

107TH CONGRESS  
1ST SESSION

# H. R. 2370

To amend the Internal Revenue Code of 1986 to modify the exception from the treatment of welfare benefit funds for 10-or-more employer plans.

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2001

Mr. WELLER (for himself and Mr. NEAL of Massachusetts) introduced the following bill; which was referred to the Committee on Ways and Means

---

## A BILL

To amend the Internal Revenue Code of 1986 to modify the exception from the treatment of welfare benefit funds for 10-or-more employer plans.

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 “Small Business Wel-  
5 fare Benefits Protection Act”.

6 **SEC. 2. MODIFICATION OF EXCEPTION FOR 10-OR-MORE**  
7 **EMPLOYER PLANS FROM TREATMENT OF**  
8 **WELFARE BENEFIT FUNDS.**

9 (a) IN GENERAL.—Paragraph (6) of section 419A(f)  
10 of the Internal Revenue Code of 1986 (relating to excep-

1 tion for 10-or-more employer plans) is amended by adding  
2 at the end the following new subparagraphs:

3           “(C)    EXPERIENCE-RATING    ARRANGE-  
4            MENT.—For purposes of subparagraph (A), a  
5            plan does not maintain an experience-rating ar-  
6            rangement if it provides that, at all times, all  
7            plan assets are available as a single, undivided  
8            pool to provide benefits to the covered employ-  
9            ees of all individual employers participating in  
10           the plan.

11           “(D)   ANTIDISCRIMINATION   RULE.—Sub-  
12            paragraph (A) shall not apply to a 10 or more  
13            employer plan unless—

14                   “(i) benefits under the plan are avail-  
15                   able to all covered employees under the  
16                   same formula,

17                   “(ii) the plan benefits each employee  
18                   who has attained at least the age of 21,  
19                   who works 1,000 hours or more annually,  
20                   and who has completed at least 1 year of  
21                   service (as defined in section 410(a)(3)),

22                   “(iii) all benefit formulas under the  
23                   plan provide a uniform multiple of com-  
24                   pensation to all participants, except that  
25                   highly compensated employees can have a

1 lower benefit than the uniform multiple of  
2 compensation provided,

3 “(iv) upon employer termination from  
4 the trust—

5 “(I) all eligible employees are en-  
6 titled to a pro rata share of the plan’s  
7 assets, and

8 “(II) benefit payments include  
9 payment to all former eligible employ-  
10 ees terminated 24 months or less  
11 prior to employer termination from  
12 the trust,

13 “(v) for each employer group, there is  
14 at least 1 employee participating in the  
15 plan who is not an owner-employee for  
16 every 2 owner-employees participating in  
17 the plan, and

18 “(vi) the trust maintains a ratio of  
19 plan participants that is at least 3 employ-  
20 ees who are not owner-employees to each  
21 owner-employee.

22 For purposes of this subparagraph, the term  
23 ‘owner-employee’ has the meaning given to such  
24 term by section 416(i).

1           “(E) DISTRIBUTION OF BENEFITS AND  
2 PLAN ASSETS.—Subparagraph (A) shall not  
3 apply to a 10 or more employer plan unless—

4                   “(i) none of the assets of the plan  
5 may revert to any employer,

6                   “(ii) no loan may be made under the  
7 plan to any employee, and

8                   “(iii) upon termination of employer  
9 participation in the trust—

10                   “(I) for plans without severance  
11 benefits, an employer may terminate  
12 participation in the trust only if all  
13 employees of the employer receive a  
14 pro rata share of the benefits,

15                   “(II) for plans with severance  
16 benefits, plan assets used to fund sev-  
17 erance benefits can be distributed only  
18 for severance benefits which are lim-  
19 ited to 200 percent of so much of the  
20 annual compensation as does not ex-  
21 ceed the limitation under section  
22 401(a)(17), and payable over not  
23 more than 24 months, or other bene-  
24 fits as provided under the plan, and

1                   “(III) for plans with post-retire-  
2                   ment medical benefits, plan assets  
3                   used to fund post-retirement medical  
4                   benefits can be distributed only for  
5                   post-retirement medical benefits.

6                   If any plan participant, including an owner,  
7                   dies prior to using all the post-retirement med-  
8                   ical benefits to which he or she is entitled under  
9                   the plan, the unused amounts revert to the  
10                  trust (a forfeiture). If a participating business  
11                  owner terminates participation in the plan due  
12                  to insolvency, sale, merger-acquisition or other  
13                  Treasury-approved event, plan assets attrib-  
14                  utable to post-retirement medical benefits must  
15                  remain in the plan until/unless they are paid in  
16                  the form of medical expense reimbursement  
17                  post-retirement.

18                  “(F) ROLLOVER.—Subparagraph (A) shall  
19                  not apply to a 10 or more employer plan unless  
20                  the plan permits plan participants to transfer  
21                  benefits from such plan to a similar multiple  
22                  employer welfare benefit plan. No amount shall  
23                  be includible in the gross income of a plan par-  
24                  ticipant by reason of such a transfer.

1           “(G) BENEFIT LIMITATIONS.—Subpara-  
2 graph (A) shall not apply to a 10 or more em-  
3 ployer plan unless benefits payable to plan par-  
4 ticipants are limited to the following:

5           “(i) DEATH BENEFITS.—Minimum  
6 death benefit amounts are determined ei-  
7 ther by the plan formula or, if greater, by  
8 the minimum issue amounts determined by  
9 the plan’s life insurance provider.

10          “(ii) SEVERANCE BENEFITS.—Max-  
11 imum severance benefits are determined in  
12 accordance with Department of Labor reg-  
13 ulations and may not exceed 200 percent  
14 of so much of the annual compensation as  
15 does not exceed the limitation under sec-  
16 tion 401(a)(17).

17          “(iii) POST-RETIREMENT MEDICAL  
18 BENEFITS.—Benefits may not be paid  
19 prior to normal retirement age. Normal re-  
20 tirement age would be the year of eligi-  
21 bility for medicare, or total and permanent  
22 disability as defined under the Social Secu-  
23 rity Act. Assets funding post-retirement  
24 medical benefits revert to the plan if not  
25 paid prior to death to a participating eligi-

1 ble employee. Assets used to fund post-re-  
2 tirement medical benefits are payable to  
3 the estate of a deceased eligible partici-  
4 pating employee to pay any uncovered  
5 medical expenses of the deceased employee  
6 participant's estate.

7 “(H) DEDUCTION LIMITATIONS.—Deduc-  
8 tions for contributions to a 10 or more em-  
9 ployer plan trust shall not exceed—

10 “(i) for insured death benefits, of  
11 which the plan trustee is the sole life in-  
12 surance policy owner—

13 “(I) in the case of term insur-  
14 ance, the annual term premium,

15 “(II) in the case of a whole life  
16 insurance policy, the level annual pre-  
17 mium to normal retirement age, or

18 “(III) in the case of universal life  
19 insurance, the guideline level annual  
20 premium (as defined in section 7702),

21 “(ii) for severance benefits, an  
22 amount determined using reasonable actu-  
23 arial principles needed to fund the pur-  
24 chase of the level of benefits as stated in  
25 the plan document, but no prefunding of

1 the benefit in excess of the amount needed  
2 to fund the current benefit amount would  
3 be permitted, and

4 “(iii) for medical, health, and dis-  
5 ability benefits, an amount required to pay  
6 an insurance company premium, or in the  
7 case of a self-funded plan, amounts needed  
8 to cover the anticipated liability, but such  
9 contributions would be forfeited to the wel-  
10 fare benefit trust if the employer plan par-  
11 ticipant dies or terminates prior to pay-  
12 ment of these benefits, or if the employer  
13 terminates participation in the welfare ben-  
14 efit trust.

15 “(I) FORFEITURE POOL.—Subparagraph  
16 (A) shall not apply to a 10 or more employer  
17 plan unless all assets in the forfeiture pool are  
18 used in a nondiscriminatory manner for the  
19 benefit of participating employees.”

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall take effect on the date of first committee  
22 action, but benefits earned as of that date may be funded  
23 at the level at which they exist as of such date with de-  
24 ductible contributions if the plans are brought into compli-

- 1 ance with the rules of such amendment within 24 months
- 2 after such date of enactment.

○