

108TH CONGRESS  
1ST SESSION

# H. R. 2078

To amend title I of the Employee Retirement Income Security Act of 1974 to require equitable funding of pension plans maintained by corporations which also maintain executive pension plans.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2003

Mr. OSE introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to require equitable funding of pension plans maintained by corporations which also maintain executive pension 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 “Employees’ Pension  
5       Equity Act of 2003”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds as follows:

1           (1) Some large companies are setting aside mil-  
2           lions of dollars to protect pensions of highly com-  
3           pensated executives at the same time as they forgo  
4           contributions to financially strained and under-  
5           funded pension plans for non-executive workers.  
6           Underfunding of pension plans for non-executives  
7           has been increasing.

8           (2) There are a variety of pension-type “supple-  
9           mental executive retirement plans” for highly com-  
10          pensated executives, including: unfunded executive  
11          pension plans; executive plan “rabbi trusts,” which  
12          are not taxable when established but are subject to  
13          creditors’ claims; executive plan “secular trusts,”  
14          where company contributions are taxable but not  
15          subject to creditors’ claims; and, corporate-owned,  
16          trust-owned, or split-dollar life insurance.

17          (3) It is difficult to compare the funding levels  
18          of regular pension plans and executive pensions.  
19          Under current law, companies must disclose pension  
20          assets and liabilities, company contributions, and  
21          other details of employee pension plans in their an-  
22          nual reports. But, for executive pensions, companies  
23          are only required by the Securities and Exchange  
24          Commission to disclose the existence of trusts they  
25          establish for their Chief Executive Officer and their

1 four other highest-paid executive officers, and not  
 2 the amount of money in them or other details.

3 **SEC. 3. EQUITABLE FUNDING REQUIREMENT FOR EMPLOY-**  
 4 **ERS MAINTAINING AN EXECUTIVE PENSION**  
 5 **PLAN.**

6 Section 302 of the Employee Retirement Income Se-  
 7 curity Act of 1974 (29 U.S.C. 1082) is amended—

8 (1) by redesignating subsection (h) as sub-  
 9 section (i); and

10 (2) by inserting after subsection (g) the fol-  
 11 lowing new subsection:

12 “(h) EQUITABLE FUNDING REQUIREMENT FOR EM-  
 13 PLOYERS MAINTAINING AN EXECUTIVE PENSION PLAN.—

14 “(1) DEFINITIONS.—For purposes of this sub-  
 15 section—

16 “(A) EXECUTIVE PENSION PLAN.—The  
 17 term ‘executive pension plan’ means, with re-  
 18 spect to an employer, any pension plan main-  
 19 tained by such employer primarily for the pur-  
 20 pose of providing for the deferral of compensa-  
 21 tion of one or more highly compensated employ-  
 22 ees of such employer.

23 “(B) NON-EXECUTIVE PENSION PLAN.—  
 24 The term ‘non-executive pension plan’ means,  
 25 with respect to an employer, a pension plan

maintained by such employer other than an executive pension plan maintained by such employer.

“(C) HIGHLY COMPENSATED EMPLOYEE.—

The term ‘highly compensated employee’ has the meaning provided such term in section 414(q) of the Internal Revenue Code of 1986.

“(D) FUNDED CURRENT LIABILITY PER-

CENTAGE.—The term ‘funded current liability percentage’ has the meaning provided such term in subsection (d)(8)(B).

“(2) REQUIREMENT.—In any case in which—

“(A) an employer maintains a non-executive pension plan to which this part applies, and

“(B) the employer also maintains an executive pension plan for any plan year ending with or during a plan year of such non-executive pension plan,

the employer shall meet the equitable funding requirement of this subsection for such plan year of such non-executive pension plan.

“(3) EQUITABLE FUNDING REQUIREMENT.—

The equitable funding requirement of this subsection is met by an employer for a plan year if—

1           “(A) the excess executive plan funding per-  
2           centage of the employer for such plan year is  
3           not more than 5 percent, or

4           “(B) the employer has applied to the plan  
5           the additional contributions necessary to correct  
6           such excess executive funding percentage by a  
7           reduction of not less than 5 percentage points.

8           “(4) EXCESS EXECUTIVE PLAN FUNDING PER-  
9           CENTAGE.—For purposes of this subsection, the ex-  
10          cess executive plan funding percentage of an em-  
11          ployer for a plan year of a non-executive pension  
12          plan is the difference between—

13           “(A) the funded current liability percent-  
14           age of the executive pension plan maintained by  
15           the employer with respect to the plan year of  
16           such executive pension plan ending with or dur-  
17           ing such plan year of such non-executive pen-  
18           sion plan, and

19           “(B) the funded current liability percent-  
20           age of the non-executive pension plan main-  
21           tained by the employer with respect to such  
22           plan year of such non-executive pension plan.

23           “(5) TREATMENT OF 2 OR MORE EXECUTIVE  
24          PENSION PLANS.—In any case in which an employer  
25          maintains 2 or more executive pension plans for plan

1       years ending with or during a plan year of a non-  
2       executive plan maintained by such employer, the ref-  
3       erence in paragraph (4)(A) to the funded current li-  
4       ability percentage of an executive pension plan shall  
5       be deemed a reference to the average of the funded  
6       current liability percentages for such plan years of  
7       such executive pension plans maintained by such em-  
8       ployer. ”.

9       **SEC. 4. EFFECTIVE DATE.**

10       The amendment made by this Act shall apply with  
11       respect to plan years (of non-executive pension plans) be-  
12       ginning after the date of the enactment of this Act.

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