

104TH CONGRESS  
2D SESSION

# S. 1922

To amend the Employee Retirement Income Security Act of 1974 to establish a Pension ProSave system which improves the retirement income security of millions of American workers by encouraging employers to make pension contributions on behalf of employees, by facilitating pension portability, by preserving and increasing retirement savings, and by simplifying pension law.

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IN THE SENATE OF THE UNITED STATES

JUNE 28, 1996

Mr. BINGAMAN (for himself and Mr. JEFFORDS) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to establish a Pension ProSave system which improves the retirement income security of millions of American workers by encouraging employers to make pension contributions on behalf of employees, by facilitating pension portability, by preserving and increasing retirement savings, and by simplifying pension law.

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 ProSave Act”.

1 **SEC. 2. ESTABLISHMENT OF PENSION PROSAVE PLANS AND**  
 2 **SYSTEM.**

3 (a) IN GENERAL.—The Employee Retirement Income  
 4 Security Act of 1974 (29 U.S.C. 1 et seq.) is amended  
 5 by adding at the end the following new title:

6 **“TITLE V—PENSION PROSAVE**  
 7 **SYSTEM**  
 8 **“Subtitle A—Pension ProSave**  
 9 **Plans**

10 **“SEC. 5001. EASY ACCESS FOR ALL EMPLOYERS.**

11 “(a) UNIVERSAL ELIGIBILITY.—Any employer may  
 12 establish a Pension ProSave Plan for the benefit of its  
 13 employees.

14 “(b) SIMPLIFIED ENROLLMENT AND ADMINISTRA-  
 15 TION.—

16 “(1) ESTABLISHMENT.—An employer may es-  
 17 tablish a Pension ProSave Plan simply by—

18 “(A) completing an enrollment form de-  
 19 scribed in subsection (c), and

20 “(B) submitting such form to the Pension  
 21 Portability Clearinghouse in the manner pro-  
 22 vided under subtitle B.

23 “(2) EASE OF ADMINISTRATION.—An employer  
 24 establishing a Pension ProSave Plan may make em-  
 25 ployer and employee contributions, changes in em-  
 26 ployees participating under the plan, and changes in

1 elections made under section 5002 in the same man-  
2 ner as under paragraph (1).

3 “(c) SIMPLIFIED FORMS.—

4 “(1) PLAN DOCUMENT.—The Pension Port-  
5 ability Clearinghouse shall establish a model form  
6 for purposes of paragraph (1)(A)—

7 “(A) which is written in a clear and easily  
8 understandable manner,

9 “(B) the completion of which by an em-  
10 ployer will constitute the establishment of a  
11 Pension ProSave Plan, and

12 “(C) which contains only such requests for  
13 information as are necessary for the establish-  
14 ment of the plan.

15 “(2) OTHER FORMS.—The Pension Portability  
16 Clearinghouse shall develop such model forms for  
17 purposes of subsection (b)(2) as are necessary to en-  
18 able an employer to easily administer a Pension  
19 ProSave Plan.

20 “(3) AVAILABILITY.—The Pension Portability  
21 Clearinghouse shall make available to all employers  
22 the forms developed under this section, and shall in-  
23 clude with such forms easy to understand explana-  
24 tory materials.

1 **“SEC. 5002. PENSION PROSAVE PLANS.**

2       “(a) TREATMENT OF PLAN.—Except as otherwise  
3 provided in this part, a Pension ProSave Plan shall be  
4 treated in the same manner as an employee pension bene-  
5 fit plan.

6       “(b) PENSION PROSAVE PLAN DEFINED.—For pur-  
7 poses of this title, the term ‘Pension ProSave Plan’ means  
8 a plan—

9               “(1) which is established by an employer for the  
10 exclusive benefit of its employees and their bene-  
11 ficiaries,

12               “(2) under which the only contributions which  
13 may be made are contributions to Pension ProSave  
14 Accounts established on behalf of such employees,  
15 and

16               “(3) which meets—

17                       “(A) the contribution requirements of sub-  
18 section (c),

19                       “(B) the vesting requirements of sub-  
20 section (d),

21                       “(C) the distribution and loan require-  
22 ments of subsection (e), and

23                       “(D) the reporting requirements of sub-  
24 section (f).

25       “(c) CONTRIBUTION REQUIREMENTS.—

1           “(1) IN GENERAL.—The requirements of this  
2 subsection are met if the only contributions under  
3 the plan on behalf of any employee are—

4           “(A) nonelective contributions described in  
5 paragraph (2), and

6           “(B) elective employee contributions de-  
7 scribed in paragraph (3).

8           “(2) NONELECTIVE CONTRIBUTIONS.—

9           “(A) IN GENERAL.—A Pension ProSave  
10 Plan shall require an employer to make nonelec-  
11 tive contributions equal to 1 percent of com-  
12 pensation for each eligible employee.

13           “(B) ELECTION TO INCREASE CONTRIBU-  
14 TIONS.—

15           “(i) IN GENERAL.—A plan shall not  
16 fail to meet the requirements of subpara-  
17 graph (A) merely because, pursuant to the  
18 terms of the plan, an employer may elect  
19 a uniform rate of nonelective contributions  
20 in excess of 1 percent.

21           “(ii) TIME FOR ELECTION.—A plan  
22 may provide that an election under clause  
23 (i) may be made—

24           “(I) for a year only if notice is  
25 given to all eligible employees within a

1 reasonable period before the 60-day  
2 period referred to in paragraph  
3 (5)(B),

4 “(II) at any time during a year  
5 only if such notice is given at least 30  
6 days before the first day of the first  
7 month for which the election is to  
8 take effect, or

9 “(III) within 45 days of the close  
10 of the year only if such notice is given  
11 before such 45th day.

12 “(C) ELECTION TO DECREASE CONTRIBU-  
13 TIONS.—

14 “(i) IN GENERAL.—A plan shall not  
15 fail to meet the requirements of subpara-  
16 graph (A) merely because, pursuant to the  
17 terms of the plan, an employer may elect  
18 for any year to suspend nonelective con-  
19 tributions or to elect a uniform rate of con-  
20 tributions of less than 1 percent. Such  
21 election may be made only if notice is  
22 given to all eligible employees within a rea-  
23 sonable period of time before the 60-day  
24 period referred to in paragraph (5)(B).

1                   “(ii) LIMITATION.—An employer may  
2                   not elect a lower percentage under clause  
3                   (i), or to suspend nonelective contributions,  
4                   for any year if that election would result in  
5                   nonelective contributions being lower than  
6                   1 percent in more than 2 of the years in  
7                   the 5-year period ending with such year.  
8                   For purposes of the preceding sentence,  
9                   nonelective contributions for any year prior  
10                  to the establishment of the Pension  
11                  ProSave Plan shall be treated as 1 percent.

12                  “(D) MAXIMUM AMOUNT.—The plan shall  
13                  provide that an employer may not make non-  
14                  elective contributions on behalf of an eligible  
15                  employee for any year in excess of \$5,000.

16                  “(3) ELECTIVE CONTRIBUTIONS.—

17                  “(A) IN GENERAL.—A Pension ProSave  
18                  Plan shall allow each eligible employee to make  
19                  elective contributions for any year in an amount  
20                  equal to the greater of—

21                         “(i) an amount equal to twice the  
22                         nonelective contributions of the employer  
23                         for such year on behalf of the employee, or

24                                 “(ii) \$2,000.

25                  “(B) TIMING OF CONTRIBUTIONS.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in clause (ii), contributions under  
3           subparagraph (A) shall be expressed as a  
4           percentage of compensation and shall be  
5           made by an employer as provided in para-  
6           graph (5)(A)(i).

7           “(ii) CATCH UP CONTRIBUTIONS.—If  
8           the maximum amount which may be con-  
9           tributed under subparagraph (A) exceeds  
10          the elective contributions made under  
11          clause (i) for any plan year, an employee  
12          may make elective contributions in an  
13          amount equal to such excess (or any por-  
14          tion thereof) not later than the due date  
15          (including extensions) for the return of tax  
16          for the taxable year within which the plan  
17          year ends. Such contributions shall be  
18          made in such manner as the Pension Port-  
19          ability Clearinghouse may provide.

20          “(C) MAXIMUM AMOUNT.—The plan shall  
21          provide that an employee may not make elective  
22          contributions for any year in excess of \$5,000.

23          “(D) NO CONSTRUCTIVE RECEIPT.—For  
24          purposes of section 402(e)(3) of the Internal  
25          Revenue Code of 1986, contributions under this

1 paragraph shall be treated in the same manner  
2 as contributions under a qualified cash or de-  
3 ferred arrangement under section 401(k) of  
4 such Code.

5 “(4) INFLATION ADJUSTMENT.—In the case of  
6 plan years beginning in a calendar year after 1996,  
7 each of the \$5,000 amounts contained in this sub-  
8 section shall be increased by the product of such  
9 amount and the percentage (if any) by which the  
10 CPI for the preceding calendar year exceeds the CPI  
11 for 1995. For purposes of this paragraph, the CPI  
12 for any calendar year shall be determined under sec-  
13 tion 1(f)(4) of the Internal Revenue Code of 1986.

14 “(5) ADMINISTRATIVE REQUIREMENTS.—

15 “(A) TIME CONTRIBUTIONS REQUIRED TO  
16 BE MADE.—

17 “(i) ELECTIVE CONTRIBUTIONS.—The  
18 terms of a Pension ProSave Plan shall re-  
19 quire an employer to make all elective con-  
20 tributions under paragraph (3) (other than  
21 subparagraph (B)(ii) thereof) not later  
22 than the date on which such contributions  
23 would otherwise be required to be made  
24 under title I if such contributions were  
25 elective contributions under a qualified

1 cash or deferred arrangement under sec-  
2 tion 401(k) of the Internal Revenue Code  
3 of 1986.

4 “(ii) NONELECTIVE CONTRIBUTIONS.—  
5

6 “(I) IN GENERAL.—The terms of  
7 a Pension ProSave Plan shall require  
8 an employer to make all nonelective  
9 contributions under paragraph (2) not  
10 later than the close of the 45-day pe-  
11 riod following the last day of the cal-  
12 endar quarter for which the contribu-  
13 tions are to be made.

14 “(II) CONTRIBUTIONS AFTER  
15 YEAR-END.—For purposes of this sub-  
16 section, a contribution on account of a  
17 year which is made within 45 days (or  
18 within a period prescribed by the Sec-  
19 retary) after the close of the year  
20 shall be deemed to have been made on  
21 the last day of such year.

22 “(B) EMPLOYEE ELECTIONS.—The terms  
23 of a Pension ProSave Plan shall provide that—

24 “(i) an employee may elect to termi-  
25 nate elective contributions described in

1 paragraph (3) at any time during the year,  
2 except that, if the employer so elects, the  
3 employee may not resume participation  
4 until the first day of the next year (or such  
5 earlier time as provided by the plan), and

6 “(ii) each employee eligible to partici-  
7 pate—

8 “(I) may elect, during the 60-day  
9 period before the beginning of any  
10 year, to make elective contributions,  
11 or to modify the amount of elective  
12 contributions, for such year,

13 “(II) may elect, within 30 days  
14 of becoming eligible to participate in  
15 the plan, to make elective contribu-  
16 tions for the year,

17 “(III) may elect, within 30 days  
18 of receiving notice under paragraph  
19 (2)(B) of an increase in nonelective  
20 contributions, to modify the amount  
21 of elective contributions, and

22 “(IV) may elect, not later than  
23 the due date described in paragraph  
24 (3)(B)(ii), to make the elective con-

1                   tributions described in such para-  
2                   graph.

3           “(d) VESTING REQUIREMENTS.—A Pension ProSave  
4 Plan meets the requirements of this subsection only if the  
5 employee’s rights to nonelective and elective contributions  
6 under subsection (c) are nonforfeitable. The rules of sec-  
7 tion 401(k)(4) of the Internal Revenue Code of 1986 shall  
8 apply for purposes of this subsection.

9           “(e) SPECIAL DISTRIBUTION AND LOAN RULES.—A  
10 Pension ProSave Plan meets the requirements of this sub-  
11 section only if, under the terms of the plan, distributions  
12 and loans may be made only in accordance with the provi-  
13 sions of sections 5022 and 5023 of this title.

14           “(f) DEFINITIONS AND SPECIAL RULES.—For pur-  
15 poses of this subsection—

16                   “(1) COMPENSATION.—

17                           “(A) IN GENERAL.—The term ‘compensa-  
18                           tion’ has the meaning given such term by sec-  
19                           tion 414(q)(3) of the Internal Revenue Code of  
20                           1986.

21                           “(B) SELF-EMPLOYED INDIVIDUALS.—

22                           Notwithstanding subparagraph (A), in the case  
23                           of an employee within the meaning of section  
24                           401(c)(1) of such Code, compensation under  
25                           section 414(q)(3) of such Code shall be deter-

1           mined without regard to paragraph (2)(A) (v)  
2           and (vi) of section 401(c) of such Code.

3           “(2) EMPLOYEE.—The term ‘employee’ includes  
4           an employee as defined in section 401(c)(1) of such  
5           Code.

6           “(3) ELIGIBLE EMPLOYEE.—

7                   “(A) IN GENERAL.—The term ‘eligible em-  
8                   ployee’ means, with respect to any year, any  
9                   employee who—

10                           “(i) completed 6 months of service  
11                           with the employer at any time during such  
12                           year, and

13                           “(ii) attained 21 years of age during  
14                           such year.

15           A plan may provide a uniform shorter period of  
16           service or lower age to apply in lieu of those  
17           under the preceding sentence.

18           “(B) EXCLUDABLE EMPLOYEES.—An em-  
19           ployer may elect not to treat employees de-  
20           scribed in section 410(b)(3) of such Code as eli-  
21           gible employees.

22           “(4) PLAN YEAR.—The term ‘plan year’ means  
23           the calendar year.

1       **“Subtitle B—Establishment of**  
2               **Pension ProSave System**

3                       **“PART 1—DEFINITIONS**

4       **“SEC. 5010. DEFINITIONS.**

5               “For purposes of this subtitle and subtitle C:

6                       “(1) **ADVISORY COUNCIL.**—The term ‘Advisory  
7               Council’ means the Pension Portability Clearing-  
8               house Advisory Council established under section  
9               5053.

10                      “(2) **BOARD.**—The term ‘Board’ means the  
11              board of directors of the Pension Portability Clear-  
12              inghouse.

13                      “(3) **CHAIRMAN.**—The term ‘Chairman’ means  
14              the chairman of the board of directors of the Pen-  
15              sion Portability Clearinghouse.

16                      “(4) **CLEARINGHOUSE.**—The term ‘Clearing-  
17              house’ means the Pension Portability Clearinghouse  
18              established under section 5051.

19                      “(5) **PENSION PROSAVE PLAN.**—The term ‘Pen-  
20              sion ProSave Plan’ has the meaning given such term  
21              by section 5002.

1           **“PART 2—ESTABLISHMENT OF PENSION**

2                           **PROSAVE SYSTEM**

3                           **“Subpart A—In General**

4   **“SEC. 5011. ESTABLISHMENT OF PENSION PROSAVE SYS-**  
5                           **TEM.**

6           “The Board shall by regulation establish a system of  
7 Pension ProSave Accounts under which—

8                   “(1) employers and employees may make con-  
9 tributions on behalf of employees under a Pension  
10 ProSave Plan,

11                   “(2) individuals may make qualified rollover  
12 contributions to Pension ProSave Accounts,

13                   “(3) amounts in the Pension ProSave Accounts  
14 are invested as provided in this title, and

15                   “(4) loans and distributions of amounts in the  
16 Pension ProSave Accounts are made as provided in  
17 this title.

18           **“Subpart B—Contributions and Distributions**

19   **“SEC. 5021. CONTRIBUTIONS TO PENSION PROSAVE AC-**  
20                           **COUNTS.**

21           “(a) IN GENERAL.—The system established under  
22 section 5011 shall provide that the only contributions  
23 made to a Pension ProSave Account are—

24                   “(1) contributions under a Pension ProSave  
25 Plan, or

26                   “(2) qualified rollover contributions.

1       “(b) PLAN CONTRIBUTIONS.—The system estab-  
2 lished under section 5011 shall provide to the maximum  
3 extent feasible that contributions under a Pension  
4 ProSave Plan are made in such a manner as provides all  
5 employers with a simple, cost-effective way of making such  
6 contributions.

7       “(c) QUALIFIED ROLLOVER CONTRIBUTIONS.—For  
8 purposes of this title—

9               “(1) IN GENERAL.—The term ‘qualified rollover  
10 contribution’ means—

11                       “(A) the transfer to a Pension ProSave  
12 Account, within 60 days of receipt, of any eligi-  
13 ble rollover distribution described in section  
14 402(c) or 403(a)(4) of the Internal Revenue  
15 Code of 1986, or

16                       “(B) any direct trustee-to-trustee transfer  
17 described in section 401(a)(31) of such Code  
18 from a qualified trust to a Pension ProSave Ac-  
19 count.

20               “(2) COORDINATION WITH TAX CODE.—For  
21 purposes of the Internal Revenue Code of 1986, a  
22 Pension ProSave Account shall be treated as an eli-  
23 gible retirement plan under section 402(c)(8)(B) of  
24 such Code.

1 **“SEC. 5022. REQUIREMENTS RELATING TO DISTRIBUTIONS.**

2 “(a) TIME FOR DISTRIBUTIONS.—

3 “(1) IN GENERAL.—The system established  
4 under section 5011 shall provide that amounts in a  
5 Pension ProSave Account may not be distributed to  
6 participants or beneficiaries earlier than—

7 “(A) the death or disability of the partici-  
8 pant, or

9 “(B) the attainment of age 59½.

10 “(2) MANDATORY DISTRIBUTIONS.—Notwith-  
11 standing paragraph (1), the provisions of section  
12 401(a)(9) of the Internal Revenue Code of 1986  
13 shall apply to a Pension ProSave Account.

14 “(b) FORMS OF DISTRIBUTIONS.—

15 “(1) IN GENERAL.—The system established  
16 under section 5011 shall provide for distributions in  
17 such forms as the Board may provide, except that  
18 the Board shall provide for—

19 “(A) a life annuity,

20 “(B) a joint and survivor annuity,

21 “(C) an annuity for a term certain, and

22 “(D) a lump-sum distribution.

23 “(2) SURVIVOR ANNUITIES; SPOUSAL CON-  
24 SENT.—The provisions of section 205 shall apply to  
25 distributions from a Pension ProSave Account.

1           “(3) ISSUERS.—Annuities under this subsection  
2           shall be provided through persons authorized under  
3           applicable State laws to provide such annuities. The  
4           Board may limit the maximum amount of annuities  
5           issued by any 1 person.

6   **“SEC. 5023. LOAN REQUIREMENTS.**

7           “(a) IN GENERAL.—The system established under  
8           section 5011 shall provide that a participant may obtain  
9           a loan of amounts in a Pension ProSave Account.

10          “(b) LIMITATIONS.—Loans under subsection (a)—

11                  “(1) may be made only for the purposes de-  
12                  scribed in subsection (c),

13                  “(2) may not in the aggregate exceed the por-  
14                  tion of the balance to the credit of the account at-  
15                  tributable to elective employee contributions (and  
16                  earnings allocable thereto), and

17                  “(3) shall be subject to the same terms and  
18                  conditions as similar loans provided by private lend-  
19                  ers.

20          “(c) LOAN PURPOSES.—Loans may be made under  
21          subsection (a)—

22                  “(1) for the payment of acquisition costs of a  
23                  principal residence of the participant or the partici-  
24                  pant’s spouse, child, or grandchild, but only if the

1 individual had no present ownership interest in a  
2 principal residence during the prior 2 years,

3 “(2) for tuition, fees, books, supplies, and  
4 equipment, and reasonable living expenses while  
5 away from home, required for the enrollment or at-  
6 tendance of the participant or the participant’s  
7 spouse, child, or grandchild at an eligible educational  
8 institution (as defined in section 135(c)(3) of the In-  
9 ternal Revenue Code of 1986),

10 “(3) if the participant during the calendar year  
11 or the preceding calendar year received unemploy-  
12 ment compensation for 12 consecutive weeks under  
13 any Federal or State law, and

14 “(4) for medical expenses of the participant, the  
15 participant’s spouse, child, or grandchild, or any an-  
16 cestor of the participant or spouse, but only if a de-  
17 duction is allowed with respect to such expenses  
18 under section 213 of such Code.

19 **“Subpart C—Clearinghouse Investments**

20 **“SEC. 5031. INVESTMENT OPTIONS.**

21 “(a) IN GENERAL.—The Board shall, pursuant to the  
22 system established under section 5011, enter into arrange-  
23 ments, on a competitive basis, with qualified professional  
24 asset managers to provide individuals with the opportunity

1 to invest sums in a Pension ProSave Account in each of  
2 the funds described in subsection (b).

3 “(b) TYPE OF FUNDS.—

4 “(1) IN GENERAL.—The funds described in the  
5 subsection are the following:

6 “(A) A fixed income investment fund.

7 “(B) An equity fund.

8 “(C) A government securities investment  
9 fund.

10 “(D) A small business capitalization fund.

11 “(E) A public infrastructure fund.

12 “(F) An international equity fund.

13 “(2) OTHER FUNDS.—The Board may provide  
14 for other funds which the Board determines appro-  
15 priate, including a common stock index investment  
16 fund.

17 “(c) ASSET MANAGERS.—

18 “(1) IN GENERAL.—The Board may select more  
19 than one qualified professional asset manager for  
20 each type of fund described in subsection (b).

21 “(2) ASSET ALLOCATION.—The Board may  
22 place limits on the amount which may be allocated  
23 to any qualified professional asset manager to the  
24 extent the Board determines necessary to prevent

1 undue impact on any financial market or undue risk  
2 to participants.

3 “(3) DEFINITION.—For purposes of this title,  
4 the term “qualified professional asset manager” has  
5 the meaning given such term by section 8438(a)(7)  
6 of title 5, United States Code.

7 “(d) PARTICIPANT ELECTIONS.—

8 “(1) IN GENERAL.—The system established  
9 under section 5011 shall provide that an individual  
10 on whose behalf a Pension ProSave Account is es-  
11 tablished may—

12 “(A) elect the investment funds into which  
13 contributions to the account are to be invested,  
14 and

15 “(B) elect to transfer contributions (and  
16 earnings) from one fund to another.

17 “(2) TIME AND METHOD.—

18 “(A) TIME.—Such system shall provide  
19 that—

20 “(i) any election under paragraph  
21 (1)(A) shall be effective on the first day of  
22 the month following the month in which  
23 the election was made, and

1           “(ii) any election under paragraph  
2           (1)(B) shall be effective on the first busi-  
3           ness day following the election.

4           “(B) METHOD.—Any election shall be  
5           made in the manner provided by the system, ex-  
6           cept that the Board shall seek to ensure elec-  
7           tions may be made in a simple, timely manner.

8           “(3) LIMITATION.—Any election under this sub-  
9           section shall be subject to the asset allocation limita-  
10          tion under subsection (c)(2).

11   **“Subpart D—Administrative Provisions; Fiduciary**  
12                                   **Responsibilities**

13   **“SEC. 5041. ACCOUNTING AND INFORMATION.**

14          “(a) ESTABLISHMENT OF ACCOUNTS.—

15               “(1) IN GENERAL.—The system established  
16               under section 5011 shall provide for the establish-  
17               ment and maintenance of a Pension ProSave Ac-  
18               count for each individual—

19                       “(A) for whom contributions are made to  
20                       the Clearinghouse under a Pension ProSave  
21                       Plan, or

22                       “(B) who transfers amounts, or on whose  
23                       behalf amounts are transferred, to the Clearing-  
24                       house in a qualified rollover contribution.

1           “(2) ALLOCATIONS AND REDUCTIONS TO AC-  
2           COUNT.—Such system shall provide for—

3                   “(A) the allocation to each account of an  
4                   amount equal to a pro rata share of the net  
5                   earnings and net losses from each investment of  
6                   sums in such account, and

7                   “(B) a reduction in each such account for  
8                   the account’s appropriate share of the adminis-  
9                   trative expenses to be paid out.

10           “(3) EXAMINATION OF ACCOUNTS.—

11                   “(A) IN GENERAL.—The Clearinghouse  
12                   shall annually engage, on behalf of all individ-  
13                   uals for whom an account is maintained, an  
14                   independent qualified public accountant (within  
15                   the meaning of section 103(a)(3)(D) who shall  
16                   conduct an examination of all accounts and  
17                   other books and records maintained in the ad-  
18                   ministration of this title as the accountant con-  
19                   siders necessary to make the determination  
20                   under subparagraph (B). The examination shall  
21                   be conducted in accordance with generally ac-  
22                   cepted auditing standards and shall involve  
23                   such tests of the accounts, books, and records  
24                   as the public accountant considers necessary.

1           “(B) DETERMINATION OF COMPLIANCE.—

2           The public accountant conducting an examina-  
3           tion under subparagraph (A) shall determine  
4           whether the accounts, books, and records re-  
5           ferred to in such paragraph have been main-  
6           tained in conformity with generally accepted ac-  
7           counting principles applied on a basis consistent  
8           with the manner in which such principles were  
9           applied during the examination conducted dur-  
10          ing the preceding year. The public accountant  
11          shall transmit to the Board and the Comptrol-  
12          ler General of the United States a report on  
13          such examination and determination.

14          “(C) RELIANCE.—In making a determina-  
15          tion under subparagraph (B), a public account-  
16          ant may rely on the correctness of any actuarial  
17          matter certified by an enrolled actuary if the  
18          public accountant states his reliance in the re-  
19          port to the Board.

20          “(b) ADDITIONAL INFORMATION.—

21                 “(1) IN GENERAL.—The system established  
22                 under section 5011 shall provide for the furnishing  
23                 of information to employers and employees of the  
24                 opportunity of establishing Pension ProSave Plans

1 and of transferring amounts to Pension ProSave Ac-  
2 counts.

3 “(2) ACCOUNT PARTICIPANTS.—

4 “(A) IN GENERAL.—Such system shall  
5 provide that each individual for whom an ac-  
6 count is maintained shall be periodically fur-  
7 nished with—

8 “(i) a statement relating to the indi-  
9 vidual’s account, and

10 “(ii) a summary description of the in-  
11 vestment options under the account and an  
12 evaluation of such option during the 5-year  
13 period preceding the evaluation.

14 “(B) ACCOUNT VALUATION.—Such system  
15 shall also provide that each individual for whom  
16 an account is established shall be entitled, upon  
17 request, to a daily valuation of amounts in each  
18 fund described in section 5031(b) in order to  
19 enable the individual to make an election to  
20 transfer such amounts between funds.

21 “(3) INVESTMENT INFORMATION.—The Clear-  
22 inghouse shall also make available to employees in-  
23 formation on how to make informed investment deci-  
24 sions and how to achieve retirement objectives.

1           “(4) INFORMATION NOT INVESTMENT AD-  
2           VICE.—Information provided under this subsection  
3           shall not be treated as investment advice for pur-  
4           poses of any Federal or State law.

5   **“SEC. 5042. ADMINISTRATIVE COSTS.**

6           “(a) IN GENERAL.—Any expense incurred by the  
7   Clearinghouse, the Board, or the Advisory Council in car-  
8   rying out their functions under this title shall be paid first  
9   from the earnings of the funds in Pension ProSave Ac-  
10   counts and then from balances in such accounts.

11          “(b) ALLOCATION.—Expenses under subsection (a)  
12   shall be allocated to each Pension ProSave Account in the  
13   manner provided under section 5041.

14   **“SEC. 5043. FIDUCIARY RESPONSIBILITIES; LIABILITY AND**  
15                   **PENALTIES; BONDING; INVESTIGATIVE AU-**  
16                   **THORITY.**

17          “Except as provided by the Secretary of Labor in reg-  
18   ulations, the provisions of sections 8477, 8478, 8478a,  
19   and 8479(a) of title 5, United States Code, shall apply  
20   to the Clearinghouse in the same manner as such provi-  
21   sions apply to the Thrift Savings Fund.

1     **“Subtitle C—Pension Portability**  
2                   **Clearinghouse**

3     **“SEC. 5051. ESTABLISHMENT OF PENSION PORTABILITY**  
4                   **CLEARINGHOUSE.**

5           “(a) ESTABLISHMENT.—There is established within  
6 the executive branch of the Government a body corporate  
7 to be known as the Pension Portability Clearinghouse.

8           “(b) ADMINISTRATION.—In carrying out its duties  
9 under this title, the Clearinghouse shall be administered  
10 by the Chairman in accordance with policies established  
11 by the Board.

12          “(c) POWERS.—In carrying out its duties under this  
13 title—

14           “(1) IN GENERAL.—The Clearinghouse shall  
15 have the powers conferred on a nonprofit corpora-  
16 tion under the District of Columbia Nonprofit Cor-  
17 poration Act (chapter 5 of title 29 of the District of  
18 Columbia Code (section 29–501 et seq.)).

19           “(2) SPECIFIC POWERS.—The Clearinghouse  
20 shall have—

21           “(A) the specific powers granted to it by  
22 this title, and

23           “(B) powers identical to the powers con-  
24 ferred on the Pension Benefit Guaranty Cor-

1           poration under paragraphs (1) through (8) of  
2           section 4002(b).

3           “(d) TREATMENT AS QUALIFIED TRUST.—For pur-  
4 poses of the Internal Revenue Code of 1986—

5           “(1) the Clearinghouse shall be treated in the  
6           same manner as a trust described in section 401(a)  
7           of such Code which is exempt from taxation under  
8           section 501(a) of such Code, and

9           “(2) any contribution to, or distribution from,  
10          the Clearinghouse shall be treated in the same man-  
11          ner as contributions to, or distributions from, such  
12          a trust.

13       **“SEC. 5052. BOARD OF DIRECTORS.**

14          “(a) APPOINTMENT.—The board of directors of the  
15 Pension Portability Clearinghouse shall be composed of 5  
16 members appointed by the President, of whom 1 shall be  
17 designated by the President as Chairman.

18          “(b) ADVICE AND CONSENT.—Appointments under  
19 subsection (a) shall be made by and with the advice and  
20 consent of the Senate.

21          “(c) EXPERTISE.—Members of the Board shall have  
22 substantial experience, training, and expertise in the man-  
23 agement of financial investments and pension benefit  
24 plans.

25          “(d) TERMS.—

1           “(1) IN GENERAL.—A member of the Board  
2 shall be appointed for a term of 3 years, except that  
3 of the members first appointed—

4           “(A) the Chairman shall be appointed for  
5 a term of 3 years,

6           “(B) 2 members shall be appointed for a  
7 term of 2 years, and

8           “(C) 2 members shall be appointed for a  
9 term of 1 year.

10          “(2) VACANCIES.—A vacancy on the Board  
11 shall be filled in the same manner in which the origi-  
12 nal appointment was made. Any individual so ap-  
13 pointed shall serve for the unexpired term of the  
14 member replaced.

15          “(3) SUCCESSORS REQUIRED.—The term of any  
16 member shall not expire before the date on which  
17 the member’s successor takes office.

18          “(e) GENERAL DUTIES AND POWERS.—

19           “(1) GENERAL RULE.—The Board shall—

20           “(A) establish policies for the establish-  
21 ment and management of the system described  
22 in section 5011,

23           “(B) establish policies for the investment  
24 and management of the amounts in Pension  
25 ProSave Accounts,

1           “(C) review the performance of invest-  
2           ments made for the Clearinghouse, and

3           “(D) review and approve the budgets of  
4           the Clearinghouse and the Board.

5           “(2) OVERSIGHT OF CLEARINGHOUSE.—The  
6           Board may—

7           “(A) provide for the hiring of employees of  
8           the Clearinghouse, including the appointment of  
9           the Executive Director,

10           “(B) direct the Executive Director to take  
11           such actions as the Board considers necessary  
12           to carry out the provisions of this title,

13           “(C) upon the concurring votes of 4 mem-  
14           bers of the Board, remove the Executive Direc-  
15           tor for cause, and

16           “(D) take such other actions as may be  
17           necessary to carry out the functions of the  
18           Board.

19           “(3) RESPONSIBILITIES.—

20           “(A) IN GENERAL.—The members of the  
21           Board shall discharge their responsibilities sole-  
22           ly in the interests of participants and bene-  
23           ficiaries under Pension ProSave Accounts.

24           “(B) INVESTMENTS.—The Board may not  
25           direct the Clearinghouse to invest or cause to be

1           invested any sums in a specific asset or to dis-  
2           pose or cause to be disposed of any specific  
3           asset.

4           “(4) INVESTMENT POLICIES.—Any investment  
5           policies adopted under paragraph (1)(B) shall pro-  
6           vide for—

7                   “(A) prudent investments suitable for ac-  
8                   cumulating funds for payment of retirement in-  
9                   come, and

10                   “(B) low administrative costs.

11           “(5) BUDGETS.—The Board shall prepare and  
12           submit to the President, and, at the same time, to  
13           the appropriate committees of Congress, an annual  
14           budget of the expenses and other items relating to  
15           the Board which shall be included as a separate item  
16           in the budget required to be transmitted to the Con-  
17           gress under section 1105 of title 31, United States  
18           Code.

19           “(6) LEGISLATIVE RECOMMENDATIONS.—The  
20           Board may submit to the President, and, at the  
21           same time, shall submit to each House of Congress,  
22           any legislative recommendations of the Board relat-  
23           ing to any of its functions under this title or any  
24           other provision of law.

25           “(f) ADMINISTRATIVE PROVISIONS.—

1           “(1) MEETINGS.—The Board shall meet not  
2 less than once during each month and at additional  
3 times at the call of the Chairman.

4           “(2) QUORUMS.—

5                 “(A) IN GENERAL.—The Board shall per-  
6 form its duties and exercise its powers on a ma-  
7 jority vote of a quorum of the Board.

8                 “(B) VACANCY.—A vacancy on the Board  
9 shall not impair the authority of a quorum of  
10 the Board to perform its duties and exercise its  
11 powers.

12                 “(C) QUORUM.—3 members of the Board  
13 shall constitute a quorum for the transaction of  
14 business.

15           “(3) COMPENSATION.—

16                 “(A) IN GENERAL.—Each member of the  
17 Board who is not an officer or employee of the  
18 Federal Government shall be compensated at  
19 the daily rate of basic pay for level IV of the  
20 Executive Schedule under title 5, United States  
21 Code, for each day such member is performing  
22 the duties of the Board.

23                 “(B) TRAVEL AND PER DIEM.—A member  
24 of the Board shall be paid travel, per diem, and  
25 other necessary expenses under subchapter I of

1 chapter 57 of title 5, United States Code, while  
2 traveling away from such member's home or  
3 regular place of business in the performance of  
4 the duties of the Board.

5 “(4) EXECUTIVE DIRECTOR.—

6 “(A) APPOINTMENT.—The chief executive  
7 officer of the Clearinghouse shall be the Execu-  
8 tive Director appointed under subsection (e).

9 “(B) DUTIES.—The Executive Director  
10 shall—

11 “(i) carry out policies established by  
12 the Board, and

13 “(ii) administer the Clearinghouse, in-  
14 cluding—

15 “(I) appointing such personnel as  
16 may be necessary to carry out the du-  
17 ties of the Clearinghouse,

18 “(II) subject to approval by the  
19 Board, procure the services of experts  
20 and consultants, and

21 “(III) pay compensation and  
22 other expenses of the Clearinghouse  
23 from funds in the Clearinghouse.

1 **“SEC. 5053. PENSION PORTABILITY CLEARINGHOUSE ADVI-**  
2 **SORY COUNCIL.**

3 “(a) APPOINTMENT.—There is hereby established the  
4 Pension Portability Clearinghouse Advisory Council which  
5 shall consist of 15 members appointed by the President,  
6 from among individuals who have substantial experience,  
7 training, and expertise in the management of financial in-  
8 vestments and pension benefit plans, including representa-  
9 tives of—

10 “(1) the insurance industry,

11 “(2) the fields of accounting, actuarial science,  
12 and investment counseling and management,

13 “(3) mutual funds,

14 “(4) organized labor, small plan sponsors, pen-  
15 sion advocacy organizations, and retiree groups, and

16 “(5) the general public.

17 “(b) TERMS.—

18 “(1) IN GENERAL.—A member of the Advisory  
19 Council shall be appointed for a term of 3 years, ex-  
20 cept that of the members first appointed—

21 “(A) 5 shall be appointed for a term of 3  
22 years,

23 “(B) 5 shall be appointed for a term of 2  
24 years, and

25 “(C) 5 shall be appointed for a term of 1  
26 year.

1           “(2) VACANCIES.—A vacancy on the Advisory  
2 Council shall be filled in the same manner in which  
3 the original appointment was made. Any individual  
4 so appointed shall serve for the unexpired term of  
5 the member replaced.

6           “(3) SUCCESSOR REQUIRED.—The term of any  
7 member shall not expire before the date on which  
8 the member’s successor takes office.

9           “(c) ACTIONS.—The Advisory Council shall act by  
10 resolution of a majority of its members.

11          “(d) DUTIES.—The Advisory Council shall—

12           “(1) advise the Board on the establishment of  
13 the Pension ProSave system under subtitle B,

14           “(2) advise the Board on matters relating to—

15            “(A) investment policies for the Clearing-  
16 house, including standards for limiting amounts  
17 administered by any asset manager, and

18            “(B) the administration of this title, and

19           “(3) perform such other duties as the Board  
20 may request.”

21          (b) CLERICAL AMENDMENT.—Section 1 of the Em-  
22 ployee Retirement Income Security Act of 1974 (29  
23 U.S.C. 1001 note) is amended by adding at the end the  
24 following new items:

“TITLE V—PENSION PROSAVE SYSTEM

“Subtitle A—Pension ProSave Plans

“Sec. 5001. Easy access for all employers.

“Sec. 5002. Pension Prosave Plans.

“Subtitle B—Establishment of Pension ProSave System

“Part 1—Definitions

“Sec. 5010. Definitions.

“Part 2—Establishment of Pension Prosave System

“SUBPART A—IN GENERAL

“Sec. 5011. Establishment of Pension Prosave system.

“SUBPART B—CONTRIBUTIONS AND DISTRIBUTIONS

“Sec. 5021. Contributions to Pension Prosave Accounts.

“Sec. 5022. Requirements relating to distributions.

“Sec. 5023. Loan requirements.

“SUBPART C—CLEARINGHOUSE INVESTMENTS

“Sec. 5031. Investment options.

“SUBPART D—ADMINISTRATIVE PROVISIONS; FIDUCIARY RESPONSIBILITIES

“Sec. 5041. Accounting and information.

“Sec. 5042. Administrative costs.

“Sec. 5043. Fiduciary responsibilities; liability and penalties; bonding; investigative authority.

“Subtitle C—Pension Portability Clearinghouse

“Sec. 5051. Establishment of Pension Portability Clearinghouse.

“Sec. 5052. Board of directors.

“Sec. 5053. Pension Portability Clearinghouse Advisory Council.”

**1 SEC. 3. OTHER MODIFICATIONS TO ERISA.**

2 (a) REPORTING REQUIREMENTS.—Section 101 of the  
 3 Employee Retirement Income Security Act of 1974 (29  
 4 U.S.C. 1021) is amended by redesignating subsection (g)  
 5 as subsection (h) and by inserting after subsection (f) the  
 6 following new subsection:

7 “(g) NOTIFICATION AND DISCLOSURE.—

8 “(1) IN GENERAL.—Except as provided in this  
 9 subsection, the reporting and disclosure require-

1       ments of title I with respect to any Pension ProSave  
2       Plan shall apply to the Pension Portability Clearing-  
3       house and not to the plan sponsor.

4           “(2) EMPLOYEE NOTIFICATION.—The plan  
5       sponsor shall notify each participant immediately be-  
6       fore the period for which an election may be made  
7       of the participant’s opportunity to make such elec-  
8       tion. Such notice shall include a copy of the sum-  
9       mary plan description required under section 102  
10      and shall indicate the level of employer nonelective  
11      contributions which will be made for the year (or  
12      portion thereof) for which the election may be made.  
13      This paragraph shall not apply to an election under  
14      section 5002(c)(3)(B)(ii).”

15      (b) FIDUCIARY DUTIES.—Section 404 of the Em-  
16      ployee Retirement Income Security Act of 1974 (29  
17      U.S.C. 1104) is amended by redesignating subsection (d)  
18      as subsection (e) and by adding after subsection (c) the  
19      following new subsection:

20           “(d) In the case of a Pension ProSave Plan under  
21      title V—

22           “(1) no plan sponsor who is otherwise a fidu-  
23      ciary shall be liable under this part for any loss, or  
24      by reason of any breach, which results from the

1 manner in which the assets in a Pension ProSave  
2 Account are invested, and

3 “(2) if—

4 “(A) a participant ceases to be an eligible  
5 employee (within the meaning of section  
6 5002(f)(3)) with respect to such plan, and

7 “(B) the plan sponsor has made all re-  
8 quired contributions with respect to such partici-  
9 pant under such plan,

10 the trustee of the Pension ProSave Account estab-  
11 lished for such participant and his beneficiaries shall  
12 be the sole fiduciary with respect to such participant  
13 and beneficiaries in connection with such plan.”

14 **SEC. 4. EFFECTIVE DATE.**

15 The Pension ProSave system established under this  
16 Act shall take effect on the first day of the sixth month  
17 following the month in which final regulations described  
18 in section 5011 of the Employee Retirement Income Secu-  
19 rity Act of 1974 are published in the Federal Register.

○