactment of this Act, except  
 10                  that such amendments shall not apply to a plan  
 11                  amendment if the Internal Revenue Service has  
 12                  issued on or before June 23, 2005, a determination  
 13                  letter which has the effect of approving the plan  
 14                  amendment.

15                  (2) SPECIAL RULE.—Notwithstanding para-  
 16                  graph (1), the amendments made by this section  
 17                  shall not apply in connection with any participant  
 18                  with respect to any plan amendment which has  
 19                  taken effect before 90 days after the date of the en-  
 20                  actment of this Act if, as of the end of such 90-day  
 21                  period, the plan provides that the participant’s ac-  
 22                  crued benefit shall at no time be less than the sum  
 23                  described in section 204(g)(6)(A) of the Employee  
 24                  Retirement Income Security Act of 1974 (as added  
 25                  by this section) or section 411(d)(6)(F)(i) of the In-

- 1 ternal Revenue Code of 1986 (as added by this sec-
- 2 tion) in connection with such plan amendment.

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