

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.

○