To amend the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and title 5, United States Code, to improve the protection of pension benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2007

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, and title 5, United States Code, to improve the protection of pension benefits, and for other purposes.

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 “Restoring Pension Promises to Workers Act”.

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TITLE I—AMENDMENTS TO THE
EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974
AND THE INTERNAL REVENUE CODE OF 1986

SEC. 101. NO EXCLUSION FOR COMPENSATION UNDER NON-QUALIFIED DEFERRED COMPENSATION PLANS UNLESS EMPLOYER MAINTAINS QUALIFIED EMPLOYER PLAN.

(a) IN GENERAL.—Paragraph (1) of section 409A(a) of the Internal Revenue Code of 1986 (relating to inclusion in gross income of deferred compensation under non-qualified deferred compensation plans) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) GROSS INCOME INCLUSION FOR EMPLOYER FAILURES.—If at any time during a taxable year an employer maintaining a non-qualified deferred compensation plan fails to meet the requirements of subsection (e), all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substan-
(b) Requirement To Maintain Qualified Employer Plan.—Section 409A of the Internal Revenue Code of 1986 (relating to inclusion in gross income of deferred compensation under nonqualified deferred compensation plans) is amended by redesignating subsection (e) as subsection (f) and by adding after subsection (d) the following new subsection:

“(e) Requirement That Employer Maintain Qualified Employer Plans.—

“(1) In General.—An employer meets the requirements of this subsection only if, at all times during the taxable year, the employer maintains 1 or more qualified employer plans which are defined benefit plans and which meet—

“(A) the participation requirements of paragraph (2),

“(B) the vesting requirements of paragraph (3), and

“(C) the minimum benefit requirements of paragraph (4).

“(2) Participation Requirements.—A qualified employer plan shall meet the requirements of
this paragraph if the plan meets the requirements of section 410(b).

“(3) Vesting requirements.—A qualified employer plan shall meet the requirements of this paragraph if the plan meets the requirements of section 416(b)(1).

“(4) Minimum benefit requirements.—A qualified employer plan shall meet the requirements of this paragraph if the plan meets the requirements of section 416(c)(1), except that such section shall be applied for purposes of this paragraph by determining the applicable percentage under section 416(c)(1)(B)(i) (and without regard to section 416(c)(1)(B)(ii)).

“(5) Applicable rules.—The Secretary shall prescribe rules for the application of sections 410(b), 416(b), and 416(c)(1) for purposes of this subsection. Such rules shall provide—

“(A) for such modifications to such sections are necessary to apply such sections to a qualified employer plan which is not a plan described in section 401(a) which includes a trust exempt from tax under section 501(a), including for the exclusion of employees from the application of section 410(b) in the same manner
as employees may be excluded under paragraphs (3) and (4) of section 410(b), and

“(B) for the application of section 416 to a qualified employer plan which is not a top-heavy plan.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007, except that the amendments shall only apply to amounts deferred after December 31, 2007 (and to earnings on such amounts).

(2) GUIDANCE RELATING TO CERTAIN EXISTING ARRANGEMENTS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before such date of enactment, may, without violating the requirements of section 409A(a) of such Code, be amended—

(A) to provide that a participant may, no later than December 31, 2008—

(i) terminate participation in the plan,

or
(ii) cancel or modify an outstanding deferral election with regard to all or a portion of amounts deferred after December 31, 2007, to the extent necessary for the plan to meet the requirements of section 409A(a)(1)(B) of such Code (as added by the amendments made by this section), but only if amounts subject to the termination, cancellation, or modification are, to the extent not previously included in gross income, includible in income of the participant when no longer subject to substantial risk of forfeiture, and

(B) to conform to the requirements of section 409A(a)(1)(B) of such Code (as added by the amendments made by this section) with regard to amounts deferred after December 31, 2007.

SEC. 102. LIMITATIONS ON RECOVERY OF OVERPAYMENTS TO PARTICIPANTS AND BENEFICIARIES.

(a) IN GENERAL.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

“(h) SPECIAL RULES RELATING TO PLAN RECOVERY OF OVERPAYMENT OF BENEFITS.—
“(1) NO RECOVERY IN CASES OF HARDSHIP OR INSIGNIFICANT AMOUNTS.—Each pension plan shall provide that the plan shall not take any action to recover any applicable overpayment if the recovery—

“(A) would be against equity and good conscience by reason of the hardship the recovery would impose on the participant or beneficiary, or

“(B) is of an amount that the plan’s actuary determines is actuarially insignificant.

For purposes of subparagraph (B), if the error resulting in the overpayment also resulted in overpayments to 1 or more other participants or beneficiaries, the determination as to whether any such overpayment is actuarially insignificant shall be made by reference to the aggregate of all such overpayments rather than each such overpayment.

“(2) TIME LIMITATION ON RECOVERY.—Each pension plan shall provide that the plan shall not initiate any action to recover any applicable overpayment if the plan did not initiate any such action with respect to the overpayment during the 3-year period beginning on the date the overpayment was made.
“(3) **NOTICE REQUIREMENT.**—Any notice to a plan participant or beneficiary with respect to an applicable overpayment shall include notice of the participant’s or beneficiary’s rights to appeal any administrative decision of the plan with respect to the overpayment.

“(4) **SATISFACTION OF FIDUCIARY RESPONSIBILITY.**—A fiduciary of a plan shall not be treated as violating any fiduciary responsibility under part 4 of this subtitle solely by reason of a failure to recover any applicable overpayment in accordance with the requirements of this subsection.

“(5) **APPLICABLE OVERPAYMENT.**—The term ‘applicable overpayment’ means any payment of benefits to a participant or beneficiary in excess of the amount to which the participant or beneficiary is entitled to under the plan which is not due to the fault of the participant or beneficiary.”.

(b) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendment made by this section shall apply to any overpayment of benefits made on or after the date of the enactment of this Act.

(2) **PREVIOUS OVERPAYMENTS.**—The amendment made by this section shall apply to any over-
payment of benefits made before the date of the enactment of this Act if, on or before such date, the plan has not initiated any action to recover such overpayment.

(3) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Labor shall issue guidance on the method or methods for determining whether an overpayment is actuarially insignificant for purposes of section 206(h)(1)(B) of the Employee Retirement Income Security Act of 1974 (as added by this section).

SEC. 103. PROTECTION OF SUBSIDIZED EARLY RETIREMENT BENEFITS IN CORPORATE MERGERS AND ACQUISITIONS.

(a) AMENDMENT TO ERISA.—Section 208 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1058) is amended by—

(1) striking “A pension plan” and inserting “(a) IN GENERAL.—A pension plan”; and

(2) adding at the end the following:

“(b) PROTECTION OF PRO-RATA SHARE OF EARLY RETIREMENT SUBSIDY.—If—

“(1) an employee, following the sale of a corporation or a corporate division, liquidation, merger, consolidation, sale of an interest in another corpora-
tion, partnership, or joint venture, or other similar transaction, continues employment with the employer that acquires all or part of the trade or business in such transaction (referred to in this subsection as the ‘successor employer’), and

“(2) the employee was a participant in a pension plan maintained by the previous employer before such transaction,

then, solely for the purpose of determining eligibility for any subsidized early retirement benefit provided by such plan, there shall be taken into account any periods of service with the successor employer that would have been taken into account had such transaction not occurred.”.

(b) Amendment to the Internal Revenue Code.—Section 414(l) of the Internal Revenue Code of 1986 (relating to mergers and consolidations of plans) is amended by adding at the end the following:

“(3) Protection of pro-rata share of early retirement subsidy.—If—

“(A) an employee, following the sale of a corporation or a corporate division, liquidation, merger, consolidation, sale of an interest in another corporation, partnership, or joint venture, or other similar transaction, continues employ-
ment with the employer that acquires all or part of the trade or business in such transaction (referred to in this paragraph as the ‘successor employer’), and

“(B) the employee was a participant in a pension plan maintained by the previous employer before such transaction,

then, solely for the purpose of determining eligibility for any subsidized early retirement benefit provided by such plan, there shall be taken into account any periods of service with the successor employer that would have been taken into account had such transaction not occurred.’’.

SEC. 104. OFFICE OF PENSION PARTICIPANT ADVOCACY.

(a) In General.—Title III of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1201 et seq.) is amended by adding at the end the following:

“Subtitle D—Office of Pension Participant Advocacy

“SEC. 3051. OFFICE OF PENSION PARTICIPANT ADVOCACY.

“(a) Establishment.—

“(1) In General.—There is established in the Department of Labor an office to be known as the ‘Office of Pension Participant Advocacy’.
“(2) PENSION PARTICIPANT ADVOCATE.—The Office of Pension Participant Advocacy shall be under the supervision and direction of an official to be known as the ‘Pension Participant Advocate’ who shall—

“(A) have demonstrated experience in the area of pension participant assistance, and

“(B) be selected by the Secretary after consultation with pension participant advocacy organizations.

The Pension Participant Advocate shall report directly to the Secretary and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.

“(b) FUNCTIONS OF OFFICE.—It shall be the function of the Office of Pension Participant Advocacy to—

“(1) evaluate the efforts of the Federal Government, business, and financial, professional, retiree, labor, women’s, and other appropriate organizations in assisting and protecting pension plan participants, including—

“(A) serving as a focal point for, and actively seeking out, the receipt of information
with respect to the policies and activities of the Federal Government, business, and such organizations which affect such participants,

“(B) identifying significant problems for pension plan participants and the capabilities of the Federal Government, business, and such organizations to address such problems, and

“(C) developing proposals for changes in such policies and activities to correct such problems, and communicating such changes to the appropriate officials,

“(2) promote the expansion of pension plan coverage and the receipt of promised benefits by increasing the awareness of the general public of the value of pension plans and by protecting the rights of pension plan participants, including—

“(A) enlisting the cooperation of the public and private sectors in disseminating information, and

“(B) forming private-public partnerships and other efforts to assist pension plan participants in receiving their benefits,

“(3) advocate for the full attainment of the rights of pension plan participants, including by
making pension plan sponsors and fiduciaries aware of their responsibilities,

“(4) give priority to the special needs of low and moderate income participants, and

“(5) develop needed information with respect to pension plans, including information on the types of existing pension plans, levels of employer and employee contributions, vesting status, accumulated benefits, benefits received, and forms of benefits.

“(c) Reports.—

“(1) Annual Report.—Not later than December 31 of each calendar year, the Pension Participant Advocate shall report to the Committees on Education and Labor and Ways and Means of the House of Representatives and the Committees on Health, Education, Labor, and Pensions and Finance of the Senate on its activities during the fiscal year ending in the calendar year. Such report shall—

“(A) identify significant problems the Advocate has identified,

“(B) include specific legislative and regulatory changes to address the problems, and

“(C) identify any actions taken to correct problems identified in any previous report.
The Pension Participant Advocate shall submit a copy of such report to the Secretary and any other appropriate official at the same time it is submitted to the committees of Congress.

“(2) SPECIFIC REPORTS.—The Pension Participant Advocate shall report to the Secretary or any other appropriate official any time the Advocate identifies a problem which may be corrected by the Secretary or such official.

“(3) REPORTS TO BE SUBMITTED DIRECTLY.—The report required under paragraph (1) shall be provided directly to the committees of Congress without any prior review or comment by any person other than the Secretary or any other Federal officer or employee.

“(d) SPECIFIC POWERS.—

“(1) RECEIPT OF INFORMATION.—Subject to such confidentiality requirements as may be appropriate, the Secretary and other Federal officials shall, upon request, provide such information (including plan documents) as may be necessary to enable the Pension Participant Advocate to carry out the Advocate’s responsibilities under this section.

“(2) APPEARANCES.—The Pension Participant Advocate may represent the views and interests of
pension plan participants before any Federal agency, including, upon request of a participant, in any proceeding involving the participant.

“(3) CONTRACTING AUTHORITY.—In carrying out responsibilities under subsection (b)(5), the Pension Participant Advocate may, in addition to any other authority provided by law—

“(A) contract with any person to acquire statistical information with respect to pension plan participants, and

“(B) conduct direct surveys of pension plan participants.”.

(b) CONFORMING AMENDMENT.—The table of contents for title III of such Act is amended by adding at the end the following:

“Subtitle D—Office of Pension Participant Advocacy

“3051. Office of Pension Participant Advocacy.”.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2009.

SEC. 105. PROSPECTIVE APPLICATION OF REQUIRED BENEFIT REDUCTIONS UNDER PLANS IN CRITICAL STATUS.

(a) IN GENERAL.—

(1) AMENDMENT TO ERISA.—Clause (ii) of section 305(e)(8)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.
1085(e)(8)(A)(ii)) is amended by striking “the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year” and inserting “the effective date of the reduction specified in the notice which the plan provides to the participant or beneficiary under subparagraph (C)”.

(2) Amendment to 1986 Code.—Clause (ii) of section 432(e)(8)(A) of the Internal Revenue Code of 1986 is amended by striking “the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year” and inserting “the effective date of the reduction specified in the notice which the plan provides to the participant or beneficiary under subparagraph (C)”.

(b) Notice Requirements.—

(1) Amendment to ERISA.—Subclause (II) of section 305(b)(3)(D)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(b)(3)(D)(ii)(II)) is amended by striking “the date such notice is provided for the first plan year in which the plan is in critical status” and inserting “the effective date of the reduction specified in the
notice which the plan provides to the participant or beneficiary under subsection (e)(8)(C)”.

(2) Amendment to 1986 Code.—Subclause (II) of section 432(b)(3)(D)(ii) of the Internal Revenue Code of 1986 is amended by striking “the date such notice is provided for the first plan year in which the plan is in critical status” and inserting “the effective date of the reduction specified in the notice which the plan provides to the participant or beneficiary under subsection (e)(8)(C)”.

(c) Effective Date.—The amendments made by this section shall take effect as if included in the amendments made by sections 202 and 212 of the Pension Protection Act of 2006 to which they relate.

TITLE II—PROTECTION FOR THE SPOUSES OF FEDERAL EMPLOYEES

SEC. 201. SURVIVOR ANNUITIES FOR WIDOWS, WIDowers, AND FORMER SPOUSES OF FEDERAL EMPLOYEES WHO DIE BEFORE ATTAINING AGE FOR DEFERRED ANNUITY UNDER CIVIL SERVICE RETIREMENT SYSTEM.

(a) Definition.—Section 8341(a) of title 5, United States Code, is amended—
(1) in paragraph (1), by striking “employee or Member” and inserting “employee, Member, or annuitant, or of a former employee or Member,”; and

(2) in paragraph (2), by striking “employee or Member” and inserting “employee, Member, or annuitant, or of a former employee or Member,”.

(b) BENEFITS FOR WIDOW, WIDOWER, OR FORMER SPOUSE.—

(1) IN GENERAL.—Section 8341 of title 5, United States Code, is amended by adding at the end the following:

“(l) If a former employee heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a widow or widower to whom married at the date of separation, the widow or widower—

“(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the former employee commencing on the day after the former employee dies and terminating on the last day of the month before the widow or widower dies or remarries before becoming 55 years of age; or

“(2) may elect to receive the lump-sum credit instead of annuity if the widow or widower is the in-
dividual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the widow or widower of a former employee may not exceed the difference between—

“(A) the annuity which would otherwise be payable to such widow or widower under this subsection, and

“(B) the amount of the survivor annuity payable to any former spouse of such former employee under subsection (h) of this section.”.

(2) Technical and Conforming Amendments.—Section 8339(j) of title 5, United States Code, is amended—

(A) in paragraph (3)(A)(ii), by striking “and (h)” and inserting “(h), and (l)”; and

(B) in paragraph (4), by striking “and (h)” and inserting “(h), and (l)”.

(c) Benefits for Former Spouse.—Section 8341(h) of title 5, United States Code, is amended—

(1) in paragraph (1), by adding after the first sentence “Subject to paragraphs (2) through (5) of this subsection, a former spouse of a former employee who dies after having separated from the
service with title to a deferred annuity under section 8338(a) but before having established a valid claim for annuity is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.”; and

(2) in paragraph (2)—

(A) in subparagraph (A)(ii), by striking “or annuitant,” and inserting “annuitant, or former employee”; and

(B) in subparagraph (B)—

(i) in clause (ii), by striking “or” at the end;

(ii) in clause (iii), by striking the period and inserting “; or”; and

(iii) by adding at the end the following:

“(iv) under subparagraph (A) of subsection (l) of this section in the case of a widow or widower, if the deceased was a former employee described in the first sentence of such subsection.”.
(d) Protection of Survivor Benefit Rights.—
Section 8339(j)(3) of title 5, United States Code, is
amended by inserting at the end the following:

“The Office shall provide by regulation for the applic-
ation of this subsection to the widow, widower, or sur-
viving former spouse of a former employee who dies after
having separated from the service with title to a deferred
annuity under section 8338(a) but before having estab-
lished a valid claim for annuity.”.

(e) Effective Date.—The amendments made by
this section shall take effect on the date of the enactment
of this Act and shall apply only in the case of a former
employee who dies on or after such date.

SEC. 202. COURT ORDERS RELATING TO FEDERAL RETIRE-
MENT BENEFITS FOR FORMER SPOUSES OF
FEDERAL EMPLOYEES.

(a) Civil Service Retirement System.—Section
8345(j) of title 5, United States Code, is amended—

(1) by redesignating paragraph (3) as para-
graph (4); and

(2) by inserting after paragraph (2) the fol-
lowing:

“(3)(A) A court decree, court order, property settle-
ment, or similar process referred to under paragraph
(1)(A) shall be treated as meeting the requirements of
that paragraph if it requires that payment of benefits be made to the former spouse of the employee, Member, or annuitant—

“(i) in the case of any payment before the employee, Member, or annuitant has separated from service, on or after the date on which the employee, Member, or annuitant attains (or would have attained) the earliest retirement age,

“(ii) as if the employee, Member, or annuitant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

“(iii) in any form in which such benefits may be paid under this chapter to the employee, Member, or annuitant (other than in the form of a joint and survivor annuity with respect to the former spouse and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified under this chapter or, if no rate is specified, 5 percent.

“(B) In this paragraph, the term ‘earliest retirement age’ means the earlier of—
“(i) the date on which the employee, Member, or annuitant is entitled to a distribution under this chapter, or
“(ii) the later of—
“(I) the date the employee, Member, or annuitant attains age 50, or
“(II) the earliest date on which the employee, Member, or annuitant could begin receiving benefits under this chapter if the employee, Member, or annuitant separated from service.”.

(b) Federal Employees Retirement System.—
Section 8467 of title 5, United States Code, is amended—
(1) by redesignating subsection (c) as subsection (d); and
(2) by inserting after subsection (b) the following:
“(c)(1) A court decree, court order, property settlement, or similar process referred to under subsection (a)(1) shall be treated as meeting the requirements of that subsection if it requires that payment of benefits be made to the former spouse of the employee, Member, or annuitant—
“(A) in the case of any payment before the employee, Member, or annuitant has separated from
service, on or after the date on which the employee, Member, or annuitant attains (or would have attained) the earliest retirement age,

“(B) as if the employee, Member, or annuitant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

“(C) in any form in which such benefits may be paid under this chapter to the employee, Member, or annuitant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subparagraph (B), the interest rate assumption used in determining the present value shall be the interest rate specified under this chapter or, if no rate is specified, 5 percent.

“(2) In this subsection, the term ‘earliest retirement age’ means the earlier of—

“(A) the date on which the employee, Member, or annuitant is entitled to a distribution under this chapter, or

“(B) the later of—
“(i) the date the employee, Member, or annuitant attains age 50, or

“(ii) the earliest date on which the employee, Member, or annuitant could begin receiving benefits under this chapter if the employee, Member, or annuitant separated from service.”

(c) EFFECTIVE DATE AND APPLICATION.—The amendments made by this section shall take effect on the date of the enactment of this Act and apply to any court decree, court order, property settlement, or similar process issued or approved before, on, or after that date.

SEC. 203. ELIMINATION OF CERTAIN BARS TO ELIGIBILITY FOR SURVIVOR ANNUITY.

Section 4(b) of the Civil Service Spouse Equity Act of 1984 (5 U.S.C. 8341 note) is amended—

(1) in paragraph (1)(B)(i), by striking “after September 14, 1978, and”; and

(2) by striking paragraph (4).
SEC. 204. ORDER OF PRECEDENCE FOR DISPOSITION OF AMOUNTS REMAINING IN THE THRIFT SAVINGS ACCOUNT OF A FEDERAL EMPLOYEE (OR FORMER EMPLOYEE) WHO DIES BEFORE MAKING AN EFFECTIVE ELECTION CONTROLLING SUCH DISPOSITION.

(a) In General.—Section 8433(e) of title 5, United States Code, is amended—

(1) by striking ``(e)'' and inserting ``(e)(1)'';

(2) by striking all that follows ``paid'' and inserting ``in accordance with paragraph (2).''; and

(3) by adding at the end the following:

``(2)(A) An amount under paragraph (1) shall be paid in a manner consistent with the provisions of section 8424(d), except that, in applying the order of precedence under such provisions—

``(i) the widow or widower of the decedent shall be the first party entitled to receive (instead of any designated beneficiary); and

``(ii) if there is no widow or widower, the party next entitled to receive shall be the beneficiary or beneficiaries designated by the employee or Member (or former employee or Member) in accordance with the procedures that would otherwise normally apply, subject to such additional conditions as the Executive Director shall by regulation prescribe based on
section 205(c)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(2)).

“(B) The order of precedence under subparagraph (A) shall not apply if the widow or widower consents in writing to the application of the order of precedence under section 8424(d).”

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 90th day after the date of the enactment of this Act, and shall apply in the case of any individual who dies on or after such 90th day.