

110TH CONGRESS
1ST SESSION

S. 1725

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.

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 “Restoring Pension
5 Promises to Workers Act”.

1 **TITLE I—AMENDMENTS TO THE**
2 **EMPLOYEE RETIREMENT IN-**
3 **COME SECURITY ACT OF 1974**
4 **AND THE INTERNAL REV-**
5 **ENUE CODE OF 1986**

6 **SEC. 101. NO EXCLUSION FOR COMPENSATION UNDER NON-**
7 **QUALIFIED DEFERRED COMPENSATION**
8 **PLANS UNLESS EMPLOYER MAINTAINS**
9 **QUALIFIED EMPLOYER PLAN.**

10 (a) IN GENERAL.—Paragraph (1) of section 409A(a)
11 of the Internal Revenue Code of 1986 (relating to inclu-
12 sion in gross income of deferred compensation under non-
13 qualified deferred compensation plans) is amended by re-
14 designating subparagraph (B) as subparagraph (C) and
15 by inserting after subparagraph (A) the following new sub-
16 paragraph:

17 “(B) GROSS INCOME INCLUSION FOR EM-
18 PLOYER FAILURES.—If at any time during a
19 taxable year an employer maintaining a non-
20 qualified deferred compensation plan fails to
21 meet the requirements of subsection (e), all
22 compensation deferred under the plan for the
23 taxable year and all preceding taxable years
24 shall be includible in gross income for the tax-
25 able year to the extent not subject to a substan-

1 tial risk of forfeiture and not previously in-
2 cluded in gross income.”.

3 (b) REQUIREMENT TO MAINTAIN QUALIFIED EM-
4 PLOYER PLAN.—Section 409A of the Internal Revenue
5 Code of 1986 (relating to inclusion in gross income of de-
6 ferred compensation under nonqualified deferred com-
7 pensation plans) is amended by redesignating subsection
8 (e) as subsection (f) and by adding after subsection (d)
9 the following new subsection:

10 “(e) REQUIREMENT THAT EMPLOYER MAINTAIN
11 QUALIFIED EMPLOYER PLANS.—

12 “(1) IN GENERAL.—An employer meets the re-
13 quirements of this subsection only if, at all times
14 during the taxable year, the employer maintains 1 or
15 more qualified employer plans which are defined
16 benefit plans and which meet—

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

19 “(B) the vesting requirements of para-
20 graph (3), and

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

23 “(2) PARTICIPATION REQUIREMENTS.—A quali-
24 fied employer plan shall meet the requirements of

1 this paragraph if the plan meets the requirements of
2 section 410(b).

3 “(3) VESTING REQUIREMENTS.—A qualified
4 employer plan shall meet the requirements of this
5 paragraph if the plan meets the requirements of sec-
6 tion 416(b)(1).

7 “(4) MINIMUM BENEFIT REQUIREMENTS.—A
8 qualified employer plan shall meet the requirements
9 of this paragraph if the plan meets the requirements
10 of section 416(c)(1), except that such section shall
11 be applied for purposes of this paragraph by deter-
12 mining the applicable percentage under section
13 416(c)(1)(B)(i) (and without regard to section
14 416(c)(1)(B)(ii)).

15 “(5) APPLICABLE RULES.—The Secretary shall
16 prescribe rules for the application of sections 410(b),
17 416(b), and 416(c)(1) for purposes of this sub-
18 section. Such rules shall provide—

19 “(A) for such modifications to such sec-
20 tions are necessary to apply such sections to a
21 qualified employer plan which is not a plan de-
22 scribed in section 401(a) which includes a trust
23 exempt from tax under section 501(a), includ-
24 ing for the exclusion of employees from the ap-
25 plication of section 410(b) in the same manner

1 as employees may be excluded under para-
2 graphs (3) and (4) of section 410(b), and

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

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by
8 this section shall apply to taxable years beginning
9 after December 31, 2007, except that the amend-
10 ments shall only apply to amounts deferred after
11 December 31, 2007 (and to earnings on such
12 amounts).

13 (2) GUIDANCE RELATING TO CERTAIN EXISTING
14 ARRANGEMENTS.—Not later than 60 days after the
15 date of the enactment of this Act, the Secretary of
16 the Treasury shall issue guidance providing a limited
17 period during which a nonqualified deferred com-
18 pensation plan adopted before such date of enact-
19 ment, may, without violating the requirements of
20 section 409A(a) of such Code, be amended—

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

23 (i) terminate participation in the plan,
24 or

1 (ii) cancel or modify an outstanding
2 deferral election with regard to all or a
3 portion of amounts deferred after Decem-
4 ber 31, 2007, to the extent necessary for
5 the plan to meet the requirements of sec-
6 tion 409A(a)(1)(B) of such Code (as added
7 by the amendments made by this section),
8 but only if amounts subject to the termination,
9 cancellation, or modification are, to the extent
10 not previously included in gross income, includ-
11 ible in income of the participant when no longer
12 subject to substantial risk of forfeiture, and

13 (B) to conform to the requirements of sec-
14 tion 409A(a)(1)(B) of such Code (as added by
15 the amendments made by this section) with re-
16 gard to amounts deferred after December 31,
17 2007.

18 **SEC. 102. LIMITATIONS ON RECOVERY OF OVERPAYMENTS**

19 **TO PARTICIPANTS AND BENEFICIARIES.**

20 (a) IN GENERAL.—Section 206 of the Employee Re-
21 tirement Income Security Act of 1974 (29 U.S.C. 1056)
22 is amended by adding at the end the following new sub-
23 section:

24 “(h) SPECIAL RULES RELATING TO PLAN RECOV-
25 ERY OF OVERPAYMENT OF BENEFITS.—

1 “(1) NO RECOVERY IN CASES OF HARDSHIP OR
2 INSIGNIFICANT AMOUNTS.—Each pension plan shall
3 provide that the plan shall not take any action to re-
4 cover any applicable overpayment if the recovery—

5 “(A) would be against equity and good
6 conscience by reason of the hardship the recov-
7 ery would impose on the participant or bene-
8 ficiary, or

9 “(B) is of an amount that the plan’s actu-
10 ary determines is actuarially insignificant.

11 For purposes of subparagraph (B), if the error re-
12 sulting in the overpayment also resulted in overpay-
13 ments to 1 or more other participants or bene-
14 ficiaries, the determination as to whether any such
15 overpayment is actuarially insignificant shall be
16 made by reference to the aggregate of all such over-
17 payments rather than each such overpayment.

18 “(2) TIME LIMITATION ON RECOVERY.—Each
19 pension plan shall provide that the plan shall not
20 initiate any action to recover any applicable overpay-
21 ment if the plan did not initiate any such action
22 with respect to the overpayment during the 3-year
23 period beginning on the date the overpayment was
24 made.

1 “(3) NOTICE REQUIREMENT.—Any notice to a
2 plan participant or beneficiary with respect to an ap-
3 plicable overpayment shall include notice of the par-
4 ticipant’s or beneficiary’s rights to appeal any ad-
5 ministrative decision of the plan with respect to the
6 overpayment.

7 “(4) SATISFACTION OF FIDUCIARY RESPONSIBI-
8 LITY.—A fiduciary of a plan shall not be treated
9 as violating any fiduciary responsibility under part 4
10 of this subtitle solely by reason of a failure to re-
11 cover any applicable overpayment in accordance with
12 the requirements of this subsection.

13 “(5) APPLICABLE OVERPAYMENT.—The term
14 ‘applicable overpayment’ means any payment of ben-
15 efits to a participant or beneficiary in excess of the
16 amount to which the participant or beneficiary is en-
17 titled to under the plan which is not due to the fault
18 of the participant or beneficiary.”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendment made by
21 this section shall apply to any overpayment of bene-
22 fits made on or after the date of the enactment of
23 this Act.

24 (2) PREVIOUS OVERPAYMENTS.—The amend-
25 ment made by this section shall apply to any over-

1 payment of benefits made before the date of the en-
2 actment of this Act if, on or before such date, the
3 plan has not initiated any action to recover such
4 overpayment.

5 (3) GUIDANCE.—Not later than 90 days after
6 the date of the enactment of this Act, the Secretary
7 of Labor shall issue guidance on the method or
8 methods for determining whether an overpayment is
9 actuarially insignificant for purposes of section
10 206(h)(1)(B) of the Employee Retirement Income
11 Security Act of 1974 (as added by this section).

12 **SEC. 103. PROTECTION OF SUBSIDIZED EARLY RETIRE-**
13 **MENT BENEFITS IN CORPORATE MERGERS**
14 **AND ACQUISITIONS.**

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

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

20 (2) adding at the end the following:

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

23 “(1) an employee, following the sale of a cor-
24 poration or a corporate division, liquidation, merger,
25 consolidation, sale of an interest in another corpora-

1 tion, partnership, or joint venture, or other similar
 2 transaction, continues employment with the em-
 3 ployer that acquires all or part of the trade or busi-
 4 ness in such transaction (referred to in this sub-
 5 section as the ‘successor employer’), and

6 “(2) the employee was a participant in a pen-
 7 sion plan maintained by the previous employer be-
 8 fore such transaction,

9 then, solely for the purpose of determining eligibility
 10 for any subsidized early retirement benefit provided
 11 by such plan, there shall be taken into account any
 12 periods of service with the successor employer that
 13 would have been taken into account had such trans-
 14 action not occurred.”.

15 (b) AMENDMENT TO THE INTERNAL REVENUE

16 CODE.—Section 414(l) of the Internal Revenue Code of
 17 1986 (relating to mergers and consolidations of plans) is
 18 amended by adding at the end the following:

19 “(3) PROTECTION OF PRO-RATA SHARE OF
 20 EARLY RETIREMENT SUBSIDY.—If—

21 “(A) an employee, following the sale of a
 22 corporation or a corporate division, liquidation,
 23 merger, consolidation, sale of an interest in an-
 24 other corporation, partnership, or joint venture,
 25 or other similar transaction, continues employ-

1 ment with the employer that acquires all or
 2 part of the trade or business in such trans-
 3 action (referred to in this paragraph as the
 4 ‘successor employer’), and

5 “(B) the employee was a participant in a
 6 pension plan maintained by the previous em-
 7 ployer before such transaction,

8 then, solely for the purpose of determining eligibility
 9 for any subsidized early retirement benefit provided
 10 by such plan, there shall be taken into account any
 11 periods of service with the successor employer that
 12 would have been taken into account had such trans-
 13 action not occurred.”.

14 **SEC. 104. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

15 (a) IN GENERAL.—Title III of the Employee Retire-
 16 ment Income Security Act of 1974 (29 U.S.C. 1201 et
 17 seq.) is amended by adding at the end the following:

18 **“Subtitle D—Office of Pension**
 19 **Participant Advocacy**

20 **“SEC. 3051. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

21 “(a) ESTABLISHMENT.—

22 “(1) IN GENERAL.—There is established in the
 23 Department of Labor an office to be known as the
 24 ‘Office of Pension Participant Advocacy’.

1 “(2) PENSION PARTICIPANT ADVOCATE.—The
2 Office of Pension Participant Advocacy shall be
3 under the supervision and direction of an official to
4 be known as the ‘Pension Participant Advocate’ who
5 shall—

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

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

11 The Pension Participant Advocate shall report di-
12 rectly to the Secretary and shall be entitled to com-
13 pensation at the same rate as the highest rate of
14 basic pay established for the Senior Executive Serv-
15 ice under section 5382 of title 5, United States
16 Code.

17 “(b) FUNCTIONS OF OFFICE.—It shall be the func-
18 tion of the Office of Pension Participant Advocacy to—

19 “(1) evaluate the efforts of the Federal Govern-
20 ment, business, and financial, professional, retiree,
21 labor, women’s, and other appropriate organizations
22 in assisting and protecting pension plan participants,
23 including—

24 “(A) serving as a focal point for, and ac-
25 tively seeking out, the receipt of information

1 with respect to the policies and activities of the
2 Federal Government, business, and such organi-
3 zations which affect such participants,

4 “(B) identifying significant problems for
5 pension plan participants and the capabilities of
6 the Federal Government, business, and such or-
7 ganizations to address such problems, and

8 “(C) developing proposals for changes in
9 such policies and activities to correct such prob-
10 lems, and communicating such changes to the
11 appropriate officials,

12 “(2) promote the expansion of pension plan cov-
13 erage and the receipt of promised benefits by in-
14 creasing the awareness of the general public of the
15 value of pension plans and by protecting the rights
16 of pension plan participants, including—

17 “(A) enlisting the cooperation of the public
18 and private sectors in disseminating informa-
19 tion, and

20 “(B) forming private-public partnerships
21 and other efforts to assist pension plan partici-
22 pants in receiving their benefits,

23 “(3) advocate for the full attainment of the
24 rights of pension plan participants, including by

1 making pension plan sponsors and fiduciaries aware
2 of their responsibilities,

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

5 “(5) develop needed information with respect to
6 pension plans, including information on the types of
7 existing pension plans, levels of employer and em-
8 ployee contributions, vesting status, accumulated
9 benefits, benefits received, and forms of benefits.

10 “(c) REPORTS.—

11 “(1) ANNUAL REPORT.—Not later than Decem-
12 ber 31 of each calendar year, the Pension Partici-
13 pant Advocate shall report to the Committees on
14 Education and Labor and Ways and Means of the
15 House of Representatives and the Committees on
16 Health, Education, Labor, and Pensions and Fi-
17 nance of the Senate on its activities during the fiscal
18 year ending in the calendar year. Such report
19 shall—

20 “(A) identify significant problems the Ad-
21 vocate has identified,

22 “(B) include specific legislative and regu-
23 latory changes to address the problems, and

24 “(C) identify any actions taken to correct
25 problems identified in any previous report.

1 The Pension Participant Advocate shall submit a
2 copy of such report to the Secretary and any other
3 appropriate official at the same time it is submitted
4 to the committees of Congress.

5 “(2) SPECIFIC REPORTS.—The Pension Partici-
6 pant Advocate shall report to the Secretary or any
7 other appropriate official any time the Advocate
8 identifies a problem which may be corrected by the
9 Secretary or such official.

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

16 “(d) SPECIFIC POWERS.—

17 “(1) RECEIPT OF INFORMATION.—Subject to
18 such confidentiality requirements as may be appro-
19 priate, the Secretary and other Federal officials
20 shall, upon request, provide such information (in-
21 cluding plan documents) as may be necessary to en-
22 able the Pension Participant Advocate to carry out
23 the Advocate’s responsibilities under this section.

24 “(2) APPEARANCES.—The Pension Participant
25 Advocate may represent the views and interests of

1 pension plan participants before any Federal agency,
 2 including, upon request of a participant, in any pro-
 3 ceeding involving the participant.

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

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

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

13 (b) CONFORMING AMENDMENT.—The table of con-
 14 tents for title III of such Act is amended by adding at
 15 the end the following:

“Subtitle D—Office of Pension Participant Advocacy
 “3051. Office of Pension Participant Advocacy.”.

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

18 **SEC. 105. PROSPECTIVE APPLICATION OF REQUIRED BEN-**
 19 **EFIT REDUCTIONS UNDER PLANS IN CRIT-**
 20 **ICAL STATUS.**

21 (a) IN GENERAL.—

22 (1) AMENDMENT TO ERISA.—Clause (ii) of sec-
 23 tion 305(e)(8)(A) of the Employee Retirement In-
 24 come Security Act of 1974 (29 U.S.C.

1 1085(e)(8)(A)(ii) is amended by striking “the date
2 on which the plan provides notice to the participant
3 or beneficiary under subsection (b)(3)(D) for the ini-
4 tial critical year” and inserting “the effective date of
5 the reduction specified in the notice which the plan
6 provides to the participant or beneficiary under sub-
7 paragraph (C)”.

8 (2) AMENDMENT TO 1986 CODE.—Clause (ii) of
9 section 432(e)(8)(A) of the Internal Revenue Code
10 of 1986 is amended by striking “the date on which
11 the plan provides notice to the participant or bene-
12 ficiary under subsection (b)(3)(D) for the initial crit-
13 ical year” and inserting “the effective date of the re-
14 duction specified in the notice which the plan pro-
15 vides to the participant or beneficiary under sub-
16 paragraph (C)”.

17 (b) NOTICE REQUIREMENTS.—

18 (1) AMENDMENT TO ERISA.—Subclause (II) of
19 section 305(b)(3)(D)(ii) of the Employee Retirement
20 Income Security Act of 1974 (29 U.S.C.
21 1085(b)(3)(D)(ii)(II)) is amended by striking “the
22 date such notice is provided for the first plan year
23 in which the plan is in critical status” and inserting
24 “the effective date of the reduction specified in the

1 notice which the plan provides to the participant or
2 beneficiary under subsection (e)(8)(C)”.

3 (2) AMENDMENT TO 1986 CODE.—Subclause
4 (II) of section 432(b)(3)(D)(ii) of the Internal Rev-
5 enue Code of 1986 is amended by striking “the date
6 such notice is provided for the first plan year in
7 which the plan is in critical status” and inserting
8 “the effective date of the reduction specified in the
9 notice which the plan provides to the participant or
10 beneficiary under subsection (e)(8)(C)”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect as if included in the amend-
13 ments made by sections 202 and 212 of the Pension Pro-
14 tection Act of 2006 to which they relate.

15 **TITLE II—PROTECTION FOR THE**
16 **SPOUSES OF FEDERAL EM-**
17 **PLOYEES**

18 **SEC. 201. SURVIVOR ANNUITIES FOR WIDOWS, WIDOWERS,**
19 **AND FORMER SPOUSES OF FEDERAL EM-**
20 **PLOYEES WHO DIE BEFORE ATTAINING AGE**
21 **FOR DEFERRED ANNUITY UNDER CIVIL**
22 **SERVICE RETIREMENT SYSTEM.**

23 (a) DEFINITION.—Section 8341(a) of title 5, United
24 States Code, is amended—

1 (1) in paragraph (1), by striking “employee or
2 Member” and inserting “employee, Member, or an-
3 nuitant, or of a former employee or Member,”; and

4 (2) in paragraph (2), by striking “employee or
5 Member” and inserting “employee, Member, or an-
6 nuitant, or of a former employee or Member,”.

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

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

12 “(1) If a former employee heretofore or hereafter sep-
13 arated from the service with title to deferred annuity from
14 the Fund hereafter dies before having established a valid
15 claim for annuity and is survived by a widow or widower
16 to whom married at the date of separation, the widow or
17 widower—

18 “(1) is entitled to an annuity equal to 55 per-
19 cent of the deferred annuity of the former employee
20 commencing on the day after the former employee
21 dies and terminating on the last day of the month
22 before the widow or widower dies or remarries before
23 becoming 55 years of age; or

24 “(2) may elect to receive the lump-sum credit
25 instead of annuity if the widow or widower is the in-

1 dividual who would be entitled to the lump-sum
2 credit and files application therefor with the Office
3 before the award of the annuity.

4 Notwithstanding the preceding sentence, an annuity pay-
5 able under this subsection to the widow or widower of a
6 former employee may not exceed the difference between—

7 “(A) the annuity which would otherwise be pay-
8 able to such widow or widower under this subsection,
9 and

10 “(B) the amount of the survivor annuity pay-
11 able to any former spouse of such former employee
12 under subsection (h) of this section.”.

13 (2) TECHNICAL AND CONFORMING AMEND-
14 MENTS.—Section 8339(j) of title 5, United States
15 Code, is amended—

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

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

20 (c) BENEFITS FOR FORMER SPOUSE.—Section
21 8341(h) of title 5, United States Code, is amended—

22 (1) in paragraph (1), by adding after the first
23 sentence “Subject to paragraphs (2) through (5) of
24 this subsection, a former spouse of a former em-
25 ployee who dies after having separated from the

1 service with title to a deferred annuity under section
2 8338(a) but before having established a valid claim
3 for annuity is entitled to a survivor annuity under
4 this subsection, if and to the extent expressly pro-
5 vided for in an election under section 8339(j)(3) of
6 this title, or in the terms of any decree of divorce
7 or annulment or any court order or court-approved
8 property settlement agreement incident to such de-
9 cree.”; and

10 (2) in paragraph (2)—

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

14 (B) in subparagraph (B)—

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

17 (ii) in clause (iii), by striking the pe-
18 riod and inserting “; or”; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(iv) under subparagraph (A) of sub-
22 section (1) of this section in the case of a
23 widow or widower, if the deceased was a
24 former employee described in the first sen-
25 tence of such subsection.”.

1 (d) PROTECTION OF SURVIVOR BENEFIT RIGHTS.—
 2 Section 8339(j)(3) of title 5, United States Code, is
 3 amended by inserting at the end the following:

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

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

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

17 (a) CIVIL SERVICE RETIREMENT SYSTEM.—Section
 18 8345(j) of title 5, United States Code, is amended—

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

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

23 “(3)(A) A court decree, court order, property settle-
 24 ment, or similar process referred to under paragraph
 25 (1)(A) shall be treated as meeting the requirements of

1 that paragraph if it requires that payment of benefits be
2 made to the former spouse of the employee, Member, or
3 annuitant—

4 “(i) in the case of any payment before the em-
5 ployee, Member, or annuitant has separated from
6 service, on or after the date on which the employee,
7 Member, or annuitant attains (or would have at-
8 tained) the earliest retirement age,

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

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

20 For purposes of clause (ii), the interest rate assumption
21 used in determining the present value shall be the interest
22 rate specified under this chapter or, if no rate is specified,
23 5 percent.

24 “(B) In this paragraph, the term ‘earliest retirement
25 age’ means the earlier of—

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

4 “(ii) the later of—

5 “(I) the date the employee, Member, or an-
6 nuitant attains age 50, or

7 “(II) the earliest date on which the em-
8 ployee, Member, or annuitant could begin re-
9 ceiving benefits under this chapter if the em-
10 ployee, Member, or annuitant separated from
11 service.”.

12 (b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—
13 Section 8467 of title 5, United States Code, is amended—

14 (1) by redesignating subsection (c) as sub-
15 section (d); and

16 (2) by inserting after subsection (b) the fol-
17 lowing:

18 “(c)(1) A court decree, court order, property settle-
19 ment, or similar process referred to under subsection
20 (a)(1) shall be treated as meeting the requirements of that
21 subsection if it requires that payment of benefits be made
22 to the former spouse of the employee, Member, or annu-
23 itant—

24 “(A) in the case of any payment before the em-
25 ployee, Member, or annuitant has separated from

1 service, on or after the date on which the employee,
2 Member, or annuitant attains (or would have at-
3 tained) the earliest retirement age,

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

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

15 For purposes of subparagraph (B), the interest rate as-
16 sumption used in determining the present value shall be
17 the interest rate specified under this chapter or, if no rate
18 is specified, 5 percent.

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

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

24 “(B) the later of—

1 **SEC. 204. ORDER OF PRECEDENCE FOR DISPOSITION OF**
2 **AMOUNTS REMAINING IN THE THRIFT SAV-**
3 **INGS ACCOUNT OF A FEDERAL EMPLOYEE**
4 **(OR FORMER EMPLOYEE) WHO DIES BEFORE**
5 **MAKING AN EFFECTIVE ELECTION CONTROL-**
6 **LING SUCH DISPOSITION.**

7 (a) IN GENERAL.—Section 8433(e) of title 5, United
8 States Code, is amended—

9 (1) by striking “(e)” and inserting “(e)(1)”;

10 (2) by striking all that follows “paid” and in-
11 serting “in accordance with paragraph (2).”; and

12 (3) by adding at the end the following:

13 “(2)(A) An amount under paragraph (1) shall be paid
14 in a manner consistent with the provisions of section
15 8424(d), except that, in applying the order of precedence
16 under such provisions—

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

20 “(ii) if there is no widow or widower, the party
21 next entitled to receive shall be the beneficiary or
22 beneficiaries designated by the employee or Member
23 (or former employee or Member) in accordance with
24 the procedures that would otherwise normally apply,
25 subject to such additional conditions as the Execu-
26 tive Director shall by regulation prescribe based on

1 section 205(c)(2) of the Employee Retirement In-
2 come Security Act of 1974 (29 U.S.C. 1055(c)(2)).

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

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

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