

103^D CONGRESS
1ST SESSION

H. R. 1874

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 in order to increase the adequacy and efficiency of the private pension system (consisting of employer and individual retirement plans) by reducing pension vesting requirements, improving the portability of earned pension benefits, and encouraging the preservation of pension asset accumulations for use in retirement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1993

Mr. GIBBONS introduced the following bill; which was referred jointly to the Committees on Education and Labor and Ways and Means

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 in order to increase the adequacy and efficiency of the private pension system (consisting of employer and individual retirement plans) by reducing pension vesting requirements, improving the portability of earned pension benefits, and encouraging the preservation of pension asset accumulations for use in retirement, 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,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 This Act may be cited as “The Pension Portability
3 Improvement Act of 1993”.

4 **TABLE OF CONTENTS**

- Sec. 1. Short Title and Table of Contents.
- Sec. 2. Minimum Vesting Standards.
- Sec. 3. Portability Requirements for Qualified Plans.
- Sec. 4. Prototype Portable Pension Accounts.
- Sec. 5. Exemptions for Certain Collectively Bargained Plans.
- Sec. 6. Effective Date and Regulations.

5 **SEC. 2. MINIMUM VESTING STANDARDS.**

6 (a) IN GENERAL.—Paragraph (2) of section 411(a)
7 of the Internal Revenue Code (related to minimum vesting
8 standards) is amended to read as follows:

9 “(2) EMPLOYER CONTRIBUTIONS.—A plan sat-
10 isfies the requirements of this paragraph, if it satis-
11 fies the requirements of subparagraphs (A), (B), or
12 (C).—

13 “(A) THREE YEAR VESTING.—A plan sat-
14 isfies the requirements of this subparagraph if
15 an employee who has completed at least three
16 years of service has a nonforfeitable right to
17 100 percent of the employee’s accrued benefit
18 derived from employer contributions.

19 “(B) ONE TO FIVE YEAR VESTING.—A
20 plan satisfies the requirements of this subpara-
21 graph if an employee has a nonforfeitable right
22 to a percentage of the employee’s accrued bene-

1 fit derived from employer contributions deter-
 2 mined under the following table:

| “Years of Service | Nonforfeitable Percentage |
|----------------------|------------------------------|
| 1 | 20 |
| 2 | 40 |
| 3 | 60 |
| 4 | 80 |
| 5 or more | 100. |

3 “(C) MULTIEMPLOYER PLANS.—A plan
 4 satisfies the requirements of this subparagraph
 5 if—

6 “(i) the plan is a multiemployer plan
 7 (within the meaning of section 414(f), and

8 “(ii) under the plan—

9 “(I) an employee who is covered
 10 pursuant to a collective bargaining
 11 agreement described in section 414
 12 (f)(1)(B) and who has completed at
 13 least five years of service has a non-
 14 forfeitable right to 100 percent of the
 15 employee’s accrued benefits derived
 16 from employer contributions, and

17 “(II) the requirements of sub-
 18 paragraph (A) or (B) are met with re-
 19 spect to employees not described in
 20 subclause (I).”.

21 (b) AMENDMENTS TO ERISA.—IN GENERAL.—Para-
 22 graph (2) of section 203(a) of the Employee Retirement

1 Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is
2 amended to read as follows:

3 “(2) A plan satisfies the requirements of this
4 paragraph if it satisfies the following requirements
5 of subparagraph (A), (B), or (C).

6 “(A) A plan satisfies the requirements of
7 this subparagraph if an employee who has com-
8 pleted at least three years of service has a non-
9 forfeitable right to 100 percent of the employ-
10 ee’s accrued benefit derived from employer con-
11 tributions.

12 “(B) A plan satisfies the requirement of
13 this subparagraph if an employee has a non-
14 forfeitable right to a percentage of the employ-
15 ee’s accrued benefit derived from employer con-
16 tributions determined under the following table:

| “Years of Service | Nonforfeitable Percentage |
|----------------------|------------------------------|
| 1 | 20 |
| 2 | 40 |
| 3 | 60 |
| 4 | 80 |
| 5 or more | 100. |

17 “(C) A plan satisfies the requirements of
18 this subparagraph if—

19 “(i) the plan is a multiemployer plan
20 (within the meaning of section 3(37)), and

21 “(ii) under the plan—

1 “(I) an employee who is covered
2 pursuant to a collective bargaining
3 agreement described in section
4 414(f)(1)(B) and who has completed
5 at least five years of service has a
6 nonforfeitable right to 100 percent of
7 the employee’s accrued benefit derived
8 from employer contributions, and

9 “(II) the requirements of sub-
10 paragraph (A) or (B) are met with re-
11 spect to employees not described in
12 subclause (I).”.

13 **SEC. 3. PORTABILITY REQUIREMENTS FOR QUALIFIED**
14 **PLANS.**

15 (a) IN GENERAL.—Part 2 of title I of the Employee
16 Retirement Income Security Act of 1974 is amended by
17 inserting after section 204(h) the following new sub-
18 section:

19 “(i) PORTABILITY REQUIREMENTS FOR QUALIFIED
20 PLANS.—

21 “(1) GENERAL RULES.—

22 “(A) QUALIFIED PLANS.—Each qualified
23 plan shall, at the election of an employee upon
24 separation from service, make a direct transfer
25 of the portion of the employee’s eligible amount

1 specified in the election to a portable pension
2 account specified in the election.

3 “(B) INDIVIDUALS.—An individual may—

4 “(i) establish a portable pension ac-
5 count on the individual’s own behalf to
6 which transfers described in paragraph
7 (1)(A), or transfers from other portable
8 pension accounts, may be made, and

9 “(ii) transfer, in a direct transfer,
10 amounts in a portable pension account es-
11 tablished on the individual’s behalf to a
12 portable pension account maintained by a
13 qualified plan in which the individual is a
14 participant or to another portable pension
15 account established by the individual on
16 the individual’s own behalf.

17 “(2) PORTABLE PENSION ACCOUNTS.—For pur-
18 poses of this section.—

19 “(A) IN GENERAL.—The term ‘portable
20 pension account’ means—

21 “(i) in the case of an employer, an in-
22 dividual account plan, an individual ac-
23 count within a qualified plan, or a sim-
24 plified employee pension under section
25 408(k) of the Internal Revenue Code meet-

1 ing requirements of the following para-
2 graphs of this subsection, and

3 “(ii) in the case of an individual, an
4 individual retirement plan meeting such re-
5 quirements.

6 “(B) DISTRIBUTION REQUIREMENTS.—

7 “(i) IN GENERAL.—The requirements
8 of this paragraph are met if distributions
9 from the account—

10 “(I) may only be made in a per-
11 mitted retirement income form, and

12 “(II) may only be made with the
13 consent of the participant.

14 “(ii) PERMITTED RETIREMENT IN-
15 COME FORM.—For the purposes of sub-
16 paragraph (A) a permitted retirement in-
17 come form means:

18 “(I) A lump sum distribution of
19 the employee’s entire earned benefit.

20 “(II) A qualified joint and survi-
21 vor annuity (within the meaning of
22 section 205(d)).

23 “(III) Any other joint life annu-
24 ity (including a cash refund annuity).

1 “(IV) A single life annuity (in-
2 cluding a cash refund annuity).

3 “(V) Any series of substantially
4 equal periodic payments described in
5 section 72(t)(2)(A)(iv) of the Internal
6 Revenue Code which are not part of
7 an annuity described in the preceding
8 clauses.

9 “(iii) SPOUSAL CONSENT.—The re-
10 quirements of this paragraph shall not be
11 met unless the account provides that any
12 election as to form of benefits must meet
13 spousal consent requirements which are
14 identical to the requirements of section
15 205(c)(2).

16 “(C) ASSET CONTROL.—The requirements
17 of this paragraph are met if the account pro-
18 vides that participants may elect to exercise
19 control over the assets in their accounts and
20 such control is the same as that described in
21 section 404(c) (as determined under regulations
22 prescribed by the Secretary).

23 “(D) NOTICE.—The requirements of this
24 paragraph are met if the account provides that,

1 immediately before any distribution, notice is
2 provided to the recipient with respect to—

3 “(i) the provisions under which the
4 distribution may or may not be subject to
5 tax or penalty under the Internal Revenue
6 Code of 1986, and

7 “(ii) the terms and conditions of each
8 permitted retirement income form under
9 paragraph (B) (including the terms and
10 conditions of any spousal consent require-
11 ments under subparagraph (B)(iii).

12 “(3) ELIGIBLE AMOUNT.—For purposes of this
13 section—

14 “(A) IN GENERAL.—The term ‘eligible
15 amount’ means, with respect to any partici-
16 pant—

17 “(i) in the case of a defined benefit
18 plan that is at least 100 percent funded
19 for nonforfeitable accrued benefits, 100
20 percent of the present value of the partici-
21 pant’s nonforfeitable accrued benefits
22 under the plan,

23 “(ii) in the case of a defined benefit
24 plan that is less than 100 percent funded
25 for nonforfeitable accrued benefits, a per-

1 centage of the present value of the partici-
2 pant's nonforfeitable accrued benefits
3 under the plan equal to the plan's percent-
4 age of funding for nonforfeitable accrued
5 benefits, and

6 “(iii) in the case of a defined con-
7 tribution plan, the balance to the credit of
8 the participant at the time of the distribu-
9 tion without regard to any reductions on
10 account of back-end loads, market value
11 adjustments, early withdrawal charges, or
12 any other charges or penalties.

13 “(B) EMPLOYEE CONTRIBUTIONS.—The
14 eligible amount shall include employee contribu-
15 tions.

16 “(C) PRESENT VALUE.—For purposes of
17 subparagraphs (A)(i) and (A)(ii)—

18 “(i) the present value of the non-
19 forfeitable accrued benefits of a participant
20 shall be determined utilizing formulas pub-
21 lished by the Pension Benefit Guaranty
22 Corporation for lump sum valuations with
23 the following specifications regarding their
24 application:

1 “(I) For the period commencing
2 with the normal retirement date for
3 full benefits under the plan, the im-
4 mediate annuity rate as published by
5 the Pension Benefit Guaranty Cor-
6 poration shall be utilized as the dis-
7 count rate.

8 “(II) For the period commencing
9 with the date of termination of em-
10 ployment until the normal retirement
11 date for full benefits under the plan,
12 a discount rate of not more than 3
13 percent shall be utilized. In addition,
14 for the period between termination of
15 employment and until the normal re-
16 irement date for full benefits under
17 the plan, the resulting present value
18 shall be determined as if the payment
19 at the normal retirement date is not
20 contingent on the survival of any per-
21 son to that date.

22 “(III) The formulas shall utilize
23 unisex mortality tables constructed to
24 reflect the experience of the plan re-

1 garding the percentages of males and
 2 females in the plan.

3 “(ii) PHASE-IN.—For plan years be-
 4 ginning in 1995 or 1996, the following per-
 5 centages shall be substituted for 3 percent
 6 in subparagraph (i)(b);

| “For plan years beginning in | The percentage is |
|---------------------------------|-------------------|
| 1995 | 5 |
| 1996 | 4. |

7 “(4) OTHER DEFINITIONS AND RULES.—For
 8 purposes of this section—

9 “(A) QUALIFIED PLAN.—The term ‘quali-
 10 fied plan’ means—

11 “(i) a plan described in section 401(a)
 12 of the Internal Revenue Code of 1986
 13 which includes a trust which is exempt
 14 from tax under section 501(a) of such
 15 Code,

16 “(ii) an annuity plan described in sec-
 17 tion 403(a) of such Code, and

18 “(iii) an annuity contract described in
 19 section 403(b) of such Code.

20 “(B) INDIVIDUAL RETIREMENT PLAN.—
 21 The term ‘individual retirement plan’ means—

22 “(i) an individual retirement account
 23 described in section 408(a) of such Code,
 24 and

1 “(ii) an individual retirement annuity
2 described in section 408(b) of such Code.

3 “(C) BENEFICIARIES OR ALTERNATE PAY-
4 EES.—In the case of an individual who is a ben-
5 eficiary of the participant or an alternate payee
6 (within the meaning of section 206(d)(3)(K)
7 under a plan, such an individual shall be treat-
8 ed in the same manner as a participant in the
9 plan.

10 (b) AMENDMENTS TO THE INTERNAL REVENUE
11 CODE.—Section 411 of the Internal Revenue Code of
12 1986 is amended by inserting at the end thereof, the fol-
13 lowing new subparagraph:

14 “(f) PORTABILITY REQUIREMENTS FOR QUALIFIED
15 PLANS.—

16 “(1) GENERAL RULES.—

17 “(A) QUALIFIED PLANS.—Each qualified
18 plan shall, at the election of an employee upon
19 separation from service, make a direct transfer
20 of the portion of the employee’s eligible amount
21 specified in the election to a portable pension
22 account specified in the election.

23 “(B) INDIVIDUALS.—An individual may—

24 “(i) establish a portable pension ac-
25 count on the individual’s own behalf to

1 which transfers described in paragraph
2 (1)(A), or transfers from other portable
3 pension accounts, may be made, and

4 “(ii) transfer, in a direct transfer,
5 amounts in a portable pension account es-
6 tablished on the individual’s behalf to a
7 portable pension account maintained by a
8 qualified plan in which the individual is a
9 participant or to another portable pension
10 account established by the individual on
11 the individual’s own behalf.

12 “(2) PORTABLE PENSION ACCOUNTS.—For the
13 purposes of this section—

14 “(A) IN GENERAL.—The term ‘portable
15 pension account’ means—

16 “(i) in the case of an employer, an in-
17 dividual account plan, an individual ac-
18 count within a qualified plan, or a sim-
19 plified employee pension under section
20 408(k) of the Internal Revenue Code meet-
21 ing requirements of the following para-
22 graphs of this subsection, and

23 “(ii) in the case of an individual, an
24 individual retirement plan meeting such re-
25 quirements.

1 “(B) DISTRIBUTION REQUIREMENTS.—

2 “(i) IN GENERAL.—The requirements
3 of this paragraph are met if distributions
4 from the account—

5 “(I) may only be made in a per-
6 mitted retirement income form, and

7 “(II) may only be made with the
8 consent of the participant.

9 “(ii) PERMITTED RETIREMENT IN-
10 COME FORM.—For the purposes of sub-
11 paragraph (i), a permitted retirement in-
12 come form means:

13 “(I) A lump sum distribution of
14 the individual’s entire earned benefit.

15 “(II) A qualified joint and survi-
16 vor annuity (within the meaning of
17 section 205(D)).

18 “(III) Any other joint life annu-
19 ity (including a cash refund annuity).

20 “(IV) A single life annuity (in-
21 cluding a cash refund annuity).

22 “(V) Any series of substantially
23 equal periodic payments described in
24 section 72(t)(2)(A)(iv) of the Internal
25 Revenue Code of 1986 which are not

1 part of an annuity described in the
2 preceding clauses.

3 “(iii) SPOUSAL CONSENT.—The re-
4 quirements of this paragraph shall not be
5 met unless the account provides that any
6 election as to form of benefit must meet
7 spousal consent requirements which are
8 identical to the requirements of section
9 205(c)(2).

10 “(C) ASSET CONTROL.—The requirements
11 of this paragraph are met if the account pro-
12 vides that participants may elect to exercise
13 control over the assets in their accounts and
14 such control is the same as that described in
15 section 404(c) (as determined under regulations
16 prescribed by the Secretary).

17 “(D) NOTICE.—The requirements of this
18 paragraph are met if the account provides that,
19 immediately before any distribution, notice is
20 provided to the recipient with respect to—

21 “(i) the provisions under which the
22 distribution may or may not be subject to
23 tax or penalty under the Internal Revenue
24 Code of 1986, and

1 “(ii) the terms and conditions of each
2 permitted retirement income form under
3 paragraph (B)(ii) (including the terms and
4 conditions of any spousal consent require-
5 ments under paragraph (B)(iii)).

6 “(3) ELIGIBLE AMOUNT.—For the purposes of
7 this section—

8 “(A) IN GENERAL.—The term ‘eligible
9 amount’ means, with respect to any partici-
10 pant—

11 “(i) in the case of a defined benefit
12 plan that is at least 100 percent funded
13 for nonforfeitable accrued benefits, 100
14 percent of the present value of the partici-
15 pant’s nonforfeitable accrued benefits
16 under the plan,

17 “(ii) in the case of a defined benefit
18 plan that is less than 100 percent funded
19 for nonforfeitable accrued benefits, a per-
20 centage of the present value of the partici-
21 pant’s nonforfeitable accrued benefits
22 under the plan equal to the plan’s percent-
23 age of funding for nonforfeitable accrued
24 benefits, and

1 “(iii) in the case of a defined con-
2 tribution plan, the balance to the credit of
3 the participant as of the time of the dis-
4 tribution without regard to any reductions
5 on account of back-end loads, market value
6 adjustments, early withdrawal charges, or
7 any other charges or penalties.

8 “(B) EMPLOYEE CONTRIBUTIONS.—The
9 eligible amount shall include employee contribu-
10 tions.

11 “(C) PRESENT VALUE.—For purposes of
12 subparagraphs (A)(i) and (A)(ii)—

13 “(i) the present value of the non-
14 forfeitable accrued benefits of a participant
15 shall be determined utilizing formulas pub-
16 lished by the Pension Benefit Guaranty
17 Corporation for lump sum valuations with
18 the following specifications regarding their
19 application:

20 “(I) For the period commencing
21 with the normal retirement date for
22 full benefits under the plan, the im-
23 mediate annuity rate as published by
24 the Pension Benefit Corporation shall
25 be utilized as the discount rate.

1 “(II) For the period commencing
 2 with the date of termination from em-
 3 ployment until the normal retirement
 4 date for full benefits under the plan,
 5 a discount rate of not more than 3
 6 percent shall be utilized. In addition,
 7 for the period between termination of
 8 employment and until the normal re-
 9 tirement date for full benefits under
 10 the plan, the resulting present value
 11 shall be determined as if the payment
 12 at the normal retirement date is not
 13 contingent on the survival of any per-
 14 son to that date.

15 “(III) The formulas shall utilize
 16 unisex mortality tables constructed to
 17 reflect the experience of the plan re-
 18 garding the percentages of males and
 19 females in the plan.

20 “(ii) PHASE-IN.—For plan years be-
 21 ginning in 1995 or 1996, the following per-
 22 centages shall be substituted for 3 percent
 23 in subparagraph (i) (b)

| “For plan years beginning in | The percentage is |
|---------------------------------|-------------------|
| 1995 | 5 |
| 1996 | 4. |

1 “(4) OTHER DEFINITIONS AND RULES.—For
2 purposes of this subsection.—

3 “(A) QUALIFIED PLAN.—The term ‘quali-
4 fied plan’ means—

5 “(i) a plan described in section 401(a)
6 of the Internal Revenue Code of 1986
7 which includes a trust which is exempt
8 from tax under section 501(a) of such
9 Code,

10 “(ii) an annuity plan described in sec-
11 tion 403(a) of such Code, and

12 “(iii) an annuity contract described in
13 section 403(b) of such Code.

14 “(B) INDIVIDUAL RETIREMENT PLAN.—
15 The term ‘individual retirement plan’ means—

16 “(i) an individual retirement account
17 described in section 408(a) of such Code,
18 and

19 “(ii) an individual retirement annuity
20 described in section 408(b) of such Code.

21 “(C) DIRECT TRANSFER.—For the pur-
22 poses of this section, the term ‘direct transfer’
23 means a direct rollover from a qualified plan
24 described in Subparagraph 411(f)(4), a trustee-
25 to-trustee transfer between accounts established

1 by individuals in such plans, and transfers be-
2 tween annuity contracts described in sections
3 403(a) and 403(b) of the Code.

4 “(D) BENEFICIARIES OR ALTERNATE PAY-
5 EES.—In the case of an individual who is a ben-
6 eficiary of the participant or an alternate payee
7 (within the meaning of section 206(d)(3)(K) of
8 the Employee Retirement Income Security Act
9 of 1974) under a plan, such individual shall be
10 treated in the same manner as if a participant
11 under the plan.”.

12 (5) CONFORMING AMENDMENTS.—

13 (A) Section 204(g)(2) of such Act (29
14 U.S.C. 1054(g)(2)) is amended by adding at
15 the end the following new sentence: “Except as
16 otherwise provided in regulations of the Sec-
17 retary of Labor and the Secretary of the Treas-
18 ury, the requirements of subparagraph (B) shall
19 not be treated as violated in the case of a direct
20 transfer described in subparagraph 411(f) of
21 the Internal Revenue Code and Section 204(i)
22 of ERISA.”.

23 (B) section 204(d) of such Act (29 U.S.C.
24 1054(d)) is amended—

25 (i) in paragraph (1), by striking “or”,

1 (ii) in paragraph (2), by striking the
2 period and inserting “or”, and

3 (iii) by inserting after paragraph (2)
4 the following new paragraph:

5 “(3) a direct transfer described in subpara-
6 graph 411(f) of the Internal Revenue Code and sec-
7 tion 205(i) of ERISA.”.

8 (C) The table of contents for part 2 of
9 subtitle B of title I of such Act is amended by
10 inserting after the item relating to section 205
11 the following new item:

12 “(c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to distributions in plan years be-
14 ginning after December 31, 1994.”.

15 **SEC. 4. PROTOTYPE PORTABLE PENSION ACCOUNTS.**

16 (a) IN GENERAL.—The Secretarys of Labor and the
17 Treasury shall prescribe by regulations one or more proto-
18 type portable pension accounts which would, upon adop-
19 tion by any plan sponsor, constitute a portable pension
20 account meeting the requirements of subsection 204(i) of
21 the Employee Retirement Income Security Act of 1974
22 and subsection 411(f) of the Internal Revenue Code. Reg-
23 ulations for such prototype portable pension accounts shall
24 be issued within twelve months after the date of enactment
25 of this Act.

1 (b) ACCOUNT SPONSOR.—A plan sponsor of a port-
2 able pension account means any person who has the power
3 to acquire, manage, or dispose of any asset of a portable
4 pension account and is at least one of the following:

5 (1) An employer or organization of employers
6 adopting a portable pension account;

7 (2) An association or organization of employees
8 sponsoring a portable pension account on behalf of
9 its members;

10 (3) A registered investment advisor under the
11 Investment Advisors Act of 1940;

12 (4) A bank, as defined in that Act;

13 (5) An insurance company qualified to perform
14 services with respect to a portable pension account
15 but only if participants are fully covered under a
16 State guaranty fund; or

17 (6) A savings and loan association regulated by
18 the Office of Thrift Management and empowered by
19 law to perform services with respect to a portable
20 pension account.

21 **SEC. 5. EXEMPTIONS FOR CERTAIN COLLECTIVELY BAR-**
22 **GAINED PLANS.**

23 (a) Any multi-employer plan, as defined by title I,
24 subtitle A, section 3 (37)(A) of the Employee Retirement
25 Income Security Act of 1974, that is established pursuant

1 to a collective bargaining agreement, shall be exempt from
2 the provisions of sections 3 and 4 of this Act.

3 (b) Any plan that is established or maintained pursu-
4 ant to a collective bargaining agreement but that does not
5 qualify as a multiemployer plan may seek an exemption
6 from the provisions of sections 3 and 4 of this Act by ap-
7 plication to the Secretary of Labor by the plan adminis-
8 trator and by notice to affected or interested parties. The
9 application and notice shall certify and present evidence
10 that participants in the plan are eligible to benefit from
11 portability provisions in their plan and related plans with-
12 in their industry. Based on evidence that the plan and re-
13 lated plans contain adequate provisions for portability of
14 benefits within the industry, the Secretary may exempt the
15 applicant from the provisions of sections 3 and 4 of this
16 Act.

17 **SEC. 6. EFFECTIVE DATE AND REGULATIONS.**

18 (a) **EFFECTIVE DATE.**—The amendments made by
19 this Act shall apply to plan years beginning after the date
20 which occurs two years after the date of enactment of this
21 Act.

22 (b) **REGULATIONS.**—The Secretary of Labor and the
23 Secretary of the Treasury shall, not later than twelve
24 months after the date of enactment of this Act, issue such

- 1 regulations as are necessary to carry out the amendments
- 2 made by this Act.

○

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