

109TH CONGRESS
1ST SESSION

S. 861

To amend the Internal Revenue Code of 1986 to provide transition funding rules for certain plans electing to cease future benefit accruals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 2005

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

A BILL

To amend the Internal Revenue Code of 1986 to provide transition funding rules for certain plans electing to cease future benefit accruals, 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 “Employee Pension
5 Preservation Act of 2005”.

1 **SEC. 2. TRANSITION FUNDING RULES FOR CERTAIN PLANS**
 2 **THAT ARE AMENDED TO CEASE FUTURE BEN-**
 3 **EFIT ACCRUALS.**

4 (a) AMENDMENT OF 1986 CODE.—Section 412 of the
 5 Internal Revenue Code of 1986 is amended by adding at
 6 the end the following new subsection:

7 “(o) TRANSITION FUNDING STANDARDS FOR CER-
 8 TAIN PLANS THAT ARE AMENDED TO PERMANENTLY
 9 CEASE FUTURE BENEFIT ACCRUALS.—

10 “(1) IN GENERAL.—Notwithstanding any other
 11 provision of this section, if an eligible plan elects to
 12 have this subsection apply—

13 “(A) the plan shall maintain a transition
 14 funding standard account for each applicable
 15 plan year,

16 “(B) the accumulated funding deficiency of
 17 the plan for any applicable plan year for pur-
 18 poses of this section and section 4971 shall be
 19 determined by using the transition funding
 20 standard account rather than the funding
 21 standard account used without regard to this
 22 subsection, and

23 “(C) except as provided in paragraph (6),
 24 the transition funding standard account shall be
 25 credited and charged solely as provided in this

1 subsection and without regard to the require-
2 ments of subsection (b), (d), (e), (f), (g), or (l).

3 “(2) ELIGIBLE PLAN.—For purposes of this
4 subsection—

5 “(A) IN GENERAL.—The term ‘eligible
6 plan’ means a plan (other than multiemployer
7 plan) to which this section applies—

8 “(i) which is sponsored by an applica-
9 ble employer (as defined in subsection
10 (l)(12)(C)(i)), and

11 “(ii) with respect to which the re-
12 quirements of subparagraphs (B) and (C)
13 are met.

14 “(B) ACCRUAL RESTRICTIONS.—The re-
15 quirements of this subparagraph are met if, ef-
16 fective as of the first day of the first applicable
17 plan year and at all times thereafter, the plan
18 provides that, except to the extent required
19 under section 401(a) or as provided in para-
20 graph (4)(C), a participant will not receive any
21 credit for any purpose under the plan for serv-
22 ice with, or for compensation earned from, the
23 employer (or any member of the employer’s
24 controlled group (within the meaning of sub-
25 section (1)(8)(C))) on or after such first day.

1 “(C) RESTRICTION ON AMENDMENTS IN-
2 CREASING LIABILITIES.—The requirements of
3 this subparagraph are met if, at any time dur-
4 ing the period beginning on the date of the en-
5 actment of this subsection and ending on the
6 day before the first day of the first applicable
7 plan year, no amendment to the plan has been
8 adopted which increases the liabilities of the
9 plan by reason of any increase in benefits, any
10 change in the accrual of benefits, or any change
11 in the rate at which benefits become nonforfeit-
12 able under the plan. This subparagraph shall
13 not apply to any plan amendment described in
14 clause (i) or (ii) of subsection (l)(12)(B).

15 “(3) ELECTIONS AND RELATED TERMS.—

16 “(A) IN GENERAL.—A plan sponsor shall
17 make the election under paragraph (1) at such
18 time and in such manner as the Secretary may
19 prescribe. Such election, once made, is irrev-
20 ocable without the consent of the Secretary.

21 “(B) YEARS FOR WHICH ELECTION
22 MADE.—

23 “(i) IN GENERAL.—The plan sponsor
24 may select the first plan year to which the
25 election under paragraph (1) applies from

1 among plan years ending after the date of
2 the election. The election shall apply to
3 such plan year and all subsequent years.

4 “(ii) ELECTION OF NEW PLAN
5 YEAR.—The plan sponsor may specify a
6 new plan year in the election under para-
7 graph (1) and the plan year of the plan
8 may be changed to such new plan year
9 without the approval of the Secretary.

10 “(C) APPLICABLE PLAN YEAR.—The term
11 ‘applicable plan year’ means each plan year to
12 which the election under paragraph (1) applies
13 under subparagraph (A).

14 “(4) CHARGES TO THE ACCOUNT.—

15 “(A) IN GENERAL.—In the case of any ap-
16 plicable plan year during the amortization pe-
17 riod, the transition funding standard account
18 shall be charged with the amount necessary to
19 amortize the unfunded liability of the plan, de-
20 termined as of the first day of the plan year,
21 in equal annual installments (until fully amor-
22 tized) over the remainder of the amortization
23 period. Such charge shall be separately deter-
24 mined for each applicable plan year.

1 “(B) YEARS AFTER AMORTIZATION PE-
2 RIOD.—In the case of an applicable plan year
3 beginning after the amortization period, the
4 transition funding standard account shall be
5 charged with the unfunded liability determined
6 as of the first day of the plan year.

7 “(C) CURRENT FUNDING OF OTHERWISE
8 PROHIBITED CREDITS.—Notwithstanding para-
9 graph (2)(C), a plan may provide credit for any
10 applicable plan year which is otherwise prohib-
11 ited under such paragraph, but the transition
12 funding standard account for the plan year
13 shall be charged with the entire amount of the
14 expected increase in unfunded accrued liability
15 (determined under the unit credit funding
16 method) due to benefits accruing during the
17 plan year which are attributable to such credit.

18 “(D) DEFINITIONS.—For purposes of this
19 subsection—

20 “(i) UNFUNDED LIABILITY.—The
21 term ‘unfunded liability’ means the un-
22 funded accrued liability under the plan, de-
23 termined under the unit credit funding
24 method.

1 “(ii) AMORTIZATION PERIOD.—The
2 term ‘amortization period’ means the 25-
3 plan year period beginning with the first
4 applicable plan year.

5 “(5) CREDIT TO ACCOUNT.—The transition
6 funding standard account for any applicable plan
7 year shall be credited with the amount considered
8 contributed by the employer to or under the plan for
9 the plan year.

10 “(6) OTHER RULES RELATING TO TRANSITION
11 FUNDING STANDARD ACCOUNT.—In the case of any
12 transition funding standard account—

13 “(A) the provisions of subsection (c) (other
14 than paragraph (7)) shall apply,

15 “(B) interest on underpayments, if any,
16 shall be charged at the rate determined under
17 subsection (b),

18 “(C) in determining credits and charges to
19 the transition funding standard account for the
20 first applicable plan year, all existing amortiza-
21 tion bases and any credit balances shall be re-
22 duced to zero, and

23 “(D) in determining credits and charges to
24 the transition funding standard account for any

1 applicable plan year, the value of plan assets
2 shall be equal to their fair market value.”

3 (b) AMENDMENT OF EMPLOYEE RETIREMENT IN-
4 COME SECURITY ACT OF 1974.—Section 302 of the Em-
5 ployee Retirement Income Security Act of 1974 is amend-
6 ed by adding at the end the following new subsection:

7 “(i) TRANSITION FUNDING STANDARDS FOR CER-
8 TAIN PLANS THAT ARE AMENDED TO PERMANENTLY
9 CEASE FUTURE BENEFIT ACCRUALS.—

10 “(1) IN GENERAL.—Notwithstanding any other
11 provision of this section, if an eligible plan elects to
12 have this subsection apply—

13 “(A) the plan shall maintain a transition
14 funding standard account for each applicable
15 plan year,

16 “(B) the accumulated funding deficiency of
17 the plan for any applicable plan year for pur-
18 poses of this section and section 4971 of the In-
19 ternal Revenue Code of 1986 shall be deter-
20 mined by using the transition funding standard
21 account rather than the funding standard ac-
22 count used without regard to this subsection,
23 and

24 “(C) except as provided in paragraph (6),
25 the transition funding standard account shall be

1 credited and charged solely as provided in this
2 subsection and without regard to the require-
3 ments of subsection (b) or (d) of this section or
4 section 303, 304, 305, 306, or 307.

5 “(2) ELIGIBLE PLAN.—For purposes of this
6 subsection—

7 “(A) IN GENERAL.—The term ‘eligible
8 plan’ means a plan (other than multiemployer
9 plan) to which this section applies—

10 “(i) which is sponsored by an applica-
11 ble employer (as defined in subsection
12 (d)(12)(C)(i)), and

13 “(ii) with respect to which the re-
14 quirements of subparagraphs (B) and (C)
15 are met.

16 “(B) ACCRUAL RESTRICTIONS.—The re-
17 quirements of this subparagraph are met if, ef-
18 fective as of the first day of the first applicable
19 plan year and at all times thereafter, the plan
20 provides that, except to the extent required
21 under part 2 or as provided in paragraph
22 (4)(C), a participant will not receive any credit
23 for any purpose under the plan for service with,
24 or for compensation earned from, the employer
25 (or any member of the employer’s controlled

1 group (within the meaning of subsection
2 (d)(8)(C)) on or after such first day.

3 “(C) RESTRICTION ON AMENDMENTS IN-
4 CREATING LIABILITIES.—The requirements of
5 this subparagraph are met if, at any time dur-
6 ing the period beginning on the date of the en-
7 actment of this subsection and ending on the
8 day before the first day of the first applicable
9 plan year, no amendment to the plan has been
10 adopted which increases the liabilities of the
11 plan by reason of any increase in benefits, any
12 change in the accrual of benefits, or any change
13 in the rate at which benefits become nonforfeit-
14 able under the plan. This subparagraph shall
15 not apply to any plan amendment described in
16 clause (i) or (ii) of subsection (d)(12)(B).

17 “(3) ELECTIONS AND RELATED TERMS.—

18 “(A) IN GENERAL.—A plan sponsor shall
19 make the election under paragraph (1) at such
20 time and in such manner as the Secretary may
21 prescribe. Such election, once made, is irrev-
22 ocable without the consent of the Secretary of
23 the Treasury.

24 “(B) YEARS FOR WHICH ELECTION
25 MADE.—

1 “(i) IN GENERAL.—The plan sponsor
2 may select the first plan year to which the
3 election under paragraph (1) applies from
4 among plan years ending after the date of
5 the election. The election shall apply to
6 such plan year and all subsequent years.

7 “(ii) ELECTION OF NEW PLAN
8 YEAR.—The plan sponsor may specify a
9 new plan year in the election under para-
10 graph (1) and the plan year of the plan
11 may be changed to such new plan year
12 without the approval of the Secretary of
13 the Treasury.

14 “(C) APPLICABLE PLAN YEAR.—For pur-
15 poses of this subsection, the term ‘applicable
16 plan year’ means each plan year to which the
17 election under paragraph (1) applies under sub-
18 paragraph (A).

19 “(4) CHARGES TO THE ACCOUNT.—

20 “(A) IN GENERAL.—In the case of any ap-
21 plicable plan year during the amortization pe-
22 riod, the transition funding standard account
23 shall be charged with the amount necessary to
24 amortize the unfunded liability of the plan, de-
25 termined as of the first day of the plan year,

1 in equal annual installments (until fully amor-
2 tized) over the remainder of the amortization
3 period. Such charge shall be separately deter-
4 mined for each applicable plan year.

5 “(B) YEARS AFTER AMORTIZATION PE-
6 RIOD.—In the case of an applicable plan year
7 beginning after the amortization period, the
8 transition funding standard account shall be
9 charged with the unfunded liability determined
10 as of the first day of the plan year.

11 “(C) CURRENT FUNDING OF OTHERWISE
12 PROHIBITED CREDITS.—Notwithstanding para-
13 graph (2)(C), a plan may provide credit for any
14 applicable plan year which is otherwise prohib-
15 ited under such paragraph, but the transition
16 funding standard account for the plan year
17 shall be charged with the entire amount of the
18 expected increase in unfunded accrued liability
19 (determined under the unit credit funding
20 method) due to benefits accruing during the
21 plan year which are attributable to such credit.

22 “(D) DEFINITIONS.—For purposes of this
23 subsection—

24 “(i) UNFUNDED LIABILITY.—The
25 term ‘unfunded liability’ means the un-

1 funded accrued liability under the plan, de-
2 termined under the unit credit funding
3 method.

4 “(ii) AMORTIZATION PERIOD.—The
5 term ‘amortization period’ means the 25-
6 plan year period beginning with the first
7 applicable plan year.

8 “(5) CREDIT TO ACCOUNT.—The transition
9 funding standard account for any applicable plan
10 year shall be credited with the amount considered
11 contributed by the employer to or under the plan for
12 the plan year.

13 “(6) OTHER RULES RELATING TO TRANSITION
14 FUNDING STANDARD ACCOUNT.—In the case of any
15 transition funding standard account—

16 “(A) the provisions of subsection (c) (other
17 than paragraph (7)) shall apply,

18 “(B) interest on underpayments, if any,
19 shall be charged at the rate determined under
20 subsection (b),

21 “(C) in determining credits and charges to
22 the transition funding standard account for the
23 first applicable plan year, all existing amortiza-
24 tion bases and any credit balances shall be re-
25 duced to zero, and

1 “(D) in determining credits and charges to
2 the transition funding standard account for any
3 applicable plan year, the value of plan assets
4 shall be equal to their fair market value.”.

5 (c) AMENDMENT TO QUALIFICATION RULES.—Sec-
6 tion 401(a) of the Internal Revenue Code of 1986 is
7 amended by inserting after paragraph (34) the following
8 new paragraph:

9 “(35) SUCCESSOR PLANS TO CERTAIN PLANS.—
10 If a plan to which section 412(o) applies is main-
11 tained by an employer that establishes or maintains
12 1 or more other defined benefit plans, and such
13 other plans in combination provide benefit accruals
14 to any substantial number of successor employees,
15 the Secretary may, in the Secretary’s discretion, de-
16 termine that any trust of which any other such plan
17 is a part does not constitute a qualified trust under
18 this subsection unless all benefit obligations of the
19 plan to which section 412(o) applies have been satis-
20 fied. For purposes of this paragraph, the term ‘suc-
21 cessor employee’ means any employee who is or was
22 covered by the plan to which section 412(o) applies
23 and any employee who performs substantially the
24 same type of work with respect to the same business
25 operations as an employee covered by such plan.”

1 (d) PBGC LIABILITY LIMITED.—Section 4022(b) of
 2 the Employee Retirement Income Security Act of 1974 is
 3 amended by adding at the end the following new para-
 4 graph:

5 “(8) For any plan that terminates at a time
 6 when the special funding requirements under section
 7 302(i) and section 412(o) of the Internal Revenue
 8 Code of 1986 apply to such plan, paragraphs (1),
 9 (3), and (7) shall be applied as if the plan had ter-
 10 minated on the first day of the first applicable plan
 11 year described in such sections.”

12 (e) LIMITATION ON DEDUCTIONS UNDER CERTAIN
 13 PLANS.—

14 (1) SPECIAL RULES.—Section 404(a)(1)(D) of
 15 the Internal Revenue Code of 1986 is amended by
 16 adding at the end the following new clause:

17 “(v) PLANS TO WHICH SECTION 412(O)
 18 APPLIES.—In the case of a plan to which
 19 section 412(o) applies, the maximum
 20 amount deductible under the limitations of
 21 this paragraph shall be the amount paid
 22 into such plan for such plan year.”

23 (2) COMBINED PLANS.—Section 404(a)(7)(C)
 24 of the Internal Revenue Code of 1986 is amended by
 25 adding at the end the following new clause:

1 “(iii) PLANS TO WHICH SECTION
2 412(O) APPLIES.—Contributions to a plan
3 to which section 412(o) applies shall be
4 disregarded in applying this paragraph.”

5 (f) NOTICE.—In the case of a plan amendment adopt-
6 ed in order to comply with section 412(o)(2)(B) of the
7 Internal Revenue Code of 1986 and with section
8 302(i)(2)(B) of the Employee Retirement Income Security
9 Act of 1974, any notice required under section 4980F(e)
10 of such Code or section 204(h) of such Act shall be subject
11 to the timing rules applicable to multiemployer plans
12 under Treasury Regulation section 54.4980F-1 Q/A-9 (or
13 any successor provision). This subsection shall not apply
14 to any plan unless such plan is—

15 (1) described in section 412(o) of such Code
16 and section 302(i) of such Act, and

17 (2) maintained pursuant to one or more collec-
18 tive bargaining agreements between employee rep-
19 resentatives and one or more employers.

20 (g) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to plan years ending after the date
22 of the enactment of this Act.

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