

# PENSION BENEFITS

PRESBYTERIAN CHURCH (USA)

ANSWERS TO QUESTIONS YOU'VE PONDERED, BUT DIDN'T KNOW WHOM TO ASK.

WHEN IS A PENSION 'VESTED' AND PROTECTED BY LAW?

ARE "VESTED ACCRUED" BENEFITS COMPLETELY SECURE?

IF MY CHURCH JOINS NEW WINESKINS (OR OTHER SUCH GROUPS), WILL MY PENSION BE AFFECTED?

IF MY CHURCH OR I WITHDRAW FROM THE PCUSA,  
WHAT HAPPENS TO MY PENSION?

CAN "VESTED ACCRUED" PENSION BENEFITS  
EVER BE REDUCED BY THE PCUSA?

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WITHDRAW FROM THE DENOMINATION, WILL THE CIVIL COURTS PROTECT MY PENSION PLAN  
RIGHTS?



*Pension Benefits*  
*Presbyterian Church (USA)*

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## INTRODUCTION

Variations of the questions on the cover page frequently are asked by pastors, and by elders concerned for their pastor's future security, as the Presbyterian Church (USA) steadily declines while lurching into a constitutional crisis. This brochure attempts to answer such questions based on a review of the publications and filings of the Board of Pensions.

### DISCLAIMER

The information and opinions contained herein are based on a review of pension plan publications, financial statements and applicable law. They are believed to be accurate; however, **all statements herein are for education and discussion only and should not be construed as legal advice concerning the actual benefits or legal rights of Plan participants.**

### BASIC PRINCIPLES

The Presbyterian Church (USA) Board of Pensions is a Pennsylvania non-profit corporation formed by the church to hold and manage assets used for pension and health benefits for Plan participants. The Benefits Plan is a merger of several deferred compensation and benefit programs – i.e., pensions, death and disability, post-retirement Medicaid, dental, death and retirement savings.

The Benefits Plan (hereafter referred to as “the Plan”) is funded by deposits made by employing organizations affiliated with the PCUSA. Based upon information available as of December 31, 2004, the plan's net assets exceeded \$6.67 billion, and the present values of accumulated benefits at that date were \$3.43 billion. In the three years ending December 31, 2004, the plan's net assets increased by \$892 million. In recent years, health benefits have exceeded the health dues received by Plan participants.

Deposits or contributions to the Plan are made during a participant's “Eligible Service,” which is defined as:

Employment by the Church or any board, agency or local church under the jurisdiction of the Church, any employment approved by the General Assembly or a Presbytery of the Church, or any employment or service which the Board deems to be appropriate for participation in the Benefits Plan.

Once “Eligible Service” is terminated, the employing organization will discontinue mandated contributions to the Benefits Plan. The Plan's administrative rules generally define the service termination date as the last date a participant worked for a Church-related employing organization.

The Plan states that it is intended to be a “church plan” as defined by the Internal Revenue Code and, as of 2004, the Plan had not elected to be subject to the Employee Retirement Income Security Act (ERISA). Thus, the Plan is exempt from ERISA compliance, but is required to comply with pension vesting (non-forfeiture) rules applicable to pension trusts prior to the passage of ERISA.

The Plan is a “defined-benefit” plan, designed to yield specific monthly payments to participants. Participation is mandatory for all PCUSA pastors and churches. Churches also may elect to make contributions for other staff members. The Plan differentiates between Full Participation Membership versus Limited Participation Membership.

The Plan's assets cover approximately the following members:

- 15,000 active participants (contributions being received).
- 12,000 benefits recipients (retirees or disabled receiving benefits).
- 8,000 inactive participants (persons eligible to receive benefits at some date, but not currently contributing).

The Plan's defined benefit accrues according to formulas devised by the Board of Pensions based on a participant's years of plan participation and his or her compensation (as specially defined in the Plan). The Plan has an option for surviving spouse benefits. Currently, the Plan formula calls for an active member to accrue an annual Pension Credit equal to 1.25 percent of that year's compensation. The Plan recently approved a three percent "experience apportionment increase" due to favorable investment and actuarial experience.

### **COMMON QUESTIONS AND CONCERNS**

**Q. When is a pension "vested" and protected?**

**A.** Section 6.4 of the Plan expressly provides that benefits become **vested** after three years' service or upon the discontinuance of the employer's participation in the Plan. Similar promises and representations are made on the Board of Pensions' Web site. The Plan's vesting rule is more generous than required by law.

**Q. Are "vested accrued" benefits completely secure?**

**A.** As noted before under "Basic Principles," the PCUSA Plan currently is well-funded and fully solvent with about \$2 in assets for every \$1 in the present value of all benefits owed. However, as members and churches leave the PCUSA, and depending on investment returns, the Plan may have to increase contribution rates to maintain benefits. Health-care costs are escalating rapidly, which also affect contribution rates. Barring extremely adverse economic conditions, all fully **vested accrued** benefits should be secure.

Terminated participants cannot count on being included in any future experience apportionment credits (such as the three percent increase granted to all participants in 2005). However, it could be considered discriminatory and could be a breach of its fiduciary duties if the Plan granted such experience benefits in the future, but excluded terminated members. Such conduct could subject Plan fiduciaries to damages in a class action suit by terminated members.

**Q. If my church joins New Wineskins (or other such groups), will my pension be affected?**

**A.** Participating in New Wineskins or other such initiatives should not affect your **vested accrued** pension benefits. As long as your church continues to contribute to the Plan and you continue to be in "Eligible Service," you should continue to accrue additional benefits. If you discontinue "Eligible Service" or your church ceases to contribute to the Plan, additional benefits would not accrue, but your **vested accrued** benefits payable under the Plan should not be affected.

**Q. If my church or I withdraw from the PCUSA, what happens to my pension?**

**A.** The Plan specifically recognizes the rights of "terminated vested members." Once your pension is "vested," neither you nor your church's withdrawal from the PCUSA affects your **vested accrued** benefits payable under the Plan.

Keep in mind that churches that leave the PCUSA can adopt their own retirement plans, which would provide participants benefits that would be in addition to their **vested accrued** benefits in the PCUSA Plan. Retirement plan options are now available to churches not required to participate in the PCUSA Plan, which may produce higher benefits.

**Q. Can “vested accrued” benefits ever be reduced by the PCUSA?**

**A.** Section 19.1 of the Plan allows amendment or alterations of the Plan by the Board, “except that any alteration or amendment ... that is in the nature of a “benefit reduction to the members shall be effective only with the approval of the General Assembly.” The purpose of this clause appears to be to protect the Plan from drastically adverse conditions and to insure at least a minimal level of solvency.

As written, there is no restriction on benefit reductions, but case law generally protects retirees and permits such reductions only for current employees. Given the Plan’s apparently favorable funding level, amendments or reductions that improperly discriminate against or penalize terminated ministers who leave the PCUSA, or whose churches withdraw from the PCUSA, would be highly suspect, probably could not be justified on economic grounds, and would be subject to serious court challenge.

**Q. Will schism and/or formal division of the PCUSA affect my pension?**

**A.** Many churches leaving the PCUSA due to schism or formal division will affect the amount of contributions received by the Plan, but should not affect your **vested accrued** benefits. The Board of Pensions is a separate corporate entity with a duty to fulfill its corporate purpose to fairly and properly administer the Pension Plan.

**Q. If the PCUSA or the Pension Plan unfairly penalizes me because my church or I withdraw from the denomination, will the civil courts protect my pension plan rights?**

**A.** Section 18.9 of the Plan Claims Procedures provides that the appeals procedure adopted by the Board of Pensions “shall be the exclusive means of contesting a **decision denying** benefits or eligibility under the Plan...” (emphasis added).

The “exclusive remedy” clause on its face applies to “decisions” by the Plan administrator, but does not apply to “amendments” by the General Assembly. Limited judicial review in the civil courts is available in cases of fraud, bad faith, or arbitrary and capricious conduct. Other common law principles also should apply for breach of trust arising from bad faith discriminatory action against terminated Plan participants.

The free exercise clause of the First Amendment of the Constitution of the United States prohibits civil courts from reviewing ecclesiastical decisions of religious organizations concerning the employment status of its ministers, but it does not immunize church corporations from every legal claim involving its members. Neither the Plan nor the PCUSA constitution condition entitlement to pension plan benefits on fidelity to the church doctrine or its constitution. While the precise issue has never been litigated, a court would not likely view a legal challenge to a Plan amendment reducing vested accrued benefits as an ecclesiastical dispute. Neutral principles of civil law can resolve disputes concerning church property and employment if the dispute does not require a determination of any doctrinal issues.

The challenge of an amendment retroactively reducing or divesting a Plan member of benefits should be viewed as a civil controversy involving contract or property rights not involving church doctrine. The Benefits Plan and its pension component are maintained by a Pennsylvania non-profit corporation called the Board of Pensions of the Presbyterian Church (USA). A careful review of the Plan reveals no

language linking benefits to religious doctrine. Thus, the benefits under the Plan essentially are a secular creation.

While the employment of clergy may be legitimately based on the subjective, ecclesiastical beliefs of the Church, the grant or denial of Pension Plan benefits involves merely the enforcement of vested secular, contractual rights. A legal challenge to an improper reduction in **vested accrued** Pension Plan benefits would not involve issues of church doctrine and could be resolved by the civil courts applying neutral principles of civil law.

**Please remember that this brochure generalizes the rules of a complex Plan document and complex area of the law. No summary such as this brochure may be viewed as a substitute for competent legal advice on specific issues of fact and law.**