

109TH CONGRESS
1ST SESSION

H. R. 4274

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide for protections with respect to the accrued benefits of participants during conversions of pension plans to cash balance plans.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2005

Mrs. JONES of Ohio 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 the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide for protections with respect to the accrued benefits of participants during conversions of pension plans to cash balance plans.

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 “Preservation of De-
5 fined Benefit Plans Act of 2005”.

1 **SEC. 2. RULES RELATING TO REDUCTION IN ACCRUED BEN-**
2 **EFITS BECAUSE OF ATTAINMENT OF ANY**
3 **AGE.**

4 (a) AMENDMENT TO INTERNAL REVENUE CODE OF
5 1986.—Subparagraph (H) of section 411(b)(1) of the In-
6 ternal Revenue Code of 1986 (relating to continued ac-
7 crual beyond normal retirement age) is amended—

8 (1) by striking the heading and inserting the
9 following: “RULES RELATING TO REDUCTION IN AC-
10 CRUED BENEFITS BECAUSE OF ATTAINMENT OF ANY
11 AGE.—”; and

12 (2) by adding at the end the following:

13 “(vi) COMPARISON TO SIMILARLY SIT-
14 UATED, YOUNGER INDIVIDUALS.—

15 “(I) IN GENERAL.—A defined
16 benefit plan under which the accrued
17 benefit payable under the plan upon
18 distribution (or any portion thereof) is
19 expressed as the balance of an ac-
20 count maintained for the participant
21 shall not be treated as age discrimina-
22 tory under the rules set forth in this
23 subsection if the participant’s accrued
24 benefit under the plan, as determined
25 as of any date under the formula as
26 set forth in the plan documents, would

1 be equal to or greater than that of
2 any similarly situated younger indi-
3 vidual.

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

13 (b) AMENDMENT TO THE EMPLOYEE RETIREMENT
14 INCOME SECURITY ACT OF 1974.—Section 204(b)(1)(H)
15 of the Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1054(b)(1)(H)) is amended by adding at the
17 end the following new clause:

18 “(vii)(I) A defined benefit plan under which the
19 accrued benefit payable under the plan upon dis-
20 tribution (or any portion thereof) is expressed as the
21 balance of an account maintained for the participant
22 shall not be treated as age discriminatory under the
23 rules set forth in this subsection if the participant’s
24 accrued benefit under the plan, as determined as of
25 any date under the formula as set forth in the plan

1 documents, would be equal to or greater than that
2 of any similarly situated younger individual.

3 “(II) For purposes of this clause, an individual
4 is similarly situated to a participant if such indi-
5 vidual is identical to such participant in every re-
6 spect (including period of service, compensation, po-
7 sition, date of hire, work history, and any other re-
8 spect) except for age.”.

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

12 **SEC. 3. DETERMINATIONS OF ACCRUED BENEFIT AS BAL-**
13 **ANCE OF BENEFIT ACCOUNT.**

14 (a) AMENDMENT TO INTERNAL REVENUE CODE OF
15 1986.—Subsection (a) of section 411 of the Internal Rev-
16 enue Code of 1986 (relating to minimum vesting stand-
17 ards) is amended by adding at the end the following new
18 paragraph:

19 “(13) MAINTENANCE OF NONFORFEITABILITY
20 OF BENEFITS EXPRESSED AS ACCOUNT BALANCE.—

21 “(A) IN GENERAL.—A defined benefit plan
22 under which the accrued benefit payable under
23 the plan upon distribution (or any portion
24 thereof) is expressed as the balance of an ac-
25 count maintained for the participant shall not

1 be treated as failing to meet the requirements
2 of paragraph (2) or 417(e) solely because of the
3 amount actually made available for such dis-
4 tribution under the terms of the plan, in any
5 case in which—

6 “(i) the applicable interest rate that
7 would be required to discount the partici-
8 pant’s accrued benefit projected under the
9 terms of the plan to normal retirement age
10 to a present value equal to the amount ac-
11 tually made available for distribution under
12 the plan is not greater than

13 “(ii) a market rate of return.

14 “(B) REGULATIONS.—The Secretary may
15 provide by regulation for rules governing the
16 calculation of a market rate of return for pur-
17 poses of subparagraph (A) and for permissible
18 methods of crediting interest to the account (in-
19 cluding variable interest rates) resulting in ef-
20 fective rates of return meeting the requirements
21 of subparagraph (A).”.

22 (b) AMENDMENT TO EMPLOYEE RETIREMENT IN-
23 COME SECURITY ACT OF 1974.—Section 203 of the Em-
24 ployee Retirement Income Security Act of 1974 (29

1 U.S.C. 1053) is amended by adding at the end the fol-
2 lowing new subsection:

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

11 “(A) the applicable interest rate that would be
12 required to discount the participant’s accrued benefit
13 projected under the terms of the plan to normal re-
14 tirement age to a present value equal to the amount
15 actually made available for distribution under the
16 plan is not greater than

17 “(B) a market rate of return.

18 “(2) The Secretary of the Treasury may provide by
19 regulation for rules governing the calculation of a market
20 rate of return for purposes of paragraph (1) and for per-
21 missible methods of crediting interest to the account (in-
22 cluding variable interest rates) resulting in effective rates
23 of return meeting the requirements of paragraph (1).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after the
3 date of the enactment of this Act.

4 **SEC. 4. AGE DISCRIMINATION PROTECTIONS FOR PENSION**
5 **PLAN PARTICIPANTS FROM CASH BALANCE**
6 **CONVERSIONS.**

7 (a) AMENDMENT TO INTERNAL REVENUE CODE OF
8 1986.—Section 411 of the Internal Revenue Code of 1986
9 (relating to special rules) is amended by adding at the end
10 the following new subsection:

11 “(f) AGE DISCRIMINATION SAFE HARBOR RULES
12 FOR CERTAIN PLAN CONVERSIONS.—

13 “(1) AGE DISCRIMINATION.—An applicable plan
14 amendment adopted by a defined benefit plan shall
15 not be treated as satisfying the requirements of this
16 section unless the opening account balance of each
17 participant under the plan after the adoption of the
18 amendment is equal to at least the present value of
19 the participant’s retirement benefit at age 65 before
20 the effective date of the amendment, determined
21 under the terms of the plan as in effect immediately
22 before the effective date.

23 “(2) APPLICABLE PLAN AMENDMENT.—For
24 purposes of this subsection, the term ‘applicable plan
25 amendment’ means a plan amendment which has the

1 effect of converting a defined benefit plan to a plan
2 under which the accrued benefit is expressed to par-
3 ticipants and beneficiaries as an amount other than
4 an annual benefit commencing at normal retirement
5 age (or which has a similar effect as determined
6 under regulations of the Secretary under subsection
7 (b)(1)(I)(iv)).

8 “(3) SPECIAL TRANSITION RULES.—

9 “(A) IN GENERAL.—Paragraph (1) shall
10 not apply with respect to an applicable plan
11 amendment adopted on or after January 1,
12 1997, and before November 9, 2005, until the
13 date which is 2 years after the date of the en-
14 actment of this subsection.

15 “(B) PARTICIPANTS SEPARATED FROM
16 SERVICE BEFORE ENACTMENT.—A participant
17 who is separated from service before November
18 9, 2005, need not be taken into account for
19 purposes of applying paragraph (1) until the
20 date which is 3 years after the date of the en-
21 actment of this subsection.”.

22 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
23 OF 1974.—Section 203 of the Employee Retirement In-
24 come Security Act of 1974 (29 U.S.C. 1053) is amended
25 by adding at the end the following new subsection:

1 “(f)(1) An applicable plan amendment adopted by a
2 defined benefit plan shall not be treated as satisfying the
3 requirements of this section unless the opening account
4 balance of each participant under the plan after the adop-
5 tion of the amendment is equal to at least the present
6 value of the participant’s retirement benefit at age 65 be-
7 fore the effective date of the amendment, determined
8 under the terms of the plan as in effect immediately before
9 the effective date.

10 “(2) For purposes of this subsection, the term ‘appli-
11 cable plan amendment’ means a plan amendment which
12 has the effect of converting a defined benefit plan to a
13 plan under which the accrued benefit is expressed to par-
14 ticipants and beneficiaries as an amount other than an
15 annual benefit commencing at normal retirement age (or
16 which has a similar effect as determined under regulations
17 of the Secretary of the Treasury under subsection
18 (b)(1)(I)(iv)).

19 “(3)(A) Paragraph (1) shall not apply with respect
20 to an applicable plan amendment adopted on or after Jan-
21 uary 1, 1997, and before November 9, 2005, until the date
22 which is 2 years after the date of the enactment of this
23 subsection.

24 “(B) A participant who is separated from service be-
25 fore November 9, 2005, need not be taken into account

1 for purposes of applying paragraph (1) until the date
2 which is 3 years after the date of the enactment of this
3 subsection.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of the enactment
6 of this Act.

7 **SEC. 5. WEAR AWAY PROTECTIONS IN PENSION PLAN CASH**
8 **BALANCE CONVERSIONS.**

9 (a) AMENDMENT TO INTERNAL REVENUE CODE OF
10 1986.—Section 411 of the Internal Revenue Code of 1986
11 (relating to special rules), as amended by section 4, is
12 amended by adding at the end the following new sub-
13 section:

14 “(g) TREATMENT OF PLAN AMENDMENTS WEARING
15 AWAY ACCRUED BENEFIT.—

16 “(1) IN GENERAL.—An applicable plan amend-
17 ment adopted by a defined benefit plan shall not be
18 treated as satisfying the requirements of this section
19 unless the applicable plan amendment meets the re-
20 quirements of paragraphs (2) and (3).

21 “(2) WEAR AWAY PREVENTED.—For purposes
22 of paragraph (1), an applicable plan amendment
23 meets the requirements of this paragraph if, under
24 the terms of the plan after the adoption of the

1 amendment, the accrued benefit of the participant at
2 any time is not less than the sum of—

3 “(A) the participant’s accrued benefit for
4 years of service before the effective date of the
5 amendment, determined under the terms of the
6 plan as in effect immediately before the effec-
7 tive date, plus

8 “(B) the participant’s accrued benefit de-
9 termined under the formula applicable to ben-
10 efit accruals under the current plan as applied
11 to years of service after such effective date.

12 “(3) EMPLOYER CHOICE OF METHOD TO PRO-
13 TECT CERTAIN PARTICIPANTS.—For purposes of
14 paragraph (1), an applicable plan amendment meets
15 the requirements of this paragraph if the plan to be
16 amended provides each participant who has at least
17 10 years of service (as determined under subsection
18 (a)) under the plan at the time such amendment
19 takes effect and is within 5 years of eligibility for re-
20 tirement under the plan with one of the following:

21 “(A) PARTICIPANT ELECTION TO MAIN-
22 TAIN RATE OF ACCRUAL IN EFFECT BEFORE
23 PLAN AMENDMENT.—Each such participant—

24 “(i) is provided with notice of the plan
25 amendment, including a comparison of the

1 present and projected values of the accrued
2 benefit determined both with and without
3 regard to the plan amendment, and

4 “(ii) may elect upon retirement to ei-
5 ther receive benefits under the terms of the
6 plan as in effect at the time of retirement
7 or to receive benefits under the terms of
8 the plan as in effect immediately before the
9 effective date of such plan amendment
10 (taking into account all benefit accruals
11 under such terms since such date).

12 “(B) BENEFITS OF AMENDED PLAN DO
13 NOT DECREASE.—For each such participant,
14 the benefits after the plan amendment takes ef-
15 fect are not less than the greatest benefits the
16 participant would have received by reason of the
17 election described in subparagraph (A)(ii).

18 “(C) MAINTENANCE OF EFFORT.—For
19 each such participant, for at least the first 5
20 years after the plan amendment takes effect,
21 benefits under the terms of the plan as in effect
22 immediately before the effective date of such
23 plan amendment (taking into account all benefit
24 accruals under such terms since such date).

1 “(4) DEFINITIONS.—For purposes of this sub-
2 section—

3 “(A) APPLICABLE PLAN AMENDMENT.—
4 The term ‘applicable plan amendment’ has the
5 meaning given such term by subsection (f).

6 “(B) PROTECTED ACCRUED BENEFIT.—An
7 accrued benefit shall include any early retire-
8 ment benefit or retirement-type subsidy (within
9 the meaning of subsection (d)(6)(B)(i)), but
10 only with respect to a participant who satisfies
11 (either before or after the effective date of the
12 amendment) the conditions for the benefit or
13 subsidy under the terms of the plan as in effect
14 immediately before such date.”.

15 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
16 OF 1974.—Section 203 of the Employee Retirement In-
17 come Security Act of 1974 (29 U.S.C. 1053), as amended
18 by section 4, is amended by adding at the end the fol-
19 lowing new subsection:

20 “(g)(1) An applicable plan amendment adopted by a
21 defined benefit plan shall not be treated as satisfying the
22 requirements of this section unless the applicable plan
23 amendment meets the requirements of paragraphs (2) and
24 (3).

1 “(2) For purposes of paragraph (1), an applicable
2 plan amendment meets the requirements of this paragraph
3 if, under the terms of the plan after the adoption of the
4 amendment, the accrued benefit of the participant at any
5 time is not less than the sum of—

6 “(A) the participant’s accrued benefit for years
7 of service before the effective date of the amend-
8 ment, determined under the terms of the plan as in
9 effect immediately before the effective date, plus

10 “(B) the participant’s accrued benefit deter-
11 mined under the formula applicable to benefit accru-
12 als under the current plan as applied to years of
13 service after such effective date.

14 “(3) For purposes of paragraph (1), an applicable
15 plan amendment meets the requirements of this paragraph
16 if the plan to be amended provides each participant who
17 has at least 10 years of service (as determined under sub-
18 section (a)) under the plan at the time such amendment
19 takes effect and is within 5 years of eligibility for retire-
20 ment under the plan with one of the following:

21 “(A) Each such participant—

22 “(i) is provided with notice of the plan
23 amendment, including a comparison of the
24 present and projected values of the accrued

1 benefit determined both with and without re-
2 gard to the plan amendment, and

3 “(ii) may elect upon retirement to either
4 receive benefits under the terms of the plan as
5 in effect at the time of retirement or to receive
6 benefits under the terms of the plan as in effect
7 immediately before the effective date of such
8 plan amendment (taking into account all benefit
9 accruals under such terms since such date).

10 “(B) For each such participant, the benefits
11 after the plan amendment takes effect are not less
12 than the greatest benefits the participant would have
13 received by reason of the election described in sub-
14 paragraph (A)(ii).

15 “(C) For each such participant, for at least the
16 first 5 years after the plan amendment takes effect,
17 benefits under the terms of the plan as in effect im-
18 mediately before the effective date of such plan
19 amendment (taking into account all benefit accruals
20 under such terms since such date).

21 “(4) For purposes of this subsection—

22 “(A) The term ‘applicable plan amendment’ has
23 the meaning given such term by subsection (f).

24 “(B) An accrued benefit shall include any early
25 retirement benefit or retirement-type subsidy (within

1 the meaning of subsection (d)(6)(B)(i)), but only
2 with respect to a participant who satisfies (either be-
3 fore or after the effective date of the amendment)
4 the conditions for the benefit or subsidy under the
5 terms of the plan as in effect immediately before
6 such date.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to any amendment
9 to a plan adopted after the date of the enactment of this
10 Act.

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