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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Emergency Retiree Health Benefits Protection Act of 2009”.

SEC. 2. FINDINGS AND PURPOSES.

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

(1) Retired participants of group health plans regulated by the Employee Retirement Income Secu-
rity Act of 1974 (ERISA) have been severely harmed by the virtually uncheckered practices of sponsors of such plans involving the post-retirement cancellation or reduction of health benefits which retirees counted on receiving for their lifetimes.

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

(A) have been unable to substitute individual coverage for the group coverage they lost, or, in order to obtain individual coverage, have jeopardized their economic security in retirement;

(B) because of preexisting medical conditions cannot obtain substitute coverage that they can afford without depleting their life savings or have been unable to obtain adequate medical care or medical care they had relied on to deal with serious illness;

(C) have sustained catastrophic illnesses or injuries or otherwise experienced a marked deterioration in their medical conditions or health as a result of post-retirement changes to their medical benefits;
(D) have been transferred indiscriminately into improperly or inadequately managed health maintenance organizations or other managed care entities, resulting in the worsening rather than improvement of prior medical conditions; and

(E) in many instances, have failed to obtain adequate relief in the courts due to highly restrictive judicial interpretations which are inconsistent with ERISA’s underlying protective purposes.

(3) The crisis in retirees’ healthcare generated by the plan sponsor practice of post-retirement cancellations or reductions of previously promised retiree health benefits has led to a widespread loss of confidence in the integrity of ERISA-regulated group health plans and the ability of ERISA itself to adequately protect retiree health benefits.

(4) A strong and dependable private sector retiree health system is necessary to the essential health of our Nation’s senior citizens.

(b) PURPOSES.—The purposes of this Act are to ensure that the reasonable health benefit expectations of retirees from ERISA-regulated group health plans are fulfilled, to minimize the incidence of prolonged legal dis-
putes arising out of the post-retirement cancellation or redu-
cution of retiree health benefits from such plans, and to
prevent further adverse effects on retiree health arising
from such post-retirement changes. To this end, the pur-
poses of this Act also include the following:

(1) to safeguard retired participants of group
health plans subject to the Employee Retirement In-
from loss or reduction of their health benefits from
such plans by barring plan sponsors from canceling
or reducing such benefits after the dates such par-
ticipants retire and when they no longer are able to
absorb such losses or reductions without experi-
encing adverse effects on their health or finances;

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

(3) to establish an Emergency Retiree Health
Loan Guarantee Program to assist sponsors of
group health plans subject to the obligation to re-
store retiree health benefits under this Act to obtain credit to assist them in discharging such obligations by providing retiree health loan guarantees that would encourage the availability of such credit.

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

(a) In general.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding at the end a new part 8 as follows:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

“SEC. 801. PROHIBITION AGAINST POST-RETIREMENT REDUCTIONS OF RETIREE HEALTH BENEFITS BY GROUP HEALTH PLANS.

“(a) In general.—Notwithstanding that a group health plan described in subsection (b) may contain a provision reserving the general power to amend or terminate the plan or a provision specifically authorizing the plan to make post-retirement reductions in retiree health benefits, it shall be prohibited for any group health plan, whether through amendment or otherwise, to reduce the benefits provided to a retired participant or his or her beneficiary under the terms of the plan if such reduction of

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benefits occurs after the date the participant retired for purposes of the plan and reduces benefits that were pro-
vided to the participant, or his or her beneficiary, as of the date the participant retired. Any group health plan provision which purports to authorize the reduction of benefits in a manner inconsistent with the foregoing prohi-
bition shall be void as against public policy.

“(b) Group Health Plan.—The term ‘group health plan’ shall have the same meaning as in section 607(1).

“(c) Prohibited Reduction of Benefits.—As used in this section, references to a prohibited reduction of benefits means any group health plan amendment or other action which has the effect of—

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

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

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

“(d) TREATMENT OF PLAN TERMINATION.—

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

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

“(e) CONSENT OR AUTHORIZATION BY PARTICI-
PANT.—A reduction of benefits shall not be treated as pro-
hibited by this section if such reduction is consented to
in writing by any retired participant or is authorized with
respect to the retired participant under the terms of one
or more agreements which the Secretary finds to be collec-
tive bargaining agreements between one or more employee
representatives who were representing such participant at
the time of the entry into such agreement and one or more
employers.

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

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

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

“(a) IN GENERAL.—The plan sponsor of each group
health plan shall provide, in accordance with this section,
the option of benefit restoration to each retired participant
that meets the following requirements:
“(1) The retired participant is entitled to benefit coverage under the plan as of the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2009.

“(2) The amount, type, level, or form of any benefits or option provided to the retired participant under the plan as of the date the participant retired was reduced after the participant’s date of retirement. For purposes of the preceding sentence, the term ‘reduced’ has the same meaning as in section 801(c).

“(3) The retired participant has elected to restore benefits under the plan within the restoration period prescribed by subsection (c) and in accordance with such procedures established by the plan pursuant to regulations of the Secretary.

“(b) Exception for Certain Plans.—In accordance with regulations prescribed by the Secretary, subsection (a) shall not apply to any group health plan with less than 100 participants both on and after the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2009.

“(c) Restoration Period.—The term ‘restoration period’ means the period which—
“(1) begins not later than 1 year after the date
of enactment of the Emergency Retiree Health Ben-
efits Protection Act of 2009;

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

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

“(d) Notice Requirements Concerning Rest-
oration of Benefits.—In accordance with regulations
prescribed by the Secretary, each group health plan sub-
ject to the requirements of subsection (a) shall, within no
less than 30 days prior to the commencement of the plan’s
restoration of benefits period, provide written notice to
each retired participant of the plan who meets the require-
ments of subsection (a) of the following:

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

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

“(3) An itemization of the value of each benefit
the retired participant is entitled to have restored,
as determined in accordance with regulations of the
Secretary, and the total value of all such benefits.
“(4) A description of any post-retirement increases in retiree health benefits the retired participant received which the plan sponsor could rescind if the retired participant asserts a claim for the restoration of benefits.

“(5) An itemization of the value of each retiree health benefit the plan sponsor could rescind, as determined in accordance with regulations of the Secretary, and the total value of all such benefits.

“(6) If the plan sponsor has filed an application for a substantial business hardship exemption under section 804, the date such application was filed, the date notice of such application was given to retired participants entitled to submit a claim for the restoration of benefits, and the status of such application as of the date of the notice sent pursuant to this subsection.

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

“(e) DEADLINE FOR RESTORATION OF BENEFITS.—Regardless of any extension that may be granted by the Secretary pursuant to section 804(g), all benefits required to be restored under this section shall be restored within no more than 3 years from the date of enactment of the
Emergency Retiree Health Benefits Protection Act of 2009, or the date the plan sponsor files an application for an exemption under section 804, whichever comes last.

“SEC. 804. EXEMPTION FROM RESTORATION OF BENEFITS REQUIREMENTS.

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

“(b) AUTHORITY FOR WAIVER OR VARIANCE.—In response to an application filed by a plan sponsor pursuant to subsection (a), the Secretary may waive or vary the requirements of section 803 with respect to any or all of such requirements, including postponing for reasonable periods of time the obligation of the plan sponsor to restore reduced benefits, if the Secretary finds that compliance by the plan sponsor with the requirements of section 803 would—

“(1) be adverse to the interests of plan participants in the aggregate;

“(2) not be administratively feasible; and

“(3) cause substantial business hardship to the plan sponsor.
“(c) Factors Taken into Account.—For purposes of this section, the factors to be taken into account in determining substantial business hardship shall include (but shall not be limited to) whether—

“(1) the plan sponsor is operating at an economic loss;

“(2) compliance with the restoration of benefits requirements would necessitate substantial future reductions in health benefits provided to participants under the plan or cause a substantial decline in employment with the plan sponsor;

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

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

“(d) Requirement of Satisfactory Evidence.—

“(1) in general.—The Secretary shall, before granting a waiver or variance under this section, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided timely written notice of the filing of an application
for such waiver or variance to each retired participant entitled to submit a claim for the restoration of benefits under the applicant’s plan.

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

“(3) Information Required.—The notice referred to in paragraph (1) shall include information with respect to the specific relief that will be sought by the plan sponsor’s application, the period of time for which relief is sought, and such other relevant information as the Secretary may prescribe.

“(e) Participation in Proceedings by Retired Plan Participants.—Each retired participant entitled to submit a claim for the restoration of benefits within the meaning of this section shall be provided a reasonable opportunity to submit comments or otherwise participate in any proceeding established by the Secretary to determine whether to grant or deny an application for a waiver or variance filed by the retired participant’s plan sponsor.

“(f) Exception for Certain Applications.—The Secretary shall not be authorized to grant any application
for a waiver or variance purporting to satisfy the requirements of subsection (b) if—

“(1) within the 5-year period preceding the date of the plan sponsor’s application the plan sponsor could have transferred excess pension assets to a health benefits account within the meaning of section 420 of the Internal Revenue Code of 1986 but failed to do so, and the plan sponsor is submitting an application on behalf of such retiree health account; or

“(2) the plan sponsor submitting the application also maintains a fully funded pension plan with respect to which—

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

“(B) the assets of the fully funded pension plan, over the past 5 years preceding the date of application for a waiver or variance, on average have exceeded 120 percent of the plan’s liabilities;

“(C) the plan had no minimum funding requirement to satisfy within the 5 years preceding the date of application for the waiver or
variance and the plan sponsor submitting the
application made no minimum funding con-
tribution to the fully funded pension plan dur-
ing such 5-year period; and

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

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

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

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

“(1) BOARD.—The term ‘Board’ means the
Emergency Retiree Health Loan Guarantee Board
established under subsection (c).
“(2) Program.—The term ‘Program’ means the Emergency Retiree Health Loan Guarantee Program established under subsection (b).

“(3) Eligible plan sponsor.—The term ‘eligible plan sponsor’ means any plan sponsor as defined in section 3(16)(B) that maintains a group health plan subject to the retiree health benefits restoration requirements of section 803.

“(b) Establishment of Emergency Retiree Health Loan Guarantee Program.—There is established the Retiree Health Loan Guarantee Program, to be administered by the Board, the purpose of which is to provide loan guarantees to eligible plan sponsors in accordance with this section.

“(c) Retiree Health Loan Guarantee Board Membership.—There is established a Retiree Health Loan Guarantee Board, which shall be composed of—

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

“(2) the Secretary of Commerce;

“(3) the Secretary of the Treasury;

“(4) the Secretary of Health and Human Services; and

“(5) the Chairman of the Council of Economic Advisers.
“(d) Retiree Health Loan Guarantee Program.—

“(1) Authority.—The Program may guarantee loans provided by private banking and investment institutions to eligible plan sponsors for purposes of assisting such plan sponsors to meet their obligations under section 803. Such loan guarantees shall be provided to the extent provided in advance in appropriation Acts pursuant to paragraph (4) and only in accordance with the procedures, rules, and regulations established by the Board.

“(2) Total Guarantee Limit.—The aggregate amount of loans guaranteed and outstanding at any time under this section may not exceed $5,000,000,000.

“(3) Individual Guarantee Limit.—The aggregate amount of loans guaranteed under this section with respect to a single eligible plan sponsor may not exceed $5,000,000.

“(4) Additional Costs.—For the additional cost of loans guaranteed under this subsection, including the costs of modifying the loans, as defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a), there is authorized to be ap-
appropriated $200,000,000, to remain available until expended.

"(e) REQUIREMENTS FOR LOAN GUARANTEES.—A loan guarantee may be issued under this section upon application to the Board by an eligible plan sponsor pursuant to an agreement to provide a loan to that eligible plan sponsor by a private bank or investment company, if the Board determines that—

"(1) credit is not otherwise available to that eligible plan sponsor under reasonable terms and conditions sufficient to meet its financing needs with respect to the restoration of retiree health benefits, as reflected in the financial and business plans of that eligible plan sponsor;

"(2) the prospective earning power of that eligible plan sponsor, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms;

"(3) the loan to be guaranteed bears interest at a rate determined by the Board to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of such loan;
“(4) the loan to be guaranteed will materially assist that eligible plan sponsor to discharge its obligation to comply with the restoration of benefits requirements contained in section 803; and

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

“(f) TERMS AND CONDITIONS OF LOAN GUARANTEE.—

“(1) LOAN DURATION.—All loans guaranteed under this section shall be payable in full not later than December 31, 2017, and the terms and conditions of each such loan shall provide that the loan may not be amended or any provision thereof waived without the consent of the Board.

“(2) LOAN SECURITY.—Any commitment to issue a loan guarantee under this section shall contain such affirmative and negative covenants and other protective provisions that the Board determines are appropriate.

“(3) FEES.—An eligible plan sponsor receiving a guarantee under this section shall pay a fee in an amount equal to 0.5 percent of the outstanding prin-
cial balance of the guaranteed loan to the Department of the Treasury.

“(g) REPORTS TO CONGRESS.—The Secretary of Labor shall submit annually to each House of the Congress a full report of the activities of the Board under this section during 2010 and 2011, and annually thereafter during such period as any loan guaranteed under this section is outstanding. Such report shall be submitted not later than January 31 of each year (beginning in 2010).

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

“(i) TERMINATION OF GUARANTEE AUTHORITY.—The authority of the Board to make commitments to guarantee any loan under this section shall terminate on December 31, 2015.

“(j) REGULATORY ACTION.—The Board shall issue such final procedures, rules, and regulations as may be necessary to carry out this section not later than 90 days after the date of enactment of the Emergency Retiree Health Benefits Protection Act of 2009. In no event shall
the Board issue a procedure, rule, or regulation which au-
thorizes it to approve or deny any application for a loan
guarantee in more than 270 days after receipt of such ap-
plication.

“SEC. 806. EFFECT ON OTHER CLAIMS.

“(a) Other Claims Unaffected.—Nothing con-
tained in this part shall be construed to alter, impair, or
eliminate any claim for retiree health benefits based on
conduct alleged to violate the terms of a group health plan,
any provision of this Act (other than this part), or both,
regardless of whether such conduct occurred prior to, on,
or after, the effective date of this part.

“(b) Other Causes of Action Not Author-
ized.—Unless the conduct giving rise to a claim for re-
tiree health benefits is alleged to violate the provisions of
this part, nothing contained in this part shall be construed
to authorize any other cause of action for the recovery of
retiree health benefits.

“SEC. 807. REGULATIONS.

“The Secretary may promulgate such regulations as
may be necessary to carry out the provisions of this part.
The Secretary may promulgate any interim final rules as
the Secretary deems are appropriate to carry out this part.
“SEC. 808. ENFORCEMENT.

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

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

(1) by redesignating the second paragraph (10) as paragraph (12); and

(2) by inserting after the first paragraph (10) (relating to Secretarial enforcement authority relating to use of genetic information) the following new paragraph:

“(11) ENFORCEMENT OF RETIREE HEALTH BENEFIT PROTECTIONS.—The Secretary may assess a civil penalty of not more than $1,000 for each separate violation of section 801, 802, or 803 by any person individually with respect to each participant or beneficiary aggrieved by such violation.”.

(c) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by inserting after the item relating to section 734 the following new items:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

“Sec. 801. Prohibition against post-retirement reductions of retiree health benefits by group health plans.

“Sec. 802. Adoption by group health plans of provision barring post-retirement reductions in retiree health benefits.

“Sec. 803. Restoration by group health plans of benefits reduced after retirement.
Sec. 4. SEPARABILITY OF PROVISIONS.

The provisions of section 509 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1139) shall be applicable to this Act and the amendments made thereby.

Sec. 5. EFFECTIVE DATE.

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