

109TH CONGRESS
1ST SESSION

H. R. 2831

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to make improvements in benefit accrual standards.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2005

Mr. BOEHNER introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to make improvements in benefit accrual standards.

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 “Pension Preservation
5 and Portability Act of 2005”.

6 **SEC. 2. IMPROVEMENTS IN BENEFIT ACCRUAL STANDARDS.**

7 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
8 INCOME SECURITY ACT OF 1974.—

1 (1) RULES RELATING TO REDUCTION IN AC-
2 CRUED BENEFITS BECAUSE OF ATTAINMENT OF ANY
3 AGE.—Section 204(b)(1)(H) of the Employee Retirement
4 Income Security Act of 1974 (29 U.S.C.
5 1054(b)(1)(H)) is amended by adding at the end the
6 following new clauses:

7 “(vii)(I) A plan complies with clause (i) if a partici-
8 pant’s entire accrued benefit, as determined as of any date
9 under the formula for determining benefits as set forth
10 in the text of the plan documents, would be equal to or
11 greater than that of any similarly situated, younger indi-
12 vidual.

13 “(II) For purposes of this clause, an individual is
14 similarly situated to a participant if such individual is
15 identical to such participant in every respect (including pe-
16 riod of service, compensation, position, date of hire, work
17 history, and any other respect) except for age.

18 “(III) In determining the entire accrued benefit for
19 purposes of this clause, the subsidized portion of any early
20 retirement benefit (including any early retirement subsidy
21 that is fully or partially included or reflected in an employ-
22 ee’s opening balance or other transition benefits) shall be
23 disregarded.

24 “(viii) A plan shall not be treated as failing to meet
25 the requirements of this subparagraph solely because the

1 plan provides allowable offsets against those benefits
2 under the plan which are attributable to employer con-
3 tributions, based on benefits which are provided under
4 title II of the Social Security Act, the Railroad Retirement
5 Act of 1974, or under any retirement program for officers
6 or employees of the Federal Government or of the govern-
7 ment of any State or political subdivision thereof. For pur-
8 poses of this clause, allowable offsets based on such bene-
9 fits consist of offsets equal to all or part of the actual
10 benefit payment amounts, reasonable projections or esti-
11 mations of such benefit payment amounts, or actuarial
12 equivalents of such actual benefit payment amounts, pro-
13 jections, or estimations (determined on the basis of rea-
14 sonable actuarial assumptions).

15 “(ix) A plan shall not be treated as failing to meet
16 the requirements of this subparagraph solely because the
17 plan provides a disparity in contributions or benefits with
18 respect to which the requirements of section 401(l) of the
19 Internal Revenue Code of 1986 are met.

20 “(x)(I) A plan shall not be treated as failing to meet
21 the requirements of this subparagraph solely because the
22 plan provides for pre-retirement indexing of accrued bene-
23 fits under the plan.

24 “(II) For purposes of this clause, the term ‘pre-re-
25 tirement indexing’ means, in connection with an accrued

1 benefit, the periodic adjustment of the accrued benefit by
2 means of the application of a recognized index or method-
3 ology so as to protect the economic value of the benefit
4 against inflation prior to distribution.”.

5 (2) DETERMINATIONS OF ACCRUED BENEFIT AS
6 BALANCE OF BENEFIT ACCOUNT.—Section 203 of
7 such Act (29 U.S.C. 1053) is amended by adding at
8 the end the following new subsection:

9 “(f)(1) A defined benefit plan under which the ac-
10 crued benefit payable under the plan upon distribution (or
11 any portion thereof) is expressed as the balance of an ac-
12 count maintained for the participant shall not be treated
13 as failing to meet the requirements of subsection (a)(2)
14 and section 205(g) solely because of the amount actually
15 made available for such distribution under the terms of
16 the plan, in any case in which—

17 “(A) the applicable interest rate that would be
18 required to discount the participant’s accrued benefit
19 projected under the terms of the plan to normal re-
20 tirement age to a present value equal to the amount
21 actually made available for distribution under the
22 plan is not greater than

23 “(B) a market rate of return.

24 “(2) The Secretary of the Treasury may provide by
25 regulation for rules governing the calculation of a market

1 rate of return for purposes of paragraph (1) and for per-
2 missible methods of crediting interest to the account (in-
3 cluding variable interest rates) resulting in effective rates
4 of return meeting the requirements of paragraph (1).”.

5 (b) AMENDMENTS TO THE INTERNAL REVENUE
6 CODE OF 1986.—

7 (1) RULES RELATING TO REDUCTION IN AC-
8 CRUED BENEFITS BECAUSE OF ATTAINMENT OF ANY
9 AGE.—Subparagraph (H) of section 411(b)(1) of the
10 Internal Revenue Code of 1986 (relating to contin-
11 ued accrual beyond normal retirement age) is
12 amended—

13 (A) by striking the heading and inserting
14 the following: “RULES RELATING TO REDUC-
15 TION IN ACCRUED BENEFITS BECAUSE OF AT-
16 TAINMENT OF ANY AGE.—”; and

17 (B) by adding at the end the following:

18 “(vi) COMPARISON TO SIMILARLY SIT-
19 UATED, YOUNGER INDIVIDUALS.—

20 “(I) IN GENERAL.—A plan shall
21 not be treated as failing to meet the
22 requirements of clause (i) if, as of any
23 applicable date, a participant’s entire
24 accrued benefit, as determined under
25 the formula for determining benefits

1 as set forth in the text of the plan
2 documents, would be equal to or
3 greater than that of any similarly sit-
4 uated, younger individual.

5 “(II) SIMILARLY SITUATED INDI-
6 VIDUAL.—For purposes of this clause,
7 an individual is similarly situated to a
8 participant if such individual is iden-
9 tical to such participant in every re-
10 spect (including period of service,
11 compensation, position, date of hire,
12 work history, and any other respect)
13 except for age.

14 “(III) SUBSIDIZED PORTION OF
15 EARLY RETIREMENT BENEFIT DIS-
16 REGARDED.—In determining the en-
17 tire accrued benefit for purposes of
18 this clause, the subsidized portion of
19 any early retirement benefit shall be
20 disregarded.

21 “(vii) ALLOWABLE OFFSETS.—A plan
22 shall not be treated as failing to meet the
23 requirements of this subparagraph solely
24 because the plan provides allowable offsets
25 against those benefits under the plan

1 which are attributable to employer con-
2 tributions, based on benefits which are pro-
3 vided—

4 “(I) under title II of the Social
5 Security Act, the Railroad Retirement
6 Act of 1974, or under any retirement
7 program for officers or employees of
8 the Federal Government or of the gov-
9 ernment of any State or political sub-
10 division thereof, or

11 “(II) under another defined ben-
12 efit plan which meets the require-
13 ments of this subparagraph or a de-
14 fined contribution plan which meets
15 the requirements of paragraph (2), if
16 such offset is determined under a for-
17 mula which does not provide for the
18 commencement of, or any increase in,
19 the offset upon the attainment of any
20 specified age of the participant.

21 For purposes of this clause, allowable off-
22 sets based on such benefits consist of off-
23 sets equal to the actual benefit payment
24 amounts, reasonable projections or esti-
25 mations of such benefit payment amounts,

1 or actuarial equivalents of such actual ben-
2 efit payment amounts, projections, or esti-
3 mations (determined on the basis of rea-
4 sonable actuarial assumptions).

5 “(viii) COMPLIANCE WITH RULES PER-
6 MITTING DISPARITY IN PLAN CONTRIBU-
7 TIONS OR BENEFITS.—A plan shall not be
8 treated as failing to meet the requirements
9 of this subparagraph solely because the
10 plan provides a disparity in contributions
11 or benefits with respect to which the re-
12 quirements of section 401(l) are met.

13 “(ix) PRE-RETIREMENT INDEXING.—

14 “(I) IN GENERAL.—A plan shall
15 not be treated as failing to meet the
16 requirements of this subparagraph
17 solely because the plan provides for
18 pre-retirement indexing of accrued
19 benefits under the plan.

20 “(II) DEFINITION.—For pur-
21 poses of this clause, the term ‘pre-re-
22 tirement indexing’ means, in connec-
23 tion with an accrued benefit, the peri-
24 odic adjustment of the accrued benefit
25 by means of the application of a rec-

1 ognized index or methodology so as to
2 protect the economic value of the ben-
3 efit against inflation prior to distribu-
4 tion.”.

5 (2) DETERMINATIONS OF ACCRUED BENEFIT AS
6 BALANCE OF BENEFIT ACCOUNT.—Subsection (a) of
7 section 411 of such Code (relating to minimum vest-
8 ing standards) is amended by adding at the end the
9 following new paragraph:

10 “(13) MAINTENANCE OF NONFORFEITABILITY
11 OF BENEFITS EXPRESSED AS ACCOUNT BALANCE.—

12 “(A) IN GENERAL.—A defined benefit plan
13 under which the accrued benefit payable under
14 the plan upon distribution (or any portion
15 thereof) is expressed as the balance of an ac-
16 count maintained for the participant shall not
17 be treated as failing to meet the requirements
18 of paragraph (2) or 417(e) solely because of the
19 amount actually made available for such dis-
20 tribution under the terms of the plan, in any
21 case in which—

22 “(i) the applicable interest rate that
23 would be required to discount the partici-
24 pant’s accrued benefit projected under the
25 terms of the plan to normal retirement age

1 to a present value equal to the amount ac-
2 tually made available for distribution under
3 the plan is not greater than

4 “(ii) a market rate of return.

5 “(B) REGULATIONS.—The Secretary may
6 provide by regulation for rules governing the
7 calculation of a market rate of return for pur-
8 poses of subparagraph (A) and for permissible
9 methods of crediting interest to the account (in-
10 cluding variable interest rates) resulting in ef-
11 fective rates of return meeting the requirements
12 of subparagraph (A).”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to plan years beginning before, on,
15 or after the date of the enactment of this Act.

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