

114TH CONGRESS
2D SESSION

S. 2894

To amend the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 to provide for salary reductions for certain employees of a pension plan in critical or declining status that reduces participant benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 28, 2016

Ms. STABENOW (for herself, Mr. BROWN, Mr. PETERS, Mrs. MCCASKILL, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 to provide for salary reductions for certain employees of a pension plan in critical or declining status that reduces participant benefits, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pension Fund Integ-
5 rity Act of 2016”.

1 **SEC. 2. EXECUTIVE SALARIES.**

2 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
3 1986.—

4 (1) IN GENERAL.—Subparagraph (C) of section
5 432(e)(9) of the Internal Revenue Code of 1986 is
6 amended by adding at the end the following new
7 clause:

8 “(iii) In the case of a systemically im-
9 portant plan (as defined in subparagraph
10 (H)(v)(III)), effective on the date the ben-
11 efit suspension goes into effect, the annual
12 compensation of each employee of the plan
13 is reduced to the lesser of—

14 “(I) the annual compensation of
15 the employee for the plan year in
16 which the benefit suspension is ap-
17 proved under subparagraph (G) (de-
18 termined as of the date of such ap-
19 proval), reduced by the reduction per-
20 centage of so much of such annual
21 compensation as exceeds \$100,000, or

22 “(II) the average annual com-
23 pensation of the employee for the 3
24 plan years immediately preceding the
25 year in which the benefit suspension is
26 approved under subparagraph (G), re-

1 duced by the reduction percentage of
 2 so much of such average annual com-
 3 pensation as exceeds \$100,000,
 4 and will not be increased (including by
 5 means of a bonus, performance-based com-
 6 pensation, or otherwise) as long as the
 7 benefit suspension remains in effect. For
 8 purposes of the preceding sentence, the
 9 term ‘reduction percentage’ means the per-
 10 centage determined by the Secretary and
 11 provided to the plan which is equal to the
 12 average percentage reduction in benefits
 13 applicable to the 50 participants and bene-
 14 ficiaries who receive the greatest reduction
 15 in benefits under the plan as a result of
 16 the suspension.”.

17 (2) TAX ON PROHIBITED TRANSACTIONS.—

18 (A) IN GENERAL.—Paragraph (1) of sec-
 19 tion 4975(c) of such Code is amended—

20 (i) by striking “or” at the end of sub-
 21 paragraph (E),

22 (ii) by striking the period at the end
 23 of subparagraph (F) and inserting “; or”,
 24 and

1 (iii) by adding at the end the fol-
2 lowing new subparagraph:

3 “(G) notwithstanding subsection (d)(2),
4 payment by a systemically important plan (as
5 defined in section 432(e)(9)(H)(v)(III)) of—

6 “(i) any compensation (including a
7 bonus or performance-based compensation)
8 in excess of the amount determined under
9 section 432(e)(9)(C)(iii) to any employee
10 of the plan with respect to which a benefit
11 suspension is in effect under section
12 432(e)(9), or

13 “(ii) in the case of any nonemployee
14 who was an employee of the plan during
15 any of the 3 plan years immediately pre-
16 ceding the year in which the benefit sus-
17 pension is approved under section
18 432(e)(9)(G), any compensation to such
19 individual (as an independent contractor or
20 otherwise and including any bonus or per-
21 formance-based compensation) in excess of
22 the amount that would be determined
23 under section 432(e)(9)(C)(iii) if the indi-
24 vidual were an employee at the time of
25 payment of such compensation.”.

(B) LIABILITY FOR TAX.—Subsection (a) of section 4975 of such Code is amended by inserting before the period the following: “, except that any tax imposed by this subsection by reason of subsection (c)(1)(G) shall be paid by the plan sponsor”.

(C) LIABILITY FOR ADDITIONAL TAXES.—Subsection (b) of section 4975 of such Code is amended by inserting before the period the following: “, except that any tax imposed by this subsection by reason of subsection (c)(1)(G) shall be paid by the plan sponsor”.

(D) CLERICAL AMENDMENTS.—The headings of subsections (a) and (b) of section 4975 of such Code are each amended by striking “ON DISQUALIFIED PERSON”.

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Subparagraph (C) of section 305(e)(9) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)(C)) is amended by adding at the end the following new clause:

“(iii) In the case of a systemically important plan (as defined in subparagraph

1 (H)(v)(III)), effective on the date the ben-
2 efit suspension goes into effect, the annual
3 compensation of each employee of the plan
4 is reduced to the lesser of—

5 “(I) the annual compensation of
6 the employee for the plan year in
7 which the benefit suspension is ap-
8 proved under subparagraph (G) (de-
9 termined as of the date of such ap-
10 proval), reduced by the reduction per-
11 centage of so much of such annual
12 compensation as exceeds \$100,000, or

13 “(II) the average annual com-
14 pensation of the employee for the 3
15 plan years immediately preceding the
16 year in which the benefit suspension is
17 approved under subparagraph (G), re-
18 duced by the reduction percentage of
19 so much of such average annual com-
20 pensation as exceeds \$100,000,

21 and will not be increased (including by
22 means of a bonus, performance-based com-
23 pensation, or otherwise) as long as the
24 benefit suspension remains in effect. For
25 purposes of the preceding sentence, the

term ‘reduction percentage’ means the percentage determined by the Secretary of the Treasury and provided to the plan which is equal to the average percentage reduction in benefits applicable to the 50 participants and beneficiaries who receive the greatest reduction in benefits under the plan as a result of the suspension.”.

(2) PROHIBITED TRANSACTIONS.—Paragraph (1) of section 406(a) of such Act (29 U.S.C. 1106(a)(1)) is amended—

(A) by striking “or” at the end of subparagraph (D),

(B) by striking the period at the end of subparagraph (E) and inserting “; or”, and

(C) by adding at the end the following new subparagraph:

“(F) notwithstanding section 408(b)(2), payment by a systemically important plan (as defined in section 305(e)(9)(H)(v)(III)) of—

“(i) any compensation (including a bonus or performance-based compensation) in excess of the amount determined under section 305(e)(9)(C)(iii) to any employee of the plan with respect to which a benefit

suspension is in effect under section 305(e)(9), or

“(ii) in the case of any nonemployee who was an employee of the plan during any of the 3 plan years immediately preceding the year in which the benefit suspension is approved under section 305(e)(9)(G), any compensation to such individual (as an independent contractor or otherwise and including any bonus or performance-based compensation) in excess of the amount that would be determined under section 305(e)(9)(C)(iii) if the individual were an employee at the time of payment of such compensation.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a)(1) and (b)(1) shall apply to suspensions of benefits under section 432(e)(9)(G) of the Internal Revenue Code of 1986 and section 305(e)(9)(G) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)(G)) which take effect after the date of the enactment of this Act.

1 (2) PROHIBITED TRANSACTIONS.—The amend-
 2 ments made by subsections (a)(2), (b)(2), and (b)(3)
 3 shall apply to any transaction made after the date
 4 of the enactment of this Act.

5 **SEC. 3. PROHIBITION OF LOBBYING EXPENSES.**

6 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
 7 1986.—

8 (1) IN GENERAL.—Paragraph (1) of section
 9 4975(c) of the Internal Revenue Code of 1986, as
 10 amended by section 1(a), is amended—

11 (A) by striking “or” at the end of subpara-
 12 graph (F),

13 (B) by striking the period at the end of
 14 subparagraph (G) and inserting “; or”, and

15 (C) by adding at the end the following new
 16 subparagraph:

17 “(H) payment by the plan of any amount
 18 for the engagement of any person other than an
 19 employee of the plan in connection with any ac-
 20 tivity described in section 162(e)(1) during any
 21 period in which the plan is in endangered status
 22 under section 432(b)(1), in critical status under
 23 section 432(b)(2), or in critical and declining
 24 status under section 432(b)(6).”.

1 (2) LIABILITY OF PLAN SPONSOR.—Subsections
 2 (a) and (b) of section 4975 of such Code, as amend-
 3 ed by section 1(a), are each amended by striking
 4 “subsection (c)(1)(G)” and inserting “subparagraph
 5 (G) or (H) of subsection (c)(1)”.

6 (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
 7 COME SECURITY ACT OF 1974.—

8 (1) IN GENERAL.—Paragraph (1) of section
 9 406(a) of the Employee Retirement Income Security
 10 Act of 1974 (29 U.S.C. 1106(a)(1)), as amended by
 11 section 1(b), is amended—

12 (A) by striking “or” at the end of subpara-
 13 graph (E),

14 (B) by striking the period at the end of
 15 subparagraph (F) and inserting “; or”, and

16 (C) by adding at the end the following new
 17 subparagraph:

18 “(G) payment by the plan of any amount
 19 for the engagement of any person other than an
 20 employee of the plan in connection with any ac-
 21 tivity described in section 162(e)(1) of the In-
 22 ternal Revenue Code of 1986 during any period
 23 in which the plan is in endangered status under
 24 section 305(b)(1), in critical status under sec-

1 tion 305(b)(2), or in critical and declining sta-
2 tus under section 305(b)(6).”.

3 (2) LIABILITY OF PLAN SPONSOR.—Subsection
4 (c) of section 409 of such Act (29 U.S.C. 1109(c)),
5 as added by section 1(b), is amended by striking
6 “4975(c)(1)(G)” and inserting “subparagraph (G)
7 or (H) of section 4975(c)(1)”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to transactions made after the date
10 of the enactment of this Act.

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