

111TH CONGRESS
1ST SESSION

H. R. 4082

To authorize the Secretary of Energy to pay affected participants under a pension plan referred to in the USEC Privatization Act for benefit increases not received.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2009

Mr. WHITFIELD introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To authorize the Secretary of Energy to pay affected participants under a pension plan referred to in the USEC Privatization Act for benefit increases not received.

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. AUTHORIZATION AND DETERMINATION OF**
4 **BENEFITS FOR AFFECTED PARTICIPANTS.**

5 (a) AUTHORIZATION FOR PAYMENT TO AFFECTED
6 PARTICIPANTS.—To the extent provided in advance in ap-
7 propriations Acts, the Secretary of Energy (referred to in
8 this Act as the “Secretary”)—

1 (1) shall establish a program under which the
2 Secretary shall pay any affected participant de-
3 scribed in subsection (b) a one-time lump sum pay-
4 ment in an amount to be determined by the Sec-
5 retary under subsection (c); and

6 (2) may contract for the procurement of infor-
7 mation necessary to enable the Secretary to effec-
8 tively carry out the provisions of this section.

9 (b) AFFECTED PARTICIPANT.—For the purposes of
10 this section, an affected participant is a person described
11 under section 3110(a)(6)(B) of the USEC Privatization
12 Act (42 U.S.C. 2297h–8(a)(6)(B)).

13 (c) DETERMINATION OF PAYMENT FOR AFFECTED
14 PARTICIPANTS.—

15 (1) IN GENERAL.—The Secretary shall pay an
16 affected participant, pursuant to an application
17 timely filed by such participant, a one-time lump
18 sum payment equal to an amount which bears the
19 same ratio to the total recoverable amount described
20 in paragraph (2) as the actuarial present value of
21 the accrued benefits of the affected participant
22 under the pension plan from which a transfer of
23 plan assets and liabilities required under section
24 3110(a)(2) of the USEC Privatization Act (42
25 U.S.C. 2297h–8(a)(2)) was made (as of immediately

1 before the transfer) bears to the actuarial present
2 value of the accrued benefits of all affected partici-
3 pants under the pension plan from which the trans-
4 fer under such section was made (as of immediately
5 before the transfer).

6 (2) TOTAL RECOVERABLE AMOUNT.—For pur-
7 poses of this subsection, the total recoverable
8 amount is an amount equal to the excess of—

9 (A) the present value of benefits that
10 would have been accrued or accruable by all af-
11 fected participants under the pension plan from
12 which the transfer under section 3110(a)(2) of
13 the USEC Privatization Act was made if such
14 transfer had not occurred and if benefit in-
15 creases had occurred, in connection with the
16 transferred liabilities, under such plan equiva-
17 lent to benefit increases that have occurred
18 under such plan in connection with the other li-
19 abilities under such plan, over

20 (B) the present value of benefits accrued
21 or accruable by all such affected participants
22 under the pension plan to which the transfer
23 under section 3110(a)(2) of the USEC Privat-
24 ization Act (42 U.S.C. 2297h–8(a)(2)) was
25 made.

1 (3) CONSIDERATIONS.—In determining a pay-
2 ment under this section, the Secretary shall con-
3 sider, with respect to the pension plan from which
4 the transfer under section 3110(a)(2) of the USEC
5 Privatization Act (42 U.S.C. 2297h–8(a)(2)) was
6 made and the pension plan to which such transfer
7 was made, benefits accrued as of the date of enact-
8 ment of this Act and accruable through attainment
9 of normal retirement age, assuming continued serv-
10 ice under the plan until attainment of such age and
11 the same rate of basic pay subject to increases re-
12 flective of reasonably anticipated increases in the
13 cost of living.

14 (4) SUCCESSOR PLANS.—For the purposes of
15 paragraphs (2) and (3), any reference to the pension
16 plan from which the transfer under section
17 3110(a)(2) of the USEC Privatization Act (42
18 U.S.C. 2297h–8(a)(2)) was made shall include a ref-
19 erence to any successor to such plan (other than the
20 pension plan to which the transfer required by such
21 section was made) if such successor plan received as-
22 sets in excess of the actuarial present value of ac-
23 crued benefits under such plan upon succession.

24 (d) PRO RATA REDUCTION OF PAYMENT.—The Sec-
25 retary shall provide for pro rata reductions in payment

1 amounts determined by the Secretary under subsection (c)
2 to affected participants described in subsection (b) to the
3 extent necessary to adjust for amounts provided in appro-
4 priation Acts for purposes of the program under sub-
5 section (a).

6 (e) DETERMINATION OF FINDINGS OF FACT.—The
7 Secretary may make findings of facts and decisions as to
8 the rights of any affected participant applying for a pay-
9 ment under this section.

10 (f) RULEMAKING.—Not later than 60 days after the
11 date of enactment of this Act, the Secretary shall issue
12 regulations to carry out this section. Such regulations
13 shall provide a requirement for applicants for payments
14 under this section to consent to the release of any informa-
15 tion requested by the Secretary.

16 (g) PUBLIC NOTICE.—To the extent practicable, the
17 Secretary shall provide notice to individuals who may be
18 eligible to receive a payment under this section.

19 (h) APPLICATION FOR PAYMENT.—To be eligible for
20 a payment under this section, an affected participant shall
21 prepare and submit to the Secretary an application—

22 (1) not later than 240 days after the date of
23 enactment of this Act;

24 (2) in such manner; and

1 (3) containing such information as the Sec-
2 retary requires.

3 (i) **TIMELY PAYMENTS.**—To the extent practicable,
4 the Secretary shall determine and make a payment to an
5 affected participant not later than 180 days after such
6 participant’s submission of an application for payment
7 under subsection (h).

8 (j) **HEARING AND JUDICIAL REVIEW.**—

9 (1) **HEARING.**—

10 (A) **IN GENERAL.**—Upon request by any
11 affected participant applying for a payment
12 under this section, who makes a showing in
13 writing that such participant’s rights may have
14 been prejudiced by any decision the Secretary
15 has rendered, the Secretary shall give such par-
16 ticipant reasonable notice and opportunity for a
17 hearing with respect to such decision, and, if a
18 hearing is held, shall, on the basis of evidence
19 adduced at the hearing, affirm, modify, or re-
20 verse the Secretary’s findings of fact and such
21 decision.

22 (B) **REQUEST FOR HEARING.**—Any request
23 for a hearing under this subsection must be
24 filed within 60 days after notice of a decision

1 by the Secretary is received by the affected par-
2 ticipant making such a request.

3 (C) SECRETARY.—The Secretary is further
4 authorized, on the Secretary's own motion, to
5 hold such hearings and to conduct such inves-
6 tigation and other proceedings as the Sec-
7 retary may deem necessary or proper for the
8 administration of this section.

9 (2) JUDICIAL REVIEW.—

10 (A) IN GENERAL.—Any affected partici-
11 pant, after any final decision of the Secretary
12 made after a hearing to which such participant
13 was a party, irrespective of the amount in con-
14 troversy, may obtain a review of such decision
15 by a civil action commenced within 60 days
16 after the mailing to such participant of notice
17 of such decision or within such further time as
18 the Secretary may allow.

19 (B) JURISDICTION AND VENUE.—An ac-
20 tion under this section shall be brought in the
21 district court of the United States for the judi-
22 cial district in which the affected participant
23 plaintiff resides, or where such plaintiff has a
24 principal place of business, or, if such plaintiff
25 does not reside or have a principal place of

1 business within any such judicial district, in the
2 United States District Court for the District of
3 Columbia.

4 (C) JUDICIAL DETERMINATION.—The
5 court shall have power to enter, upon the plead-
6 ings and transcript of the record, a judgment
7 affirming, modifying, or reversing the decision
8 of the Secretary, with or without remanding the
9 cause for a rehearing.

10 (D) FINAL JUDGMENT.—The judgment of
11 the court shall be final, except that it shall be
12 subject to review in the same manner as a judg-
13 ment in other civil actions.

14 (E) CHANGE IN SECRETARY.—Any action
15 instituted in accordance with this section shall
16 survive notwithstanding any change in the per-
17 son occupying the office of Secretary or any va-
18 cancy in such office.

19 (k) SECRETARY'S RESPONSIBILITY; NO THIRD
20 PARTY LIABILITY.—

21 (1) SECRETARY'S RESPONSIBILITY.—The Sec-
22 retary shall be responsible for all payments and
23 costs under this section and for answering questions
24 relating to the implementation of this section for af-
25 fected participants and applicants for payment. In

1 no event shall the current or former employer of an
2 affected participant or applicant be responsible for
3 providing communication, making payments, report-
4 ing payments, answering questions, or providing cal-
5 culations.

6 (2) NO THIRD PARTY LIABILITY.—Nothing in
7 this section shall be deemed to impose any liability
8 or cost, or authorize any claim against the operator
9 of the Department of Energy’s uranium enrichment
10 facility in Paducah, Kentucky, or against any person
11 or entity other than the Secretary.

12 (1) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Secretary such
14 amounts as necessary to carry out this section.

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