

108TH CONGRESS  
1ST SESSION

# S. 825

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

APRIL 8, 2003

Mr. HARKIN (for himself, Mr. DURBIN, Mr. FEINGOLD, Mr. KENNEDY, and Mrs. BOXER) 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 2003”.

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

4 (a) IN GENERAL.—The Employee Retirement Income  
5 Security Act of 1974, the Internal Revenue Code of 1986,  
6 and the Age Discrimination in Employment Act of 1967  
7 shall be applied and administered without regard to pro-  
8 posed regulations of the Secretary of the Treasury, in-  
9 cluded in proposed regulations published in the Federal  
10 Register on December 11, 2002 (relating to reductions of  
11 accruals and allocations because of the attainment of any  
12 age; application of nondiscrimination cross-testing rules to  
13 cash balance plans) (67 Fed. Reg. 76123), which pertain  
14 to plan amendments adopting a cash balance formula, and  
15 without regard to any other regulation which reaches the  
16 same or a similar result. The Secretary of the Treasury  
17 shall take no action in contravention of section  
18 204(b)(1)(G), 204(b)(1)(H)(i), or 204(g) of the Employee  
19 Retirement Income Security Act of 1974, section  
20 411(b)(1)(G), 411(b)(1)(H)(i), or 411(d)(6) of the Inter-  
21 nal Revenue Code of 1986, or section 4(i)(1)(A) of the  
22 Age Discrimination in Employment Act of 1967.

23 (b) DIRECTIVE.—The Secretary of the Treasury shall  
24 apply section 411(b)(1)(H) of the Internal Revenue Code  
25 of 1986 without regard to the portion of the preamble to  
26 Treasury Decision 8360 (56 Fed. Reg. 47524–47603,

1 September 19, 1991) which relates to the allocation of in-  
2 terest adjustments through normal retirement age under  
3 a cash balance plan, as such preamble is and has been  
4 since its adoption without the force of law.

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

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

9 (1) AMENDMENT TO ERISA.—Section 204(b)(1)  
10 of the Employee Retirement Income Security Act of  
11 1974 (29 U.S.C. 1054(b)(1)) is amended by adding  
12 at the end the following new subparagraph:

13 “(I)(i) Notwithstanding the preceding subpara-  
14 graphs, in the case of a plan amendment to a defined ben-  
15 efit plan—

16 “(I) which has the effect of converting the plan  
17 to a plan under which the accrued benefit is ex-  
18 pressed to participants and beneficiaries as an  
19 amount other than an annual benefit commencing  
20 at normal retirement age (or which has a similar  
21 effect as determined under regulations issued under  
22 clause (iv)), and

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

1 such plan shall be treated as not satisfying the require-  
2 ments of this paragraph unless such plan meets the re-  
3 quirements of clause (ii).

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

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

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

21 “(iii) For purposes of clause (i), an accrued benefit  
22 shall include any early retirement benefit or retirement-  
23 type subsidy (within the meaning of subsection (g)(2)(A)),  
24 but only with respect to a participant who satisfies (either  
25 before or after the effective date of the amendment) the

1 conditions for the benefit or subsidy under the terms of  
 2 the plan as in effect immediately before such date.

3 “(iv) The Secretary shall issue regulations under  
 4 which any plan amendment which has an effect similar  
 5 to the effect described in clause (i)(I) shall be treated as  
 6 a plan amendment described in clause (i)(I). Such regula-  
 7 tions may provide that if a plan sponsor represents in com-  
 8 munications to participants and beneficiaries that a plan  
 9 amendment has an effect described in the preceding sen-  
 10 tence, such plan amendment shall be treated as a plan  
 11 amendment described in clause (i)(I).”.

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

17 “(I) ELECTION TO MAINTAIN RATE OF AC-  
 18 CRUAL IN EFFECT BEFORE CERTAIN PLAN  
 19 AMENDMENTS.—

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

24 “(I) which has the effect of con-  
 25 verting the plan to a plan under which

1 the accrued benefit is expressed to  
2 participants and beneficiaries as an  
3 amount other than an annual benefit  
4 commencing at normal retirement age  
5 (or which has a similar effect as de-  
6 termined under regulations issued  
7 under clause (iv)), and

8 “(II) which has the effect of re-  
9 ducing the rate of future benefit ac-  
10 crual of 1 or more participants,

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

15 “(ii) REQUIREMENTS.—A plan meets  
16 the requirements of this clause if the plan  
17 provides each participant who has attained  
18 40 years of age or 10 years of service (as  
19 determined under subsection (a)) under  
20 the plan at the time such amendment  
21 takes effect with—

22 “(I) notice of the plan amend-  
23 ment indicating that it has such ef-  
24 fect, including a comparison of the  
25 present and projected values of the

1 accrued benefit determined both with  
2 and without regard to the plan  
3 amendment, and

4 “(II) an election upon retirement  
5 to either receive benefits under the  
6 terms of the plan as in effect at the  
7 time of retirement or to receive bene-  
8 fits under the terms of the plan as in  
9 effect immediately before the effective  
10 date of such plan amendment (taking  
11 into account all benefit accruals under  
12 such terms since such date).

13 “(iii) TREATMENT OF EARLY RETIRE-  
14 MENT BENEFITS AND RETIREMENT-TYPE  
15 SUBSIDIES.—For purposes of clause (i), an  
16 accrued benefit shall include any early re-  
17 tirement benefit or retirement-type subsidy  
18 (within the meaning of subsection  
19 (d)(6)(B)(i)), but only with respect to a  
20 participant who satisfies (either before or  
21 after the effective date of the amendment)  
22 the conditions for the benefit or subsidy  
23 under the terms of the plan as in effect  
24 immediately before such date.

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

14                  (b) EFFECTIVE DATE AND RELATED RULES.—

15                         (1) IN GENERAL.—The amendments made by  
16                         this section apply to plan amendments taking effect  
17                         before, on, or after the date of the enactment of this  
18                         Act, except that such amendments shall not apply to  
19                         a plan amendment if the Internal Revenue Service  
20                         has issued on or before April 8, 2003, a determina-  
21                         tion letter which has the effect of approving the plan  
22                         amendment.

23                         (2) SPECIAL RULE.—In the case of a plan  
24                         amendment taking effect before 90 days after the  
25                         date of the enactment of this Act, the requirements

1 of section 204(b)(1)(I) of the Employee Retirement  
2 Income Security Act of 1974 (as added by this sec-  
3 tion) and section 411(b)(1)(I) of the Internal Rev-  
4 enue Code of 1986 (as added by this section) shall  
5 be treated as satisfied in connection with such plan  
6 amendment, in the case of any participant described  
7 in such sections 204(b)(1)(I) and 411(b)(1)(I) in  
8 connection with such plan amendment, if, as of the  
9 end of such 90-day period—

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

15 (B) the plan provides for the election de-  
16 scribed in clause (i)(II) of such section  
17 204(b)(1)(I) and clause (i)(II) of such section  
18 411(b)(1)(I) in connection with such partici-  
19 pant's retirement under the plan.

20 **SEC. 4. PREVENTION OF WEARING AWAY OF EMPLOYEE'S**  
21 **ACCRUED BENEFIT.**

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

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

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

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

15       “(B) For purposes of this paragraph—

16               “(i) The term ‘applicable plan amendment’  
17 means a plan amendment which has the effect of  
18 converting the plan to a plan under which the ac-  
19 crued benefit is expressed to participants and bene-  
20 ficiaries as an amount other than an annual benefit  
21 commencing at normal retirement age (or which has  
22 a similar effect as determined under regulations of  
23 the Secretary).

24               “(ii) The term ‘large defined benefit plan’  
25 means any defined benefit plan which had 100 or

1 more participants who had accrued a benefit under  
 2 the plan (whether or not vested) as of the last day  
 3 of the plan year preceding the plan year in which  
 4 the plan amendment becomes effective.

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

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

17 “(F) TREATMENT OF PLAN AMENDMENTS  
 18 WEARING AWAY ACCRUED BENEFIT.—

19 “(i) IN GENERAL.—For purposes of  
 20 subparagraph (A), an applicable plan  
 21 amendment adopted by a large defined  
 22 benefit plan shall be treated as reducing  
 23 accrued benefits of a participant if, under  
 24 the terms of the plan after the adoption of  
 25 the amendment, the accrued benefit of the

1 participant may at any time be less than  
2 the sum 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) DEFINITIONS.—For purposes of  
15 this subparagraph—

16 “(I) APPLICABLE PLAN AMEND-  
17 MENT.—The term ‘applicable plan  
18 amendment’ means a plan amendment  
19 which has the effect of converting the  
20 plan to a plan under which the ac-  
21 crued benefit is expressed to partici-  
22 pants and beneficiaries as an amount  
23 other than an annual benefit com-  
24 mencing at normal retirement age (or  
25 which has a similar effect as deter-

1           mined under regulations of the Sec-  
2           retary).

3           “(II) LARGE DEFINED BENEFIT  
4           PLAN.—The term ‘large defined ben-  
5           efit plan’ means any defined benefit  
6           plan which had 100 or more partici-  
7           pants who had accrued a benefit  
8           under the plan (whether or not vest-  
9           ed) as of the last day of the plan year  
10          preceding the plan year in which the  
11          plan amendment becomes effective.

12          “(III) PROTECTED ACCRUED  
13          BENEFIT.—An accrued benefit shall  
14          include any early retirement benefit or  
15          retirement-type subsidy (within the  
16          meaning of subparagraph (B)(i)), but  
17          only with respect to a participant who  
18          satisfies (either before or after the ef-  
19          fective date of the amendment) the  
20          conditions for the benefit or subsidy  
21          under the terms of the plan as in ef-  
22          fect immediately before such date.”.

23          (c) EFFECTIVE DATE AND RELATED RULES.—

24                  (1) IN GENERAL.—Except as provided in para-  
25          graph (2), the amendments made by this section

1 apply to plan amendments taking effect before, on,  
2 or after the date of the enactment of this Act, except  
3 that such amendments shall not apply to a plan  
4 amendment if the Internal Revenue Service has  
5 issued on or before April 8, 2003, a determination  
6 letter which has the effect of approving the plan  
7 amendment.

8 (2) SPECIAL RULE.—Notwithstanding para-  
9 graph (1), the amendments made by this section  
10 shall not apply in connection with any participant  
11 with respect to any plan amendment which has  
12 taken effect before 90 days after the date of the en-  
13 actment of this Act if, as of the end of such 90-day  
14 period, the plan provides that the participant’s ac-  
15 crued benefit shall at no time be less than the sum  
16 described in section 204(g)(6)(A) of the Employee  
17 Retirement Income Security Act of 1974 (as added  
18 by this section) or section 411(d)(6)(F)(i) of the In-  
19 ternal Revenue Code of 1986 (as added by this sec-  
20 tion) in connection with such plan amendment.

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