

108TH CONGRESS
2D SESSION

H. R. 5313

To require the advance disclosure to shareholders of certain executive pension plans.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 8, 2004

Mr. EVERETT introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To require the advance disclosure to shareholders of certain
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 “Corporate Advance
5 Disclosure Act of 2004”.

6 **SEC. 2. ADVANCE DISCLOSURE FOR CREATION OR IN-**
7 **CREASE IN NON-QUALIFIED PENSION PLANS.**

8 Section 13 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78m) is amended by adding at the end the
10 following new subsection:

1 “(m) ADVANCE DISCLOSURE FOR CREATION OR IN-
2 CREASE IN NON-QUALIFIED PENSION PLANS.—

3 “(1) DISCLOSURE REQUIRED.—Any issuer that
4 creates, substantially increases, or funds any non-
5 qualified pension plan for which any director or ex-
6 ecutive officer of the issuer is the beneficiary shall
7 provide not less than 60 days notice in advance of
8 such action by filing, in accordance with such rules
9 as the Commission shall prescribe, such information
10 as the Commission may require. Such rules shall re-
11 quire that the disclosure separately state each cre-
12 ation, increase, or funding with respect to each such
13 director or officer.

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

16 “(A) DIRECTOR OR EXECUTIVE OFFI-
17 CER.—The Commission shall define the term
18 ‘director or executive officer’ by rule.

19 “(B) NON-QUALIFIED PENSION PLAN.—
20 The term ‘non-qualified pension plan’ means—

21 “(i) an excess benefit plan;

22 “(ii) a top-hat plan; or

23 “(iii) any other benefit plan that the
24 Commission determines by rule, consistent
25 with the protection of investors and the

1 public interest, to treat as a non-qualified
2 pension plan.

3 “(C) EXCESS BENEFIT PLAN.—The term
4 ‘excess benefit plan’ has the meaning provided
5 such term by section 3(36) of the Employee Re-
6 tirement Income Security Act of 1974 (29
7 U.S.C. 1002(36)).

8 “(D) TOP-HAT PLAN.—The term ‘top-hat
9 plan’ means any pension plan (as such term is
10 defined in section 3(2) of such Act), or any sep-
11 arable part of a pension plan, that is—

12 “(i) maintained by an employer pri-
13 marily for the purpose of providing de-
14 ferred compensation for a select group of
15 management or highly compensated em-
16 ployees; and

17 “(ii) unfunded.

18 “(E) UNFUNDED.—A plan shall be consid-
19 ered to be ‘unfunded’ if its benefits must be
20 paid as needed solely—

21 “(i) from the employer’s general as-
22 sets, rather than from a separate trust or
23 account that has been set aside to hold the
24 funds in question;

1 “(ii) through insurance contracts the
2 premiums for which are paid directly by
3 the employer from its general assets; or

4 “(iii) through both the assets de-
5 scribed in subparagraph (B) and the con-
6 tracts described in subparagraph (C).

7 “(F) SUBSTANTIALLY INCREASE; FUND-
8 ING.—The Commission shall, by rule, define the
9 terms ‘substantially increase’ and ‘to fund’.
10 Such rules may provide that an action may be
11 treated as within either such term even if there
12 is not a ‘constructive receipt’ by the officer or
13 director.”.

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