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Nos. 12-4834-cv, 12-4839-cv, 12-4851-cv, 12-4861-cv, 12-4912-cv

RAFAEL ALCANTARA, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED, ALONSO GOMEZ, INDIVIDUALLY, AND ON BEHALF  
OF ALL OTHERS SIMILARLY SITUATED, CELESTINO JUAREZ,  
INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,  
VASILICHIA BABU, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED, ANGEL DE LA CRUZ, INDIVIDUALLY, AND ON  
BEHALF OF ALL OTHERS SIMILARLY SITUATED, KHIM CHAND,  
INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,  
TESFAYE GHEBREMEDHIN, INDIVIDUALLY, AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED, RATHIN DUTTA GUPTA, INDIVIDUALLY,  
AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, LUIS MEJIA,  
INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,  
ANTONIO MEROLLA, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED, ROLANDO MONTANO, INDIVIDUALLY, AND ON  
BEHALF OF ALL OTHERS SIMILARLY SITUATED, RUSSELL NEUBERT,  
INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,  
TAGLIARENI SALVATORE, INDIVIDUALLY, AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED, MUSOVIC SMAIL, INDIVIDUALLY, AND ON  
BEHALF OF ALL OTHERS SIMILARLY SITUATED, JUAN F. TORRES,  
INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

1 KENNETH KERN, MELVIN MENARD, GARRETT SCHOL, GUY STALTER,  
2 ALMOND REID, MICHAEL D'ANTONIO, PHILLIP ROGERS, DONALD  
3 SCROGHAM, BRIAN K. FOWLER, SR., JOSEPH ALTAMORE, INDIVIDUALLY,  
4 AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, LESLIE DURHAM,  
5 RANDALL FARMER, RODNEY SIMPSON, JAMES THOMAS, JAMES SMITH,  
6 STEVEN SHANKLES, MATTIE DAVIS, JOYCE SLATON, RICKEY MEDLEY,  
7 KATHY BENEFIELD, TIMOTHY WRIGHT, M.D., RODNEY FOSTER, SANDRA  
8 BRANDON, EDDIE WRIGHT, TOMMY WOMACK, ROGER WOOTEN, RICKEY  
9 WILBORN, GARY WHITMORE, WALTER WATSON, DANNY WHITE, TERRY  
10 WAGNER, DANIEL THURMAN, RICKY TEAT, BEECHER TANNER, JR.,  
11 MICHAEL SLATON, TOMMY SIBERT, DONNA SMITH, CHRIS SMITH, GARY  
12 SARRATT, CHARLES ROGERS, WILLIAM RICHEY, GUY RICE, PHYLLIS  
13 CRAZE, GARY MEDLEY, RANDALL MOORE, MARK MONEY, MICHAEL  
14 NORRIS, TONY NELSON, DONALD JONES, DAVID LAWMAN, TONEY IVEY,  
15 ROBERT JONES, LARRY INGLE, BILLY HOLKEM, HERBERT HEAD, PAMULA  
16 HARPER, RODNEY BROTHERS, DENNIS BRANDON, CONNIE BURGESS,  
17 RUTH BAILEY, JIMMY AMMONS, KENNETH BEARDEN, NICKEY GORHAM,  
18 RALPH FLYNN, JAMES FERGUSON, WALTER ESLOON, GLENDA DUPREE,  
19 ROGER DAVIS, ALAN DALTON, JAMES CRAWFORD, DOUGLAS COMBS,  
20 MELISSA CISCO, BILLY COOK, CHARLES COKER, BILLY CATHEY,  
21 KENNETH BURT, DANIEL CARTER, EDWARD BEARDEN, SHEILA  
22 HAMMOND, SALVADOR MARTINEZ, RANDALL GARRISON, LESLIE  
23 CADDICK, JOSEPH BARELA, SHEILA JUAREZ, ROGER GONZALEZ, PHILLIP  
24 G. SCOTT, INDIVIDUALLY AND AS REPRESENTATIVE ON BEHALF OF A  
25 CLASS OF SIMILARLY SITUATED PERSONS, TERRY WAYNE FINCH, TERRY  
26 MOORE, RONALD BLACKWELL,  
27 *Plaintiffs-Appellees,*

28 JOHN STEVEN CHAMBERS, KEVIN WATERS,  
29 *Plaintiffs,*

30 *v.*

1 BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL  
2 PENSION FUND PENSION PLAN, BAKERY AND CONFECTIONERY UNION  
3 AND INDUSTRY INTERNATIONAL PENSION FUND BOARD OF TRUSTEES, AS  
4 PLAN ADMINISTRATOR, JOHN DOES 3-10, AS TRUSTEES OF THE BAKERY  
5 AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION  
6 FUND, FRANK HURT, STEVEN V. BERTELLI, DAVID B. DURKEE, ANTHONY  
7 JOHNSON, ART MONTMINY, ROBERT OAKLEY, RANDY D. ROARK, JOSEPH  
8 THIBODEAU, RICHARD B. COOK, DAN CRAIG, THOMAS G. KIRCHNER,  
9 JON MCPHERSON, LOU MINELLA, JOHN WAGNER, JOHN DOE NO. 1,  
10 JOHN DOE NO. 2, AS TRUSTEES OF THE BAKERY AND CONFECTIONERY  
11 UNION AND INDUSTRY INTERNATIONAL PENSION FUND, THE BAKERY  
12 AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL PENSION  
13 FUND, JOHN BECK, PLAN MANAGER, BAKERY AND CONFECTIONERY  
14 UNION AND INDUSTRY INTERNATIONAL PENSION FUND BOARD OF  
15 TRUSTEES, BAKERY AND CONFECTIONERY UNION AND INDUSTRY  
16 INTERNATIONAL PENSION FUND,  
17 *Defendants-Appellants.*<sup>1</sup>  
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19 Appeal from the United States District Court  
20 for the Southern District of New York.  
21 Nos. 11 Civ. 1471, 11 Civ. 9203, 12 Civ. 141,  
22 12 Civ. 142, 12 Civ. 913 — Vincent L. Briccetti, *Judge*.  
23

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24 ARGUED: NOVEMBER 20, 2013  
25 DECIDED: MAY 1, 2014  
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<sup>1</sup>The Clerk of Court is directed to amend the official caption to conform to the listing above.

1 Before: KEARSE, JACOBS, and B.D. PARKER, *Circuit Judges*.

2  
3 Appeal from a judgment of the United States District Court for  
4 the Southern District of New York (Briccetti, J.). The district court  
5 held that the anti-cutback rule in § 204(g) of the Employee  
6 Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1054(g),  
7 precludes plan amendments that reduce retirement-type subsidies  
8 for Plaintiffs-Appellees who ceased employment without satisfying  
9 the preamendment conditions for the subsidy, but who could later  
10 satisfy the conditions without returning to work. We **AFFIRM** the  
11 judgment of the district court.

12  
13 JULIA PENNY CLARK (Jeremiah A. Collins, Osvaldo  
14 Vazquez, *on the brief*), Bredhoff & Kaiser PLLC,  
15 Washington, DC, *for Bakery and Confectionery*  
16 *Union and Industry International Pension Fund*  
17 *Pension Plan, Bakery and Confectionery Union and*  
18 *Industry International Pension Fund Board of*  
19 *Trustees, as Plan Administrator, John Does 3-10, as*  
20 *Trustees of the Bakery and Confectionery Union and*  
21 *Industry International Pension Fund, Frank Hurt,*  
22 *Steven V. Bertelli, David B. Durkee, Anthony Johnson,*  
23 *Art Montminy, Robert Oakley, Randy D. Roark,*  
24 *Joseph Thibodeau, Richard B. Cook, Dan Craig,*  
25 *Thomas G. Kirchner, Jon McPherson, Lou Minella,*  
26 *John Wagner, John Doe No. 1, John Doe No. 2, as*  
27 *Trustees of the Bakery and Confectionery Union and*  
28 *Industry International Pension Fund, The Bakery and*  
29 *Confectionery Union and Industry International*  
30 *Pension Fund, John Beck, Plant Manager, Bakery and*  
31 *Confectionery Union and Industry International*

1 *Pension Fund Board of Trustees, Bakery and*  
2 *Confectionery Union and Industry International*  
3 *Pension Fund.*

4 BENJAMIN GOULD (Lynn L. Sarko, Derek W.  
5 Loeser, David S. Preminger, Erin M. Riley, Alison  
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10 Frumkin & Hunter LLP, White Plains, NY *for*  
11 *Alcantara Plaintiffs.*

12 Thomas O. Sinclair (M. Clayborn Williams, *on the*  
13 *brief*), Sinclair Williams LLC, Birmingham, AL, *for*  
14 *Phillip G. Scott and Terry Wayne Finch.*

15 DAVID P. MARTIN, The Martin Law Group, LLC,  
16 Tuscaloosa, AL, Robert Brett Adair, Adair Law  
17 Firm, LLC, Birmingham, AL, *for Blackwell,*  
18 *Martinez, and Moore Plaintiffs.*

19  
20 BARRINGTON D. PARKER, *Circuit Judge:*

21 In this appeal from a judgment of the United States District  
22 Court for the Southern District of New York (Vincent L. Briccetti,  
23 *Judge*) we consider whether the anti-cutback rule in § 204(g) of the  
24 Employee Retirement Income Security Act of 1974 (“ERISA”), 29  
25 U.S.C. § 1054(g), precludes plan amendments that reduce retirement-  
26 type subsidies for plan participants who have ceased employment  
27 without satisfying the preamendment conditions for the subsidy, but  
28 who could later satisfy the preamendment conditions without

1 returning to work. We hold that the rule protects such benefits and,  
2 accordingly, we affirm the judgment of the district court.

### 3 I. BACKGROUND

4 The relevant facts are uncontested. Defendants-Appellants  
5 are the Bakery and Confectionery Union and Industry International  
6 Pension Fund Pension Plan (the “Plan”), a multiemployer defined-  
7 benefit pension plan, and its Board of Trustees. The Plaintiffs-  
8 Appellees are participants in the Plan. The plaintiffs’ former  
9 employers are parties to collective bargaining agreements with local  
10 unions of the Bakery, Confectionery, Tobacco Workers and Grain  
11 Millers International Union.

12 The Plan provides for a range of benefits. The standard  
13 benefit, payable at age 65 — the “normal retirement age” under the  
14 Plan — was labeled Plan A. Participants could elect to receive their  
15 Plan A pension benefits as early as age 55, but at an actuarially  
16 reduced level that reflected the earlier (and longer) expected stream  
17 of payments. Certain employers elected to offer additional  
18 subsidized early retirement benefits that were not actuarially  
19 reduced. Two of these plans, Plan G (the “Golden 80 Plan”), and  
20 Plan C (the “Golden 90 Plan”), are at issue here. Under those Plans,  
21 a participant who had completed at least ten years of service with a  
22 participating employer, and whose combination of his age and years  
23 of service totaled 80 or 90 years, respectively, could retire and  
24 receive full pension benefits.

25 Prior to July 2010, the Plan allowed a participant to “age into”  
26 Golden 80 or 90 benefits. This meant that a participant who had

1 achieved the ten-year minimum service requirement, but who had  
2 left covered employment before achieving the requisite 80- or 90-  
3 year age-plus-years-of-service level, would still become eligible for  
4 Golden 80 or 90 benefits as soon as his age-plus-years-of-service  
5 reached the required 80- or 90-year requirement.

6 In July 2010, the Trustees amended the Plan to eliminate the  
7 option to “age into” benefits and to require that a participant be  
8 employed at the time he qualified for Golden 80 or 90 benefits. The  
9 amendment did not affect those participants who had already aged  
10 into Golden 80 or 90 benefits. The amendment affected only those  
11 participants who had completed the ten-year minimum service  
12 requirement, but who had not yet reached the requisite age-plus-  
13 years-of-service level and were no longer working for an employer  
14 participating in the Golden 80 or 90 Plans. The brunt of this change,  
15 according to plaintiffs, fell on former employees who were laid off  
16 due to either plant closings or reductions in force and subsequently  
17 were unable to find work in the industry.

18 Participants who lost their opportunity to qualify for Golden  
19 80 or 90 benefits as a result of the amendment filed various suits  
20 alleging that the plan amendment violated § 204(g), ERISA’s anti-  
21 cutback rule, which prohibits plan amendments that reduce or  
22 eliminate certain pension benefits. In response, the Plan contended  
23 that the rule protected only those Golden 80 and 90 Plan participants  
24 who remained in covered employment at the time they achieved the  
25 required age-plus-years-of-service level.



1           The anti-cutback rule, ERISA § 204(g), provides as follows:

2           (g) Decrease of accrued benefits through amendment of  
3           plan

4                   **(1)** The accrued benefit of a participant under a  
5                   plan may not be decreased by an amendment of  
6                   the plan [except in certain circumstances not  
7                   applicable here].

8                   **(2)** For purposes of paragraph (1), a plan  
9                   amendment which has the effect of--

10                           **(A)** eliminating or reducing an early  
11                           retirement benefit or a retirement-type  
12                           subsidy (as defined in regulations), or

13                           **(B)** eliminating an optional form of benefit,  
14                   with respect to benefits attributable to service  
15                   before the amendment shall be treated as  
16                   reducing accrued benefits. In the case of a  
17                   retirement-type subsidy, the preceding sentence  
18                   shall apply only with respect to a participant who  
19                   satisfies (either before or after the amendment)  
20                   the preamendment conditions for the subsidy.

21   29 U.S.C. § 1054(g).

22           The issues presented on appeal are whether the Golden 80 and  
23   90 Plans are considered “accrued benefits” under § 204(g)(1) or  
24   “retirement-type subsid[ies]” under § 204(g)(2) for the purposes of  
25   the anti-cutback rule, and, if the latter, whether plaintiffs, as former  
26   employees, can “satisf[y] (either before or after the amendment) the  
27   preamendment conditions for the subsidy.”

1           In our view, it is clear that the Golden 80 and 90 Plans are  
2 “retirement-type subsid[ies]” that qualify for protection under  
3 § 204(g)(2). The term “retirement-type subsidy” is defined in IRS  
4 regulations interpreting a parallel provision of the Internal Revenue  
5 Code.<sup>2</sup> A retirement-type subsidy is:

6           the excess, if any, of the actuarial present value of a  
7 retirement-type benefit over the actuarial present value  
8 of the accrued benefit commencing at normal retirement  
9 age or at actual commencement date, if later, with both  
10 such actuarial present values determined as of the date  
11 the retirement-type benefit commences. Examples of  
12 retirement-type subsidies include a subsidized early  
13 retirement benefit . . . .

14   26 C.F.R. § 1.411(d)–3(g)(6)(iv).

15           The Golden 80 and 90 Plans fall within this definition. The  
16 Plans provide a “retirement-type benefit” because they provide a  
17 “benefit under a defined benefit plan . . . that . . . continues after  
18 retirement, and is not an ancillary benefit.” *Id.* § 1.411(d)–3(g)(6)(iii).  
19 It is undisputed that the actuarial value of the Golden 80 and 90  
20 Plans at the time they begin distributing benefits is in “excess” of  
21 “the actuarial present value of the accrued benefit commencing at  
22 normal retirement age.” *Id.* § 1.411(d)–3(g)(6)(iv). Accordingly, for  
23 the purposes of the anti-cutback rule, the Golden 80 and 90 Plans are  
24 retirement-type subsidies.

25           The evolution of § 204(g) reinforces this conclusion. Prior to  
26 the passage of the Retirement Equity Act of 1984 (“REA”), Pub. L.  
27 No. 98-397, 98 Stat. 1426, the anti-cutback rule was limited to the

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<sup>2</sup> Pursuant to regulations issued by the Secretary of Labor, the IRS regulations are applicable to the interpretation of sections 202 through 204 of ERISA. *See* 29 C.F.R. § 2530.200a-2.

1 text now included in § 204(g)(1) and thus applied only to “accrued  
2 benefits.” Whether early retirement benefits, retirement-type  
3 subsidies, and optional forms of benefits were protected was unclear  
4 because the statute did not specifically address those types of  
5 benefits.

6 Congress recognized that these benefits could be important  
7 components of retirement packages and passed the REA in part to  
8 limit the circumstances under which these benefits could be reduced  
9 or eliminated through plan amendments. S. Rep. No. 98-575, at 27  
10 (1984). To do so, Congress added § 204(g)(2) which did not disturb  
11 the existing protection for “accrued benefits,” but went on to  
12 provide that reductions to early retirement benefits, retirement-type  
13 subsidies, and optional forms of benefits were to be “treated as”  
14 reductions of “accrued benefits.” Accordingly, where a benefit  
15 qualifies as a retirement-type subsidy, it is subject to § 204(g)(2) of  
16 the anti-cutback rule.

17 Section 204(g)(2) contains an additional provision, the  
18 meaning of which is the primary point of disagreement on this  
19 appeal. Under that provision, the anti-cutback rule applies to  
20 retirement-type subsidies, “only with respect to a participant who  
21 satisfies (either before or after the amendment) the preamendment  
22 conditions for the subsidy.” 29 U.S.C. § 1054(g)(2). The plaintiffs  
23 would have us read the “only with respect to a participant . . .”  
24 language as simply requiring that a participant “satisf[y] (either  
25 before or after the amendment) the preamendment conditions for  
26 the subsidy” to have their benefits protected by the rule. The  
27 plaintiffs contend that they have satisfied (or will satisfy) this  
28 requirement. The preamendment Plan, they argue, conditioned  
29 Golden 80 or 90 benefits on the sum of plaintiffs’ years-of-  
30 employment plus age equaling 80 or 90, respectively. Because  
31 plaintiffs either have seen, or if they continue to age will see, that

1 number equal 80 or 90 and because the Plan has no time limitation  
2 within which a participant must reach that number, the  
3 preamendment condition, they contend, is or will be satisfied.

4 The Plan agrees that Golden 80 and 90 Plans are retirement-  
5 type subsidies, but insists that § 204(g)(2) contains an implicit  
6 “continued employment” requirement, under which a participant, to  
7 be protected by the anti-cutback rule, must have remain in covered  
8 employment until he becomes eligible for the subsidy. The Plan  
9 insists that the “only with respect to a participant . . .” language is  
10 intended to have a limiting effect on the application of the anti-  
11 cutback rule to retirement-type subsidies and that, read literally as  
12 the plaintiffs urge, the sentence has none because a participant could  
13 never be eligible for a subsidy without “satisf[ying] . . . the  
14 preamendment conditions for the subsidy.” On the basis of this  
15 reading, the Plan contends that the scope of the limitation is unclear  
16 and can be understood only by resort to the legislative history,  
17 which the Plan argues reveals that Congress intended to limit the  
18 protection of the anti-cutback rule to current employees. For several  
19 reasons, we disagree with the Plan’s approach.

20 Legislative interpretation begins with the plain text of the  
21 statute and, where the text is unambiguous, also ends there because  
22 the “judicial inquiry is complete.” *Hedges v. Obama*, 724 F.3d 170, 189  
23 (2d Cir. 2013). We read the provision as straightforwardly applying  
24 to participants, such as the plaintiffs, who qualified for the subsidy  
25 before the amendment or who could do so afterwards. The text says  
26 nothing about satisfying the preamendment conditions “while  
27 employed,” or before “separating from service,” or anything to that  
28 effect. To the contrary, the statutory wording cuts against such a  
29 requirement. Section 204(g)(2), which requires that a “participant”  
30 satisfy the preamendment conditions of the subsidy in order to enjoy  
31 the protections of the anti-cutback rule, is elucidated by the

1 definition of a “participant” under ERISA as “any employee *or*  
2 *former employee* of an employer, . . . who is or may become eligible to  
3 receive a benefit of any type from an employee benefit plan.” 29  
4 U.S.C. § 1002(7) (emphasis added). Consequently, it is immaterial  
5 that some plaintiffs had not yet satisfied the preamendment age-  
6 level conditions when they left covered employment, because §  
7 204(g)’s prohibition on cutbacks applies to former as well as to  
8 current employees.

9       The Plan’s approach would require us to delve into the  
10 complex legislative history of ERISA and the REA in search of  
11 limiting principles that Congress did not include in the text. This  
12 “would result not in a construction of the statute, but, in effect, an  
13 enlargement of it by the court, so that what was omitted . . . may be  
14 included within its scope.” *Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004)  
15 (internal quotation marks and brackets omitted). Accordingly, we  
16 are not inclined to overlook the plaintiffs’ straightforward and  
17 reasonable interpretation of the statute in favor of one that renders  
18 the text ambiguous and resorts to legislative history or policy  
19 arguments to give it meaning. *See also Fedorenko v. United States*, 449  
20 U.S. 490, 513 (1981).

21       This conclusion is consistent with decisions from other circuits  
22 recognizing that a participant may “grow into” eligibility for  
23 retirement-type subsidy benefits under the anti-cutback rule by  
24 satisfying the eligibility requirements *after* the date of the  
25 amendment. *See, e.g., Bellas v. CBS, Inc.*, 221 F.3d 517, 521 (3d Cir.  
26 2000); *Ahng v. Allsteel, Inc.*, 96 F.3d 1033, 1036-37 (7th Cir. 1996);  
27 *Harms v. Cavenham Forest Indus., Inc.*, 984 F.2d 686, 692 (5th Cir.  
28 1993); *Gillis v. Hoechst Celanese Corp.*, 4 F.3d 1137, 1146 (3d Cir. 1993);  
29 *Hunger v. AB*, 12 F.3d 118, 121 (8th Cir. 1993). As the Seventh Circuit  
30 explained in *Ahng*, “[t]he courts of appeals that have ruled on an  
31 employee’s right to ‘grow into’ early retirement benefits have . . .

1 uniformly held that as long as an employee satisfies, *or will be able to*  
2 *satisfy*, the eligibility requirements of the early retirement benefit in  
3 effect prior to the amendment, § 204(g) protects the benefit.” 96 F.3d  
4 at 1036 (emphasis added).

5 Other courts have denied a participant the ability to “grow  
6 into” benefits only where he has ceased employment without  
7 completing the minimum years of service necessary to become  
8 eligible for the retirement-type subsidy or failed to satisfy some  
9 other preamendment condition that cannot be cured. In that  
10 situation, courts have permitted the reduction or elimination of the  
11 benefits because the participant, even without the amendment,  
12 would never have been able to satisfy the preamendment conditions  
13 of the subsidy. *See Shaver v. Siemens Corp.*, 670 F.3d 462, 490-91 (3d  
14 Cir. 2012) (denying application of § 204(g)(2) because service with  
15 successor employee “forever disqualifie[d the participants] from  
16 receiving . . . benefits under th[e] plan” which was “a prohibition  
17 that the passage of time cannot cure”); *Hunger*, 12 F.3d at 121; *Berger*  
18 *v. Edgewater Steel Co.*, 911 F.2d 911, 918 (3d Cir. 1990). In contrast, the  
19 plaintiffs here all have, or will, become eligible for the Golden 80 or  
20 90 benefits simply through the passage of time.

21 For these reasons we hold that the plaintiffs have satisfied (or  
22 will satisfy) the preamendment conditions and their Golden 80 and  
23 90 benefits are protected by the anti-cutback rule.

## 24 CONCLUSION

25 The judgment of the District Court is affirmed.