

House Education &
the Workforce Committee

John Boehner, Chairman

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BILL SUMMARY

PENSION PRESERVATION & PORTABILITY ACT: Preserving the Portable Benefits of Cash Balance Pension Plans for American Workers

June 9, 2005

House Education & the Workforce Committee Chairman John Boehner (R-OH) today introduced the *Pension Preservation & Portability Act* to ensure that cash balance pensions remain a viable part of the defined benefit system. The bill is a starting point for discussion on efforts to resolve the legal uncertainty surrounding cash balance plans. Boehner has pledged that the cash balance fix would be included in the more comprehensive *Pension Protection Act* when it passes through Committee.

Cash balance pension plans – a type of defined benefit plan that is employer-funded, insured by the PBGC, and portable from job to job – represent an important component of worker retirement security. They account for more than 20 percent of the premium revenue paid by employers to the PBGC.

The threat of legal liability is creating ongoing uncertainty and undermining the retirement security of American workers. A few employer conversions from traditional defined benefit plans to cash balance plans have raised policy questions about whether such conversions are age discriminatory. Notably, the vast majority of conversions have been handled properly, within the rule of the law, and to the benefit of workers. In a typical cash balance plan, a participant's account is credited each year with pay and interest credits. Cash balance opponents have argued that benefits for younger workers are ultimately higher than benefits provided to older workers because the younger workers' accrue interest and earn benefits over a longer period of time. This is tantamount to arguing the concept of compounding interest is age discriminatory, which would make the most basic savings account illegal. Recent court decisions made clear that no age discrimination occurs with these plans if the pay and interest credits attributed to older employee accounts are equal to or greater than those of younger workers.

Moreover, under the Employee Retirement Income Security Act (ERISA) benefits earned under a traditional plan cannot be reduced when they are converted to a cash balance plan. Despite assertions to the contrary, vested benefits earned by workers are never reduced in a cash balance conversion. The majority of courts have ruled that cash balance and other hybrid plans are NOT age discriminatory, including the most recent court ruling on June 10, 2004, in the *Tootle v. ARINC Inc.* case.

Providing a Simple Age Discrimination Standard for All Defined Benefit Plans

The *Pension Preservation & Portability Act* offers a solution to end this legal uncertainty and ensure that cash balance pension plans remain a viable part of the defined benefit system and a positive retirement security option for workers and employers. Specifically, the bill establishes a simple age discrimination standard for all defined benefit plans that clarifies current law with respect to age discrimination requirements under ERISA. The standard would ensure that all defined benefit plans, including hybrid formulas such as cash balance plans, are not age discriminatory if they comply with the standard.

The bill does not establish different rules for hybrid plans or conversions, but merely sets up a simple age discriminatory standard that all defined benefit plans must meet. Under the bill, a plan would meet all age discrimination tests if a participant's benefits are equal to or greater than that of any similarly situated, younger

individual in the plan. The bill also prohibits employers from reducing or cutting any vested benefits workers have earned during a conversion to a cash balance plan.