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109TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 109–232, Part 1

PENSION PROTECTION ACT OF 2005

SEPTEMBER 22, 2005.—Ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2830]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2830) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Pension Protection Act of 2005".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 101. Minimum funding standards.
Sec. 102. Funding rules for single-employer defined benefit pension plans.
Sec. 103. Benefit limitations under single-employer plans.
Sec. 104. Technical and conforming amendments.

Subtitle B—Amendments to Internal Revenue Code of 1986

[*See introduced bill, page 71, line 1 through page 140, line 13*].

Subtitle C—Other provisions

Sec. 121. Modification of transition rule to pension funding requirements.
Sec. 122. Treatment of nonqualified deferred compensation plans when employer defined benefit plan in at-risk status [*See introduced bill, page 142, line 3 through page 143, line 16*].

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TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

Sec. 201. Funding rules for multiemployer defined benefit plans.
Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.
Sec. 203. Measures to forestall insolvency of multiemployer plans.
Sec. 204. Withdrawal liability reforms.
Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Subtitle B—Amendments to Internal Revenue Code of 1986

[*See introduced bill, page 200, line 8 through page 251, line 15*].

TITLE III—OTHER PROVISIONS

Sec. 301. Interest rate assumption for determination of lump sum distributions.
Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions [*See introduced bill, page 254, line 6 through page 255, line 7*].
Sec. 303. Distributions during working retirement.
Sec. 304. Other amendments relating to prohibited transactions.
Sec. 305. Correction period for certain transactions involving securities and commodities.
Sec. 306. Government Accountability Office pension funding report.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notices.
Sec. 502. Additional disclosure requirements.
Sec. 503. Section 4010 filings with the PBGC.

TITLE VI—INVESTMENT ADVICE

Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.
Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice [*See introduced bill, page 287, line 15 through page 298, line 23*].

TITLE VII—BENEFIT ACCRUAL STANDARDS

Sec. 701. Improvements in benefit accrual standards.

TITLE VIII—DEDUCTION LIMITATIONS

[*See introduced bill, page 299, line 1 through page 305, line 20*].

TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

SEC. 101. MINIMUM FUNDING STANDARDS.

(a) REPEAL OF EXISTING FUNDING RULES.—Sections 302 through 308 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082 through 1086) are repealed.

(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of subtitle B of title I of such Act (as amended by subsection (a)) is amended further by inserting after section 301 the following new section:

"MINIMUM FUNDING STANDARDS

"SEC. 302. (a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

"(1) IN GENERAL.—A plan to which this part applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

"(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

"(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 303 for the plan for the plan year,

"(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

"(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 304 as of the end of the plan year.

"(b) LIABILITY FOR CONTRIBUTIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 303(j)) shall be paid by the employer responsible for making contributions to or under the plan.

"(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

"(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

"(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

"(A) IN GENERAL.—If—

"(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

"(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

"(B) EFFECTS OF WAIVER.—If a waiver is granted under subparagraph (A) for any plan year—

"(i) in the case of a single-employer plan, the minimum required contribution under section 303 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 303(e), and

"(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 304(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 304(b)(2)(C).

"(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

"(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

"(A) the employer is operating at an economic loss,

"(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

"(C) the sales and profits of the industry concerned are depressed or declining, and

"(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

"(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term 'waived funding deficiency' means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

"(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

"(A) SECURITY MAY BE REQUIRED.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

"(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor

(within the meaning of section 4001(a)(13)), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

"(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

"(i) provide the Pension Benefit Guaranty Corporation with—

"(I) notice of the completed application for any waiver or modification, and

"(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

"(ii) consider—

"(I) any comments of the Corporation under clause (i)(II), and

"(II) any views of any employee organization (within the meaning of section 3(4)) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

"(C) EXCEPTION FOR CERTAIN WAIVERS.—

"(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

"(I) the aggregate unpaid minimum required contribution for the plan year and all preceding plan years, and

"(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 303(e)(2),

is less than $1,000,000.

"(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

"(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

"(I) IN GENERAL.—The term 'unpaid minimum required contribution' means, with respect to any plan year, any minimum required contribution under section 303 for the plan year which is not paid on or before the due date (as determined under section 303(j)(1)) for the plan year.

"(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 303 for the plan year.

"(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

"(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

"(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

"(i) with respect to such employer, and

"(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

"(6) ADVANCE NOTICE.—

"(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

"(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

"(7) RESTRICTION ON PLAN AMENDMENTS.—

"(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

"(B) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

"(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

"(ii) only repeals an amendment described in subsection (d)(2), or

"(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1 of the Internal Revenue Code of 1986.

"(8) CROSS REFERENCE.—For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412(c) of such Code.

"(d) MISCELLANEOUS RULES.—

"(1) CHANGE IN METHOD OR YEAR.—If the funding method, the valuation date, or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary of the Treasury.

"(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

"(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

"(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

"(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 304(d)) is unavailable or inadequate.

"(3) CONTROLLED GROUP.—For purposes of this section, the term 'controlled group' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.".

(c) CLERICAL AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the items relating to sections 302 through 308 and inserting the following new item:

"Sec. 302. Minimum funding standards.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 101 of this Act) is amended further by inserting after section 302 the following new section:

"MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

"SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 302(a)(2)(A), except as provided in subsection (f), the term 'minimum required contribution' means, with respect to any plan year of a defined benefit plan which is a single employer plan—

"(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is less than the funding target of the plan for the plan year, the sum of—

"(A) the target normal cost of the plan for the plan year,

"(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

"(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

"(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or

"(3) in any other case, the target normal cost of the plan for the plan year.

"(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term 'target normal cost' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

"(c) SHORTFALL AMORTIZATION CHARGE.—

"(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

"(2) SHORTFALL AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

"(3) SHORTFALL AMORTIZATION BASE.—For purposes of this section, the shortfall amortization base of a plan for a plan year is the excess (if any) of—

"(A) the funding shortfall of such plan for such plan year, over

"(B) the sum of—

"(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

"(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

"(4) FUNDING SHORTFALL.—

"(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph (B), the funding shortfall of a plan for any plan year is the excess (if any) of—

"(i) the funding target of the plan for the plan year, over

"(ii) the value of plan assets of the plan (as reduced under subsection (f)(4)) for the plan year which are held by the plan on the valuation date.

"(B) TRANSITION RULE.—

"(i) IN GENERAL.—For purposes of paragraph (3), in the case of a non-defecit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2005 and before 2010 by substituting for the amount described in subparagraph (A)(i) the applicable percentage of the funding target of the plan for the plan year determined under the following table:

"In the case of a plan year beginning in calendar year:	The applicable percentage is:
2006	92 percent
2007	94 percent
2008	96 percent
2009	98 percent.

"(ii) NON-DEFICIT REDUCTION PLAN.—For purposes of clause (i), the term 'non-deficit reduction plan' means any plan—

"(I) to which this part (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2005, and

"(II) to which section 302(d) (as so in effect) did not apply for such plan year.

"(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

"(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

"(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

"(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The 'funding target attainment percentage' of a plan for a plan year is the ratio (expressed as a percentage) which—

"(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)), bears to

"(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

"(e) WAIVER AMORTIZATION CHARGE.—

"(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

"(2) WAIVER AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

"(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

"(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 302(c).

"(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

"(f) REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—

"(1) ELECTION TO MAINTAIN BALANCES.—

"(A) PRE-FUNDING BALANCE.—The plan sponsor of a single-employer plan may elect to maintain a pre-funding balance.

"(B) FUNDING STANDARD CARRYOVER BALANCE.—

"(i) IN GENERAL.—In the case of a single-employer plan described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

"(ii) PLANS MAINTAINING FUNDING STANDARD ACCOUNT IN 2005.—A plan is described in this clause if the plan—

"(I) was in effect for a plan year beginning in 2005, and

"(II) had a positive balance in the funding standard account under section 302(b) as in effect for such plan year and determined as of the end of such plan year.

"(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

"(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

"(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

"(C) may be reduced at any time, pursuant to an election under paragraph (5).

"(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 302(c).

"(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

"(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

"(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)), bears to

"(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent.

"(4) EFFECT OF BALANCES ON AMOUNTS TREATED AS VALUE OF PLAN ASSETS.—In the case of any plan maintaining a pre-funding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

"(A) APPLICABILITY OF SHORTFALL AMORTIZATION CHARGE AND WAIVER AMORTIZATION CHARGE.—For purposes of subsection (c)(3), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

"(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of subsections (a), (c)(4)(A)(ii), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.

"(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.

"(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—

"(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

"(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

"(6) PRE-FUNDING BALANCE.—

"(A) IN GENERAL.—A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

"(B) INCREASES.—As of the valuation date for each plan year beginning after 2006, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

"(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

"(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

"(C) DECREASES.—As of the valuation date for each plan year after 2006, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

"(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

"(ii) any reduction in such balance elected under paragraph (5).

"(7) FUNDING STANDARD CARRYOVER BALANCE.—

"(A) IN GENERAL.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

"(B) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

"(C) DECREASES.—As of the valuation date for each plan year after 2006, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

"(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

"(ii) any reduction in such balance elected under paragraph (5).

"(8) ADJUSTMENTS TO BALANCES.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary of the Treasury, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

"(9) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary of the Treasury.

"(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

"(1) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

"(2) VALUATION DATE.—For purposes of this section—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

"(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

"(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

"(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

"(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

"(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury, except that—

"(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 3 most recent plan years (including the current plan year), and

"(B) any such method may not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

"(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

"(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2006 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

"(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the preceding plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

"(5) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

"(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

"(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

"(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

"(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

"(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

"(2) INTEREST RATES.—

"(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term 'effective interest rate' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

"(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

"(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

"(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

"(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

"(C) SEGMENT RATES.—For purposes of this paragraph—

"(i) FIRST SEGMENT RATE.—The term 'first segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

"(ii) SECOND SEGMENT RATE.—The term 'second segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

"(iii) THIRD SEGMENT RATE.—The term 'third segment rate' means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

"(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'corporate bond yield curve' means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

"(ii) 3-YEAR WEIGHTED AVERAGE.—The term '3-year weighted average' means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

"(E) APPLICABLE MONTH.—For purposes of this paragraph, the term 'applicable month' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary of the Treasury.

"(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section

205(g)(3)(B)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

"(G) TRANSITION RULE.—

"(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

"(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

"(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2005), multiplied by a percentage equal to 100 percent minus the applicable percentage.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2006 and 66⅔ percent for plan years beginning in 2007.

"(3) MORTALITY TABLE.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B).

"(B) PERIODIC REVISION.—The Secretary of the Treasury shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

"(C) SUBSTITUTE MORTALITY TABLE.—

"(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary of the Treasury for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

"(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary of the Treasury determines that—

"(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

"(II) such table is significantly different from the table described in subparagraph (A).

"(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary of the Treasury for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless the Secretary of the Treasury, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii).

"(D) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2005) shall be phased in ratably over the first period of 5 plan years beginning in or after 2006 so as to be fully effective for the fifth plan year.

"(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present value or making any computation under this section, there shall be taken into account—

"(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

"(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit pay-

ments in any such optional form of benefits, which are different from those specified in this subsection.

"(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

"(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a single-employer plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury.

"(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

"(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

"(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

"(i) SPECIAL RULES FOR AT-RISK PLANS.—

"(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

"(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is the sum of—

"(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (g), the supplemental actuarial assumptions described in subparagraph (B), plus

"(ii) a loading factor determined under subparagraph (C).

"(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

"(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

"(i) $700, times the number of participants in the plan, plus

"(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

"(2) TARGET NORMAL COST OF AT-RISK PLANS.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

"(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

"(B) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

"(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in 'at-risk status' for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

"(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

"(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

"(i) the amount determined under this section without regard to this subsection, plus

"(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

"(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the 'transition percentage' for a plan year is the product derived by multiplying—

"(i) 20 percent, by

"(ii) the number of plan years during the period described in subparagraph (A).

"(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

"(2) INTEREST.—Any payment required under paragraph (1) for a plan year made after the valuation date for such plan year shall be increased by interest, for the period from the valuation date to the payment date, at the effective rate of interest for the plan for such plan year.

"(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—

"(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE.—In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full, then the minimum required contribution for the plan year (as increased under paragraph (2)) shall be further increased by an amount equal to the interest on the amount of the underpayment for the period of the underpayment, using an interest rate equal to the excess of—

"(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), over

"(ii) the effective rate of interest for the plan for the plan year.

"(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

"(i) AMOUNT.—The amount of the underpayment shall be the excess of—

"(I) the required installment, over

"(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

"(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

"(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

"(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

"(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

"(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

"In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year

"(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

"(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

"(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term 'required annual payment' means the lesser of—

"(I) 90 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the plan year under this section, or

"(II) in the case of a plan year beginning after 2006, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

"(E) FISCAL YEARS AND SHORT YEARS.—

"(i) FISCAL YEARS.—In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for

the months specified in this paragraph, the months which correspond thereto.

"(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

"(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

"(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

"(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (f)(2)(B) if '100' were substituted for '500' therein) which—

"(i) is required to pay installments under paragraph (3) for a plan year, and

"(ii) has a liquidity shortfall for any quarter during such plan year.

"(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

"(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

"(E) DEFINITIONS.—For purposes of this subparagraph:

"(i) LIQUIDITY SHORTFALL.—The term 'liquidity shortfall' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

"(I) the base amount with respect to such quarter, over

"(II) the value (as of such last day) of the plan's liquid assets.

"(ii) BASE AMOUNT.—

"(I) IN GENERAL.—The term 'base amount' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

"(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

"(iii) DISBURSEMENTS FROM THE PLAN.—The term 'disbursements from the plan' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

"(iv) ADJUSTED DISBURSEMENTS.—The term 'adjusted disbursements' means disbursements from the plan reduced by the product of—

"(I) the plan's funding target attainment percentage for the plan year, and

"(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

"(v) LIQUID ASSETS.—The term 'liquid assets' means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

"(vi) QUARTER.—The term 'quarter' means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

"(F) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

"(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

"(1) IN GENERAL.—In the case of a plan covered under section 4021 of this Act and to which this subsection applies (as provided under paragraph (2)), if—

"(A) any person fails to make a contribution payment required by section 302 and this section before the due date for such payment, and

"(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

"(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

"(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 302 for which payment has not been made before the due date.

"(4) NOTICE OF FAILURE; LIEN.—

"(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

"(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

"(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

"(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) CONTRIBUTION PAYMENT.—The term 'contribution payment' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

"(B) DUE DATE; REQUIRED INSTALLMENT.—The terms 'due date' and 'required installment' have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 303.

"(C) CONTROLLED GROUP.—The term 'controlled group' means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

"(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.".

(b) CLERICAL AMENDMENT.—The table of sections in section 1 of such Act (as amended by section 101) is amended by inserting after the item relating to section 302 the following new item:

"Sec. 303. Minimum funding standards for single-employer defined benefit pension plans.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056) is amended by adding at the end the following new subsection:

"(g) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

"(1) IN GENERAL.—No pension plan which is a single-employer plan may provide benefits to which participants are entitled solely by reason of the occurrence of—

"(A) a plant shutdown, or

"(B) any other unpredictable contingent event.

"(2) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term 'unpredictable contingent event' means an event other than—

"(A) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

"(B) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).".

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

(1) IN GENERAL.—Section 206 of such Act (as amended by subsection (a)) is amended further by adding at the end the following new subsection:

"(h) FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.—

"(1) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

"(A) IN GENERAL.—No amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

"(i) less than 80 percent, or

"(ii) would be less than 80 percent taking into account such amendment.

For purposes of this subparagraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation shall be treated as affected by plan amendment.

"(B) EXEMPTION.—Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303) equal to—

"(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 303) for the plan year attributable to the amendment, and

"(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in a funding target attainment percentage of 80 percent.

"(2) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

"(A) IN GENERAL.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e)).

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

"(3) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

"(4) NEW PLANS.—Paragraphs (1) and (3) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this paragraph, the reference in this paragraph to a plan shall include a reference to any predecessor plan.

"(5) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

"(A) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under paragraph (1), (2), or (3) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date

of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

"(B) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such paragraphs, to be the valuation date of the plan for the current plan year.

"(C) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

"(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

"(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

"(6) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under paragraph (2) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of paragraph (5).

"(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'funding target attainment percentage' means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

"(i) the value of plan assets for the plan year (as determined under section 303(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 303(f)), bears to

"(ii) the funding target of the plan for the plan year (as determined under section 303(d)(1), but without regard to section 303(i)(1)).

"(B) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this subparagraph and without regard to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance), subparagraph (A) shall be applied without regard to such reduction.".

(2) NOTICE REQUIREMENT.—

(A) IN GENERAL.—Section 101 of such Act (29 U.S.C. 1021) is amended—

(i) by redesignating subsection (j) as subsection (k); and

(ii) by inserting after subsection (i) the following new subsection:

"(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restriction described in section 206(h)(2) or at such other time as may be determined by the Secretary.".

(B) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended by striking "section 302(b)(7)(F)(vi)" and inserting "sections 101(j) and 302(b)(7)(F)(vi)".

(c) SPECIAL RULE FOR PLAN AMENDMENTS.—A plan shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 or section 411(d)(6) of the Internal Revenue Code of 1986 solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of the amendments made by this section.

(d) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after 2006.

(3) COLLECTIVE BARGAINING EXCEPTION.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this subsection shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

(ii) the first day of the first plan year to which the amendments made by this subsection would (but for this subparagraph) apply, or

(B) January 1, 2009.

For purposes of clause (i), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this subsection shall not be treated as a termination of such collective bargaining agreement.

SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.

(a) MISCELLANEOUS AMENDMENTS TO TITLE I.—Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.) is amended—

(1) in section 101(d)(3), by striking "section 302(e)" and inserting "section 303(j)";

(2) in section 101(f)(2)(B), by striking clause (i) and inserting the following:

"(i) a statement as to whether—

"(I) in the case of a single-employer plan, the plan's funding target attainment percentage (as defined in section 303(d)(2)), or

"(II) in the case of a multiemployer plan, the plan's funded percentage (as defined in section 305(d)(2)),

is at least 100 percent (and, if not, the actual percentage);";

(3) in section 103(d)(8)(B), by striking "the requirements of section 302(c)(3)" and inserting "the applicable requirements of sections 303(h) and 304(c)(3)";

(4) in section 103(d), by striking paragraph (11) and inserting the following:

"(11) If the current value of the assets of the plan is less than 70 percent of—

"(A) in the case of a single-employer plan, the funding target (as defined in section 303(d)(1)) of the plan, or

"(B) in the case of a multiemployer plan, the current liability (as defined in section 304(c)(6)(D)) under the plan,

the percentage which such value is of the amount described in subparagraph (A) or (B).";

(5) in section 203(a)(3)(C), by striking "section 302(c)(8)" and inserting "section 302(d)(2)";

(6) in section 204(g)(1), by striking "section 302(c)(8)" and inserting "section 302(d)(2)";

(7) in section 204(i)(2)(B), by striking "section 302(c)(8)" and inserting "section 302(d)(2)";

(8) in section 204(i)(3), by striking "funded current liability percentage (within the meaning of section 302(d)(8) of this Act)" and inserting "funding target attainment percentage (as defined in section 303(d)(2))";

(9) in section 204(i)(4), by striking "section 302(c)(11)(A), without regard to section 302(c)(11)(B)" and inserting "section 302(b)(1), without regard to section 302(b)(2)";

(10) in section 206(e)(1), by striking "section 302(d)" and inserting "section 303(j)(4)", and by striking "section 302(e)(5)" and inserting "section 303(j)(4)(E)(i)";

(11) in section 206(e)(3), by striking "section 302(e) by reason of paragraph (5)(A) thereof" and inserting "section 303(j)(3) by reason of section 303(j)(4)(A)"; and

(12) in sections 101(e)(3), 403(c)(1), and 408(b)(13), by striking "American Jobs Creation Act of 2004" and inserting "Pension Protection Act of 2005".

(b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—Title IV of such Act is amended—

(1) in section 4001(a)(13) (29 U.S.C. 1301(a)(13)), by striking "302(c)(11)(A)" and inserting "302(b)(1)", by striking "412(c)(11)(A)" and inserting "412(b)(1)", by striking "302(c)(11)(B)" and inserting "302(b)(2)", and by striking "412(c)(11)(B)" and inserting "412(b)(2)";

(2) in section 4003(e)(1) (29 U.S.C. 1303(e)(1)), by striking "302(f)(1)(A) and (B)" and inserting "303(k)(1)(A) and (B)", and by striking "412(n)(1)(A) and (B)" and inserting "430(k)(1)(A) and (B)";

(3) in section 4010(b)(2) (29 U.S.C. 1310(b)(2)), by striking "302(f)(1)(A) and (B)" and inserting "303(k)(1)(A) and (B)", and by striking "412(n)(1)(A) and (B)" and inserting "430(k)(1)(A) and (B)";

(4) in section 4011(b) (29 U.S.C. 1311(b)), by striking "to which" and all that follows and inserting "for any plan year for which the plan's funding target attainment percentage (as defined in section 303(d)(2)) is at least 90 percent.";

(5) in section 4062(c)(1) (29 U.S.C. 1362(c)(1)), by striking paragraphs (1), (2), and (3) and inserting the following:

"(1)(A) in the case of a single-employer plan, the sum of the shortfall amortization charge (within the meaning of section 303(c)(1) of this Act and 430(c)(1) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 303(c)(2) of this Act and section 430(c)(2) of such Code (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 302(c) of this Act and section 412(c) of such Code which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year), or

"(B) in the case of a multiemployer plan, the outstanding balance of the accumulated funding deficiencies (within the meaning of section 304(a)(2) of this Act and section 431(a) of the Internal Revenue Code of 1986) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 302(c) of this Act or section 412(c) of such Code and for extensions of the amortization period under section 304(d) of this Act or section 431(d) of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

"(2)(A) in the case of a single-employer plan, the sum of the waiver amortization charge (within the meaning of section 303(e)(1) of this Act and 430(j)(2) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 303(e)(2) of this Act and section 430(j)(3) of such Code, or

"(B) in the case of a multiemployer plan, the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 302(c) of this Act or section 412(c) of such Code (if any), and

"(3) in the case of a multiemployer plan, the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304(d) of this Act or section 431(d) of such Code (if any);";

(6) in section 4071 (29 U.S.C. 1371), by striking "302(f)(4)" and inserting "303(k)(4)";

(7) in section 4243(a)(1)(B) (29 U.S.C. 1423(a)(1)(B)), by striking "302(a)" and inserting "304(a)", and, in clause (i), by striking "302(a)" and inserting "304(a)";

(8) in section 4243(f)(1) (29 U.S.C. 1423(f)(1)), by striking "303(a)" and inserting "302(c)";

(9) in section 4243(f)(2) (29 U.S.C. 1423(f)(2)), by striking "303(c)" and inserting "302(c)(3)"; and

(10) in section 4243(g) (29 U.S.C. 1423(g)), by striking "302(c)(3)" and inserting "304(c)(3)".

(c) AMENDMENTS TO REORGANIZATION PLAN NO. 4 OF 1978.—Section 106(b)(ii) of Reorganization Plan No. 4 of 1978 (ratified and affirmed as law by Public Law 98–532 (98 Stat. 2705)) is amended by striking "302(c)(8)" and inserting "302(d)(2)", by striking "304(a) and (b)(2)(A)" and inserting "304(d)(1), (d)(2), and (e)(2)(A)", and by

striking "412(c)(8), (e), and (f)(2)(A)" and inserting "412(d)(2) and 431(d)(1), (d)(2), and (e)(2)(A)".

(d) REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY VARIANCES.—

(1) IN GENERAL.—Section 207 of such Act (29 U.S.C. 1057) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 207.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

Subtitle B—Amendments to Internal Revenue Code of 1986

SEC. 111. [*SEE INTRODUCED BILL, PAGE 71, LINE 1 THROUGH PAGE 140, LINE 13*].

Subtitle C—Other Provisions

SEC. 121. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

(a) IN GENERAL.—In the case of a plan that—

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor); and

(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after 2005.

(b) MODIFIED RULES.—The rules described in this subsection are as follows:

(1) For purposes of section 430(i)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act, and

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act,

the mortality table shall be the mortality table used by the plan.

(3) Notwithstanding section 303(f)(4)(B) of such Act, for purposes of section 303(c)(4)(B) of such Act, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance if, pursuant to a binding written agreement with the Pension Benefit Guaranty Corporation entered into before January 1, 2006, the funding standard carryover balance is not available to reduce the minimum required contribution for the plan year.

(4) Section 430(c)(4)(B) of such Code and section 303(c)(4)(B) of such Act (relating to phase-in of funding target for determination of funding shortfall) shall each be applied by substituting "2011" for "2010" therein and by substituting for the table therein the following:

In the case of a plan year beginning in calendar year:	The applicable percentage is:
2006	90 percent
2007	92 percent
2008	94 percent
2009	96 percent
2010	98 percent.

(c) DEFINITIONS.—Any term used in this section which is also used in section 303 of such Act shall have the meaning provided such term in such section.

(d) CONFORMING AMENDMENT.—

(1) Section 769 of the Retirement Protection Act of 1994 (26 U.S.C. 412 note) is amended by striking subsection (c).

(2) The amendment made this subsection shall apply to plan years beginning after 2005.

SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.

[*See introduced bill, page 142, line 3 through page 143, line 16*]

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by section 102) is amended further by inserting after section 303 the following new section:

"MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

"SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

"(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

"(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

"(b) FUNDING STANDARD ACCOUNT.—

"(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

"(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

"(A) the normal cost of the plan for the plan year,

"(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

"(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

"(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

"(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

"(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

"(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

"(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

"(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

"(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

"(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

"(A) the amount considered contributed by the employer to or under the plan for the plan year,

"(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

"(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

"(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

"(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

"(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

"(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

"(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2006.—In the case of any amount amortized under section 302(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2006, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

"(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

"(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

"(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

"(6) INTEREST.—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

"(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

"(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

"(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

"(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

"(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

"(i) was adopted before such date, and

"(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

"(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

"(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

"(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

"(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

"(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) as of the end of the last plan year that the plan was in reorganization.

"(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

"(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

"(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

"(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary of the Treasury.

"(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for '15'.

"(c) ADDITIONAL RULES.—

"(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

"(2) VALUATION OF ASSETS.—

"(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

"(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall

by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

"(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

"(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

"(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

"(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

"(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

"(B) a change in the definition of the term 'wages' under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

"(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

"(A) the funding standard account shall be credited with the amount of such excess, and

"(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

"(6) FULL-FUNDING LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (5), the term 'full-funding limitation' means the excess (if any) of—

"(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

"(ii) the lesser of—

"(I) the fair market value of the plan's assets, or

"(II) the value of such assets determined under paragraph (2).

"(B) MINIMUM AMOUNT.—

"(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

"(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

"(II) the value of the plan's assets determined under paragraph (2).

"(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

"(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

"(D) CURRENT LIABILITY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'current liability' means all liabilities to employees and their beneficiaries under the plan.

"(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

"(I) age, service, compensation, death, or disability, or

"(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

"(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

"(iv) MORTALITY TABLES.—

"(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

"(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

"(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

"(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

"(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

"(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

"(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

"(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

"(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

"(I) IN GENERAL.—Except as provided in subclause (II), the term 'permissible range' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

"(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

"(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

"(I) determined without taking into account the experience of the plan and reasonable expectations, but

"(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

"(7) ANNUAL VALUATION.—

"(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination

shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

"(B) VALUATION DATE.—

"(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

"(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

"(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

"(9) INTEREST RULE FOR WAIVERS AND EXTENSIONS.—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

"(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

"(B) the rate of interest used under the plan for determining costs.

"(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

"(1) EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (2)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if such Secretary determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

"(A) result in—

"(i) a substantial risk to the voluntary continuation of the plan, or

"(ii) a substantial curtailment of pension benefit levels or employee compensation, and

"(B) be adverse to the interests of plan participants in the aggregate.

"(2) ADDITIONAL EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if such Secretary determines that—

"(A) absent the extension, the plan would have an accumulated funding deficiency in any of the next 10 plan years,

"(B) the plan sponsor has adopted a plan to improve the plan's funding status, and

"(C) taking into account the extension, the plan is projected to have suficient assets to timely pay its expected benefit liabilities and other anticipated expenditures

"(3) ADVANCE NOTICE.—

"(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21)) with respect to the affected plan. Such notice shall

include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

"(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).".

(b) CONFORMING AMENDMENTS.—

(1) Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).

(2) The table of contents in section 1 of such Act (as amended by section 102 of this Act) is amended further by inserting after the item relating to section 303 the following new item:

"Sec. 304. Minimum funding standards for multiemployer plans.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after 2005.

SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.

(a) IN GENERAL.—Part 3 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (as amended by the preceding provisions of this Act) is amended further by inserting after section 304 the following new section:

"ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

"SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

"(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

"(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

"(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d).

"(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

"(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

"(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

"(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the plan actuary makes a contrary certification.

"(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

"(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

"(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

"(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (a)—

"(A) the plan's funded percentage for such plan year is less than 80 percent, or

"(B) the plan has an accumulated funding deficiency for such plan year under section 304 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

"(3) FUNDING IMPROVEMENT PLAN.—

"(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

"(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan's funded percentage such that—

"(I) the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement period, is not more than

"(II) ⅔ of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement period.

"(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

"(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

"(i) the second anniversary of the date of the adoption of the funding improvement plan, or

"(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

"(C) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—

"(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

"(ii) In the case of a plan in which the funded percentage of a plan for the plan year is more than 70 percent but less than 80 percent, and—

"(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

"(II) the plan year is prior to the day described in subparagraph (B)(ii),

subparagraph (A)(i)(II) shall be applied by substituting '⅘' for '⅔' and subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

"(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting 'the 15-year period' for 'the 10-year period'.

"(D) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

"(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

"(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan spon-

sor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

"(i) an increase in the plan's funded percentage, and

"(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

"(B) RECOMMENDATIONS BY PLAN SPONSOR.—

"(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

"(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

"(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

"(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

"(I) employs at least 5 percent of the active participants, or

"(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

"(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

"(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

"(A) a reduction in the level of contributions for participants who are not in pay status,

"(B) a suspension of contributions with respect to any period of service, or

"(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

"(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

"(A) RESTRICTIONS ON LUMP SUM AND SIMILAR DISTRIBUTIONS.—In any case in which the present value of a participant's accrued benefit under the plan exceeds $5,000, such benefit may not be distributed as an immediate distribution or in any other accelerated form.

"(B) PROHIBITION ON BENEFIT INCREASES.—

"(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

"(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986.

"(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

"(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

"(A) so as to be inconsistent with the funding improvement plan, or

"(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

"(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

"(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

"(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

"(A) the plan is in endangered status for the preceding plan year and the requirements of subsection (b)(1) were not met with respect to the plan for such preceding plan year, or

"(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

"(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

"(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

"(i) the funded percentage of the plan is less than 65 percent, and

"(ii) the sum of—

"(I) the market value of plan assets, plus

"(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

"(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

"(i) the market value of plan assets, plus

"(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

"(C) A plan is described in this subparagraph if—

"(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

"(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

"(D) A plan is described in this subparagraph if—

"(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

"(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

"(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

"(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

"(E) A plan is described in this subparagraph if—

"(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

"(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 304(d).

"(4) REHABILITATION PLAN.—

"(A) IN GENERAL.—A rehabilitation plan shall consist of—

"(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

"(ii) reasonable measures to forestall possible insolvency (within the meaning of section 4245) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

"(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

"(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

"(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan's entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

"(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

"(5) DEVELOPMENT OF REHABILITATION PLAN.—

"(A) PROPOSALS BY PLAN SPONSOR.—

"(i) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

"(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

"(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

"(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party who—

"(i) employs at least 5 percent of the active participants, or

"(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

"(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

"(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

"(E) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below the lower of—

"(i) a monthly benefit equal to 1 percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the plan year in which the plan enters critical status, or

"(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

"(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term 'rehabilitation plan' for 'funding improvement plan'.

"(7) SPECIAL RULES.—

"(A) AUTOMATIC EMPLOYER SURCHARGE.—

"(i) 5 PERCENT AND 10 PERCENT SURCHARGE.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be obligated to pay to the plan a surcharge equal to 5 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each consecutive plan year thereafter in which the plan is in critical status, the surcharge shall be 10 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes).

"(ii) ENFORCEMENT OF SURCHARGE.—The surcharges under clause (i) shall be due and payable on the same schedule as the contributions on which they are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.

"(iii) SURCHARGE TO TERMINATE UPON CBA RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement, beginning on the date on which that agreement is renegotiated to include—

"(I) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

"(II) otherwise collectively bargained benefit changes.

"(iv) SURCHARGE NOT TO APPLY UNTIL EMPLOYER RECEIVES 30-DAY NOTICE.—The surcharge under this subparagraph shall not apply to an employer until 30 days after the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

"(v) SURCHARGE NOT TO GENERATE INCREASED BENEFIT ACCRUALS.—Notwithstanding any provision of a plan to the contrary, the amount of any surcharge shall not be the basis for any benefit accruals under the plan.

"(B) BENEFIT ADJUSTMENTS.—

"(i) IN GENERAL.—The trustees shall make appropriate reductions, if any, to adjustable benefits based upon the outcome of collective bargaining over the schedules provided under paragraph (5).

"(ii) RETIREE PROTECTION.—Except as provided in subparagraph (C), the trustees of a plan in critical status may not reduce adjustable benefits of any participant or beneficiary who was in pay status at least one year before the first day of the first plan year in which the plan enters into critical status.

"(iii) TRUSTEE FLEXIBILITY.—The trustees shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate based on the plan's then current overall funding status and its future prospects in light of the results of the parties' negotiations.

"(C) ADJUSTABLE BENEFIT DEFINED.—For purposes of this paragraph, the term 'adjustable benefit' means—

"(i) benefits, rights, and features, such as post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

"(ii) retirement-type subsidies, early retirement benefits, and benefit payment options (other than the 50 percent qualified joint-and-survivor benefit and single life annuity), and

"(iii) benefit increases that would not be eligible for a guarantee under section 4022A on the first day of the plan year in which the plan enters into critical status because they were adopted, or if later, took effect less than 60 months before reorganization.

"(D) NORMAL RETIREMENT BENEFITS PROTECTED.—Nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age which is not an adjustable benefit.

"(E) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

"(i) BENEFIT REDUCTIONS.—Any benefit reductions under this paragraph shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

"(ii) SURCHARGES.—Any surcharges under this paragraph shall be disregarded in determining an employer's withdrawal liability under section 4211, except for purposes of determining the unfunded vested benefits attributable to an employer or under a modified attributable method adopted with the approval of the Pension Benefit Guaranty Corporation under subsection (c)(5) of that section.

"(8) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

"(A) so as to be inconsistent with the rehabilitation plan, or

"(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

"(9) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

"(10) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 or a partial withdrawal by the employer under section 4205.

"(d) DEFINITIONS.—For purposes of this section—

"(1) BARGAINING PARTY.—The term 'bargaining party' means, in connection with a multiemployer plan—

"(A) an employer who has an obligation to contribute under the plan, and

"(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

"(2) FUNDED PERCENTAGE.—The term 'funded percentage' means the percentage expressed as a ratio of which—

"(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

"(B) the denominator of which is the accrued liability of the plan.

"(3) ACCUMULATED FUNDING DEFICIENCY.—The term 'accumulated funding deficiency' has the meaning provided such term in section 304(a).

"(4) ACTIVE PARTICIPANT.—The term 'active participant' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

"(5) INACTIVE PARTICIPANT.—The term 'inactive participant' means, in connection with a multiemployer plan, a participant who—

"(A) is not in covered service under the plan, and

"(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

"(6) PAY STATUS.—A person is in 'pay status' under a multiemployer plan if—

"(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

"(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

"(7) OBLIGATION TO CONTRIBUTE.—The term 'obligation to contribute' has the meaning provided such term under section 4212(a).

"(8) ENTRY INTO CRITICAL STATUS.—A plan shall be treated as entering into critical status as of the date that such plan is certified to be in critical status under subsection (a)(1), is presumed to be in critical status under subsection (a)(3), or enters into critical status under subsection (b)(7).".

(b) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act (as amended by the preceding provisions of this Act) is amended further by inserting after the item relating to section 304 the following new item:

"Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2005.

SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1426(d)(1)) is amended—

(1) by striking "3 plan years" the second place it appears and inserting "5 plan years"; and

(2) by adding at the end the following new sentence: "If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after 2005.

SEC. 204. WITHDRAWAL LIABILITY REFORMS.

(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABILITY IN THE EVENT OF CERTAIN SALES OF EMPLOYER ASSETS TO UNRELATED PARTIES.—

(1) IN GENERAL.—Section 4225 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405) is repealed.

(2) CONFORMING AMENDMENT.—The table of contents in section 1 of such Act is amended by striking the item relating to section 4225.

(3) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to sales occurring on or after January 1, 2006.

(b) REPEAL OF LIMITATION TO 20 ANNUAL PAYMENTS.—

(1) IN GENERAL.—Section 4219(c)(1) of such Act (29 U.S.C. 1399(c)(1)) is amended by striking subparagraph (B).

(2) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to withdrawals occurring on or after January 1, 2006.

(c) WITHDRAWAL LIABILITY CONTINUES IF WORK CONTRACTED OUT.—

(1) IN GENERAL.—Clause (i) of section 4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A)) is amended by inserting "or to another party or parties" after "to another location".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to work transferred on or after the date of the enactment of this Act.

(d) REPEAL OF SPECIAL RULE FOR LONG AND SHORT HAUL TRUCKING INDUSTRY.—

(1) IN GENERAL.—Subsection (d) of section 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

(2) EFFECTIVE DATE.—The repeal under this subsection shall apply with respect to cessations to have obligations to contribute to multiemployer plans and cessations of covered operations under such plans occurring on or after January 1, 2006.

(e) APPLICATION OF FORGIVENESS RULE TO PLANS PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND CONSTRUCTION.—

(1) IN GENERAL.—Section 4210(b) of such Act (29 U.S.C. 1390(b)) is amended—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (4) as paragraphs (1) through (3), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to plan withdrawals occurring on or after January 1, 2006.

SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO PROCEDURES APPLICABLE TO DISPUTES INVOLVING WITHDRAWAL LIABILITY.

(a) IN GENERAL.—Section 4221(f)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(f)(1)) is amended—

(1) in subparagraph (A) by inserting "and" after "plan,", and

(2) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

"(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of any transaction which occurred at least 5 years (2 years in the case of a small employer) before the date of the complete or partial withdrawal was to evade or avoid withdrawal liability under this subtitle,".

(b) SMALL EMPLOYER.—Paragraph (2) of section 4221(f) of such Act is amended by adding at the end the following new subparagraph:

"(C) SMALL EMPLOYER.—For purposes of paragraph (1)(B)—

"(i) IN GENERAL.—The term 'small employer' means any employer who (as of immediately before the transaction referred to in paragraph (1)(B))—

"(I) employs not more than 500 employees, and

"(II) is required to make contributions to the plan for not more than 250 employees.

"(ii) CONTROLLED GROUP.—Any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subparagraph.".

(c) ADDITIONAL AMENDMENTS.—

(1) Subparagraph (A) of section 4221(f)(2) of such Act (29 U.S.C. 1401(f)(2)) is amended by striking "Notwithstanding" and inserting "In the case of a transaction occurring before January 1, 1999, and at least 5 years before the date of the complete or partial withdrawal, notwithstanding".

(2) Section 4221(f)(2)(B) of such Act (29 U.S.C. 1401(f)(2)(B)) is amended—

(A) by inserting "with respect to withdrawal liability payments" after "determination" the first place it appears, and

(B) by striking "any" and inserting "the".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 on or after the date of the enactment of this Act.

Subtitle B—Amendments to Internal Revenue Code of 1986

SEC. 211. [*SEE INTRODUCED BILL, PAGE 200, LINE 8 THROUGH PAGE 251, LINE 15***].**

TITLE III—OTHER PROVISIONS

SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Paragraph (3) of section 205(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to read as follows:

"(3)(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

"(B) For purposes of subparagraph (A)—

"(i) The term 'applicable mortality table' means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under section 303(h)(3).

"(ii) The term 'applicable interest rate' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

"(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

"(I) section 303(h)(2)(D)(i) were applied by substituting 'the yields' for 'a 3-year weighted average of yields',

"(II) section 303(h)(2)(G)(i)(II) were applied by substituting 'section 205(g)(3)(B)(ii)' for 'section 302(b)(5)(B)(ii)(II)', and

"(III) the applicable percentage under section 303(h)(2)(G) were determined in accordance with the following table:

"In the case of plan years beginning in:	The applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.".

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—[*See introduced bill, page 252, line 19 through page 254, line 5*]

(c) SPECIAL RULE FOR PLAN AMENDMENTS.—A plan shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 solely by reason of the adoption by the plan of an amendment necessary to meet the requirements of the amendments made by this section.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2005.

SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.

[*See introduced bill, page 254, line 6 through page 255, line 7*]

SEC. 303. DISTRIBUTIONS DURING WORKING RETIREMENT.

(a) IN GENERAL.—Subparagraph (A) of section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following new sentence: "A distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions in plan years beginning after 2005.

SEC. 304. OTHER AMENDMENTS RELATING TO PROHIBITED TRANSACTIONS.

(a) DEFINITION OF AMOUNT INVOLVED.—Section 502(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(i)) is amended to read as follows:

"(i)(1) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

"(2) For purposes of paragraph (1)—

"(A) Except as provided in subparagraphs (C) and (D), the term 'amount involved' means, with respect to a prohibited transaction, the greater of—

"(i) the amount of money and the fair market value of the other property given, or

"(ii) the amount of money and the fair market value of the other property received.

"(B) For purposes of subparagraph (A), fair market value—

"(i) shall be determined as of the date on which the prohibited transaction occurs; and

"(ii) shall be the highest fair market value during the period between the date of the transaction and the date of correction.

"(C) In the case of services described in subsection (b)(2) or (c)(2) of section 408, the term 'amount involved' means only the amount of excess compensation.

"(D) In the case of principal transactions involving securities or commodities, the term 'amount involved' means only the amount received by the disqualified person in excess of the amount such person would have received in an arm's length transaction with an unrelated party as of the same date.

"(E) For the purposes of this paragraph—

"(i) the term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof) , and

"(ii) the term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).".

(b) EXEMPTION FOR BLOCK TRADING.—Section 408(b) of such Act (29 U.S.C. 1108(b)), as amended by section 601, is further amended by adding at the end the following new paragraph:

"(15)(A) Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary) with respect to a plan if—

"(i) the transaction involves a block trade,

"(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade, and

"(iii) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction.

"(B) For purposes of this paragraph, the term 'block trade' includes any trade which will be allocated across two or more client accounts of a fiduciary.".

(c) BONDING RELIEF.— Section 412(a) of such Act (29 U.S.C. 1112(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3);

(2) by striking "and" at the end of paragraph (1); and

(3) by inserting after paragraph (1) the following new paragraph:

"(2) no bond shall be required of an entity which is subject to regulation as a broker or a dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or an entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including requirements imposed by a self-regulatory organization (within the meaning of section 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)), or any affiliate with respect to which the broker or dealer agrees to be liable to the same extent as if they held the assets directly.".

(d) EXEMPTION FOR ELECTRONIC COMMUNICATION NETWORK.—Section 408(b) of such Act (as amended by subsection (b)) is further amended by adding at the end the following:

"(16) Any transaction involving the purchase and sale of securities or other property between a plan and a fiduciary or a party in interest if—

"(A) the transaction is executed through an exchange, electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by the applicable governmental regulating entity,

"(B) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

"(C) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system, and

"(D) the price and compensation associated with the purchase and sale are not greater than an arm's length transaction with an unrelated party.".

(e) CONFORMING ERISA'S PROHIBITED TRANSACTION PROVISION TO FERSA.—Section 408(b) of such Act (29 U.S.C. 1106), as amended by subsection (d), is further amended by adding at the end the following new paragraph:

"(17)(A) transactions described in subparagraphs (A), (B), and (D) of section 406(a)(1) between a plan and a party that is a party in interest (under section 3(14)) solely by reason of providing services, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration.

"(B) For purposes of this paragraph, the term 'adequate consideration' means—

"(i) in the case of a security for which there is a generally recognized market—

"(I) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

"(II) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

"(ii) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary.".

(f) RELIEF FOR FOREIGN EXCHANGE TRANSACTIONS.— Section 408(b) of such Act (as amended by the preceding provisions of this section) is further amended by adding at the end the following new paragraph:

"(18) Any foreign exchange transactions, between a bank or broker-dealer, or any affiliate of either thereof, and a plan with respect to which the bank or broker-dealer, or any affiliate, is a trustee, custodian, fiduciary, or other party in interest, if—

"(A) the transaction is in connection with the purchase or sale of securities,

"(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or the broker-dealer (or any affiliate thereof) in comparable arm's-length foreign exchange transactions involving unrelated parties,

"(C) the exchange rate used by the bank or broker-dealer for a particular foreign exchange transaction must be at a rate no less favorable than the rate quoted for transactions of similar size at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

"(D) the bank or broker-dealer, or any affiliate, does not have investment discretion, or provide investment advice, with respect to the securities transaction.".

(g) DEFINITION OF PLAN ASSET VEHICLE.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

"(42) the term 'plan assets' means plan assets as defined by such regulations as the Secretary may prescribe, except that under such regulations the assets of any entity shall not be treated as plan assets if, immediately after the most recent acquisition of any equity interest in the entity, less than 50 percent of the total value of all equity interests in the entity are held by employee benefit plan investors. For purposes of determinations pursuant to this paragraph, the value of any equity interest owned by a person (other than such an employee benefit plan) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded for purposes of calculating the 50 percent threshold. An entity shall be considered to hold plan assets only to the extent of the percentage of the equity interest owned by benefit plan investors. For purposes of this paragraph, the term 'benefit plan investor' means an employee benefit plan subject to this part and any plan to which section 4975 of the Internal Revenue Code of 1986 applies.".

SEC. 305. CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.

(a) IN GENERAL.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)), as amended by sections 304 and 601, is further amended by adding at the end the following new paragraph:

"(19)(A) Except as provided in subparagraphs (B) and (C), a transaction described in section 406(a) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

"(B) Subparagraph (A) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an em-

ployer security (as defined in section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

"(C) In the case of any fiduciary or other party in interest (or any other person knowingly participating in such transaction), subparagraph (A) does not apply to any prohibited transaction if, at the time such transaction is discovered, such fiduciary or party in interest (or other person) knew that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

"(D) For purposes of this paragraph, the term 'correction period' means, in connection with a fiduciary or party in interest (or other person knowingly participating in the transaction), the 14-day period beginning on the date on which such fiduciary or party in interest (or other person) discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

"(E) For purposes of this paragraph—

"(i) The term 'security' has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof).

"(ii) The term 'commodity' has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).

"(iii) The term 'correct' means, with respect to a transaction, to undo the transaction to the extent possible, but in any case, to make good to the plan or affected account any losses resulting from the transaction and to restore to the plan or affected account any profits made through use of the plan.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any transaction which the fiduciary or disqualified person discovers, or reasonably should have discovered, after the date of the enactment of this Act, constitutes a prohibited transaction.

SEC. 306. GOVERNMENT ACCOUNTABILITY OFFICE PENSION FUNDING REPORT.

(a) IN GENERAL.—The Comptroller General of the Government Accountability Office shall transmit to the Congress a pension funding report not later than one year after the date of the enactment of this Act.

(b) REPORT CONTENT.—The pension funding report required under subsection (a) shall include an analysis of the feasibility, advantages, and disadvantages of—

(1) requiring an employee pension benefit plan to insure a portion of such plan's total investments;

(2) requiring an employee pension benefit plan to adhere to uniform solvency standards set by the Pension Benefit Guaranty Corporation, which are similar to those applied on a State level in the insurance industry; and

(3) amortizing a single-employer defined benefit pension plan's shortfall amortization base (referred to in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 (as amended by this Act)) over various periods of not more than 7 years.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

SEC. 401. INCREASES IN PBGC PREMIUMS.

(a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) by striking clause (i) of subparagraph (A) and inserting the following:

"(i) in the case of a single-employer plan, an amount equal to—

"(I) for plan years beginning after December 31, 1990, and before January 1, 2006, $19, or

"(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (F),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;"; and

(2) by adding at the end the following new subparagraph:

"(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of $30 or the adjusted amount determined under clause (ii).

"(ii) For plan years beginning after 2006, the adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

"(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to

"(II) the national average wage index (as so defined) for 2004,

with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.

"(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2005 and before 2010—

"(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

"If the plan year begins in:	The amount is:
2006	$21.20
2007	$23.40
2008	$25.60
2009	$27.80; or

"(II) if the plan's funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

"If the plan year begins in:	The amount is:
2006	$22.67
2007	$26.33
2008 or 2009	the amount provided under clause (i).

"(iv) For purposes of this subparagraph, the term 'funding target attainment percentage' has the meaning provided such term in section 303(d)(2).".

(b) RISK-BASED PREMIUMS.—

(1) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act is amended by striking clauses (iii) and (iv) and inserting the following:

"(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term 'unfunded vested benefits' means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and only vested benefits were taken into account.

"(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were applied by substituting 'the yields' for 'the 3-year weighted average of yields', as applicable under rules similar to the rules under section 303(h)(2)(B).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply with respect to plan years beginning after 2005.

TITLE V—DISCLOSURE

SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.

(a) APPLICATION OF PLAN FUNDING NOTICE REQUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Section 101(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)) is amended—

(1) in the heading, by striking "MULTIEMPLOYER";

(2) in paragraph (1), by striking "which is a multiemployer plan"; and

(3) by striking paragraph (2)(B)(iii) and inserting the following:

"(iii)(I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV, or

"(II) in the case of a multiemployer plan, a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions

efit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and".

(b) INCLUSION OF STATEMENT OF THE RATIO OF INACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) is amended—

(1) in clause (iii)(II) (added by subsection (a)(3) of this section), by striking "and" at the end;

(2) in clause (iv), by striking "apply." and inserting "apply; and"; and

(3) by adding at the end the following new clause:

"(v) a statement of the ratio, as of the end of the plan year to which the notice relates, of—

"(I) the number of participants who are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

"(II) the number of participants who are in covered service under the plan.".

(c) COMPARISON OF MONTHLY AVERAGE OF VALUE OF PLAN ASSETS TO PROJECTED CURRENT LIABILITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) (as amended by the preceding provisions of this section) is amended further—

(1) by striking clause (ii) and inserting the following:

"(ii) a statement of a reasonable estimate of—

"(I) the value of the plan's assets for the plan year to which the notice relates,

"(II) projected liabilities of the plan for the plan year to which the notice relates, and

"(III) the ratio of the estimated amount determined under subclause (I) to the estimated amount determined under subclause (II);"; and

(2) by adding at the end (after and below clause (v)) the following:

"For purposes of determining a plan's projected liabilities for a plan year under clause (ii)(II), such projected liabilities shall be determined by projecting forward in a reasonable manner to the end of the plan year the liabilities of the plan to participants and beneficiaries as of the first day of the plan year, taking into account any significant events that occur during the plan year and that have a material effect on such liabilities, including any plan amendments in effect for the plan year.".

(d) STATEMENT OF PLAN'S FUNDING POLICY AND METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

(1) in clause (iv), by striking "and" at the end;

(2) in clause (v), by striking the period and inserting "; and"; and

(3) by inserting after clause (v) the following new clause:

"(vi) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates.".

(e) NOTICE OF FUNDING IMPROVEMENT PLAN OR REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER PLAN.—Section 101(f)(2)(B) of such Act (as amended by the preceding provisions of this section) is amended further—

(1) in clause (v), by striking "and" at the end;

(2) in clause (vi), by striking the period and inserting "; and"; and

(3) by inserting after clause (vi) the following new clause:

"(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates.".

(f) NOTICE DUE 90 DAYS AFTER PLAN'S VALUATION DATE.—

(1) IN GENERAL.—Section 101(f)(3) of such Act (29 U.S.C. 1021(f)(3)) is amended by striking "two months after the deadline (including extensions) for filing the annual report for the plan year" and inserting "90 days after the end of the plan year".

(2) MODEL NOTICE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model version of the notice required by section 101(f) of the Employee Retirement Income Security Act of 1974.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.

(a) ADDITIONAL ANNUAL REPORTING REQUIREMENTS.—Section 103 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023) is amended—

(1) in subsection (a)(1)(B), by striking "subsections (d) and (e)" and inserting "subsections (d), (e), and (f)"; and

(2) by adding at the end the following new subsection:

"(f)(1) With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

"(A) The ratio, as of the end of such plan year, of—

"(i) the number of participants who, as of the end of such plan year, are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

"(ii) the number of participants who are in covered service under the plan as of the end of such plan year.

"(B) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries borne by 2 or more pension plans as of immediately before such plan year, the funded ratio of each of such 2 or more pension plans as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

"(C) For purposes of this paragraph, the term 'funded ratio' means, in connection with a plan, the percentage which—

"(i) the value of the plan's assets is of

"(ii) the liabilities to participants and beneficiaries under the plan.

"(2) With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include the following:

"(A) The number of employers obligated to contribute to the plan as of the end of such plan year.

"(B) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year. For purposes of this subparagraph, the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.".

(b) ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—

(1) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(2) by inserting after paragraph (11) the following new paragraph:

"(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.".

(c) FILING AFTER 275 DAYS AFTER PLAN YEAR ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of such Act (29 U.S.C. 1024(a)(1)) is amended by inserting after the first sentence the following new sentence: "In the case of a pension plan, the Secretary may extend the deadline for filing the annual report for any plan year past 275 days after the close of the plan year only on a case by case basis and only in cases of hardship, in accordance with regulations which shall be prescribed by the Secretary.".

(d) INTERNET DISPLAY OF INFORMATION.—Section 104(b) of such Act (29 U.S.C. 1024(b)) is amended by adding at the end the following:

"(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on a website maintained by the Secretary on the Internet and other appropriate media. Such information shall also be displayed on any website maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) on the Internet, in accordance with regulations which shall be prescribed by the Secretary.".

(e) SUMMARY ANNUAL REPORT FILED WITHIN 15 DAYS AFTER DEADLINE FOR FILING OF ANNUAL REPORT.—Section 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended—

(1) by striking "Within 210 days after the close of the fiscal year of the plan," and inserting "Within 15 business days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan,"; and

(2) by striking "the latest" and inserting "such".

(f) DISCLOSURE OF PLAN ASSETS AND LIABILITIES IN SUMMARY ANNUAL REPORT.—

(1) IN GENERAL.—Section 104(b)(3) of such Act (as amended by subsection (a)) is amended further—

(A) by inserting "(A)" after "(3)"; and

(B) by adding at the end the following:

"(B) The material provided pursuant to subparagraph (A) to summarize the latest annual report shall be written in a manner calculated to be understood by the average plan participant and shall set forth the total assets and liabilities of the plan for the plan year for which the latest annual report was filed and for each of the 2 preceding plan years, as reported in the annual report for each such plan year under this section.".

(g) INFORMATION MADE AVAILABLE TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) (as amended by section 103(b)(2)(A)) is further amended—

(A) by redesignating subsection (k) as subsection (l); and

(B) by inserting after subsection (j) the following new subsection:

"(k) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

"(1) IN GENERAL.—Each administrator of a multiemployer plan shall furnish to any plan participant or beneficiary or any employer having an obligation to contribute to the plan, who so requests in writing—

"(A) a copy of any actuarial report received by the plan for any plan year which has been in receipt by the plan for at least 30 days, and

"(B) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary which has been in receipt by the plan for at least 30 days.

"(2) COMPLIANCE.—Information required to be provided under paragraph (1)—

"(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary, and

"(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided.

"(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.".

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) (as amended by section 103(b)(2)(B)) is further amended by striking "sections 101(j) and 302(b)(7)(F)(iv)" and inserting "sections 101(j), 101(k), and 302(b)(7)(F)(iv)".

(3) REGULATIONS.—The Secretary shall prescribe regulations under section 101(k)(2) of the Employee Retirement Income Security Act of 1974 (added by paragraph (1) of this subsection) not later than 90 days after the date of the enactment of this Act.

(h) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY TO MULTIEMPLOYER PLANS.—

(1) IN GENERAL.—Section 101 of such Act (as amended by subsection (g) of this section) is further amended—

(A) by redesignating subsection (l) as subsection (m); and

(B) by inserting after subsection (k) the following new subsection:

"(l) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

"(1) IN GENERAL.—The plan sponsor or administrator of a multiemployer plan shall furnish to any employer who has an obligation to contribute under the plan and who so requests in writing notice of—

"(A) the amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

"(B) the average increase, per participant under the plan, in accrued liabilities under the plan as of the end of such plan year to participants under such plan on whose behalf no employer contributions are payable (or their beneficiaries), which would be attributable to such a withdrawal by such employer.

For purposes of subparagraph (B), the term 'employer contribution' means, in connection with a participant, a contribution made by an employer as an employer of such participant.

"(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

"(A) shall be provided to the requesting employer within 180 days after the request in a form and manner prescribed in regulations of the Secretary, and

"(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

"(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.".

(2) ENFORCEMENT.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) (as amended by paragraph (1)) is further amended by striking "sections 101(j), 101(k), and 302(b)(7)(F)(iv)" and inserting "sections 101(j), 101(k), 101(l), and 302(b)(7)(F)(iv)".

(i) MODEL FORM.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall publish a model form for providing the statements, schedules, and other material required to be provided under section 104(b)(3) of the Employee Retirement Income Security Act of 1974, as amended by this section.

(j) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.

(a) CHANGE IN CRITERIA FOR PERSONS REQUIRED TO PROVIDE INFORMATION TO PBGC.—Section 4010(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310(b)) is amended by striking paragraph (1), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting before paragraph (3) (as so redesignated) the following new paragraphs:

"(1) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 60 percent;

"(2)(A) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 75 percent, and

"(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining; ".

(b) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

"(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

"(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

"(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

"(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and

"(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

"(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

"(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

"(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) VALUE OF PLAN ASSETS.—The term 'value of plan assets' means the value of plan assets, as determined under section 303(g)(3).

"(B) FUNDING TARGET.—The term 'funding target' has the meaning provided under section 303(d)(1).

"(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term 'funding target attainment percentage' has the meaning provided in section 303(d)(2).

"(D) AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.—The term 'aggregate funding targets attainment percentage' with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

"(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

"(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

"(E) AT-RISK STATUS.—The term 'at-risk status' has the meaning provided in section 303(i)(3).

"(3) COMPLIANCE.—

"(A) IN GENERAL.—Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.

"(B) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

"(4) NOTICE TO CONGRESS.—Concurrent with the provision of any notice under paragraph (1), such person shall provide such notice to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, which shall be treated as materials provided in executive session.".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

TITLE VI—INVESTMENT ADVICE

SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

"(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

"(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

"(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

"(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

"(B) The transactions described in this subparagraph are the following:

"(i) the provision of the advice to the plan, participant, or beneficiary;

"(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

"(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acqui-

sition, or holding of a security or other property pursuant to the advice.".

(b) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

"(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

"(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

"(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

"(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

"(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

"(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

"(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

"(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

"(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

"(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

"(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

"(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

"(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

"(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

"(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

"(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

"(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

"(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

"(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

"(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

"(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

"(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

"(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

"(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

"(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

"(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

"(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

"(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

"(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

"(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

"(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

"(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

"(iii) an insurance company qualified to do business under the laws of a State,

"(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

"(v) an affiliate of a person described in any of clauses (i) through (iv), or

"(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements

of applicable insurance, banking, and securities laws relating to the provision of the advice.

"(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

"(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 provided on or after January 1, 2006.

SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.

[*See introduced bill, page 287, line 15 through page 298, line 23*]

TITLE VII—BENEFIT ACCRUAL STANDARDS

SEC. 701. IMPROVEMENTS IN BENEFIT ACCRUAL STANDARDS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) RULES RELATING TO REDUCTION IN ACCRUED BENEFITS BECAUSE OF ATTAINMENT OF ANY AGE.—Section 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)(1)(H)) is amended by adding at the end the following new clauses:

"(vii)(I) A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

"(II) For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

"(III) In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

"(viii) A plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of clause (i) solely because interest accruing on such balance is taken into account.

"(ix) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, the Railroad Retirement Act of 1974, another plan described in section 401(a) of the Internal Revenue Code of 1986 maintained by the same employer, or under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

"(x) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of the Internal Revenue Code of 1986 are met.

"(xi)(I) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for pre-retirement indexing of accrued benefits under the plan.

"(II) For purposes of this clause, the term 'pre-retirement indexing' means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by

means of the application of a recognized index or methodology so as to protect the economic value of the benefit against inflation prior to distribution.".

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—Section 203 of such Act (29 U.S.C. 1053) is amended by adding at the end the following new subsection:

"(f)(1) A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2) and section 205(g) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return.

"(2) The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of paragraph (1) and for permissible methods of crediting interest to the account (including variable interest rates) resulting in effective rates of return meeting the requirements of paragraph (1).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning on or after June 29, 2005.

TITLE VIII—DEDUCTION LIMITATIONS

SEC. 801. [*SEE INTRODUCED BILL, PAGE 299, LINE 1 THROUGH PAGE 305, LINE 20*].

PURPOSE

The purpose of H.R. 2830, the "Pension Protection Act of 2005" (PPA), is to ensure the health and future of the voluntary, employer-sponsored defined benefit pension system through comprehensive reforms intended to protect the interests of workers, retirees, and taxpayers. H.R. 2830 includes new funding requirements to ensure employers adequately and consistently fund their pension plans, provides workers with meaningful disclosure about the financial status of their benefits, and protects taxpayers from a potential multi-billion dollar bailout of the Pension Benefit Guaranty Corporation (PBGC).

COMMITTEE ACTION

On June 9, 2005, Committee on Education and the Workforce Chairman John A. Boehner, Subcommittee on Employer-Employee Relations Chairman Sam Johnson and Vice Chairman John Kline, and Committee on Ways and Means Chairman Bill Thomas introduced H.R. 2830, the Pension Protection Act of 2005. H.R. 2830 represents the culmination of legislative activity, begun in the 106th Congress and continuing through the 109th Congress, intended to fix outdated pension laws that threaten the fiscal well-being of taxpayers, workers, and retirees, and to improve the pension security of all American workers.

106TH CONGRESS

In the 106th Congress, the Committee on Education and the Workforce (the "Committee") began a comprehensive review of the federal law governing private pensions, the Employee Retirement Income Security Act ("ERISA"), and its relevance to the needs of participants, beneficiaries, and employers in the 21st century.

On March 11, 1999, Representatives Rob Portman and Benjamin Cardin introduced H.R. 1102, the "Comprehensive Retirement Security and Pension Reform Act of 1999." The bill was jointly re-

ferred to the Committee on Education and Workforce and the Committee on Ways and Means. On June 29, 1999, the Subcommittee on Employer-Employee Relations held a hearing entitled "Enhancing Retirement Security: A Hearing on H.R. 1102, the 'Comprehensive Retirement Security and Pension Reform Act of 1999.'" Testimony was received from the bill's sponsors, Representatives Portman and Cardin.

On July 14, 1999, the Committee discharged the Subcommittee on Employer-Employee Relations from consideration of the bill, approved H.R. 1102, and ordered it favorably reported to the House of Representatives by voice vote. On July 19, 2000, the House of Representatives passed the bill by a vote of 401 yeas to 25 nays.[1] The Senate did not complete consideration of H.R. 1102 prior to the adjournment of the 106th Congress.

On February 15, 2000, the Subcommittee on Employer-Employee Relations continued its examination of issues arising under ERISA at a hearing entitled "The Evolving Pension and Investment World After 25 Years of ERISA." The following individuals testified before the Subcommittee: Professor John H. Langbein, Chancellor Kent Professor of Law and Legal History, Yale Law School; Michael S. Gordon, Esq., Law Offices of Michael S. Gordon; Dr. John B. Shoven, Charles R. Schwab Professor of Economics, Stanford University; and Dr. Teresa Ghilarducci, Associate Professor of Economics, University of Notre Dame.

On March 9th and 10th, 2000, the Subcommittee on Employer-Employee Relations held a two days of hearings entitled "More Secure Retirement for Workers: Proposals for ERISA Reform." Testifying on March 9th were: W. Allen Reed, President, General Motors Investment Management Company, testifying on behalf of the Committee on Investment of Employee Benefit Assets (CIEBA) of the Financial Executives Institute; Daniel P. O'Connell, Corporate Director for Employee Benefits and HR Systems, United Technologies Corporation, testifying on behalf of the ERISA Industry Committee (ERIC); Damon Silvers, Esq., Associate General Counsel, AFL–CIO; Professor Joseph A. Grundfest, William A. Franke Professor of Law and Business, Stanford Law School, and co-founder of Financial Engines, Inc.; Eula Ossofsky, President, Board of Directors, Older Women's League; and Margaret Raymond, Esq., Assistant General Counsel, Fidelity Investments, testifying on behalf of the Investment Company Institute. During the second day of hearings on March 10th, the Subcommittee heard testimony from Kenneth S. Cohen, Esq., Senior Vice President and Deputy General Counsel, Massachusetts Mutual Life Insurance Company, testifying on behalf of the American Council of Life Insurers; Marc E. Lackritz, President, Securities Industry Association; David Certner, Senior Coordinator, Department of Federal Affairs, American Association of Retired Persons; Louis Colosimo, Managing Director, Morgan Stanley Dean Witter & Company, Inc., testifying on

[1] Fifteen provisions of Title VI of H.R. 1102 subsequently were included in H.R. 2488, the "Taxpayer Refund and Relief Act of 1999," which passed the House and Senate on August 5, 1999, but was vetoed by then-President Clinton. The following year, twenty-two ERISA provisions from H.R. 1102 were included in the "Retirement Savings and Pension Coverage Act of 2000," which was included in H.R. 2614, the "Taxpayer Relief Act of 2000." The conference report on H.R. 2614 was adopted by the House on October 26, 2000, by a vote of 237 yeas, 174 nays, and one present. The conference report was not adopted by the Senate prior to adjournment of the 106th Congress.

behalf of the Bond Market Association; John Hotz, Deputy Director, Pension Rights Center; and Deedra Walkey, Esq., Assistant General Counsel, Frank Russell Company.

On March 16, 2000, the Subcommittee on Employer-Employee Relations held a hearing entitled "The Wealth Through the Workplace Act: Worker Ownership in Today's Economy." The hearing focused on H.R. 3462, introduced by then-Subcommittee Chairman John A. Boehner, which made stock options more readily available to ERISA participants. Testifying before the Subcommittee were: Jane F. Greenman, Esq., Deputy General Counsel (Human Resources), Honeywell, Inc., testifying on behalf of the American Benefits Counsel; Tim Byland, Senior Sales Executive, INTERVU, Inc.; and Patrick Von Bargen, Executive Director, National Commission on Entrepreneurship.

On April 4, 2000, the Subcommittee on Employer-Employee Relations continued its examination of ERISA reform in a hearing entitled "Modernizing ERISA to Promote Retirement Security." The following individuals testified at the hearing: the Honorable Leslie Kramerich, Acting Assistant Secretary of Labor for Pension and Welfare Benefits, U.S. Department of Labor; and David M. Strauss, Executive Director, Pension Benefit Guaranty Corporation.

On June 26, 2000, then-Subcommittee on Employer-Employee Relations Chairman Boehner introduced H.R. 4747, the Retirement Security Advice Act of 2000. On July 19, 2000, the Subcommittee on Employer-Employee Relations ordered H.R. 4747 favorably reported, as amended, by voice vote. There was no further action taken on the legislation prior to the conclusion of the 106th Congress.

Concluding its legislative activity for the 106th Congress, the Subcommittee held a hearing on September 14, 2000 entitled "How to Improve Pension Coverage for American Workers." The Subcommittee heard testimony from Theodore Groom, Esq., Groom Law; Michael Calabrese, Director, Public Assets Program, New America Foundation; and Ed Tinsley, III, President and CEO, K-Bob's Steakhouse.

107TH CONGRESS

Building upon the activity of the previous Congress, the Committee continued its efforts to examine and improve upon the private pension system. On March 14, 2001, Representatives Portman and Cardin introduced H.R. 10, which was very similar to the House passed H.R. 1102 of the previous Congress. The Subcommittee on Employer-Employee Relations held a legislative hearing on the bill on April 5, 2001. At the hearing, entitled "Enhancing Retirement Security: A Hearing on H.R. 10, The 'Comprehensive Retirement Security and Pension Reform Act of 2001,'" testimony was received from the bill's sponsors, Representatives Portman and Cardin, Nanci S. Palmintere, Director of Tax, Licensing and Customs, Intel Corporation, testifying on behalf of the American Benefits Council; Richard Turner, Esq., Associate General Counsel, American General Financial Group, testifying on behalf of the American Council of Life Insurers; Judith Mazo, Senior Vice President, Segal Co., testifying on behalf of the Building and Construction Trades Department, AFL–CIO and the National Co-

ordinating Committee for Multiemployer Plans; and Karen Ferguson, Director, Pension Rights Center.

On April 26, 2001, the Committee on Education and the Workforce approved H.R. 10, as amended, by voice vote and ordered the bill favorably reported to the House of Representatives. On May 5, 2001, the House of Representatives passed H.R. 10 by a vote of 407 yeas to 24 nays. On May 16, 2001, the provisions of H.R. 10 were included in H.R. 1836, the Economic Growth and Tax Relief Reconciliation Act, and passed by the House of Representatives on a vote of 230 yeas to 197 nays. The House passed the conference report on the measure on May 26, 2001, by a vote of 240 yeas to 154 nays. On December 5, 2001, the Senate adopted the conference report, as amended, by a vote of 90 yeas and nine nays. On December 11, 2001, the House agreed to the Senate amendments by a roll call vote of 369 yeas and 33 nays. The President signed the bill into law on December 21, 2001; it became public law 107–90.

On June 21, 2001, Committee on Education and the Workforce Chairman Boehner introduced H.R. 2269, the "Retirement Security Advice Act of 2001," a bill to promote the provision of retirement investment advice to workers regarding the management of their retirement income assets. The bill was referred to the Committee on Education and the Workforce and the Committee on Ways and Means.

On July 17, 2001, the Subcommittee on Employer-Employee Relations held a hearing on H.R. 2269. Testifying before the Subcommittee were the Honorable Ann L. Combs, Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor; Betty Shepard, Human Resources Administrator, Mohawk Industries, Inc.; Damon Silvers, Esq., Associate General Counsel, AFL–CIO; Richard A. Hiller, Vice President, Western Division, TIAA–CREF; Joseph Perkins, Immediate Past Present, American Association for Retired Persons; and Jon Breyfogle, Principal, Groom Law Group, testifying on behalf of the American Council of Life Insurers.

On August 2, 2001, the Subcommittee on Employer-Employee Relations approved H.R. 2269, without amendment, by voice vote and ordered the bill favorably reported to the full Committee. On October 3, 2001, the Committee approved H.R. 2269, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 29 yeas to 17 nays. The Committee on Ways and Means considered and marked up the bill on November 7, 2001, and reported it to the House on November 13, 2001. The bill, as amended, passed the House of Representatives on November 15, 2001 by a roll call vote of 280 yeas to 144 nays. The Senate did not consider the measure prior to the adjournment of the 107th Congress.

On February 6th and 7th, 2002, the Committee held two days of hearings entitled "The Enron Collapse and Its Implications for Worker Retirement Security." On February 6th, the sole witness was U.S. Secretary of Labor Elaine Chao. On the second day, the witnesses were Thomas O. Padgett, Senior Lab Analyst, EOTT; Cindy K. Olson, Executive Vice President, Human Resources and Community Relations and Building Services, Enron Corporation; Mikie Rath, Benefits Manager, Enron Corporation; Scott Peterson, Global Practice Leader for Defined Contribution Services, Hewitt

Associates; and Dr. Teresa Ghilarducci, Associate Professor, Department of Economics, University of Notre Dame.

The Subcommittee on Employer-Employee Relations held a hearing on February 13, 2002 entitled "Enron and Beyond: Enhancing Worker Retirement Security." The Subcommittee heard testimony from Jack L. VanDerhei, Ph.D., CEBS, Professor, Department of Risk, Insurance, and Healthcare Management, Fox School of Business and Management, Temple University, testifying on behalf of the Employee Benefit Research Institute; Douglas Kruse, Ph.D., Professor, School of Management and Labor Relations, Rutgers University; Norman Stein, Douglas Arant Professor of Law, University of Alabama School of Law; and Rebecca Miller, CPA, Partner, McGladrey & Pullen, LLP.

On February 14, 2002, Chairman Boehner and Subcommittee on Employer-Employee Relations Chairman Sam Johnson introduced H.R. 3762, the "Pension Security Act."

On February 27, 2002, the Subcommittee on Employer-Employee Relations held a hearing entitled "Enron and Beyond: Legislative Solutions." The witnesses were Dave Evans, Vice President, Retirement and Financial Services, Independent Insurance Agents of America; Angela Reynolds, Director, International Pension and Benefits, NCR Corporation; Erik Olsen, Member, Board of Directors, American Association of Retired Persons; Dr. John H. Warner, Jr., Corporate Executive Vice President, Science Applications International Corp., testifying on behalf of the Profit Sharing Council of America; Richard Ferlauto, Director of Pensions and Benefits, American Federation of State County, and Municipal Employees (AFSCME), testifying on behalf of AFSCME and AFL–CIO; and John M. Vine, Esq., Partner, Covington and Burling, testifying on behalf of the ERISA Industry Committee.

On March 20, 2002, the Committee on the Education and the Workforce approved H.R. 3762, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 28 yeas to 19 nays. On April 11, 2003 the House passed H.R. 3762 by a recorded vote of 255 yeas to 163 nays. No further action was taken on the measure prior to the adjournment of the 107th Congress.

108TH CONGRESS

Building on the success of corporate reform and the foundation of the pension reform principles established during the 107th Congress, the Subcommittee on Employer-Employee Relations held a hearing on February 13, 2003, "The Pension Security Act: New Pension Protections to Safeguard the Retirement Savings of American Workers." Testifying before the Subcommittee were the Honorable Ann L. Combs, Assistant Secretary, Employee Benefits Security Administration, United States Department of Labor; Ed Rosic, Esq., Vice President and Managing Assistant General Counsel, Marriott International, Inc., testifying on behalf of the American Benefits Council; Nell Minow, Editor, The Corporate Library, testifying on behalf of Robert Monks, Lens Governance Advisors; and Scott Sleyster, Senior Vice President and President of Retirement Services and Guaranteed Products, Prudential Financial.

On February 27, 2003, Chairman Boehner and Subcommittee on Employer-Employee Relations Chairman Sam Johnson introduced

H.R. 1000, the "Pension Security Act of 2003." This bill incorporated the provisions of H.R. 2269 from the previous Congress, and contained a number of ERISA provisions from H.R. 10 in the 107th Congress that were dropped prior to that bill's final passage.

On March 5, 2003, the Committee on Education and the Workforce approved H.R. 1000, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 29 yeas to 19 nays. On May 14, 2003, the House of Representatives passed H.R. 1000 by a roll call vote of 271 yeas to 157 nays. The Senate did not complete consideration of the bill before the adjournment of the 108th Congress.

On June 4, 2003, as part of a series of hearings that would focus on the challenges that faced the future of defined benefit plans, and highlight obstacles in federal law that discourage employers from offering these plans, the Subcommittee on Employer-Employee Relations held a hearing entitled "Strengthening Pension Security: Examining the Health and Future of the Defined Benefit Plan." The Subcommittee heard testimony from Dr. Jack Van Derhei, Professor, Fox School of Business Management, Temple University, testifying on behalf of the Employee Benefits Research Institute; Dr. John Leary, Esq., Partner, O'Donoghue and O'Donoghue; Ron Gebhardtsbauer, Senior Pension Fellow, American Academy of Actuaries; and J. Mark Iwry, Esq., Non-Resident Senior Fellow, The Brookings Institution.

On July 15, 2003, the Subcommittee on Employer-Employee Relations and the Ways and Means Subcommittee on Select Revenue Measures held a joint hearing entitled "Examining Pension Security and Defined Benefit Plans: The Bush Administration's Proposal to Replace the 30-Year Treasury Rate." The following witnesses testified on the Bush Administration's proposal to replace the discontinued 30-year Treasury interest rate that was used as the benchmark for defined benefit pension plan funding: The Honorable Ann Combs, Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor; The Honorable Peter Fisher, Under Secretary for Domestic Finance, U.S. Department of Treasury; Kenneth Porter, Director of Corporate Insurance and Global Benefits Financial Planning, DuPont Company; Ashton Phelps, Publisher, The Times-Picayune; Kenneth Steiner, Resource Actuary, Watson Wyatt Worldwide; and Christian Weller, Economist, Economic Policy Institute.

On September 4, 2003, the Committee on Education and the Workforce held the third in a series of hearings to examine the future of defined benefit pension plans entitled "Strengthening Pension Security and Defined Benefit Plans: Examining the Financial Health of the Pension Benefit Guaranty Corporation." The witnesses included David Walker, Comptroller General, General Accounting Office, and Steven Kandarian, Executive Director, Pension Benefit Guaranty Corporation.

On September 17, 2003, Chairman Boehner, joined by Senior Democrat Member George Miller, Subcommittee on Employer-Employee Relations Chairman Sam Johnson, Committee on Ways and Means Chairman Bill Thomas, Ways and Means Committee Senior Democrat Member Charles Rangel, and Representative Rob Portman introduced H.R. 3108, the "Pension Funding Equity Act of 2003." On October 8, 2003, the House passed the bill, as amended,

by a vote of 397 yeas and two nays. On January 28, 2004, the Senate approved an amended version of H.R. 3108 by a roll call vote of 86 yeas and nine nays. The House adopted the conference report on the bill on April 2, 2004, by a vote of 336 yeas and 69 nays. On April 8, 2004, the Senate adopted the conference report by a vote of 78 yeas and 19 nays. On April 10, 2004 President Bush signed the bill into law; it became public law 108–218.

Immediately following House passage of H.R. 3108, Chairman Boehner and Employer-Employee Relations Subcommittee Chairman Sam Johnson announced that the Committee would proceed with its work to implement permanent, long-term solutions to the pension underfunding crisis. On October 29, 2003, the Committee held a hearing entitled "The Pension Underfunding Crisis: How Effective Have Reforms Been?" Testifying before the Committee were Barbara Bovbjerg, Director of Education, Workforce, and Income Security Issues, General Accounting Office; Robert Krinsky, Chairman, Segal Company; Michael S. Gordon, Esq., General Counsel, National Retiree Legislative Network, testifying on behalf of the American Benefits Council; J. Mark Iwry, Esq., Non-Resident Senior Fellow, Brookings Institution; and David John, Research Fellow, Thomas A. Roe Institute for Economic Policy Studies, Heritage Foundation.

On February 25, 2004, the Committee held a hearing entitled "Strengthening Pension Security for All Americans: Are Workers Prepared for a Safe and Secure Retirement?" Testifying before the Committee were Ben Stein, Honorary Chairperson, National Retirement Planning Coalition; Dan McCaw, Chairman and CEO, Mercer Human Resource Consulting; C. Robert Henrikson, President, U.S. Insurance and Financial Services, MetLife; and Peter R. Orszag, Joseph A. Pechman Senior Fellow, Brookings Institution.

On March 18, 2004, the Subcommittee on Employer-Employee Relations held a hearing entitled, "Reforming and Strengthening Defined Benefit Plans: Examining the Health of the Multiemployer Pension System." Testifying before the Subcommittee were Barbara Bovbjerg, Director of Education, Workforce, and Income Security Issues, General Accounting Office; John McDevitt, Senior Vice President, United Parcel Service; Scott Weicht, Executive Vice President, Adolfson and Peterson Construction, testifying on behalf of the Associated General Contractors; and Randy G. DeFrehn, Executive Director, National Coordinating Committee for Multiemployer Plans.

On April 29, 2004, the Subcommittee on Employer-Employee Relations held a hearing entitled "Examining Long-Term Solutions to Reform and Strengthen the Defined Benefit Pension System." Testifying before the Subcommittee were Kenneth A. Kent, Academy Vice President, Pension Issues, American Academy of Actuaries; Greg Heaslip, Vice President, Benefits, PepsiCo, Inc.; J. Mark Iwry, Esq., Non-Resident Senior Fellow, the Brookings Institution; Timothy Lynch, President and CEO, Motor Freight Carriers Association; John S. "Rocky" Miller, Esq., Partner, Cox, Castle & Nicholson, L.L.P.; and Dr. Teresa Ghilarducci, Ph.D., Associate Professor of Economics and Director of the Monsignor Higgins Labor Research Center, University of Notre Dame.

On July 7, 2004, the Committee held its eighth hearing in the 108th Congress, focusing on issues relating to cash balance pension

plans. The hearing was entitled "Examining Cash Balance Pension Plans: Separating Myth from Fact." The Committee heard testimony from James Delaplane, Jr., Esq., Attorney, American Benefits Council; Ellen Collier, Director of Benefits, Eaton Corporation; Dr. Robert Clark, Professor, College of Management, North Carolina State University; Robert Hill, Esq., Partner, Hill & Robbins; and Nancy Pfotenhauer, President, Independent Women's Forum.

109TH CONGRESS

In the 109th Congress, the Committee continued its efforts focusing on comprehensive reform of the defined benefit pension system. On March 2, 2005, the Committee held a hearing entitled "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers." Testifying before the Committee were the Honorable Ann L. Combs, Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor; the Honorable Mark Warshawsky, Assistant Secretary for Economic Policy, U.S. Department of Treasury; Bradley Belt, Executive Director, Pension Benefit Guaranty Corporation; Kenneth Porter, Director of Corporate Insurance and Global Benefits Financial Planning, the DuPont Company, testifying on behalf of the American Benefits Council; Norman Stein, Douglas Arant Professor, University of Alabama School of Law; and Dr. Janemarie Mulvey, Chief Economist, Employment Policy Foundation.

On June 9, 2005, Chairman Boehner, Employer-Employee Relations Subcommittee Chairman Sam Johnson, Employer-Employee Relations Vice-Chairman John Kline and Committee on Ways and Means Chairman Bill Thomas introduced H.R. 2830, the "Pension Protection Act of 2005." On that same day, Chairman Boehner also introduced H.R. 2831, the "Pension Preservation and Portability Act of 2005."

On June 15, 2005, the Committee held a legislative hearing on H.R. 2830. Testifying before the Committee were Lynn Franzoi, Vice President for Human Resources, Fox Entertainment Group, testifying on behalf of the U.S. Chamber of Commerce; Bart Pushaw, Actuary, Milliman, Inc.; Dr. Teresa Ghilarducci, Professor of Economics, University of Notre Dame; Timothy Lynch, President and CEO, Motor Freight Carriers Association; Judy Mazo, Senior Vice President/Director of Research, The Segal Company; and Andy Scoggin, Vice President for Labor Relations, Albertsons, Inc.

On June 22, 2005, the Subcommittee on Employer-Employee Relations approved H.R. 2830, as amended, and ordered the bill favorably reported to the full Committee, by voice vote. On June 30, 2005, the full Committee approved H.R. 2830, as amended, and ordered the bill favorably reported to the House of Representatives by a roll call vote of 27 yeas, 0 nays, and 22 present. H.R. 2830, as amended and reported to the House, included several provisions contained within H.R. 2831.

SUMMARY

TITLE I—SINGLE EMPLOYER REFORMS

The main component of H.R. 2830, the Pension Protection Act, changes the way plan sponsors calculate their plan liabilities,

which in turn determines the amount of minimum required contributions they must make to their plans. There are a number of technical features to the funding rule changes, including:

Determining Plan Liabilities with a Modified Yield Curve. H.R. 2830 includes a modified yield curve approach that provides a permanent interest rate for employers to calculate their pension contributions and more accurately measure current pension liabilities as they come due. This replaces the composite corporate bond interest rate which is currently scheduled to expire at the end of 2005.

Generally speaking, under H.R. 2830, each pension plan has a unique schedule of future benefit payments that depends on the characteristics of the plan's demographics. For example, plans with more retirees and older workers, more lump sum pension payments, and shrinking workforces will make a greater percentage of their pension payments in the near future, while plans with younger workers, fewer retirees, fewer lump sums, and growing workforces will make a greater percentage of payments in later years as these obligations come due. The comprehensive funding reforms included in H.R. 2830 recognize the different timing of various pension payments and require plan sponsors to fund for such payments accordingly. This change will ensure that employers progressively make more contributions to pension plans as participant demographics mature, so that they can meet their pension promises when workers retire. It also provides greater certainty and predictability for employers as they make financial decisions and budget to meet their future pension obligations.

The modified yield curve interest rate that employers will use under H.R. 2830 to calculate their required contributions is based on the future date at which a pension plan's benefit obligations come due, as defined in three categories or "segments:" liabilities due within five years, liabilities due between six and twenty years, and liabilities due after twenty years until the estimated end of the plan's obligations. For purposes of calculating a plan's total liabilities for a plan year, otherwise known as the plan's "funding target," employers will use the plan's effective interest rate. The effective interest rate of a plan is the rate of interest which, if used to determine the present value of the plan's liabilities, would result in an amount equal to the total plan liabilities of the plan each year.

For purposes of determining the plan's liabilities for short-term, mid-term, and long-term durations, the interest rates to be used are based on the three segment rates applied to a plan's liabilities for each duration segment. The segment rates are determined by the Secretary of the Treasury on the basis of the portion of the corporate bond yield curve for yields of bonds maturing in each short-term, mid-term, and long-term segment. The segment rates should reflect the average of all AAA, AA, and A bonds for each year on the yield curve. The Committee intends for the Secretary of the Treasury to develop one corporate bond yield curve based on a three-year weighted average of yields on investment grade corporate bonds reflecting AAA, AA, and A bonds.

The modified yield curve approach in H.R. 2830 is designed to ensure employers more accurately measure and fund their short-term, mid-term, and long-term pension obligations with greater predictability and certainty about their future pension costs. The

use of the modified yield curve for calculating plan liabilities is phased in over three years.

Special Rules For At-Risk Plans. Special funding rules apply to certain severely underfunded plans that are considered "at-risk," which are plans that have a funding target of less than 60%. These plans not only represent a financial risk to the PBGC, but the retirement security of the participants and beneficiaries in these plans is also threatened. For at-risk plans, a plan's actuary would have to assume that all participants would elect benefits at the earliest available time and in the forms that will result in the highest present value of liabilities. In other words, a plan's at-risk funding target is the sum of the present value of all liabilities of participants and beneficiaries under the plan for the plan year determined using additional assumptions that assume all participants will elect benefits at the times and in the forms that will result in the highest possible present value of liabilities. At-risk plans are also subject to an additional "loading factor" equal to $700 per participant plus 4 percent of at-risk liability. However, it is the Committee's intent that once a plan's funded status is at 60 percent or greater, it is no longer considered at-risk; therefore, all future shortfall amortization payments are based on the plan's funding target liability shortfall.

The transition between a plan's normal funding target and its at-risk funding target is five years. In other words, if a plan is less than 60 percent funded for a consecutive period of fewer than five plan years, the plan must pay 20 percent of its at-risk required contribution multiplied by the number of plan years that the plan is less than 60 percent funded. The purpose of the at-risk liability assumption changes and loading factor is to recognize that these plans pose a greater risk to the PBGC and that there is a greater likelihood the plan may have to pay benefits on an accelerated basis or terminate.

Ensuring Underfunded Pension Plans Make Up Shortfalls. Under current law, pension funding rules permit underfunded plans to make up funding shortfalls over too long a period of time, putting workers at risk of having their plans terminate without adequate funding. The current rules contain several amortization periods for making up a shortfall, which in some cases can be up to 30 plan years. Moreover, today's rules generally only require plans to meet a 90 percent funded status target, or in some cases only 80 percent.[2]

It is the view of the Committee that extended amortization schedules increase the risk of plan termination because smaller payments are made to a plan each year. H.R. 2830 requires employers to make sufficient and consistent contributions to ensure that plans meet a 100 percent funding target. If a plan has a funding shortfall, the bill requires employers to make additional contributions to erase the shortfall over a seven-year period. A plan has a funding shortfall for a plan year if the plan's funding target for the year exceeds the value of the plan's assets. If a plan has established a funding shortfall in any year, the remaining present values of the amortization payments that are due are included in plan assets. Any new amortization shortfall, which is determined

[2] See ERISA § 302(d).

as of the valuation date of the plan, requires a new, seven-year level payment schedule to be established. The present value of any shortfall payment made to a plan is determined by using the appropriate segment rates for the plan year.

The minimum required contribution required under H.R. 2830 is the sum of a plan's target normal cost for the plan year, which is the present value of all benefits that a plan is expected to accrue or to be earned during the plan year, and any required shortfall amortization charge for a plan that is less than 100 percent funded. However, for plans that were not subject to the deficit reduction contribution for the 2005 plan year, the 100 percent funding target is phased in over a five-year period, and a plan is required to be 100 percent funded by 2010. These new funding requirements will ensure employers have strong incentives to properly and adequately fund their plans in a timely manner.

Making Smoothing More Effective for Plans and Participants. Under current law, interest rates used to calculate pension assets and liabilities are "smoothed," or averaged, over approximately five years for assets and four years for liabilities. Such smoothing is intended to reduce pension funding volatility and help make employer contribution requirements more predictable. However, some have expressed concern that this is too long a period to smooth these interest rates and assets. H.R. 2830 reduces the smoothing of interest rates to calculate liabilities using a weighted average of the three most recent plan years (50 percent from the most recent plan year, 35 percent from the second year, and 15 percent from the third year). Asset smoothing is also reduced to a maximum of three years; however, the smoothed value of plan assets may not vary more or less than 10 percent of the fair market value of such assets. The overall reduced smoothing method protects pension plans against market and funding volatility on an annual basis while providing plan sponsors the ability to predict and budget their pension contributions.

Prohibiting Underfunded Plans from Using Credit Balances. In general, a plan accumulates a credit balance if an employer contributes more than the minimum required contribution in any plan year. However, the credit balance rules under current law contribute to plan underfunding by allowing employers with underfunded plans to replace cash contributions with credit balances accrued in previous years. In addition, current law allows the credit balance to accrue additional interest based on a plan's rate of return regardless of the actual market performance of a plan's general assets. These provisions allow underfunded plans to skip pension payments, even if the plans are severely underfunded, by using artificially inflated credit balances that mask the true funded status of plans.

H.R. 2830 prohibits employers from using credit balances to offset minimum required contributions if their pension plans are funded at less than 80 percent of the plan's funding target. The bill further requires that old credit balances (funding standard carryover balance) as well as any new credit balance (pre-funding balance, which is any credit balance accumulated after the 2005 plan year), reflect actual market gains and losses based on a plan's net asset gains and losses. In order to determine whether a plan is at least 80 percent funded, any credit balance accumulated prior to

plan year 2006 is not subtracted from plan assets; any new credit balance, however, is subtracted from plan assets. All credit balances may be used to determine whether a plan has a funding shortfall. If a plan does have a funding shortfall for any plan year, credit balances must be subtracted from plan assets in order to determine the actual shortfall. A plan may elect to reduce its credit balances and assume that such balance is part of the general plan assets for any reason; however, the credit balance may no longer be used to offset any minimum required contribution. With respect to ordering, any pre-funding balance may not be used to satisfy a minimum required contribution until all of the funding standard carryover balance is used. Finally, if a plan is 100 percent funded or more (including plan assets as well as any funding standard carryover balance and pre-funding balance), the benefit restriction provisions under the bill do not apply.

Restricting the use of credit balances for plans that are below 80 percent funded will ensure that plan sponsors are making actual cash contributions to their plans consistently. This provision will increase a plan's funded status as well as protect participants and beneficiaries in the future.

Mortality Table Changes. Under current law, plans are generally required to use the 1983 Group Annuity Mortality ("GAM") Table in calculating plan liabilities. The use of this table assumes that the actual mortality experience of a plan has not changed since 1983. The use of the 1983 GAM table to calculate plan liabilities is outdated and may cause certain plans to appear better funded with fewer liabilities. H.R. 2830 requires plans to use an updated mortality table, the RP–2000 Combined Mortality Table, using Scale AA, in order to calculate plan liabilities. The use of the RP–2000 Table should result in a more accurate measure of plan liabilities by reflecting an updated mortality experience and the projected trends for plans. H.R. 2830 directs that the Secretary of the Treasury update the table every 10 years. Additionally, H.R. 2830 allows a plan to apply to the Secretary of the Treasury to use a substitute mortality table if the Secretary determines that the substitute table reflects the actual experience and projected trends in experience of the plan and that the use of the RP–2000 Combined Mortality Table is inappropriate for the plan. The Department of the Treasury has 180 days to determine whether the substitute table is not appropriate and that, therefore, a plan must use the RP–2000 Combined Mortality Table. This provision includes a five-year phase-in. The use of the RP–2000 mortality table will ensure that pension plans are adequately funding for their liabilities based on reasonable and updated mortality assumptions which will result in better plan funding overall.

Timing of Plan Contribution and Valuation Date. Under current law, plans that have a current liability percentage of less than 100 percent are required to make quarterly contributions, which are due on the 15th day following the end of each quarter in a plan year. The amount of the quarterly contributions is 25 percent of the lesser of 90 percent of the plan's current year minimum funding requirements or 100 percent of the plan's minimum funding require-

ments for the preceding plan year.[3] It is the Committee's intent that the required annual payment for plan year 2006 is to be based on 90 percent of the minimum funding requirements under H.R. 2830. Furthermore, it is the intent of the Committee that, for plan years beginning after 2006, the amount of quarterly contributions is 25 percent of the lesser of 90 percent of the plan year's current minimum funding requirements or 100 percent of the plan's minimum funding requirements for the preceding plan year.

H.R. 2830 requires plans to use the first day of the plan year for a plan's valuation date. However, plans with 500 or fewer participants may use any valuation date. Contributions made after the valuation date are to be credited against the minimum required contribution for the year based on its present value as of the valuation date, discounted from the date the contribution is actually made using a plan's effective interest rate.

Limits on Benefit Increases and Accruals for Underfunded Plans. Too often, employers and union leaders have negotiated benefit increases when plans are underfunded, which ultimately results in increasing plan underfunding. This, in turn, results in an even greater likelihood that the PBGC will be forced to assume responsibility for paying the benefits, often at reduced levels, of terminated plans. H.R. 2830 restricts the ability of employers and union leaders to promise additional benefits when a plan is underfunded. Specifically, the bill prohibits employers and union leaders from increasing benefits or providing lump sum distributions if a pension plan is less than 80 percent funded for the prior year, unless the plan sponsor immediately makes the necessary contribution to fund the entire increase. If a plan is greater than 80 percent funded, but adopts a plan amendment which results in a plan with a funded status of less than 80 percent, the plan sponsor must immediately make the necessary contribution to ensure that the plan's funded status is at least 80 percent. The restriction for lump sum distributions does not apply to plans that have previously adopted amendments that effectively freeze all future accruals. H.R. 2830 also prohibits future benefit accruals for severely underfunded plans, which effectively freezes the plan. Plan amendments are required in order to resume any lump sum distributions or plan accruals once the plan is above the respective thresholds.

In addition to these limitations, H.R. 2830 also prohibits the payment of shutdown benefit and other unpredictable contingent event benefits. The Committee believes that because such benefits are not funded and cannot reasonably be funded with any accuracy, these unfunded benefits are more similar to severance benefits than pension benefits. Shutdown benefits have increased PBGC's deficit when the agency assumes the liabilities of terminated plans that include such unfunded promises. It is the Committee's view that shutdown benefits and other unpredictable contingent event benefits should not be considered pension benefits and should not be payable from plan assets.

The effective date of the benefit restriction provisions set forth above is 2006. However, in the case of a collectively bargained plan, the effective date applies to any plan year beginning the earlier of: (1) the date on which the last collective bargaining agreement ex-

[3] See ERISA § 302(e).

pires, or (2) 2009. This effective date ensures that any current collective bargaining agreements are not disrupted and that employees are given ample time to discuss the effects of the benefit restrictions with their respective unions and employers.

Prohibiting Executive Compensation Arrangements If Rank-and-File Plans Are Severely Underfunded. H.R. 2830 addresses a problem recently seen in the airline industry where executives of companies in financial difficulty are given generous nonqualified deferred compensation arrangements while the retirement security of rank-and-file workers is at risk due to poorly funded qualified plans. The Committee believes that it is inappropriate for companies with underfunded qualified defined benefit pension plans to fund nonqualified deferred compensation plans covering executives. While rank-and-file employees have little control over a company's decision to fund its pension plans, executives often have control in determining whether nonqualified deferred compensation plans will be funded. In addition, executives who are covered by a nonqualified deferred compensation plan may also be instrumental in deciding how much to contribute to the defined benefit pension plan, thus determining the funded status of the pension plan. The Committee believes that if any defined benefit pension plan of an employer is not sufficiently funded, executives should be required to recognize current income inclusion (*i.e.,* be taxed) upon the funding of their nonqualified deferred compensation plans.

H.R. 2830 provides that if an employer's defined benefit pension plan is in at-risk status and the employer sets aside amounts for purposes of paying deferred compensation under a nonqualified deferred compensation plan, the amounts set aside are treated as property transferred in connection with the performance of services. Thus, participants for whom such amounts are set aside would be subject to current income inclusion under the provision. In addition, interest and an additional 20 percent tax would apply.

H.R. 2830 specifically provides that if during any period in which a qualified defined benefit pension plan of an employer is below 60 percent funded, any assets that are set aside, directly or indirectly, in a trust or other arrangement as determined by the Secretary of the Treasury, or transferred to such a trust or other arrangement, for purposes of paying deferred compensation, such assets are treated as property transferred in connection with the performance of services, regardless of whether or not such assets are available to satisfy the claims of general creditors. Furthermore, if a nonqualified deferred compensation plan of an employer provides that assets will be restricted to the provision of benefits under the qualified plan, such assets are treated as property transferred in connection with the performance of services, regardless of whether or not such assets are available to satisfy the claims of general creditors. If the plan sponsor's qualified defined benefit plan is below 60 percent funded, any subsequent increases in the value of, or any earnings with respect to, transferred or restricted assets are treated as additional transfers of property to the individual. In addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the amounts been includible in income for the taxable year in which first deferred or, if later, the first taxable year not subject to a substantial risk of forfeiture. The amount re-

quired to be included in income is also subject to an additional 20 percent tax.

H.R. 2830 requires the plan administrator to provide notice to plan participants and beneficiaries within 30 days after the plan has become subject to any of the above benefit restrictions. Any failure to provide notice will automatically result in a civil penalty.

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

Multiemployer pension plans are defined benefit pension plans maintained by two or more employers in a particular trade or industry, such as trucking or construction, which are collectively bargained between an employer and a labor union. These plans are managed by a board of trustees, which must be comprised of an equal number of employer and union representatives. While multiemployer and single employer pension plans have some similarities, there are also fundamental differences. While single employer plan sponsors generally may adjust their pension contributions to meet funding requirements, the contributions of individual employers in multiemployer plans cannot be easily modified because their benefit contributions are fixed by the terms of a collective bargaining agreement.

Multiemployer contributions are tied directly to the total number of hours worked by active workers; thus, any reduction in the number of active participants results in lower contributions to multiemployer plans. One of the major challenges facing the multiemployer system is that these pension plans are funded by a declining number of employers making contributions on behalf of a declining number of active workers, while paying benefits to a rapidly growing number of retirees. This "risk pooling" pension funding concept was designed for a 1940s era workforce that expected the multiemployer labor base to continue to grow; in reality, it has not. Indeed, only five new multiemployer plans have been formed since 1992. This has resulted in funding problems the Committee believes must be immediately addressed.

Multiemployer Funding Reforms. H.R. 2830 establishes a structure for identifying troubled multiemployer pension plans by providing appropriate triggers for determining when plans are underfunded as well as quantifiable benchmarks for measuring a plan's funding improvement. The bill quantifies the health of certain underfunded multiemployer pension plans and separates them into two broad categories: (1) endangered plans, which are plans that are not in immediate financial danger, but are not considered well-funded plans; and (2) critical plans, which are plans in serious financial trouble and are expected to experience an accumulated funding deficiency in the near future. Present-law reorganization and insolvency rules continue to apply.

H.R. 2830 provides that, in general, a plan's actuary must certify to the Secretary of the Treasury, within 90 days after the first day of the plan year, whether the plan is in endangered or critical status. If the certification is not made within this period, the plan is presumed to be in critical status. In making the determination whether a plan is in endangered or critical status, the plan actuary must make projections for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the cur-

rent value of plan assets and the present value of liabilities, as set forth in the actuarial statement for the preceding plan year. If a plan is certified to be in endangered or critical status for the plan year or is presumed to be in critical status because no certification was made, notice must be provided within 30 days to participants, beneficiaries, bargaining parties, the PBGC, and the Secretaries of Labor and the Treasury.

Endangered Multiemployer Plans. H.R. 2830 requires that, if a plan is less than 80 percent funded or will experience a funding deficiency in the next seven years, the plan is considered to be in endangered status. The plan's trustees must design and adopt a program, within 240 days after a plan is certified as endangered, that will improve the health of the plan by one-third within 10 years, unless the plan's actuary certifies that the plan cannot meet that improvement benchmark. If the plan cannot meet the one-third improvement benchmark within 10 years, the plan must develop a program to improve the health of the plan by one-fifth within fifteen years; however, the plan's actuary must certify each year, until the expiration of the collective bargaining agreement, that the plan is unable to meet the ⅓ improvement benchmark within 10 years.

For endangered plans that are funded between 65 and 70 percent, the trustees must create a program to improve the funded status of the plan by one-fifth within fifteen years. In addition, the bill prohibits trustees from increasing benefits if the increase would cause the plan to fall below 65 percent funded status. Plan trustees also must adopt certain other measures for increasing contributions and restricting benefit increases until the plan meets the one-third benchmark.

The funding improvement period for the plan to reach the required benchmarks is the 10 year period beginning on the earlier of: (1) the second anniversary of the date of adoption of the funding improvement plan, or (2) the first day of the first plan year following the year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

Pending approval of the funding improvement plan, the plan sponsor must take all actions (consistent with the terms of the plan and present law) to ensure an increase in the plan's funded percentage and a postponement of an accumulated funding deficiency for at least one additional plan year. These applications include, but are not limited to, applications for extensions of amortization periods, use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, and reductions in future benefit accruals.

Pending approval of a funding improvement plan, the plan may not be amended to provide for the following: (1) a reduction in the level of contributions for participants who are not in pay status; (2) a suspension of contributions with respect to any service; or (3) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

Critical Multiemployer Plans. H.R. 2830 includes a series of requirements to address multiemployer plans that are severely underfunded and face significant and immediate funding problems. H.R. 2830 strengthens the funding requirements for critical plans and requires trustees to develop and adopt, within 240 days from

the plan's critical status certification, a rehabilitation plan to exit the critical zone within 10 years. A plan is considered to be in critical status if it meets one of the following tests: (1) as of the beginning of the plan year, the funded percentage of the plan is less than 65 percent and the sum of the market value of plan assets plus the present value of reasonably anticipated contributions for the current and six succeeding plan years is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current and six succeeding plan years; (2) as of the beginning of the plan year, the sum of the market value of plan assets plus the present value of the reasonably anticipated contributions for the current and four succeeding plan years (assuming the same collective bargaining agreement is in effect) is less than the present value of all nonforfeitable benefits for participants and beneficiaries projected to be payable under the plan during the current and four succeeding plan years; (3) as of the beginning of the plan year, the funded percentage of the plan is less than 65 percent and the plan has an accumulated funding deficiency for the current or four succeeding plan years (taking into account any amortization extension); (4) the plan's normal cost for the year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year exceeds the present value, as of the beginning of the plan year, of the reasonably anticipated contributions for the year plus the present value of the nonforfeitable benefits of the inactive participants is greater than the present value, as of the beginning of the plan year, of the nonforfeitable benefits of active participants, and the plan is projected to have an accumulated funding deficiency for the current or four succeeding plan years; or (5) the funded percentage of the plan is greater than 65 percent for the current plan year and the plan is projected to have an accumulated funding deficiency for the current or three succeeding plan years.

The rehabilitation period for the plan to reach the required benchmarks is the 10 year period beginning on the earlier of: (1) the second anniversary of the date of adoption of the rehabilitation plan, or (2) the first day of the first plan year following the year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

H.R. 2830 requires that a rehabilitation plan for a critical plan must include a combination of employer contribution increases, expense reductions, funding relief measures, restrictions on future benefit accruals, and benefit reductions of certain ancillary benefits. These changes must be adopted by all bargaining parties. The bill also provides for a surcharge to the plan by employers until the parties adopt a rehabilitation plan and allows the trustees of the plan, in the most dire circumstances, to reduce certain ancillary benefits. If the plan cannot emerge from the critical zone within 10 years, the rehabilitation plan must describe alternatives, explain why emergence from the critical zone is not feasible, and develop actions that the trustees must take to postpone insolvency. Until a rehabilitation plan is adopted, a critical plan is subject to the same restrictions as an endangered plan; however, subject to certain exceptions, no amendment may be adopted which increases

the liabilities of the plan by reason of any increase in benefits, any change in accrual of benefits, or any change in the rate at which benefits become nonforfeitable.

Other Multiemployer Plan Reforms: In addition to the new funding reforms, H.R. 2830 includes new requirements for multiemployer pension plans irrespective of funding status. Specifically, the bill streamlines all amortization payments to a maximum of 15 years. However, the new amortization periods do not apply to amounts attributable to amortization schedules established for plan years beginning before 2006. H.R. 2830 increases the maximum deductible limit up to the excess of 140 percent of current liability, providing additional funding flexibility for plans each year in order to respond to different economic markets.

Amortization Extensions: H.R. 2830 provides that upon a plan's application, the Secretary of the Treasury shall grant an extension of the amortization period for up to five plan years for any unfunded past service liability, investment loss, or experience loss. An applicant must demonstrate to the satisfaction of the Secretary that the notice of the application has been provided to each organization representing employees covered by the plan and to the PBGC. The Secretary may also grant an amortization extension for an additional five years beyond the automatic extension. The standard for determining whether an additional extension may be granted is the same as under present law; however, the rate applicable to the waived funding deficiencies and extensions of amortization periods is the greater of: (1) 150 percent of the federal midterm rate, or (2) the rate of interest used under the plan in determining costs.

Finally, H.R. 2830 also includes withdrawal liability reforms in order to strengthen and clarify current law withdrawal rules and provide certain privately-held, small employers with the ability to grow and/or modify their business to meet the needs of a dynamic economy. Such reforms may not, however, be made with any attempt to evade or avoid any obligations to contribute to a multiemployer plan. The Committee believes that withdrawal liability reforms are needed in order to ensure the future of these plans, and that employers continue to participate in the multiemployer pension system.

TITLE III—INTEREST RATE FOR LUMP SUM DISTRIBUTIONS

H.R. 2830 requires employers to use the three appropriate segment rates under the modified yield curve to calculate minimum lump sum distributions for participants. In other words, the modified yield curve must be applied to each projected annuity payment in converting to a lump sum.

In general, current law requires lump sum distributions to be calculated using the artificially-low 30-year Treasury rate; this has the effect of inflating lump sum distributions, which drains plan assets and represents a major source of systemic pension underfunding. Using the same interest rates to calculate both employer pension contributions and lump sum distributions will ensure that these benefits are calculated and funded properly and fairly without having an adverse impact on the remaining workers and retirees in the plan. It is the Committee's intent that employers use the RP–2000 Combined Mortality Table in calculating lump sum dis-

tributions and use the assumption that an equal number of men and women will take lump sum distributions. There is a five-year phase-in of the modified yield curve rate from the 30-year Treasury rate for the purpose of calculating lump sum distributions. If a plan offers lump sum distributions, however, the assumption regarding the probability of when payments will be made is required to be taken into account for funding purposes.

Amendment to the ERISA Prohibited Transaction Rules Adopted by the Committee: H.R. 2830 outlines eight prohibited transaction exemptions to facilitate easier, faster, and less expensive transactions between private pension plans and service providers. The purpose of this provision is to ensure that pension plans are not denied certain investment opportunities or overburdened by unnecessary or duplicative regulatory structures that result in higher administrative costs. The eight exemptions include the following:

Definition of "Amount Involved." This provision clarifies the term "amount involved" with respect to certain types of investment which is used in calculating the civil penalties imposed and the appropriate amount for correcting a prohibited transaction. The "amount involved" in a transaction is clarified as the amount of money and the fair market value of property either given or received as of the date on which the prohibited transaction occurs.

Exemption for Block Trading. This provision allows pension assets to be included in block trades in order to achieve better execution and reduced costs and provides for more efficient plan asset transactions.

Bonding Relief. This provision amends ERISA's bonding rules to reflect the regulation of broker-dealers and investment advisers under federal securities law.

Conforming ERISA's Prohibited Transaction Provision to the Federal Employees' Retirement System Act (FERSA). This provision exempts fair market value exchanges from the prohibited transaction requirements to reduce pension plan costs.

Relief for Foreign Exchange Transactions. This provision allows broker-dealers and affiliates to provide ancillary services to plans (such as currency conversions) which results in overall lower administrative costs and burdens.

Definition of Plan Asset Vehicle. This provision excludes the underlying assets of entities which hold less than 50 percent of plan assets from the fiduciary rules under ERISA to allow plans the flexibility to participate in greater investment opportunities.

Exemption for Electronic Communication Network. This provision allows plans to conduct transactions on electronic trading networks that are owned in part or whole by any plan service provider, which will result in reduced plan costs and enhanced efficiency.

Correction Period for Certain Transactions Involving Securities and Commodities. This provision provides a 14-day "correction" period for any transactions that occur by mistake between a plan and a party-in-interest or fiduciary.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Two important steps are essential to improving the financial condition of the PBGC and ensuring its long-term solvency: (1) reforming pension funding rules to ensure pensions are more adequately

and consistently funded; and (2) increasing premiums paid by employers to the PBGC in a responsible fashion. It is important to note that ensuring employers fund their plans appropriately will prove more helpful to the overall defined benefit system than additional premiums paid to the PBGC. However, Congress has not raised premiums since 1991, so a reasonable increase is both prudent and necessary.

Flat-Rate Premiums. The Pension Protection Act raises flat-rate, per participant premiums employers pay to the PBGC, but phases the increases in over time instead of increasing them immediately. For pension plans that are less than 80 percent funded, the bill raises the flat per-participant rate premium from the current $19 to $30 over three years. For plans funded at more than 80 percent, the premium increase is phased in over five years. The bill indexes the flat-rate premium annually to worker wage growth.

Variable Rate Premiums. Under H.R. 2830, variable rate premiums are charged to a plan based on the amount of plan underfunding below 100 percent. Employers are required to pay $9 for every $1000 dollars of unfunded vested benefits to the PBGC.

TITLE V—DISCLOSURE

While ERISA includes a number of reporting and disclosure requirements that provide workers with information about their benefits, the timeliness and usefulness of this information should be improved. Too often in recent years, participants have mistakenly believed that their pension plans were well funded, only to receive a shock when the plan is terminated. Without basic information, workers, contributing employers, lawmakers, and the federal agencies that oversee pension plans are left without the most complete and accurate information about the true funded status of these pension plans. This has troubling implications for workers who are relying on this information for their retirement, and taxpayers who ultimately face the risk of bailing out these plans. The Pension Protection Act provides workers, investors, and lawmakers more timely and useful information about the status of defined benefit pension plans to ensure greater transparency and accountability.

New Notice to Workers and Retirees. Within 90 days after the close of the plan year, H.R. 2830 requires both single and multiemployer pension plans to notify participants and beneficiaries of the actuarial value of assets and projected liabilities and the funded percentage of their plan. Such notice must also include the plan's funding policy and asset allocations based on a percentage of overall plan assets. This notice is due for plan years beginning after 2005.

For multiemployer plans already subject to this provision, such notice must also include a statement of the ratio of inactive participants to active participants in a plan, as of the end of the plan year to which the notice relates. Inactive participants are considered those participants who are not in covered service under the plan and are in pay status or have a nonforfeitable right to benefits under the plan. It is the Committee's intent that covered service includes a period of service of no less than 12 consecutive months.

With respect to multiemployer plan disclosure under current law, contributing employers of multiemployer plans have little access to any information regarding the health of the pension plan to which

they contribute. H.R. 2830 requires multiemployer plans to make available certain information within 30 days of a request by contributing employers or labor organizations, including: (1) copies of all actuary reports received by the plan for a plan year; and (2) copies of all financial reports prepared by plan fiduciaries, including plan investment managers and advisors, and/or plan service providers.

Enhancing Form 5500 Notice Requirements. The principal source of information about private sector defined benefit plans is the Form 5500, the equivalent of a pension plan's federal tax return. H.R. 2830 requires both single and multiemployer plans to include more information on their Form 5500 filings. Specifically, if plans merge and file one Form 5500, the plan must provide the funded percentage for the preceding plan year and the new funded percentage after the plan merger. In addition, a plan's enrolled actuary must explain the basis for all plan retirement assumptions on the Schedule B, which is the actuarial statement filed along with Form 5500 that provides information on the plan's assets, and liabilities. Finally, H.R. 2830 requires multiemployer plans to include on Form 5500 filings the number of contributing employers in the plan as well as the number of employees in the plan that no longer have a contributing employer on their behalf.

Making Form 4010 Disclosure Publicly Available. Under current law, employers who sponsor single employer defined benefit plans that are underfunded, in the aggregate, by more than $50 million must disclose to the PBGC certain information annually on Form 4010. H.R. 2830 provides for certain information included in a plan sponsor's Form 4010 filing to be disclosed to participants and beneficiaries.

Under the bill, if a plan is less than 60 percent funded, H.R. 2830 requires employers to provide certain additional information to workers and retirees within 90 days after Form 4010 is due. This new notice must include: (1) notice that a plan has made a Form 4010 filing for the year; (2) the aggregate amount of assets, liabilities, and funded ratio of the plan; (3) the number of plans maintained by the employer that are less than 60 percent funded ("at-risk" liability); and (4) the assets, liabilities, and funded ratio for those at-risk plans that are less than 60 percent funded.

The PBGC may also request that a plan sponsor file a 4010 and provide notice to its participants if a plan is less than 75 percent funded and such plan is sponsored by an employer in an industry that is experiencing substantial unemployment or underemployment and in which sales and profits are depressed or declining.

Multiemployer Withdrawal Liability Notice. H.R. 2830 requires a multiemployer plan to notify a contributing employer of its withdrawal liability amount within 180 days of a written request. The notice may only be provided once within a 12-month period and may be subject to a reasonable fee. The notice must also include the cost of all participants and beneficiaries in the plan without a contributing employer.

Summary Annual Report. The summary annual report (SAR) provides basic disclosure of information from the Form 5500 to workers and retirees. However, under current law, because this notice isn't required until 110 days after the Form 5500 is filed, the information is often out of date. The bill requires both single and

multiemployer pension plans to provide this notice within 15 days following the Form 5500 filing deadline. The bill also requires the Department of Labor to publish a model SAR notice for plans sponsors.

TITLE VI—INVESTMENT ADVICE

The Pension Protection Act includes a comprehensive investment advice proposal that has passed the House three times in the last several years with significant Democrat support (twice in the 107th Congress and once in the 108th Congress). It allows employers to provide rank-and-file workers with access to a qualified investment adviser who can inform them of the need to diversify and help them choose appropriate investments. The bill also includes tough fiduciary and disclosure safeguards to ensure that advice provided to employees is solely in their best interest.

Important Fiduciary Safeguards. H.R. 2830 includes important fiduciary safeguards and new disclosure protections to ensure that workers receive quality advice that is solely in their best interests. Under the bill, only qualified "fiduciary advisers" who are fully regulated by applicable banking, insurance, and securities laws may offer investment advice; this ensures that only qualified individuals may provide advice. Under the bill, investment advisers who breach their fiduciary duty are personally liable for any failure to act solely in the interest of the worker, and may be subject to civil and criminal penalties by the Labor Department and civil penalties by the worker, among other sanctions. In addition, existing federal and state laws that regulate individual industries will continue to apply.

Comprehensive Disclosure Protections. In order to provide advice under H.R. 2830, advice providers must disclose in plain, easy-to-understand language any fees or potential conflicts. The bill requires advisers to make these disclosures when advice is first given, at least annually thereafter, whenever the worker requests the information, and whenever there is a material change to the adviser's fees or affiliations. The disclosure must also be reasonably contemporaneous with the advice so that employees can make informed decisions with the advice they receive.

Clarifies the Role of the Employer. H.R. 2830 clarifies that employers are not responsible for the individual advice given by professional advisers to individual participants; this liability is assumed by the individual adviser. Under current law, employers are discouraged from providing this benefit because liability issues are ambiguous and employers may be held liable for specific advice that is provided to their employees. Under the bill, employers will remain responsible under ERISA fiduciary rules for the prudent selection and periodic review of any investment adviser and the advice given to employees.

Voluntary Process. The bill does not require any employer to contract with an investment adviser nor is any employee under any obligation to accept or follow any advice. Workers, not the adviser, will have full control over their investment decisions.

TITLE VII—BENEFIT ACCRUAL STANDARDS

Hybrid pension plans generally combine the best features of both defined benefit and defined contribution plans by providing a

meaningful retirement benefit to all employees, regardless of age. Hybrid plans are similar to defined benefit plans because they are funded by employers and the benefits are protected by the PBGC. In addition, employers bear the responsibility for any market gains and losses. However, these plans are also similar to defined contribution plans, such as 401(k) plans, because benefits are provided through individual "hypothetical accounts."

In recent years, the legality of these plans has been challenged as violating the age discrimination provisions in ERISA. H.R. 2830 ends the legal uncertainty surrounding cash balance pension plans and ensures that such plans remain a viable retirement security option for workers and employers. In general, 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 on a prospective basis. The age discrimination clarification in the bill specifies that if a participant's entire accrued benefit, as of any date under the formula for determining benefits as set forth in the text of the plan documents, is equal to or greater than that of a similarly situated, younger employee, or provides for lump sum distributions equal to a participant's hypothetical account, the plan is not considered age discriminatory under ERISA. Two employees are considered similarly situated if they are, and always have been, identical in every respect, including but not limited to, any period of service, compensation, position, date of hire, or work history, except for age.

In determining the entire accrued benefit of a participant, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening account balance or other transition benefits, in the case of a hybrid pension plan) shall be disregarded.

As stated above, it is the intent of the Committee to confirm the legality of all defined benefit plans, including certain plans that index benefits for inflation. As such, H.R. 2830 provides that a plan formula does not fail to satisfy the requirements of this provision if the formula provides for the indexing of pre- or post-retirement benefits. For example, a plan may index benefits to protect the economic value of a participant's benefit by providing for a cost-of-living adjustment. However, it is the intent of the Committee to prohibit any pre-retirement indexing which results in a cumulative negative adjustment in a participant's benefit.

With respect to lump sum distributions, it is the Committee's intent that if a defined benefit plan determines a participant's benefit by reference to the balance in a hypothetical account (or by reference to a current value equal to an accumulated percentage of a participant's final average of compensation), the plan does not fail to meet the requirements of this provision if a lump sum distribution is made equal to the participant's nonforfeitable accrued benefit expressed as the value of a hypothetical account (or of the present value of the accumulated percentage of final average compensation).

TITLE VIII—INCREASING MAXIMUM DEDUCTIBLE CONTRIBUTIONS

Current pension funding rules often force employers into the difficult position of being unable to make additional contributions to

pension plans during good economic times, but then subject to accelerated contribution requirements during an economic downturn or market fluctuation. H.R. 2830 permits employers to make additional contributions up to a new higher maximum deductible amount equal to the greater of: (1) the excess of the sum of 150 percent of the plan's funding target plus the target normal cost over the value of plan assets, or (2) the excess of the sum of the plan's at-risk normal cost and at-risk funding target for the plan year over the value of plan assets. In determining the maximum deductible amount, plan assets are not reduced by any pre-funding balance or funding standard carryover balance. The Committee believes that giving employers more flexibility to make generous contributions during good economic times will help provide workers and retirees greater retirement security by increasing the assets available to finance retirement benefits.

In the case of a multiemployer defined benefit plan, the maximum deductible amount is not less than 140 percent of current liability over the value of plan assets.

COMMITTEE VIEWS

The defined benefit pension system is rapidly declining due to a complex statutory and regulatory structure, expensive administrative costs, and changing workforce demographics. The financial health of defined benefit plans is a critical issue for the millions of workers that participate in these plans. Moreover, the funding of these plans has become more challenging for many employers because of a climate of low interest rates, a lackluster economy, stock market losses, and an increasing number of retirees. As a result, the number of employers offering defined benefit pension plans has declined and some employers have frozen or terminated their traditional pension plans altogether.

The Committee believes that the defined benefit pension system must be strengthened in order to ensure a protected and reliable retirement system. Employees need greater pension security in order to prepare for retirement. Employers must have the ability to accurately measure and predict pension liabilities and other funding issues in order to properly determine their capital allocations and expenditures for business planning purposes. The Committee recognizes that pensions are voluntary benefits provided by employers and that Congress must take a balanced approach to reforming the system that addresses current failings without overburdening plan sponsors to the extent that it becomes impractical for them to provide such benefits to their employees. Peter R. Fisher, Under Secretary for Domestic Finance, U.S. Department of Treasury, testified on the need for a balanced approach to comprehensive reforms of the defined benefit pension system, and in particular, to funding reforms, in order to protect the interest of workers and retirees:

> Americans have broadly shared interest in adequate funding of employer-provided defined benefit pensions. Without adequate funding, the retirement income of America's workers will be insecure. This by itself is a powerful reason to pursue improvements in our pension system. At the same time, we must remember that the defined benefit

> pension system is a voluntary system. Firms offer defined benefit pensions to their workers as an employee benefit, as a form of compensation. Our pension rules should thus be structured in ways that encourage, rather than discourage, employer participation. Key aspects of the current system frustrate participating employers while also failing to produce adequate funding. We thus have multiple incentives to improve our pension system, and to thus better ensure both the availability and the viability of worker pensions. We owe it to the nation's workers, retirees, and companies to roll up our sleeves and to create a system that more clearly and effectively funds pension benefits.[4]

The Committee believes that the current defined benefit pension system does not contain appropriate rules, including funding and disclosure rules, to ensure that pension plans are properly funded and that participants and beneficiaries receive sufficient information. Maintaining the status quo is clearly unacceptable to the remaining 44 million workers and retirees participating in the defined benefit pension system. Ann L. Combs, Assistant Secretary of the Employee Benefits Security Administration (EBSA), U.S. Department of Labor, testified on the need for comprehensive reforms to the current defined benefit pension rules:

> Defined benefit plans are intended to provide a secure source of retirement income that lasts a lifetime. Recent volatility in the stock market has reminded workers of the value of such plans where corporate plan sponsors bear investment risk. As our aging workforce begins to prepare for retirement and think about how to manage its savings wisely, there is a renewed interest in guaranteed annuity payouts that last a lifetime. If we do nothing but paper over the problems facing defined benefit plans and the companies and unions that sponsor them, we will ill-serve America's workers threatened by unfunded benefits and potentially broken promises.[5]

SINGLE EMPLOYER PENSION PLANS

Title I of ERISA addresses the rules and required conduct for the establishment, operation, and termination of qualified pension plans.[6] The minimum funding requirements under ERISA permit an employer to fund defined benefit plans over a certain period of time, regardless of whether a plan is considered fully funded.[7] As a result, pension plans may be terminated when plan assets are not sufficient to provide for all benefits accrued by employees under the plan. In order to protect participants from losing retirement benefits if a plan terminates without sufficient assets to pay vest-

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[4] Joint Hearing on "Examining Pension Security and Defined Benefit Plans: The Bush Administration's Proposal to Replace the 30-Year Treasury Rate," before the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce and the Subcommittee on Select Revenue Measures of the Committee on Ways and Means, U.S. House of Representatives, 108th Congress, First Session, July 15, 2003, Serial No. 108–26.

[5] Id.

[6] See ERISA § 4(b). There are certain types of pension plans which are not covered under Title I of ERISA and thus are not qualified ERISA plans. For example, plans sponsored by a government or a church are not qualified ERISA plans.

[7] See ERISA § 302. In general, the funding requirements under ERISA provide that a plan is considered fully funded at 90 percent, and in some cases, 80 percent.

ed, accrued benefits, the PBGC, a corporation within the Department of Labor, was created in 1974 under ERISA to provide an insurance program for the payment of benefits from certain terminated pension plans maintained by private employers.[8]

The need for legislation

It is the view of the Committee that the role of the PBGC in protecting the retirement benefits of over 44 million Americans participating in both single employer and multiemployer defined benefit plans is crucial.[9] However, the current system does not contain appropriate funding rules to ensure that pension plans are adequately funded. Over the past few years, the terminations of severely underfunded pension plans have threatened the retirement security of the participants and beneficiaries who earned these benefits. Furthermore, the recent terminations of several notable and chronically underfunded pension plans has placed an increasing financial strain on the PBGC single employer pension insurance program, and has threatened its long-term viability.

In fact, recent statistical evidence suggests that PBGC's long-term financial health may be in jeopardy. The Executive Director of the PBGC, Bradley D. Belt, testified on the financial condition of the PBGC:

> The pension insurance programs administered by the PBGC have come under severe pressure in recent years due to an unprecedented wave of pension plan terminations with substantial levels of underfunding. This was starkly evident in 2004, as the PBGC's single employer insurance program posted its largest year-end shortfall in the agency's 30-year history. Losses from completed and probable pension plan terminations totals $14.7 billion for the year, and the program ended with a deficit of $23.3 billion. That is why the Government Accountability Office has once again placed the PBGC's single employer insurance program on its list of "high risk" government programs in need of attention.[10]

The latest plan sponsor filings with the PBGC reveal an unprecedented and systematic pension underfunding problem within the defined benefit pension system. On June 7, 2005, the PBGC issued a press release stating that companies with underfunded pension plans reported a record shortfall of $353.7 billion in their filings with the PBGC, which represents a 27 percent increase from the previous year. The 2004 reports, filed with the PBGC by April 15, 2005, were submitted by 1,108 pension plans covering approximately 15 million workers and retirees. In total, the filings indicated that underfunded plans had only $786.8 billion in assets to cover more than $1.14 trillion in liabilities, for an average funded ratio of approximately 69 percent.

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[8] See ERISA § 4021(b)(13). Plans sponsored by professional service employers, such as physicians and lawyers, with 25 or fewer employees are not covered by the PBGC single-employer insurance program.

[9] The PBGC currently guarantees payment of basic pension benefits of participants in approximately 31,000 defined benefit plans.

[10] Hearing on "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, March 2, 2005, Serial No. 109–3.

It is important to note that the PBGC has acknowledged that it has the adequate resources to continue paying benefits into the future; however, its financial condition will continue to deteriorate without comprehensive reforms made to the entire defined benefit pension system. Mr. Belt specifically testified on the current financial condition of the PBGC as well as its ability to pay benefits in the future:

> Notwithstanding our record deficit, I want to make clear that the PBGC has sufficient assets on hand to continue paying benefits for a number of years. However, with $62 billion in liabilities and only $39 billion in assets as of the end of the past fiscal year, the single employer program lacks the resources to fully satisfy its benefit obligations.[11]

The PBGC is required through statutory mandates to maintain premiums at the lowest levels consistent with carrying out the agency's statutory obligations. However, these premiums have not been increased in over fourteen years and are simply not adequate for the payment of guaranteed benefits. H.R. 2830 responsibly increases flat-rate premiums paid by plan sponsors maintaining certain qualified defined benefit pension plans by phasing-in the current $19 per participant to $30 over a maximum period of 5 years, depending upon the plan's funded status. This increase is needed in order to assist the PBGC in continuing to provide benefits to participants and beneficiaries in terminated pension plans.

It is the view of the Committee that comprehensive funding rule changes are needed in order to address the systematic pension underfunding crisis that continues to threaten the financial security of millions of participants. Ann Combs, Assistant Secretary of EBSA, testified this year on the need for funding reform changes:

> The increasing PBGC deficit and high levels of plan underfunding are themselves a cause for concern. More importantly, they are symptomatic of serious structural problems in the private defined benefit system. It is important to strengthen the defined benefit pension system now.[12]

Assistant Secretary Combs also testified on the inadequacies of the current funding rules:

> Under the current funding rules, financially weak companies can promise new benefits and make lump sum payments that the plan cannot afford. Workers, retirees, and their families who rely on these empty promises can face serious financial hardship if the pension plan is terminated.[13]

The need for pension reform has been echoed further by professional organizations that performs services for all defined benefit plans. Kenneth A. Kent, Academy Vice-President, American Academy of Actuaries, testified from the perspective of professional pension actuaries on the need for comprehensive reforms:

> Do we need reform? The need is evident by the continuing decline in the number of defined benefit pension

[11] Id.
[12] Id.
[13] Id.

> plans. Defined benefit programs are a fundamental vehicle for providing financial security for millions of Americans. Unlike other programs, they provide lifetime benefits to retirees, no matter how long they live and regardless of how well they do on their individual investments. However, recent market conditions of low interest rates and low market returns have caused more dramatic declines in the number of covered employees. There are many contributing factors, including regulatory and administrative burdens derived from years of amendments to ERISA, which have had a long-term detrimental impact. These programs need your support through major reform of the current laws.[14]

In addition to the Administration, Congress, and professional associations, corporations, business groups, and trade associations also recognize the need for comprehensive pension reforms. Kenneth W. Porter, Director of Corporate Insurance and Global Benefits Financial Planning for the DuPont Company, testifying on behalf of the American Benefits Council, the American Council of Life Insurers, the Business Roundtable, the ERISA Industry Committee, the National Association of Manufacturers, and the U.S. Chamber of Commerce, testified on the need for overall comprehensive reforms to the single employer defined benefit pension system:

> Not only do we agree that funding rules need to be strengthened, we also agree that broader, more timely disclosure to plan participants is needed, and the proposals to allow employers to make larger contributions during good economic times is long overdue.[15]

Modified yield curve

The Committee believes that in order to protect the retirement security interests of participants, beneficiaries, and retirees, comprehensive reforms must include permanent interest rate reforms that generally reflect the timing of when such liabilities are to be paid out. The general matching of discount rates of differing maturities to pension obligations is the most accurate and practical way to measure today's cost of meeting pension obligations. Therefore, a yield curve concept represents one of the most important reforms to the defined benefit pension system. Bart Pushaw, an actuary for Milliman, Inc., testified on the appropriateness of using a modified yield curve to measure pension liabilities:

> The bill . . . updates ERISA greatly and simplifies relevant provisions and fixes some of these weaknesses. The yield curve is not a widely familiar concept, and it has only recently begun to enter into use by the pension industry. Thirty years after ERISA was enacted, pension plans now have a wide range of maturity from new plans with hordes

[14] Hearing on "Examining Long-Term Solutions to Reform and Strengthen the Defined Benefit Pension System," before the Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, Second Session, April 29, 2004, Serial No. 108–55.

[15] Hearing on "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, March 2, 2005, Serial No. 109–3.

> of new hires at young ages to plans which have retired populations and liabilities on their balance sheets which dwarf that of the plan sponsor. These vastly differing plan profiles have, in the past, all been treated identically for valuation purposes, grossly and materially erring relative to the market value. Erroneous, inaccurate valuations mean no money to pay benefits. Using yield curves is the right answer. The market, arguably, incorporates more information about expectations in the yield curve than any other single measure . . . leading to higher levels of benefit security for participants and thus strengthening the financial security of millions.[16]

Mr. Pushaw further testified on the simplicity of the modified yield curve approach:

> The modified yield curve approach in this bill is a good simplification to ease administrative implementation by small plans but rigorous to develop market-based valuations for the largest of plans, reflective of their plan's liability profiles and, hence, emerging cash flow needs.[17]

It is the view of the Committee that the Secretary of the Treasury should construct one yield curve representing the three-year weighted average of AAA, AA, and A bond markets. The three segment rates, which are to be used for each of the three duration periods in the modified yield curve, should reflect the average of all AAA, AA, and A bonds for each year in each respective segment. The Committee believes these markets are interrelated; therefore, the modified yield curve should incorporate the interrelated connection between these markets.

Lump sum distribution rates

The Committee also believes that the modified yield curve should be used to calculate the value of lump sum distributions to participants, and the prevalence of lump sum distributions must be assumed when determining a plan's funding target. In addition, the mortality table that must be used for calculating lump sums is the same table required for minimum funding purposes (the RP–2000 Combined Mortality Table, as published by the Society of Actuaries). The mortality assumptions should also take into account an equal number of men and women receiving lump sums. Currently, lump sum distributions are calculated using the artificially-low 30–year Treasury rate; this has the effect of inflating lump sum distributions, which drains plan assets and represents a major source of systemic pension underfunding. Using the same interest rates to calculate both employer pension contributions and lump sum distributions will ensure these benefits are calculated and funded properly and fairly without having an adverse impact on the rest of the workers and retirees in the plan. Robert D. Krinsky, A.S.A, E.A., Chairman, The Segal Company, on behalf of the American Benefits Council, testified on the impact of the current rate used

[16] Hearing on "H.R. 2830, the Pension Protection Act," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, June 15, 2005 (to be published).
[17] Id.

to determine lump sum distributions and the need for it to be changed:

> [T]he payment of lump sum distributions to defined benefit plan participants exacerbates funding problems for many plans. In part, because lump sum calculations are currently based on the obsolete 30-year Treasury rate, lump sum payments are artificially inflated, and inappropriately drain plan assets. It is important to address the growing prevalence and use of the lump sum distribution option and determine whether this necessitates changes in the funding rules.[18]

Reducing volatility and ensuring predictability

The Committee understands that plan sponsors need the ability to predict and budget for pension contributions in order for defined benefit plans to remain a practical pension plan to offer to its employees. The Committee considered the need for contribution predictability with less volatility in the multiple hearings on defined benefit pension reform. As a result, the Committee believes that a modified yield curve concept which incorporates smoothing techniques[19] is appropriate for calculating pension contributions and plan assets. Mr. Greg Heaslip, Vice President of Benefits, PepsiCo, Inc., testified on the need for companies to predict and budget for pension contributions:

> Certainty, predictability, and stability are things that you'll hear me reiterate . . . At PepsiCo and at other plan sponsors, defined benefit pension plans have grown to a size where they have a material impact on the company's overall financial results. Our pension expense impacts our profits, our share price. Funding impacts our balance sheet and our credit rating. For any expense . . . companies have to know in advance for the next three to five years what costs and funding requirements will be with reasonable certainty . . . It is really not the cost of defined benefit pension plans that scares companies. We understand that and that's what we signed up for while we implemented them. It's the unpredictability, the volatility, and the uncertainty surrounding them that make them very, very difficult and challenging to sponsor.[20]

Limiting the use of credit balances

In addition to implementing a permanent interest rate, the Committee believes that companies should be required to adequately and consistently fund their pension plans. Under current law, plan

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[18] Hearing on "The Pension Underfunding Crisis: How Effective Have Reforms Been?" before the Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, First Session, October 29, 2003, Serial No. 108–40.

[19] In general, smoothing refers to averaging of interest rates used to calculate plan liabilities as well as the averaging of plan assets. Smoothing generally is used to allow plan fiduciaries to predict future pension contributions. It also is used to mitigate short-term market fluctuations. Since pension obligations are considered long-term obligations, it is the view of the Committee that such fluctuations need not be recognized as they occur. Under current law, interest rates are smoothed over four years and assets are generally smoothed over six years.

[20] Hearing on "Examining Long-Term Solutions to Reform and Strengthen the Defined Benefit Pension System," before the Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, Second Session, April 29, 2004, Serial No. 108–55.

sponsors are allowed to take advantage of "contribution holidays" instead of making actual contributions to their plans by using a "credit balance." A credit balance can be either actual assets or an accounting credit that is used to increase plan assets and offset future contributions. However, the use of credit balances has contributed greatly to the current funding problems. Bradley D. Belt, Executive Director of the Pension Benefit Guaranty Corporation, testified on how the current law use of credit balances negatively impacts the financial status of the PBGC as well as participants and beneficiaries:

> The funding rules allow contribution holidays for seriously underfunded plans. Bethlehem Steel made no cash contributions to its plan for three years prior to termination, and US Airways made no cash contributions to its pilots' plan for four years before termination. One reason for contribution holidays is that companies build up a "credit balance" for contributions above the minimum required amount. They can treat the credit balance as a payment of future required contributions, even if the assets in which the extra contributions were invested have lost much of their value. Indeed, some companies have avoided making cash contributions for several years through the use of credit balances, heedlessly ignoring the substantial contributions that may be required when the balances are used up.[21]

Limiting benefit increases

In addition to comprehensive reforms to the funding rules, it is the view of the Committee that plan sponsors should not be able to continue to increase benefits when a plan is underfunded. This practice perpetuates systematic underfunding and is a moral hazard which threatens the retirement security of the participants and beneficiaries as well as the future of the defined benefit pension system. David C. John, Research Fellow of the Thomas A. Roe Institute for Economic Policy Studies at the Heritage Foundation, testified on the negative effects of increasing benefits in underfunded plans:

> Companies that are in severe financial trouble often try to keep their workers happy by promising them higher pension benefits. Similarly, companies in bankruptcy sometimes seek to improve pension benefits in return for salary concessions. In both cases, these higher pension promises often get passed on to the PBGC, and thus to the taxpayers, for payment when the company seeks to terminate its pension plan.[22]

Ann Combs, Assistant Secretary of EBSA, also testified on the need for limitations on benefit increases, as well as the prohibition on lump sum distributions, for underfunded plans:

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[21] Hearing on "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, March 2, 2005, Serial No. 109–3.

[22] Hearing on "The Pension Underfunding Crisis: How Effective Have Funding Reforms Been?" before the Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, First Session, October 29, 2003, Serial No. 108–40.

> The current rules encourage some plans to be chronically underfunded, in part, because they shift potential losses to third parties. This is what economists refer to as a "moral hazard." Under current law, sponsors of underfunded plans can continue to provide for additional accruals and, in some situations, even make new benefit promises, while pushing the cost of paying for those benefits off into the future. For this reason, some companies have an incentive to provide generous pension benefits that they cannot currently finance, rather than increase wages. The company, its workers, and any union officials representing them know that at least some of the additional benefits will be paid, if not by their own plan, then by other plan sponsors in the form of PBGC guarantees . . . If a company's plan is poorly funded, the company should be precluded from adopting further benefit increases unless it fully funds them, especially if it is in a weak financial position. If a plan is severely underfunded, retiring employees should not be able to elect lump sums and similar accelerated benefits. The payment of those benefits allows those participants to receive the full value of their benefits while depleting the plan assets for the remaining participants.[23]

Prohibiting shutdown and unpredictable contingent event benefits

In addition to limitations on benefit increases and certain distributions, the Committee believes that shutdown benefits and other unpredictable contingent event benefits, should be eliminated. Unpredictable contingent event benefits are benefits that become payable under special circumstances relating to the closure of a plant, division or facility, or to layoffs of employees of a certain group or class; because they are a severance-type subsidy payment, they may trigger significantly disproportionate increases in plan liabilities. The PBGC guarantees all nonforfeitable benefits, other than benefits that become nonforfeitable solely on account of the termination of a plan. Shutdown benefits become nonforfeitable when the shutdown or layoff occurs, not when the plan terminates. As a result, shutdown benefits may be guaranteed by the PBGC if the shutdown occurs before the termination date, but they are not guaranteed if the shutdown occurs after plan termination.

Shutdown benefits are not funded. Indeed, precisely because a plant shutdown is inherently unpredictable, it is extremely difficult to recognize the costs of these benefits in advance so funding for shutdown benefits is nearly impossible. Thus, upon shutdown, a plan's liabilities may be increased dramatically. The PBGC is responsible for paying these unfunded benefits, yet employers are not obligated to contribute money to pay for them.

Plant shutdown benefits increase plan terminations and impose unreasonable costs on the PBGC, and should not be permitted. A recurring problem in pension funding has been that a plan may provide special benefits that are only payable in the event that the location at which workers are employed ceases operations. Such

[23] Hearing on "The Retirement Security Crisis: The Administration's Proposal for Pension Reform and Its Implications for Workers and Taxpayers," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, March 2, 2005, Serial No. 109–3.

events are inherently unpredictable, such that it is difficult to recognize the costs of these benefits in advance. Current law does not include in any current liability calculation the cost of benefits arising from future unpredictable contingent events. Yet these benefits can dramatically increase the level of underfunding in a plan and by themselves have been a considerable source of pension funding problems. Moreover, allowing and guaranteeing plant shutdown benefits raises fairness issues, since other participants and plan sponsors may bear the burden of paying for these unfunded benefits.

It is the view of the Committee that shutdown benefits are not similar to pension benefits. Shutdown benefits are not paid upon retirement from a plan. They are more like severance pay benefits provided to an employee upon termination from employment. Accordingly, HR 2830 prohibits a plan from providing benefits payable due to a plant shutdown or any other unpredictable contingent event. The bill defines "unpredictable contingent event" as an event other than the attainment of any age, the performance of any service, the receipt or derivation of any compensation, the occurrence of death or disability, or any other event which is reasonably and reliably predictable (as determined by the Secretary of Treasury).

Bradley D. Belt, Executive Director of the PBGC shares the Committee's concerns, and testified on April 26, 2005, before the Subcommittee on Retirement Security and Aging, Committee on Health, Education, Labor, and Pensions, United States Senate. Mr. Belt stated:

> The Administration believes that shutdown benefits are severance benefits that should not be paid by pension plans. These benefits generally are not funded until the shutdown occurs, by which time it is often too late, and no PBGC premiums are paid for them. However, despite the lack of funding, shutdown benefits may be guaranteed if the shutdown occurs before the plan termination date, often imposing large losses on the insurance program.
>
> The Administration proposal would prospectively eliminate the guarantee of certain unfunded contingent liability benefits and prohibit such benefits under pension plans. These severance benefits generally are not funded and no PBGC premiums are paid for them. Such benefits could continue to be provided outside the pension plan.

Improving disclosure

Another crucial aspect of comprehensive pension reform is improved disclosure to participants and beneficiaries. The Committee believes that additional and timely disclosure of plan information is imperative for employees to have in order to understand the financial status of their pension plan for their retirement security. In general current law requires plan sponsors to disclose "current liability" to participants and beneficiaries, which is not an accurate proxy for the disclosure of the financial health of a plan.[24] Participants and beneficiaries should be provided information on the general health of their pension plan, including an estimate of plan as-

[24] Current liability means the present value of all accrued liabilities attributable to participants and beneficiaries under the plan.

sets, liabilities, and the funded ratio, on a timely basis. Barbara D. Bovbjerg, Director of Education, Workforce, and Income Security Issues, U.S. General Accounting Office, testified on the need for additional disclosure of pension plan information:

> In addition, only participants in plans below a certain funding threshold receive annual notices of the funding status of their plans. As a result, many plan participants, including participants of the Bethlehem Steel pension plan, did not receive such notifications in the years immediately preceding the termination of their plans. Expanding the circumstances under which sponsors must notify participants of plan underfunding might give sponsors an additional incentive to increase plan funding and would enable more participants to better plan their retirement.[25]

Increasing the maximum deductible amount

It is the view of the Committee that the rules relating to the maximum amount of deductible contributions that plan sponsors may make to a qualified pension plan must be reformed in order to encourage plan sponsors to make additional contributions. The current rules prohibit plan sponsors from making additional contributions to pension plans during good economic times, but impose accelerated contribution requirements on plan sponsors during an economic downturn or even a slight market fluctuation. Additionally, employers are generally subject to an excise tax for making contributions in excess of the maximum deductible amount.

H.R. 2830 permits employers to make additional contributions up to a new higher maximum deductible of up to the greater of: (1) the excess of the sum of 150 percent of a plan's funding target plus the normal cost for the plan year over the value of plan assets, or (2) the excess of the sum of the plan's at-risk funding target plus the at-risk normal cost for the plan year over the value of plan assets. Giving employers more flexibility to make generous contributions during good economic times will help provide workers and retirees greater retirement security by increasing the assets available to finance retirement benefits.

In a report released to the Committee on Education and the Workforce on October 29, 2003, the General Accounting Office indicated that raising the level of tax deductible contributions was one of the steps that could be taken to enhance incentives to increase funding of plans:

> IRC and ERISA restrict tax-deductible contributions to prevent plan sponsors from contributing more to their plan than is necessary to cover accrued future benefits. This can prevent employers from making plan contributions during periods of strong profitability. Raising these limitations might result in pension plans being better funded, decreasing the likelihood that they will be underfunded should they terminate.[26]

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[25] Hearing on "The Pension Underfunding Crisis: How Effective Have Reforms Been?" before the Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, First Session, October 29, 2003, Serial No. 108–40.

[26] United States General Accounting Office, "Private Pensions: Changing Funding Rules and Enhancing Incentives Can Improve Plan Funding," No. GAO–04–176T.

In recent years, plan sponsors have also expressed their concern that market volatility limits their ability to make additional contributions. Increasing the level of maximum deductible contributions is an important incentive to encourage plan sponsors to make additional contributions to their plans, which will ultimately result in a system with plans that are better funded. Lynn Franzoi, Senior Vice President of Benefits for Fox Entertainment Group, recently testified on the need for increasing the maximum deductible amount of contributions to pension plans:

> [I]ncreasing the maximum deductible contribution limit is long overdue. Employers should be able to contribute more to their plans in good times and not be forced to increase contributions during bad economic times. Some employers with plans that are now experiencing funding deficiencies would have liked to have increased contributions when they had cash on hand. However, they were limited by the maximum deductibility rules. Not only would their additional contributions have been nondeductible, but they would have had to pay a significant excise tax on the contributions. This cap on contributions works against companies and plan participants by requiring contributions when companies are financially strapped and prohibiting contributions when companies are prosperous. Thus, companies cannot insulate themselves and their plan participants against cyclical changes in the economy. Therefore, we fully support the increases to the maximum deductible contributions for defined benefit plans.[27]

Ensuring the viability of hybrid pension plans

Recent statistics show that the traditional defined benefit pension system is declining. Although the PBGC provides insurance protection to approximately 29,000 single employer pension plans covering 34.6 million people, the percentage of private sector workers covered by a defined benefit pension plan has dropped from 39 percent in 1975 to 21 percent in 2004.[28] The Committee believes that hybrid pension plans, such as cash balance plans, may reverse this trend if the rules surrounding these plans are clarified. It is the view of the Committee that hybrid pension plans represent the future of the defined benefit pension system and are a valuable tool in providing benefits that are not subject to market fluctuations and guaranteed by the PBGC.

Under hybrid plans, participants earn portable benefits more evenly over a career span, not just at the very end of a participant's career. This can result in greater retirement savings for workers who do not remain with the same employer for their entire career. As a result, a broader group of participants, including lower-income employees and women, earn greater benefits with shorter service under hybrid plans than traditional plans. On June 22, 2004, the Committee released a fact sheet which shows the ben-

[27] Hearing on H.R. 2830, the "Pension Protection Act of 2005," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, June 15, 2005 (to be published).

[28] "The Future of the Defined Benefit System and the Pension Benefit Guaranty Corporation," General Accounting Office, Report No. GAO–05–578SP.

efits of hybrid plans and dispels some of the myths surrounding these plans:

House Education & the Workforce Committee
John Boehner, Chairman
2181 Rayburn HOB • (202) 225-4527

FACT SHEET

Independent Research Findings Confirm Benefits of Cash Balance Pension Plans

June 22, 2004

Despite press accounts that have misstated basic facts, cash balance pension plans actually provide more generous benefits for the majority of workers than do traditional plans. As a result, cash balance conversions over the past two decades have actually benefited employees. These conclusions emerge from a growing body of independent research by economists and academics at some of the nation's most respected institutions, including the Federal Reserve Board, the Urban Institute, the Brooking Institution, and the Wharton School. This independent research confirms the following facts:

- Traditional defined benefit plans deliver the bulk of their benefits only to a small group of employees who retire in their mid-50s after spending 20 to 30 years with the same employer.
- Few workers actually retire in their mid-50s after spending 20 to 30 years with the same employer, even at large companies.
- Cash balance plans are better suited to Americans' work patterns because they offer portable benefits that allow workers to earn benefits steadily throughout their careers.
- The motivation for switching to cash balance plans is not cost savings but the need to remain competitive and to better adapt pensions to employees' career patterns.
- Although hybrid plans share accrual patterns with defined contribution plans, hybrid plans have distinct advantages over defined contribution plans.

TRADITIONAL DEFINED BENEFIT PLANS DELIVER BULK OF BENEFITS TO WORKERS WHO RETIRE IN THEIR MID-50s AFTER SPENDING 20 TO 30 YEARS WITH THE SAME EMPLOYER

Traditional plans are economically back-loaded, and workers earn the bulk of their pension benefit only after 20 to 30 years with the same employer. The value of this benefit spikes after workers qualify for subsidized early retirement benefits (if offered by the employer), typically in their mid-50s, but then declines if they fail to retire at a specific age and keep working. As a result, traditional plans are advantageous only for the small proportion of employees who work for the same employer for 20 to 30 years and retire in their mid-50s. Conversely, traditional plans are disadvantageous for younger

employees, for workers who change jobs or interrupt their careers (especially women), and for older workers who continue working after early and normal retirement age.

- "The annual increment to pension wealth often turns negative after workers reach the plan's normal retirement age, because the modest increase in the size of the annuity from an additional year of work does not offset the loss of a year's worth of benefits." Johnson & Uccello, Urban Institute, *Can Cash Balance Pension Plans Improve Retirement Security for Today's Workers?* (2002).

- "A survey of 1,000 [traditional] pension plans showed that continued work after early retirement eligibility typically reduced the lifetime value of a pension by the equivalent of a 30 percent pay cut." Committee for Economic Development, *New Opportunities for Older Workers* (1999).

- "[P]ension accruals in traditional DB plans are minimal at young ages, grow rapidly in the late 40s and 50s as workers approach retirement age, and then become negative as workers lose pension wealth when they remain at work past the plan's retirement age. For workers in their early 60s who have participated in the DB plan since age 25, for example, pension wealth declines on average by about 14 percent of annual salary each year." Johnson & Steuerle, Urban Institute, *Promoting Work at Older Ages: The Role of Hybrid Pension Plans in an Aging Population* (2003).

- "In effect, [traditional] DB plans favor a select group of longer-term employees, often in late middle-age, but disfavor both younger and older workers." Johnson & Steuerle, Urban Institute, *Promoting Work at Older Ages: The Role of Hybrid Pension Plans in an Aging Population* (2003).

VERY FEW WORKERS RETIRE IN THEIR MID-50s AFTER SPENDING 20 TO 30 YEARS WITH THE SAME EMPLOYER, EVEN AT LARGE COMPANIES

Only a very small percentage of employees work for the same employer throughout their career. Most employees change jobs or interrupt their career. Very few workers retire in their mid-50s after spending 20 to 30 years with the same employer. Most Americans work beyond early retirement age because they cannot afford to retire, and an increasing percentage of employees work past normal retirement age for the same reason.

- "[U]sing data from personnel files from 65 large companies we found that only seven percent of workers were likely to stay with one employer for their entire career." Mitchell & Mulvey, Pension Research Council, Wharton School, University of Pennsylvania, *Possible Implications of Mandating Choice in Corporate Defined Benefit Plans* (2003).

- The median years of tenure with an employee's current employer in 2002 for employees age 25 and older was 4.7 years. The median tenure varied by age, for example: 7.6 years for employees age 45 to 54; 9.9 years for employees age 55 to 64, and 8.7 years for employees age 65 and older. Bureau of Labor Statistics, *Median Years of Tenure with Current Employer for Employed Wage and Salary Workers by Age and Sex, Selected Years, 1983-2002.*

- "Over the past 20 years, the median tenure of workers has been declining, particularly for the older age groups. . . . [M]edian tenures for workers age 45-54 has fallen from 9.5 years in 1983, to 7.6 years in 2002, for a 20 percent decline drop over 20 years." Mitchell & Mulvey, Pension Research Council, Wharton School, University of Pennsylvania, *Possible Implications of Mandating Choice in Corporate Defined Benefit Plans* (2003).

- "[A] significant percentage of the workforce has been in their current job for a very short period of time (two years or less) consistently over the years . . . Over the period 1983-1996, the fraction of all wage and salary workers with two years or less of tenure with current employer hovered in the 36-39 percent range." Yakoboski, Employee Benefit Research Institute, *Debunking the Retirement Policy Myth: Lifetime Jobs Never Existed for Most Workers* (1998).

CASH BALANCE PLANS ARE BETTER SUITED TO AMERICANS' WORK PATTERNS BECAUSE THEY ALLOW WORKERS TO EARN BENEFITS STEADILY THROUGHOUT THEIR CAREERS

Under cash balance plans, workers earn portable benefits steadily throughout their careers without the deferred spikes and subsequent declines in value typical of traditional plans. Because the vast majority of workers do not spend 20 to 30 years with the same employer, are likely to change jobs at least once or twice in their careers, and do not retire in their mid-50s, cash balance plans provide more generous and more secure retirement benefits for workers. In fact, cash balance plan conversions have benefited most employees affected by them. <u>These plans are especially advantageous for women, lower-paid workers, older employees who continue working after early and normal retirement age, younger workers, and employees who change jobs during their careers</u>.

- "Compared with traditional pensions, cash balance plans generate retirement wealth more evenly over time for a couple of reasons: Contributions made early on earn interest for many years, and lifetime earnings rather than final earnings determine benefits. Consequently, a worker changing jobs incurs only a small penalty. For women, who tend to have higher turnover rates than men, the ability to change jobs without jeopardizing pension wealth may be particularly important." Johnson & Uccello, Urban Institute, *Can Cash Balance Pension Plans Improve Retirement Security for Today's Workers?* (2002).

- "[P]ension accruals in traditional DB plans are minimal at young ages, grow rapidly in the late 40s and 50s as workers approach retirement age, and then become negative as workers lose pension wealth when they remain at work past the plan's retirement age. For workers in their early 60s who have participated in the DB plan since age 25, for example, pension wealth declines on average by about 14 percent of annual salary each year. These sharp drops in pension wealth provide strong incentives to retire. By contrast, the prototypical hybrid plans we modeled reward work at older ages." Johnson & Steuerle, Urban Institute, *Promoting Work at Older Ages: The Role of Hybrid Pension Plans in an Aging Population* (2003).

- A study of a traditional plan and a cash balance plan that provided equal pension wealth in the aggregate found that 68 percent of employees receive greater benefits

under the cash balance plan. The same study found that 77 percent of women employees would be better off under the cash balance plan. Kopp & Sher, Society of Actuaries, *A Benefit Value Comparison of a Cash-Balance Plan with a Traditional Final Average Pay Defined-Benefit Plan*, The Pension Forum (Oct. 1998).

- "Cash balance plans generally are structured such that workers accrue benefits earlier in their careers than they would under most traditional defined benefit plans. This feature, combined with the lump sum payouts also common to such plans, provides opportunity for more mobile workers to secure and retain higher benefits, even when they change jobs, than they would under most traditional defined benefit plans." General Accounting Office, *Cash Balance Plans: Implications for Retirement Income* (2000).

- "A recent Watson Wyatt report concluded that most workers would do better in cash balance plans than DB plans (Brown, et al. undated). It examined three actual plan conversions by large employers. Pension costs decreased by 32 percent in one conversion, increased by 23 percent in the second conversion and remained approximately constant in the third. Under the cost-neutral conversion, pension wealth increased for 80 percent of participants." Johnson & Uccello, Urban Institute, *The Potential Effects of Cash Balance Plans on the Distribution of Pension Wealth at Midlife* (2001).

- "The proportion of females who would have received more valuable cash balance benefits is higher –about three-quarters – due to their relatively higher turnover particularly at younger ages where the cash balance plan provides more valuable benefits than the final average pay plan." Kopp & Sher, Society of Actuaries, *A Benefit Value Comparison of a Cash-Balance Plan with a Traditional Final Average Pay Defined-Benefit Plan*, The Pension Forum (Oct. 1998).

THE MOTIVATION FOR SWITCHING TO CASH BALANCE PLANS IS NOT COST SAVINGS BUT THE NEED TO ADAPT PENSIONS TO EMPLOYEES' CAREER PATTERNS

Cost savings are not driving the switch to cash balance plans, but the need to adapt pension plans to the reality of the American workplace – a reality in which full-career employment capped by early retirement in one's mid-50s is a rarity experienced by few employees. Under current law, employers could choose to freeze or terminate their traditional plan without the complexity and expense of converting to a cash balance plan. Far from cutting costs, most companies that convert to cash balance plans actually spend as much or more on retirement benefits after the conversion as before.

Instead, companies have switched to cash balance plans to meet pressures imposed by an increasingly mobile workforce as well as fierce business competition both at home and abroad. In a world where the vast majority of employees will not spend 20 to 30 years working for the same employer, the steady accrual of benefits under a cash balance plan provides greater retirement security than the distant accrual of back-loaded benefits under a traditional plan. In a world where women, skilled mobile workers, and older experienced employees form a critical supply of labor, employers find it difficult to continue traditional plans that can disadvantage or penalize these workers. As a result, some employers have switched to cash balance plans that provide more equitable and generous rewards for all workers.

- "[C]ash balance conversions have been undertaken in competitive industries with tight labor markets and can be viewed largely as a response to better compensate a more mobile labor force. Indeed, many firms appear to increase their pension liabilities through such conversions." Coronado & Copeland, Federal Reserve Board, *Cash Balance Pension Plan Conversions and the New Economy*, Abstract (2003).

- "[T]raditional DB plans provide retirement income security quite effectively for only a fraction of the population, since lifetime jobs were never widespread. Traditional DB plans were never going to be an effective means of ensuring retirement income security for *most* workers. . . . Hybrid plans have emerged combining features of DB and DC plans, including the portability features of DC plans. It can be argued that retirement plans today match the reality of the work experience for most Americans better than at any time in history." Yakoboski, Employee Benefit Research Institute, *Debunking the Retirement Policy Myth: Lifetime Jobs Never Existed for Most Workers* (1998).

- "As a consequence of the new plan elements, hybrid plans are in fact *less* age discriminatory than many traditional DB plans." Mitchell & Mulvey, Pension Research Council, Wharton School, University of Pennsylvania, *Possible Implications of Mandating Choice in Corporate Defined Benefit Plans* (2003).

CASH BALANCE PLANS ARE SIMILAR TO DEFINED CONTRIBUTION 401(K) PLANS, BUT SHARE THE DISTINCT ADVANTAGES OF DEFINED BENEFIT PLANS

Cash balance plan benefits are portable and may be rolled over to an IRA just like defined contribution 401(k) plans. Employees are able to view their cash balance benefits in a hypothetical account, much like a 401(k) savings account. However, cash balance plans can pay employees benefits in the form of annuities, which defined contribution plans cannot. Under these plans, the employer bears the investment risk; by contrast, workers bear the investment risk under 401(k) plans. As defined benefit plans, cash balance plans can provide subsidized benefits upon death, disability, plant shutdown, and other circumstances, while 401(k) plans cannot. Finally, as defined benefit plans, cash balance plans are insured by the Pension Benefit Guaranty Corporation, while defined contribution plans are not.

- "Cash balance plans also have an advantage over defined contribution plans—they protect workers from downturns in the stock market." Johnson & Uccello, Urban Institute, *Can Cash Balance Pension Plans Improve Retirement Security for Today's Workers?* (2002).

- "However, unlike DC plans, the balances in [hybrid plan] accounts do not depend on uncertain investment returns. Instead, retirement benefits paid to participants are set by formulas which specify the interest rate at which the account balances grow. Cash balance plans are similar to DB plans, in that employers bear all investment risks." Johnson & Uccello, Urban Institute, *The Potential Effects of Cash Balance Plans on the Distribution of Pension Wealth at Midlife* (2001).

• "For example, if an employer wanted to offer employees a more portable retirement benefit through a cash balance formula that provides annual credits of five percent of pay, mandatory choice might lead the employer to instead freeze its defined benefit plan and adopt a 401(k) plan that provides contributions of five percent of pay. Under the 401(k) plan, employees would bear the entire risk of stock market declines." Mitchell & Mulvey, Pension Research Council, Wharton School, University of Pennsylvania, Possible Implications of Mandating Choice in Corporate Defined Benefit Plans (2003).

Nancy M. Pfotenhauer, President, Independent Women's Forum, testified on the impact of hybrid plans on the retirement security of women:

> In the opinion of the Independent Women's Forum, traditional retirement and pension approaches simply fail to meet the needs of our changing society. Succinctly, they do not reflect the work patterns and demographics of American women. Whether it's the Wall Street Journal or Family Circle magazine, today's commentators agree that movement in and out of the workforce for American mothers has become the "new normal." In fact, many are noting a current trend of mothers going back home when their children become teenagers . . . Luckily, pension innovations in the private sector hold promise. Cash balance, pension equity, and other hybrid plans combine attractive features of a traditional defined benefit plan (employer funding, employer assumption of risk of poor investment, government insurance and spousal protections) with attractive features of a defined contribution plan (individual accounts, an easily understood benefit formula and portability).[29]

It is the view of the Committee that the clarification of the current age discrimination rules under ERISA preserves the current ability of plan sponsors to amend or modify their pension plans prospectively in order to maximize plan sponsor flexibility and ensure the future of these valuable defined benefit plans for participants and beneficiaries. The private, employer-sponsored employee benefit system is voluntary; therefore, placing restrictions on plan sponsors regarding plan design or conversion approaches and mandating that plan sponsors guarantee a certain level of benefits, even benefits that have not been earned by participants, should be prohibited. Ms. Pfotenhauer also testified on the importance of maintaining a voluntary pension system:

> [A]ny adoption of restrictions that effectively limit the ability of companies to transition to hybrid plans places the financial well-being of the relatively few employees who have had the luxury of staying with one company for a long period of time (decades), have had the luxury of taking early retirement, and have had the luxury of taking their pension benefits in the form of an annuity rather than as a lump sum, ahead of all the employees who do

[29] Hearing on "Examining Cash Balance Pension Plans: Separating Myth From Fact," before the Committee on Education and the Workforce, U.S. House of Representatives, Second Session, July 7, 2004, Serial No. 108–67.

> not have these options. Regardless of one's perspective, any discussion about transition is appropriately done within the context of a clear understanding that these plans are voluntarily sponsored by employers. As such, an employer currently could decide to freeze benefit accruals or completely terminate plans altogether if costs become too burdensome.[30]

The need for clarification of the hybrid age discrimination issue is critical to the future of the defined benefit pension system. Congress must clarify the existing rules to ensure that companies continue to offer these valuable benefits. Ellen Collier, Director of Benefits, Eaton Corporation, testified on the issues and concerns that many plan sponsors face surrounding the uncertainty of sponsoring a hybrid pension plan:

> Now that the basic hybrid designs have been called into question, employers facing a set of circumstances similar to ours would have far fewer options. One choice would be to stay with the traditional pension design, which tends to deliver meaningful retirement benefits to a relatively small number of career-long workers, has limited value as a recruitment device in today's marketplace, and makes integration of new employees difficult. The other alternative would be to exit the defined benefit system and provide only a defined contribution plan, which while an important and popular benefit offering, provides none of the security guarantees inherent in defined benefit plans. Clearly, it is employees that lose out as a result of today's uncertainty surrounding hybrid plans.[31]

Providing for personalized investment advice

In addition to comprehensive defined benefit reforms, the Committee believes that all defined contribution participants, regardless of their income, net worth, or position, should be afforded the opportunity to receive personalized investment advice in order to strengthen the retirement security of the millions of American workers participating in these plans. The ability to provide workers with individualized investment advice has passed the house three times with bipartisan support. Most recently, investment advice legislation passed the House of Representatives on May 14, 2003, by a vote of 271–157, including 49 Democrats, as part of H.R. 1000, the "Pension Security Act."

Assistant Secretary of EBSA Ann Combs addressed the importance of the investment advice provisions in the Pension Security Act:

> It's clear that people who participate in 401(k) plans want their employers and plans to provide more investment advice. According to a survey recently released by CIGNA Retirement and Investment Services, 89 percent of 401(k) investors want "specific information on investment decision-making."

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[30] Id.
[31] Id.

> Investment advice also encourages participation in employer-provided retirement plans. Studies conducted on behalf of the investment advisory firm Power show workers who receive advice are more likely to participate in savings plans and to save more than workers who never get any guidance . . . For many workers, investment advice decisions are intimidating. The Department is encouraged to see growing interest in the adoption of an alternative method sanctioned by the advisory opinion where workers turn over their decision making to the financial services firm who manages their accounts in accordance with the independent adviser's decisions.[32]

Scott Sleyster, Senior Vice President and President of Retirement Services and Guaranteed Products, Prudential Financial, testified about the importance of investment advice and addressed the so-called "conflict" issue claimed by opponents of individualized investment advice:

> [F]irst and foremost, you need to remember that the choices, the options that are being offered in DC [defined contribution] plans have already been reviewed by the plan sponsor. The industry has demanded open architecture for some time. So you typically have 11 to 15 choices and in most cases, our funds and any company's funds would probably only represent about a third of that. Second, the most important decision here isn't the individual fund or even fund manager. The most important issue in managing a portfolio is asset allocation. And models are built to design asset allocation, and that is really what designs the choices you have. So, that if you have 15 funds, you don't have 15 growth funds; you have some that are growth, some that are international, some that are small capped, some that are fixed income, [and] some that are stable value. And I think that what really drives this is asset allocation.
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> [T]he issue here is how are we going to get advice to people in a cost effective manner. While you can probably come up with more esoteric and elegant solutions that seem pure, if you are asking the company to fund that or you are asking the participant to pay an additional fee for that, then you are going to end up with what we have ended up with already, which is tools out there that aren't utilized or options that plan sponsors don't want to pay for. Any you know, quite frankly, that is really the issue: How do we get investment advice to the average employee—remember, the average 401(k) balance, 45 percent of plan participants have less than $10,000. People aren't typically trying to go after those customers to sell them other products. The real question is, how do we get them

[32] Hearing on "The Pension Security Act: New Pension Protections to Safeguard the Retirement Savings of American Workers," before the Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, First Session, February 13, 2003, Serial No. 108–2.

> advice that is as close to unbiased as possible, but also in a very cost efficient and simple manner.[33]

Additional prohibited transaction reforms

In addition to investment advice, it is the view of the Committee that, in general, the prohibited transaction rules under ERISA, which were passed over 30 years ago, must be updated in order for pension plans to provide the best retirement benefits to participants and beneficiaries. America's financial markets are the most efficient, dynamic, and transparent in the world. The dynamic marketplace of today is extremely different than it was 30 years ago with the introduction of electronic trading, new financial products, and faster execution. Furthermore, the financial services industry has dramatically consolidated, which makes the current prohibited transaction rules onerous and detrimental to the entire employee benefits system. In order to improve the overall operation and maintenance of pension plans, which will ultimately result in greater efficiency and, therefore, lower costs and fees paid by these plans, while continuing to protect the interests of participants and beneficiaries, the prohibited transaction rules should be safely updated to ensure that all pension plans are able to function with ease and efficiency in our current marketplace. Representative John Kuhl (R–NY) addressed the need for specific changes to the current prohibited transaction system:

> [T]hese are very targeted changes that will help solve many of the most pressing issues our financial markets are facing because of ERISA. They will benefit our pension plans and those who rely on efficient investment for their retirement security without undercutting important protections for investors.[34]

Representative Rob Andrews (D–NJ) also addressed the need to reform the prohibited transaction exemption rules within the current framework of ERISA in order to ensure the protections currently afforded to participants and beneficiaries:

> [T]hese changes will lower some transaction costs by eliminating redundant bonding; eliminating some other administrative responsibilities that really don't add any protection or value from the point of view of the pensioner, but do add costs, and therefore reduce return.[35]

MULTIEMPLOYER REFORMS

There is considerable attention surrounding single employer defined benefit reforms because of the recent and notable terminations of several large, underfunded traditional defined benefit pension plans as well as the PBGC's $23.3 billion deficit. However, it is the view of the Committee that the multiemployer pension system must also be reformed in order to ensure that all stakeholders, including participants, beneficiaries, and contributing employers, are protected from the possible negative consequences currently facing the system.

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[33] Id.

[34] Consideration of H.R. 2830, the "Pension Protection Act of 2005," by the Committee on Education and the Workforce, U.S. House of Representatives, June 29, 2005.

[35] Id.

The need for legislation

There are currently 9.8 million workers and retirees participating in 1,587 multiemployer plans. Unfortunately, the major provisions in ERISA that govern multiemployer plans have not been amended since 1980. Until 2003, the PBGC's multiemployer insurance program had shown growing financial strength since enactment of the 1980 amendments. During 2003, however, the program (which is vulnerable to the same economic and demographic pressures that have threatened the single-employer program) sustained a net loss of $419 million, the largest one-year drop in the program's history. As a result, the program reported a year-end deficit of $261 million, the program's largest shortfall ever and its first year-end deficit in over 20 years. By the end of 2004, that deficit had declined to $236 million as the program reported net income of $25 million.

Since 1980, PBGC has received requests for financial assistance from 39 multiemployer plans. During 2004, 27 of these plans received assistance. At the end of fiscal year 2004, the multiemployer program had assets of $1.07 billion and total liabilities of $1.306 billion. Most of these liabilities—$1.295 billion—represent non-recoverable future financial assistance to the 27 plans currently receiving financial assistance and to other plans expected to receive such assistance in the future.

A March 2004 GAO report to the Subcommittee on Employer-Employee Relations discussed problems in multiemployer pension system:

> Following two decades of relative financial stability, multiemployer plans as a group appeared to have suffered recent and significant funding losses, while long-term declines in participation and new plan formation continued unabated. At the close of the 1990s, the majority of multiemployer plans reported assets exceeding 90 percent of total liabilities. Recently, however, stock market declines, coupled with low interest rates and poor economic conditions, appear to have reduced assets and increased liabilities for many plans. PBGC reported an accumulated net deficit of $261 million for its multiemployer program in 2003, the first since 1981. Meanwhile, since 1980, the number of plans has declined from over 2,200 to fewer than 1,700 plans, and there has been a long-term decline in the total number of active workers. PBGC monitors those multiemployer plans, which may, in PBGC's view, present a risk of financial insolvency.[36]

The PBGC does not trustee the administration of insolvent multiemployer plans as it does with single-employer plans; however, it provides technical and financial assistance to troubled plans and guarantees a minimum level of benefits to participants in insolvent plans. PBGC loans have been rare, with loans to only 33 plans totaling $167 million since 1980.

[36] "Private Pensions: Multiemployer Plans Face Short- and Long-Term Challenges," General Accounting Office, Report No. GAO–04–423.

Challenges facing the multiemployer pension system

The GAO report revealed several factors that pose challenges to the long-term prospects of the multiemployer system. Some are inherent to the multiemployer regulatory framework, such as the greater perceived financial risk and reduced flexibility for employers compared to other plan designs, which suggest that fewer employers will find these plans attractive. Furthermore, the long-term decline of collective bargaining results in fewer new participants to expand or create new multiemployer plans. Other factors threaten all defined benefit plans, including multiemployer plans: the growing trend among employers to choose defined contribution plans; the increasing life expectancy of workers, which raises the cost of plans; and continuing increases in employer health insurance costs, which compete with pensions for employer funding.[37]

It is the Committee's view that the multiemployer system has had a history of financial stability due to the fact that these plans pool their risk and that retiree benefits are not generally dependent upon the economic viability of one company. However, despite these facts, the multiemployer system faces some serious long-term structural issues. It is the Committee's view that the multiemployer pension system must be self sustaining for the long-term on behalf of workers and employers.

Barbara D. Bovbjerg, Director of Education, Workforce, and Income Security Issues at the General Accounting Office, echoed those concerns, citing the facts that individual employers in multiemployer plans cannot easily adjust their plan contributions in response to the firm's own financial circumstances, the long-term decline in collective bargaining growth, and an increasing number of retirees in comparison to active workers in the system:

> Although available evidence suggests that multiemployer plans are not experiencing anywhere near the magnitude of the problems that have recently afflicted the single employer plans, there is cause for concern . . . a number of factors pose challenges to the multiemployer plan system over the long term.[38]

John McDevitt, Senior Vice President, United Parcel Service, noted the need for long-term reform:

> It is important to understand that the underlying problems are not simply caused by economic swings in the stock markets, which could be cured by "waiting out" the downturn. The problems are structural to the trucking industry, to the labor market in general, and to the past management of multiemployer pension plans. Short-term fixes dependent on market changes will not correct the financial solvency problems of multiemployer pension plans; therefore a need for real multiemployer pension plan reform is urgently needed. Doing nothing is not an option.[39]

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[37] See id.

[38] Hearing on "Reforming and Strengthening Defined Benefit Plans: Examining the Health of the Multiemployer Pension System," before the Subcommittee on Employer-Employee Relations, U.S. House of Representatives, 108th Congress, Second Session, March 18, 2004, Serial No. 108–49.

[39] Id.

Scott Weicht, Executive Vice President of Adolfson and Peterson Construction, talked about the importance of strengthening multiemployer plans on behalf of workers:

> I believe that these plans are a secure and viable way . . . to provide pension benefits to workers. In the construction arena, workers follow the job, not necessarily the company, and these plans provide the proverbial third leg of the retirement stool for people who would otherwise be left with only Social Security and whatever savings that they could muster. I know that Congress is extremely interested in retirement security, and I believe that these plans are an essential part of that discussion.[40]

Improving and preserving the multiemployer pension system

The Committee believes that the multiemployer pension funding and benefit structure needs to be reformed as soon as possible, including the addition of quantifiable measures of improvement and adjustments to the benefit structures for severely underfunded plans, in order to maintain the health of the plans that are in existence. Timothy Lynch, President and CEO of the Motor Freight Carriers Association, testified on the need for overall reforms which plan trustees should consider in order to improve the financial health of multiemployer plans:

> As multiemployer legislation is considered, serious consideration should be given to whether additional procedural or legal controls over the management of the plans could prevent serious funding issues. Something as simple as imposing funding policy guidelines that mandate clear targets for the plan's unfunded liability. The Teamsters Western Pension Fund has long had a funding policy that established the funding levels and requires the trustees to adjust benefits based on the levels. Plan modifications are virtually automatic.
>
> Additionally, consideration should be given to requiring that the level of plan benefits be more closely tied to the level of plan contributions and available assets. This may require a hard look at anti-cutback provisions. If trustees want to increase benefits during good times, there should be less restriction on their ability to reduce benefits during bad times.[41]

It is the Committee's view that H.R. 2830 includes the much-needed reforms for multiemployer pension plans. As noted previously, the bill provides for quantifiable measures of improvement for plans that are underfunded at certain levels. A wide-ranging coalition of employer and labor groups have made significant progress in reaching consensus on proposals for reforms, and the H.R. 2830 includes many of these reforms. Andy Scoggin, Vice President for Labor Relations at supermarket retailer Albertsons, Inc., praised the Committee for addressing the problem:

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[40] Id.

[41] Hearing on "Examining Long-Term Solutions to Reform and Strengthen the Defined Benefit Pension System," before the Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, Second Session, April 29th, 2004, Serial No. 108–55.

> We believe that it provides a reasonable and rational framework for multiemployer pension plans to work through the problems now facing all pension plans. The reforms in H.R. 2830 are not a government bailout . . . instead, the proposed legislation will provide the tools which will allow multiemployer plans to solve our own pension problems without direct government intervention and without putting additional financial pressure on the Pension Benefit Guaranty Corporation . . . we believe, if Congress acts now, multiemployer plans can solve their own problems so that they do not become a burden on the federal government or the taxpayer.[42]

Timothy Lynch, President and CEO of the Motor Freight Carriers Association, agreed and testified on the need for Congress to act on reforming the multiemployer pension system in order to protect the pension benefits of workers and retirees could be at risk:

> [E]mployers are concerned about the current framework for multiemployer pension plans and strongly believe that if not properly addressed, the problems will increase and possibly jeopardize the ability of contributing employers to finance the pension plans. The end result could put at risk the pension benefits of their employees and retirees . . . we believe that H.R. 2830 meets the overall objective of alleviating the short-term consequences of funding deficits while promoting long-term funding reform for multiemployer pension plans.[43]

Judy Mazo, Senior Vice President and Director of Research for The Segal Company provides consulting services for many of the nation's multiemployer plans, said the status quo was unacceptable:

> Our aim is to make sure that, in the end, the environment for multiemployer plans will be improved, so that they, their contributing employers and their participants are all well-served . . . the alternative is not the continuation of the status quo, but a much worse fate that includes: the loss not only of accrued ancillary benefits, but a substantial portion of a participant's normal retirement benefit as plans are assumed by the PBGC; the demise of potentially large numbers of small businesses and the loss, not only of pension benefits, but the jobs from which such benefits stem; and an increase in taxpayer exposure at the PBGC, an agency that is already overburdened.[44]

It is the view of the Committee that multiemployer plans provide valuable, guaranteed benefits to union workers and retirees. The reforms included in H.R. 2830 will help to ensure the continuation of these plans by providing much-needed restrictions for underfunded plans and additional requirements for all parties with a vested interest in the health and future of these plans.

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[42] Hearing on H.R. 2830, the "Pension Protection Act of 2005," before the Committee on Education and the Workforce, U.S. House of Representatives, 109th Congress, First Session, June 15, 2005 (to be published).
[43] Id.
[44] Id.

PRESENT LAW

SINGLE EMPLOYER PENSION PLANS

Minimum Funding Rules. Single employer defined benefit pension plans are subject to minimum funding requirements under ERISA and the Internal Revenue Code ("IRC").[45] In general, the amount of contributions required for a plan year under the minimum funding rules is the amount needed to fund benefits earned during a plan year, which is considered a plan's "normal cost" for the year, plus that year's portion of other liabilities that are amortized over a period of years, such as investment losses or increased benefits related to past service credit.[46] The amount of required annual contributions is determined under one of a number of acceptable actuarial cost methods. Additional contributions are required under the deficit reduction contribution rules in the case of certain underfunded plans (described below). No contribution is required under the minimum funding rules in excess of the full funding limit (described below).

Funding Standard Account. As an administrative aid in the application of the funding requirements, a defined benefit pension plan is required to maintain a special account called a "funding standard account" to which specified charges and credits are made for each plan year, including a charge for normal cost and credits for contributions to the plan. Other credits or charges may apply as a result of increases or decreases in past service liability as a result of plan amendments, experience gains or losses, gains or losses resulting from a change in actuarial assumptions, or a waiver of minimum required contributions.

In determining plan funding under an actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. If the plan's actual unfunded liabilities are less than those anticipated by the actuary on the basis of these assumptions, then the excess is an experience gain. If the actual unfunded liabilities are greater than those anticipated, then the difference is an experience loss. Experience gains and losses for a year are generally amortized as credits or charges to the funding standard account over five years. If the actuarial assumptions used for funding a plan are revised and, under the new assumptions, the accrued liability of a plan is less than the accrued liability computed under the previous assumptions, the decrease is a gain from changes in actuarial assumptions. If the new assumptions result in an increase in the accrued liability, the plan has a loss from changes in actuarial assumptions. The accrued liability of a plan is the actuarial present value of projected pension benefits under the plan, including projected future benefit increases, which will not be funded by enough future contributions to meet the plan's normal cost. The gain or loss for a year from

[45] See ERISA § 301–308 and IRC § 412. Under section four of ERISA, certain plans are not subject to the minimum funding rules, including governmental plans, certain church plans, foreign plans, excess benefit plans, and certain plans maintained for the purpose of complying with applicable workers' compensation, unemployment compensation, or disability insurance laws.

[46] See ERISA§3(28). The term "normal cost" is defined as the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a plan.

changes in actuarial assumptions is amortized as credits or charges to the funding standard account over ten years.

If minimum required contributions are waived, in accordance with the waiver rules and procedures established by the Secretary of the Treasury, the waived amount (referred to as a "waived funding deficiency") is credited to the funding standard account. The waived funding deficiency is then amortized over a period of five years, beginning with the year following the year in which the waiver is granted. Each year, the funding standard account is charged with the amortization amount for that year unless the plan becomes fully funded. If, as of the close of the plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an "accumulated funding deficiency."

If, as of the close of a plan year, the funding standard account reflects credits at least equal to charges, the plan is generally treated as meeting the minimum funding standard for the year and there is no required contribution.

In applying the funding rules, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, each of which is reasonable (taking into account the experience of the plan and reasonable expectations), or which, in the aggregate, result in a total plan contribution equivalent to a contribution that would be obtained if each assumption and method were reasonable. In addition, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.

Normal costs and other required amortization payments under a plan are determined on the basis of an actuarial valuation of the assets and liabilities of a plan. An actuarial valuation of plan assets and liabilities is required annually and is made as of a date within the plan year or within one month before the beginning of the plan year. However, a valuation date within the preceding plan year may be used if, as of that date, the value of a plan's assets is at least 100 percent of a plan's current liability.[47] For funding purposes, the actuarial value of plan assets may be used, rather than fair market value. The actuarial value of plan assets is the value determined under a reasonable actuarial valuation method that takes into account fair market value and is permitted under Department of Treasury regulations. However, any actuarial valuation method used must result in a value of plan assets that is not less than 80 percent of the fair market value of the assets and not more than 120 percent of the fair market value. In addition, if the valuation uses the average value of the plan assets, the values may not be averaged for more than the five most recent plan years, including the current year.

Credit Balances. If credits to the funding standard account exceed charges, the plan is considered to have a "credit balance." Typically, a plan maintains a credit balance if contributions are made in excess of minimum required contributions or a plan experiences significant investment gains. The amount of the credit balance increases each year with interest at the rate used under the

[47] Current liability is generally defined as the present value of all liabilities attributable to participants and beneficiaries accrued to date under the plan.

plan to determine costs, regardless of whether other plan assets experience investment losses. Credit balances can be used to reduce future required contributions.

Additional Contributions for Underfunded Plans. Under special funding rules known as the deficit reduction contribution rules, an additional charge to a plan's funding standard account is generally required for a plan year if the plan's funded current liability percentage for the plan year is less than 90 percent.[48] A plan's funded current liability percentage is generally the actuarial value of plan assets as a percentage of the plan's current liability.[49] As stated above, a plan's current liability means the present value of all liabilities to employees and their beneficiaries under the plan.

The deficit reduction contribution is the sum of: (1) the "unfunded old liability amount;" (2) the "unfunded new liability amount;" and (3) the expected increase in current liability due to benefits accruing during the plan year. The "unfunded old liability amount" is the amount needed to amortize certain unfunded liabilities under 1987 and 1994 transition rules.[50] The "unfunded new liability amount" is the applicable percentage of the plan's unfunded new current liability, which is the amount by which the plan's current liability exceeds the actuarial value of plan assets. The applicable percentage is generally 30 percent, but decreases by .4 of one percentage point for each percentage point by which the plan's funded current liability percentage exceeds 60 percent.[51] A plan may provide for unpredictable contingent event benefits, which are benefits that depend on contingencies that are not reliably and reasonably predictable, such as facility shutdowns or reductions in workforce due to company layoffs. The value of any unpredictable contingent event benefit is not considered in determining additional contributions until the event has occurred. As a result, plan sponsors are not able or required to fund for these benefits.

The amount of the additional charge required under the deficit reduction contribution rules is the sum of two amounts: (1) the excess, if any, of (a) the deficit reduction contribution over (b) the contribution required under the normal funding rules; and (2) the amount (if any) required with respect to unpredictable contingent event benefits. The amount of the additional charge cannot exceed the amount needed to increase the plan's funded current liability percentage to 100 percent, taking into account any expected in-

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[48] Under an alternative test, a plan is not subject to the deficit reduction contribution rules for a plan year if: (1) the plan's funded current liability percentage for the plan year is at least 80 percent, and (2) the plan's funded current liability percentage was at least 90 percent for each of the two immediately preceding plan years or each of the second and third immediately preceding plan years. The deficit reduction contribution rules apply to single employer plans, other than single employer plans with no more than 100 participants on any day in the preceding plan year. Single employer plans with more than 100 but not more than 150 participants are generally subject to lower contribution requirements under these rules.

[49] In determining a plan's funded current liability percentage for a plan year, the value of the plan's assets is generally reduced by the amount of any credit balance under the plan's funding standard account. However, this reduction does not apply in determining the plan's funded current liability percentage for purposes of whether an additional charge is required under the deficit reduction contribution rules.

[50] The transition rules were included in the 1987 Pension Protection Act and the 1994 Retirement Protection Act.

[51] For example, if a plan's funded current liability percentage is 85 percent (i.e., it exceeds 60 percent by 25 percentage points), the applicable percentage is 20 percent (30 percent minus 10 percentage points (25 multiplied by .4)). Under this calculation, the value of the plan's assets is reduced by the amount of any credit balance accumulated in the plan's funding standard account.

crease in current liability due to benefits accruing during the plan year.

Required Interest Rate and Mortality Table. Specific interest rate and mortality assumptions must be used in determining a plan's current liability for purposes of the special funding rule. For plan years beginning before January 1, 2004, the interest rate used to determine a plan's current liability must be within a permissible range of the weighted average of the interest rates on 30-year Treasury securities for the four-year period ending on the last day before the plan year begins.[52] The permissible range is generally from 90 percent to 105 percent (120 percent for plan years beginning in 2002 or 2003).[53] The interest rate used under the plan generally must be consistent with the assumptions which reflect the group annuity purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.[54]

Under the Pension Funding Equity Act of 2004 ("PFEA"), a special interest rate applies in determining current liability for plan years beginning in 2004 or 2005.[55] For these plan years, the interest rate used must be within a permissible range of the weighted average of the rates of interest on amounts invested conservatively in long-term investment-grade corporate bonds during the four-year period ending on the last day before the plan year begins. The permissible range for these years is from 90 percent to 100 percent. The interest rate is to be determined by the Secretary of the Treasury on the basis of two or more indices that are selected periodically by the Secretary and are in the top three quality levels available. The Secretary of the Treasury is required to prescribe mortality tables and to periodically review, at least every five years, and update such tables to reflect the actuarial experience of pension plans and projected trends in such experience.[56] The Secretary of the Treasury has required the use of the 1983 Group Annuity Mortality Table.[57]

Deduction Limit. Contributions to single employer pension plans are deductible up to certain limits. In general, a plan sponsor may deduct the greater of: (1) the amount necessary to satisfy the minimum funding requirement for the plan year; or (2) the amount of the plan's normal cost for the year plus the amount necessary to amortize certain unfunded liabilities over 10 years, subject to the full funding limitation for the year (see explanation of a plan's full funding limitation below). The maximum deductible amount is not less than the present value of the plan's unfunded current liability.[58]

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[52] The weighting used for this purpose is 40 percent, 30 percent, 20 percent and 10 percent, starting with the most recent year in the four-year period. Notice 88–73, 1988–2 C.B. 383.

[53] If the Secretary of the Treasury determines that the lowest permissible interest rate in this range is unreasonably high, the Secretary may prescribe a lower rate, but not less than 80 percent of the weighted average of the 30-year Treasury rate.

[54] See ERISA § 302(b)(5)(B)(iii)(II).

[55] Pub. L. No. 108–218. In addition, if certain requirements are met, reduced contributions under the deficit reduction contribution rules apply for plan years beginning after December 27, 2003, and before December 28, 2005, for plans maintained by commercial passenger airlines, employers primarily engaged in the production or manufacture of a steel mill product or in the processing of iron ore pellets, or a certain labor organization.

[56] See ERISA § 302(d)(7)(C)(ii).

[57] Rev. Rul. 95–28.

[58] In general, single employer plans are subject to a maximum deductible amount of not less than 120 percent of current liability over the value of plan assets.

If an employer sponsors both a defined benefit and a defined contribution plan that includes the same participants, the total deduction allowable for the employer in a year is the greater of: (1) 25 percent of employee compensation; or (2) the contribution necessary to meet the defined benefit plan's minimum funding requirement.

In general, employers are subject to a 10 percent excise tax for the amount of any nondeductible contributions made to a plan in a plan year.

Full Funding Limitation. Under ERISA, no contributions are required under the minimum funding rules in excess of the full funding limitation. The full funding limitation is the excess, if any, of the accrued liability under the plan, including normal cost, over the lesser of (a) the market value of plan assets, or (b) the actuarial value of plan assets. However, the full funding limitation may not be less than the excess, if any, of 90 percent of the plan's current liability over the actuarial value of plan assets.

Timing of Plan Contributions. In general, plan contributions required to satisfy the funding rules must be made within 8½ months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year. In the case of a plan with a funded current liability percentage of less than 100 percent for the preceding plan year, estimated contributions for the current plan year must be made in quarterly installments during the current plan year.[59] As stated above, the amount of each required installment is 25 percent of the lesser of 90 percent of the amount required to be contributed for the current plan year or 100 percent of the amount required to be contributed for the preceding plan year.

Failure to Make Required Contributions. An employer is generally subject to an excise tax of 10 percent of the amount of the funding deficiency if it fails to make minimum required contributions and fails to obtain a waiver from the Internal Revenue Service.[60] In addition, a tax of 100 percent may be imposed if the funding deficiency is not corrected within a certain period. If the total of the contributions the employer fails to make, with interest, exceeds one million dollars and the plan's funded current liability percentage is less than 100 percent, a lien arises in favor of the plan with respect to all property of the employer and the members of the employer's controlled group. The amount of the lien is the total amount of the missed contributions, including interest.

Limitations on Benefit Increases, Distributions, and Accruals. ERISA provides that a defined benefit plan may not adopt an amendment which results in an increase in the plan's current liability if the funded current liability percentage of a plan is less than 60 percent, including any amendment that would cause a plan's current liability percentage to fall below 60 percent, unless the plan sponsor provides security, such as real property or equities.[61] Other than the above limitation, ERISA only provides for a prohibition on benefit increases if a plan is involved in a bankruptcy proceeding. ERISA also limits certain benefit payments if a

[59] See ERISA § 302(e).

[60] See ERISA § 303. In general, the Secretary of the Treasury is permitted to waive all or a portion of a plan's minimum required contributions or extend the amortization periods applicable to any net experience loss.

[61] See ERISA § 307.

plan has a liquidity shortfall, which occurs if a plan's liquid assets are less than the disbursements from the plan in the preceding plan year.

Under current law, plans are not permitted to provide severance benefits; however, plans may provide for subsidized early retirement benefits and unpredictable contingent event benefits. Unpredictable contingent event benefits are benefits that depend on certain events or other contingencies that are not reasonably predictable, such as a facility shutdown. These benefits are considered protected benefits under ERISA and may not be eliminated.

Disclosure. ERISA requires plan administrators/fiduciaries to file an annual report with the Secretary of Labor, known as a Form 5500. This report includes certain plan information, including an actuarial report containing plan asset and liability information, information regarding participant distributions, and plan contributions. This form is due on the last day of the seventh month after the end of the plan year. The summary of this report, otherwise known as a plan's summary annual report, must be provided to participants within two months after the due date of the annual report.

Single employer defined benefit plan participants have the right to certain notices regarding their plan's funded status. In general, if an employer is subject to a variable rate premium (discussed below) because the plan is underfunded, participants are entitled to receive a notice regarding the plan's funded status and PBGC benefit guarantee limits.[62] The employer is also required to notify plan participants if it fails to make the required contributions.[63] In addition, the PFEA requires multiemployer plans to provide an annual funding notice to participants, contributing employers, labor organizations, and the PBGC regarding the plan's funded status.[64]

Executive Compensation. Amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includable in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are satisfied.[65] For example, distributions from a nonqualified deferred compensation plan may be allowed only at certain times and upon certain events. Rules also apply for the timing of elections. If the requirements are not satisfied, in addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includable in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to a 20 percent additional tax.

In the case of assets set aside in a trust (or other arrangement) for purposes of paying nonqualified deferred compensation, such assets are treated as property transferred in connection with the performance of services under Internal Revenue Code section 83 at the time set aside if such assets (or trust or other arrangement) are located outside of the United States or at the time transferred if such assets (or trust or other arrangement) are subsequently transferred

[62] See ERISA § 4011.
[63] See ERISA § 101(d).
[64] See ERISA § 101(f).
[65] See IRC § 409A.

outside of the United States. A transfer of property in connection with the performance of services under Code section 83 also occurs with respect to compensation deferred under a nonqualified deferred compensation plan if the plan provides that upon a change in the employer's financial health, assets will be restricted to the payment of nonqualified deferred compensation. In addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includable in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to a 20 percent additional tax.

Benefit Accruals. ERISA provides that benefit accruals may not decrease on account of the attainment of any age. Under a defined benefit plan, an employee's benefit accrual may not cease or be reduced because of the attainment of any age.[66] Furthermore, accrued benefits may not decrease on account of increasing age or service.[67] However, a plan does not fail to satisfy the benefit accrual rules by imposing a limitation on the amount of benefits that a plan provides or a limitation on the number of years of service or participation that are taken into account in determining accrued benefits. Furthermore, a plan does not fail the benefit accrual rules because the subsidized portion of an early retirement benefit is disregarded in determining benefit accruals. Finally, ERISA does not prohibit the modification of any benefit formula on a prospective basis. In other words, ERISA does not require a plan to provide a minimum benefit level or vest participants in benefits that have not been earned under the plan's formula.

PBGC Premiums. ERISA requires all single employer plans covered by the PBGC insurance program to pay flat-rate premiums. Flat-rate premiums are based on the number of plan participants. Under current law, the premium is set at $19 per participant. ERISA also requires certain underfunded plans to pay a variable rate premium. The amount of the variable rate premium is also set by statute and is $9 per $1000 of unfunded vested benefits; however, there is an exemption from this requirement if the plan meets its full funding limit. In determining the amount of unfunded vested benefits, the interest rate used is 85 percent of the annual rate of interest of the corporate bond rate provided under the PFEA.[68]

MULTIEMPLOYER PENSION PLANS

As stated above, multiemployer pension plans are defined benefit pension plans maintained by two or more employers in a particular trade or industry, such as trucking or construction, that are collectively bargained between an employer and a labor union. While single employer plan sponsors generally may adjust their pension contributions to meet funding requirements, the contributions of individual employers in multiemployer plans cannot be easily modified because level of contributions to such plans is generally set as part of the bargaining process, and the level of benefits is determined by the plan trustees.

[66] See ERISA § 204(b)(1)(H).
[67] See ERISA § 204(b)(1)(G).
[68] The PFEA rate will expire on December 31, 2005. The interest rate to be used after the expiration of the PFEA is 85 percent of the interest rate on 30-year Treasury bonds.

Multiemployer plans have certain characteristics that are different from single employer plans. While multiemployer plans are subject to many of the same rules as single employer plans, present law also applies special rules to such plans in recognition of their differing features.

Multiemployer Funding Rules. In general, multiemployer plans are subject to the same general minimum funding rules as single employer plans. However, special rules apply to multiemployer plans in some instances. For example, the amortization of a plan's experience gains and losses is extended over a longer period of time. Furthermore, multiemployer plans are not subject to the additional deficit reduction contribution rules if a plan becomes underfunded by a certain percentage.

Like single employer plans, multiemployer plans are required to maintain a funding standard account to which specified charges and credits are made for each plan year, including a charge for normal cost and credits for contributions to the plan as well as charges and credits for any decreases or increases in past service liability[69] as a result of plan amendments or experience gains or losses, gains or losses resulting from a change in actuarial assumptions, or a waiver of minimum required contributions.

A multiemployer pension plan is required to use an acceptable actuarial cost method to determine the above factors included in the plan's funding standard account each year. Generally, an actuarial cost method divides the cost of benefits under the plan into annual charges consisting of two elements for each plan year which include the plan's normal cost and the amortized portions of any additional costs of the plan. The plan's normal cost for a plan year represents the cost of current and future benefits allocated to the year by the funding method used by the plan for active and inactive employees. The amortized portions of any additional costs of the plan for a plan year are the cost of future benefits that would not be met by future normal costs, including any costs that may be attributable to net experience losses, changes in actuarial assumptions, and amounts necessary to make up funding deficiencies for which a waiver was obtained.

In general, the portion of the cost of a plan that is required to be paid for a particular year depends upon the nature of the cost. The normal cost for a year is generally required to be funded currently; however, many plans today cannot afford to do this. The other costs associated with the plan are amortized over a period of years. In the case of a multiemployer plan, past service liability is amortized over 40 or 30 years depending on how the liability arose, experience gains and losses[70] are amortized over 15 years, gains and losses from changes in actuarial assumptions[71] are amortized

[69] Past service liability is a term used to describe different amortization charges to the funding standard account. For plans in existence on January 1, 1974, past service liability is amortized over 40 years. For plans in existence after January 1, 1974, past service liability is amortized over 30 years. Any plan amendments which result in past service liabilities to a plan are amortized over 30 years.

[70] Experience gains and losses are determined by a plan actuary's assumptions regarding the future experience of a plan. These assumptions generally include interest rates, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities.

[71] Gains and losses from changes in actuarial assumptions generally arise if the plan's assumptions are modified. A plan will have a gain if the accrued liability of a plan using the new assumptions is less than the accrued liability calculated using the previous assumptions. A plan will have a loss if the accrued liability of a plan using the new assumptions is greater than the accrued liability calculated using the previous assumptions. Accrued liabilities are the excess

over 30 years, and waived funding deficiencies are amortized over 15 years. The above plan costs, which are charged to the funding standard account, require an offsetting credit by employer contributions.

As with single employer plans, if, as of the close of the plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an accumulated funding deficiency. If credits to the funding standard account exceed charges, the plan has a credit balance which can be used to reduce future required contributions.

Similar to single employer plans, the actuarial value of plan assets may be used, rather than fair market value, with the same applicable valuation methods that must result in a value of plan assets that is not less than 80 percent of the fair market value of the assets and not more than 120 percent of the fair market value or an average value that may not be averaged over more than the five most recent plan years, including the current year. In applying the funding rules to a multiemployer plan, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, which in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations). In addition, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.

Funding waivers and amortization of waived funding deficiencies

In general, the Secretary of the Treasury is permitted to waive all or a portion of the contributions required under the minimum funding standard for the year. In the case of a multiemployer plan, a waiver may be granted if 10 percent or more of the contributing employers cannot make the required contribution without substantial business hardship and if requiring the contribution would be adverse to the interests of plan participants in the aggregate. The minimum funding requirements may not be waived with respect to a multiemployer plan for more than five out of any 15 consecutive years.

If a funding deficiency is waived for a multiemployer plan, the waived amount is credited to the funding standard account and amortized over a period of 15 years. Each year, the funding standard account is charged with the amortization amount for that year unless the plan becomes fully funded.[72]

Extension of Amortization Periods. The Secretary of the Treasury may extend any amortization periods for up to 10 years if the Secretary finds that the extension would carry out the purposes of ERISA and would provide adequate protection for participants under the plan and if such Secretary determines that the failure to permit such an extension would: (1) result in a substantial risk to the voluntary continuation of the plan or a substantial curtail-

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of the present value of all projected future benefits cost and administrative expenses for all plan participants and beneficiaries over the present value of all future contributions for the normal cost to a plan.

[72] See IRC § 1274. The rate used to determine the amortization on the waived amount is 150 percent of the federal mid-term rate.

ment of pension benefit levels or employee compensation; and (2) be adverse to the interests of plan participants in the aggregate.[73]

Withdrawal Liability. The Multiemployer Pension Plan Amendments Act of 1980 ("MEPPA") amended ERISA to require that employers pay withdrawal liability to a multiemployer plan if the employer withdraws from the plan.[74] Prior to the enactment of the withdrawal liability rules, employers who had an obligation to contribute to the plan within five years of the plan's termination were liable to the PBGC for a share of unfunded benefits; however, certain employer withdrawals from a multiemployer plan would not necessarily impair the financial health of the plan if the industry was stable and the contributing employer was replaced by a new employer or by an expansion of covered employment by other contributing employers. However, concerns were raised that the withdrawal of larger contributing employers may result in increased financial burdens on remaining contributing employers. Therefore, the withdrawal liability rules included in MEPPA were designed to address these concerns and help promote the financial health of multiemployer plans by requiring certain withdrawing employers to pay a portion of unfunded benefits for their employees that exist at the time of withdrawal.

Determination of Withdrawal Liability. In general, contributing employers may withdraw from a multiemployer plan either by a "complete" or a "partial" withdrawal liability. Current law requires that certain employers who withdraw from a multiemployer plan in a complete or partial withdrawal are liable to the plan in the amount determined to be the employer's withdrawal liability.[75] In general, a "complete withdrawal" occurs when the contributing employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute.[76] In determining if there is a complete withdrawal, special rules apply in the case of the building and construction industry, the entertainment industry, and employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry.[77]

A "partial withdrawal" occurs if, on the last day of a plan year, there is a 70 percent contribution decline by contributing employers for such plan year or there is a partial cessation of an individual employer's contribution obligation.[78] A partial cessation of the employer's obligation occurs if: (1) the employer permanently ceases to have an obligation to contribute under one or more, but fewer than all, collective bargaining agreements under which obligated to contribute, but the employer continues to perform work in the jurisdiction of the collective bargaining agreement; or (2) an employer permanently ceases to have an obligation to contribute under the plan

[73] The interest rate with respect to extensions of amortization periods is the same as that used with respect to waived funding deficiencies.

[74] See Public Law No. 96–364.

[75] See ERISA § 4201.

[76] ERISA § 4203.

[77] In the case of employers engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry, a complete withdrawal occurs only if: (1) an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan; and (2) the PBGC determines that the plan has suffered substantial damage to its contribution base as a result of such cessation, or the employer fails to furnish a bond or amount held in escrow in an amount equal to 50 percent of the withdrawal liability of the employer.

[78] See ERISA § 4205(a).

with respect to work performed at one or more, but fewer than all, of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.[79]

When a contributing employer withdraws from a multiemployer plan, the plan sponsor is required to calculate the amount of the employer's withdrawal liability, notify the employer of the amount of the withdrawal liability, and collect the amount of the withdrawal liability from the employer. The contributing employer's withdrawal liability is based on the plan's unfunded vested benefits for the plan years preceding the withdrawal. After the withdrawal, the plan sponsor must notify the contributing employer of the amount of liability and schedule of payments. In general, amounts are required to be paid over the period of years necessary to amortize the amounts in level annual payments; however, in certain instances where the amortization period exceeds 20 years, the employer's liability is limited to the first 20 annual payments.[80]

Current law provides rules limiting withdrawal liability in certain instances. The amount of unfunded vested benefits allocable to an employer is limited in the case of certain sales of all or substantially all of the employer's assets and in the case of an insolvent employer undergoing liquidation or dissolution.[81] A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may adopt a rule that an employer who withdraws from the plan is not subject to withdrawal liability if: (1) the employer first had an obligation to contribute to the plan after the date of enactment of MEPPA; (2) contributed to the plan for no more than the lesser of six plan years or the number of years required for vesting under the plan; (3) was required to make contributions to the plan for each year in an amount equal to less than two percent of all employer contributions for the year; and (4) never avoided withdrawal liability because of the special rule.[82]

Under ERISA, the plan sponsor's assessment of withdrawal liability is presumed correct unless the employer shows by a preponderance of the evidence that the plan sponsor's determination of withdrawal liability was unreasonable or erroneous. In other words, the employer has the burden of proof to show that his withdrawal from the plan was not to evade or avoid withdrawal liability.[83] Disputes between an employer and plan sponsor concerning withdrawal liability are resolved through arbitration, which can be initiated by either party. The first payment of withdrawal liability determined by the plan sponsor is generally due no later than 60 days after demand, even if the employer contests the determination of liability. If the employer contests the determination, payments of withdrawal liability must be made by the employer until the arbitrator issues a final decision with respect to the determination submitted for arbitration.[84]

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[79] See ERISA § 4205(b)(2).
[80] See ERISA § 4219(c).
[81] See ERISA § 4225.
[82] See ERISA § 4210.
[83] See ERISA § 4212(c).
[84] See ERISA § 4221(f). The plan sponsor has the burden of proof that the principal purpose of a transaction that occurred before January 1, 1999, was to evade or avoid withdrawal liability if the transaction occurred at least 5 years before the date of withdrawal. Employers are not obligated to make withdrawal liability payments until a final decision is rendered.

Multiemployer Plan Reorganization and Insolvency. If a multiemployer plan experiences severe financial problems, certain modifications to the single-employer plan funding rules apply and these plans are considered to be in "reorganization status." A plan is in reorganization status if contributions needed to equal the charges and credits to its funding standard account exceed the amount of a plan's vested benefits charge.[85] The plan's vested benefits charge is generally the amount needed to amortize, in equal annual installments, unfunded vested benefits under the plan over: (1) 10 years in the case of obligations attributable to participants in pay status; and (2) 25 years in the case of obligations attributable to other participants. A plan in reorganization status must increase funding to specified levels and may reduce benefits to the level guaranteed by the PBGC. A cap on year-to-year contribution increases and other relief is available to employers that continue to contribute to the plan. Any failure to make the required contributions results in a funding deficiency.

The plan sponsor must provide notice that the plan is in reorganization status and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced and/or an excise tax may be imposed.[86] Notice must be provided to every employer who has an obligation to contribute under the plan and to each employee organization representing plan participants.

Benefit limitations and adjustments also apply to plans in reorganization status including limitations on lump sum distributions[87] and adjustments in accrued benefits.[88]

In addition, the law presumes there is an increased likelihood that a plan in reorganization will become insolvent.[89] In general, insolvent plans do not have sufficient resources to pay benefits under the plan when they are due. If a multiemployer plan is insolvent, benefit payments must be reduced to level of benefits that the plan can pay with its available resources.

PBGC's Role. PBGC's insurance programs were created as part of ERISA in 1974 to assure retirees pension benefit protection. In 1980, MEPPA strengthened the pension protection program for multiemployer plans. As stated above, the amendments established mandatory requirements for financially weak multiemployer plans in reorganization and imposed new financial requirements on employers withdrawing from multiemployer plans.

PBGC's multiemployer program is funded and maintained separately from the single employer program. Each multiemployer plan pays an annual insurance premium of $2.60 per participant to the PBGC. Under the multiemployer program, PBGC provides financial assistance through loans to plans that are insolvent. Before a plan receives financial assistance from PBGC, it must suspend payment of all benefits in excess of the guaranteed level.

MEPPA established a benefit guarantee limit for participants in multiemployer plans equal to the participant's years of service multiplied by the sum of: (1) 100 percent of the first five dollars of the monthly benefit accrual rate; and (2) 75 percent of the next fifteen

[85] See ERISA § 4241.
[86] See id.
[87] See ERISA § 4241(c).
[88] See ERISA § 4244A.
[89] See ERISA § 4245.

dollars of the accrual rate. For a participant with 30 years of service under the plan, the maximum PBGC-guaranteed benefit was $5,850 per year. This benefit guarantee formula remains in effect for participants in multiemployer plans that received financial assistance from PBGC at any time during the period from December 22, 1999, to December 21, 2000. The Consolidated Appropriations Act of 2001,[90] signed into law on December 21, 2000, increased the benefit guarantee in multiemployer plans to the product of a participant's years of service multiplied by the sum of: (1) 100 percent of the first $11 of the monthly benefit accrual rate; and (2) 75 percent of the next $33 of the accrual rate. For someone with 30 years of service, this raised the guaranteed limit to approximately $13,000.

ERISA's Prohibited Transaction Rules. ERISA prohibits certain transactions between a qualified plan and a party-in-interest.[91] Under current law, a party-in-interest to a plan includes plan fiduciaries, plan service providers, an employer, employee organizations with members participating in a plan, and certain persons with an ownership interest in the plan sponsor.

In general, for a party-in-interest, the transaction rules prohibit: (1) the sale, exchange, or leasing of property; (2) the lending of money or extension of credit; (3) the furnishing of goods, services, or facilities; and (4) the transfer to or use by or for the benefit of the income or assets of the plan.[92] Fiduciaries are also subject to additional rules which include: (1) any self-dealing with the plan's assets in his own interest or account; (2) any transactions for himself or on behalf of another party whose interests are adverse to the interest of the plan or its participants and beneficiaries; or (3) the receipt of any consideration for his own personal account from any party dealing with the plan.

An excise tax and, in certain instances, a civil penalty is assessed against any person who engages in a prohibited transaction.

SECTION-BY-SECTION

Sec. 1. Short title and table of contents

This Act may be cited as the Pension Protection Act of 2005.

TITLE I—REFORM OF FUNDING RULES FOR SINGLE EMPLOYER DEFINED BENEFIT PENSION PLANS

SUBTITLE A—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 101. Minimum funding standards

Section 101 repeals sections 302–308 of the Employee Retirement Income Security Act of 1974 and establishes new minimum funding standards that single employer defined benefit plans must meet. Minimum required contributions must be paid by the employer(s) responsible for making contributions to the plan. The bill also provides for waivers to the minimum funding standards in the case of business hardship when an employer is operating at an economic

[90] Public Law No. 106–554.
[91] See ERISA § 3(14).
[92] See ERISA § 406(a).

loss, when there is substantial unemployment or under employment in the trade or business, when the sales and profits of the industry concerned are depressed or declining, and when it is reasonable to conclude the plan will be continued only if the waiver is granted. The application for a waiver must be submitted to the Secretary of the Treasury no later than 2½ months after the close of the plan year. Prior to the granting of a waiver, a notice is required to be provided to each participant, beneficiary, and employee organization of the filing of the application of the waiver.

Sec. 102. Funding rules for single-employer defined benefit pension plans

Under section 102, a single employer plan's minimum required contribution for a plan year is the target normal cost of the plan for the year plus any shortfall amortization charge (if applicable) for the plan year and any waiver amortization charge (if applicable) for the plan year. The target normal cost of a plan for a plan year is the present value of all liabilities attributable to benefits which are expected to accrue or to be earned under the plan during the plan year. If a plan's assets (not including any pre-funding balance and funding standard carryover balance) are greater than the plan's funding target (the present value of all liabilities under the plan for the plan year),[93] the minimum required contribution for a plan year is the target normal cost minus any excess assets held by the plan. A shortfall amortization charge applies if a plan has any unfunded liability shortfall as of the first day of any plan year. The shortfall amortization charge for any plan year is the amount necessary to amortize any unfunded liability shortfall for a plan year over the current and six succeeding plan years in level payments, using the effective rate of interest for the plan. Unfunded liability shortfall, otherwise known as a funding shortfall, is defined as the excess (if any) of a plan's funding target for the plan year over the value of plan assets for any plan year (not including the value of any assets held in a plan's pre-funding balance and carryover balance). If a plan's assets for any plan year (including any funding standard carryover balance attributable to the funding rules in effect prior to January 1, 2006, plus any assets held in the plan's pre-funding balance, unless the pre-funding balance is intended to be used to reduce the minimum required contribution for the plan year) exceed the plan's liabilities for the plan year, any shortfall amortization charge applicable for any previous plan year is reduced to zero.

For purposes of determining whether a plan has a funding shortfall and is, therefore, subject to the variable rate premium requirements, a funding target transition rule shall apply to any plan that was not subject to the deficit reduction contribution requirements for the plan year beginning in 2005. The applicable percentage of the funding target is as follows.

In the case of a plan year beginning in calendar year:	The applicable percentage is:
2006	92 percent.
2007	94 percent.
2008	96 percent.

[93] A plan's funding target attainment percentage is the ratio, expressed as a percentage, which the value of plan assets for the year bears to the funding target for the year.

In the case of a plan year beginning in calendar year:	The applicable percentage is:
2009	98 percent.

Credit for excess assets: If the value of plan assets which are held by the plan immediately before the valuation date exceed the funding target of the plan for the plan year, the minimum required contribution with respect to the plan is the target normal cost, reduced by the excess assets.

Funding target: The funding target of a plan for a plan year is the present value of all liabilities attributable to participants and beneficiaries under the plan for the plan year.

Waiver amortization charge: A waiver amortization charge (if any) for a plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the five preceding plan years. The plan sponsor determines, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize the waiver amortization base in five level, annual installments, using the applicable segment rates determined under the modified yield curve. The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency.

Reduction of minimum required contribution by pre-funding balance and funding standard carryover balance: Any plan assets that are included in a plan's funding standard account as a positive balance as a result of contributions made in excess of a plan's required minimum contribution prior to the date of enactment of the bill remain intact. These additional plan assets are referred to as a funding standard carryover balance. Any new contributions made in excess of the minimum required contribution for a plan will be credited to a pre-funding balance. Each year, the pre-funding balance and the funding standard carryover balance must reflect the same fair market value of gains and losses as the plan assets experience for each year.[94] In other words, the actual rate of return is the net fair market value gain or loss experienced by all plan assets, taking into account plan contributions, distributions and other payments in accordance with regulations issued by the Secretary of the Treasury.

Application of balances: To determine whether a plan meets its funding target for a plan year, plan assets will not be reduced by the value of any carryover credit balance or any new pre-funding balance. Plan assets are required to be reduced by both the carryover credit balance and the pre-funding account balance for the following calculations: (a) to determine whether the plan's target normal cost can be reduced by any excess assets credit for a plan that is over 100 percent funded; (b) to determine the shortfall amortization charge for a plan year (if required to be made); (c) to determine whether the plan is in at-risk status; (d) to determine whether there is an increase in quarterly payments of a plan; and (e) to determine whether any benefit limitations apply. However, if all plan assets (including a plan's funding standard carryover balance and pre-funding balance) equal the plan's funding target, the benefit limitations provided under this bill do not apply. In addition, a plan may elect to apply the balances against a plan's minimum

[94] The plan assets will continue to be actuarially adjusted.

required contribution. However, a plan may not elect to reduce its minimum required contribution for a plan year if the plan's target liability for the preceding plan year is less than 80 percent. For purposes of determining whether a plan's funding target is at least 80 percent funded and can apply the pre-funding balance to offset its minimum required contribution for a plan year, such pre-funding balance is subtracted from the plan's assets. Plan assets are not reduced by any funding standard carryover balance in determining whether a plan's funding target is at least 80 percent funded. Plan assets are not reduced by any funding standard carryover balance for purposes of calculating a plan's target normal cost for the plan year if the plan is funded above 80 percent. Any balance in the pre-funding account, as well as any carryover credit balance, is reduced each year by the amount of reduction of the minimum required contribution.

A plan cannot use the carryover balance to reduce the minimum required contribution for a plan if it is also used to increase plan assets in order to avoid any shortfall amortization charge in the same plan year. In addition, no amount of the pre-funding balance may be used to offset a plan's minimum required contribution if the plan has a funding standard carryover balance greater than zero.

Valuation date for plan assets and liabilities: The valuation date for plans with greater than 500 participants is the first day of the plan year. If a plan has less than 500 participants, the plan may choose any day during the plan year as its valuation date. For plans that were not in existence prior to the enactment of this bill, the plan shall take into account the number of participants that the plan is reasonably expected to have on days during the first plan year.

Determining value of plan assets: The value of plan assets is determined on the basis of any reasonable actuarial method of valuation which takes into account the fair market value of assets. If assets are averaged, any method used by the plan may not provide for averaging of such values over more than three plan years. In addition, the averaging method used by the plan may not result in a valuation of averaged assets greater than 110 percent or lower than 90 percent of the fair market value of the plan's assets.

Accounting for contribution receipts: For purposes of determining the value of plan assets for any current plan year, any contributions allocable to amounts owed for the previous year that are made after the plan's valuation date for the current plan year are taken into account, except that any contribution made during any current plan year beginning after 2006 are taken into account only in an amount equal to its present value (determined using the plan's effective interest rate for the preceding plan year) as of the valuation date of the plan for the current plan year. However, any contributions made to any plan for the current plan year are not taken into account and any interest earned on such contributions must be disregarded for calculating the value of plan assets.

Accounting for plan liabilities: In determining the value of liabilities under a plan for a plan year, liabilities attributable to benefits accrued as of the first day of the plan year are taken into account. Any benefits which are expected to accrue during a plan year are not taken into account. If a plan is collectively bargained, any an-

ticipated benefit increases scheduled to take effect during the plan year are included as part of a plan's liabilities for the plan year.

Actuarial assumptions and methods: For purposes of calculating a plan's liabilities for a plan year, the effective interest rate of a plan must be used. The effective interest rate of a plan is the rate of interest which, if used to determine the present value of the plan's liabilities, would result in an amount equal to the funding target of the plan for a plan year.

For purposes of determining the plan's funding target, the interest rates used in calculating the present value of the plan's liabilities are based on three segment rates applied to a plan's short-term, mid-term, and long-term liabilities. Short-term liabilities are plan liabilities which are payable within five years. Mid-term liabilities are plan liabilities which are payable in between six and twenty years. Long-term liabilities are plan liabilities which are payable after twenty years. The segment rates, with respect to any month, are determined by the Secretary of the Treasury on the basis of the appropriate corporate bond yield curve. The first segment rate is based on the portion of the corporate bond yield curve for yields of bonds maturing in five years or less; the second segment rate is based on the portion of the corporate bond yield curve for yields of bonds maturing between six and 20 years; and the third segment rate is based on the corporate bond yield curve for yields of bonds maturing over 20 years.

The Secretary of the Treasury will develop the corporate bond yield curve which is based on a 3-year weighted average of yields on investment grade corporate bonds.[95] The term "3-year weighted average" means an average determined by using a methodology under which the most recent year's rates are weighted 50 percent, the preceding year's rates are weighted 35 percent, and the second preceding year's rates are weighted 15 percent. The Secretary must publish each month the corporate bond yield curve and each segment rate. The Secretary must also publish a description of the methodology used to determine the corporate bond yield curve and the segment rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and segment rates for future months based on the plan's projection of future interest rates.

Transition period: The interest rate transition will be the following: For plan year 2006, a plan is required to use of ⅓ of the modified yield curve and ⅔ of the current rate. For plan year 2007, a plan is required to use of ⅔ of the modified yield curve and ⅓ of the current rate. For plan year 2008, all plans must use the modified yield curve for calculating pension liabilities.

Mortality table: In order to determine the present value of liabilities for a plan, the plan must use the RP 2000 Combined Mortality Table using scale AA. The Secretary of the Treasury is required to make projected improvements to the table to reflect the actual experience of plans and projected trends in such experience at least once every ten years. The use of the RP 2000 Combined Table is phased in ratably over a five year period.

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[95] Under current law, interest rates used to calculate pension assets and liabilities are "smoothed," or averaged, over four years. Such smoothing is intended to reduce pension funding volatility and help make contribution requirements more predictable.

Upon request by the plan sponsor and approval by the Secretary of the Treasury, a plan may use a different mortality table if the Secretary determines that the table reflects the actual experience of the pension plan and that it is significantly different from the RP 2000 Combined Mortality Table. The Secretary has 180 days, beginning on the date of submission, to disapprove of the use of a table other than the RP 2000 Combined Mortality Table if the table fails to meet the above requirements.

Probability of benefit payments in the form of lump sum or other optional forms: For purposes of determining the present value of a plan's liabilities, the probability that future benefit payments under the plan, including lump sums and other optional forms of benefits, must be taken into account and included in the plan's funding target.

Special rules for at-risk plans: A plan is considered to be "at-risk" if its funding target is less than 60 percent. At-risk liability is based on the same benefits and assumptions as a plan's normal funding target, except that the valuation of those benefits would require the use of certain actuarial assumptions that would take into account the fact that there is a greater likelihood the plan may have to pay benefits on an accelerated basis or terminate. These modified actuarial assumptions are acceleration in retirement rates using the earliest retirement age, and benefits being distributed in a lump sum payment (or in whatever form results in the most valuable benefit). At-risk liability also includes a "loading factor" of $700 per participant plus four percent of the at-risk liability before the loading factor to reflect the additional administrative cost of purchasing a group annuity if the plan were to terminate. At-risk normal cost is the same as ongoing normal cost, except that at-risk normal cost is calculated using the assumptions that are used for determining at-risk liability. The transition between a plan's normal funding target and its at-risk funding target is five years. In other words, if a plan has a funding target of less than 60 percent for a consecutive period of fewer than five plan years, the plan must pay 20 percent of its at-risk required contribution multiplied by the number of plan years that the plan is less that 60 percent funded.

Payment of minimum required contributions: The due date for the payment of minimum required contribution for any plan year is 8½ months after the close of the plan year. Any minimum contribution payment made after the valuation date is increased by the effective rate of interest for a plan from the valuation date to the payment date.

Accelerated quarterly contributions: If a plan is less than 100 percent funded in the prior plan year, quarterly contributions are required to be paid by the plan. The minimum required quarterly contribution is increased by the amount equal to the interest on the amount of underpayment for the period of the underpayment. The interest rate used is the excess of 175 percent of the federal mid-term rate over the effective rate of the plan.[96] The amount of the underpayment is the excess of the required installment over the amount of the installment contributed to or under the plan on or

[96] See ERISA § 302(e). The rate of interest used is equal to the greater of: (1) 175 percent of the federal mid-term rate, or (2) the rate of interest used under the plan in determining costs.

before the due date for the installment. The amount of the required installment is 25 percent of the required annual payment. The required annual payment is 90 percent of the minimum required contribution (without regard to any waiver) or, for a plan year beginning after 2006, 100 percent of the minimum required contribution to the plan for the preceding plan year (without regard to any waiver). The deadline for the final contribution for the year is 8½ months after the end of the plan year. A contribution made after the valuation date for the year would be credited against the minimum required contribution for the year based on its present value as of the valuation date, discounted from the date actually contributed and determined using the average effective interest rate that applied in the determination of the plan's liabilities. A plan is treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in the installment is less than the liquidity shortfall, regardless of whether the liquidity shortfall exceeds the amount of the installment required to be paid.[97]

Imposition of lien where failure to make required contributions: For plans covered by the PBGC insurance program, any plan sponsor who fails to make a required contribution to the plan before the due date of a payment where the unpaid balance of the payment (including interest), when added to the aggregate balance of all prior payments not made before the due date (including interest) exceeds $1,000,000, a lien is imposed in favor of the plan upon all property and rights to property, whether real or personal, belonging to the plan sponsor and any other controlled group member in the amount equal to the total aggregate unpaid balance of the contributions. The plan sponsor must notify the PBGC of such failure within 10 days of the due date for the required contribution. The lien begins on the due date for the required contribution payment and continues until the last day of the first plan year in which the plan ceases to have an aggregate balance of prior missed payments in excess of $1,000,000. Any lien may be perfected and enforced only by or at the direction of the PBGC.

Qualified transfers to health benefit accounts: This section allows any plan assets over 100 percent of a plan's funding target but not above 125 percent of the sum of the target liability amount and the target normal cost to be transferred to a qualified welfare benefit plan for the purpose of providing certain health benefits. Any transfer of plan assets made shall result in a reduction of plan assets by the amount of the transfer.

Sec. 103. Benefit limitations under single employer plans

Section 103 prohibits benefits payable due to a plant shutdown or any other unpredictable contingent event. An unpredictable contingent event is defined as any event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, the occurrence of death or disability, or any event

[97] A liquidity shortfall is defined, with respect to any required installment, as an amount equal to the excess (as of the last day of the first quarter for which the installment is made) of the base amount of the quarterly installment (three times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of the quarter) over the value of the plan's liquid assets as of the last day of the quarter.

which is reasonably and reliably predictable, as determined by the Secretary of Treasury.

This section further provides that if a plan's funding target is less than 80 percent as of the plan's valuation date, the plan may not adopt an amendment that has the effect of increasing the plan's liabilities by reason of increases in benefits, establishment of new benefits, a change in the rate of benefit accrual, or any change in the rate at which benefits become non-forfeitable. Subject to this general rule, a plan may avail itself of the following exceptions: (a) if a plan's funding target is less than 80 percent in a plan year, as of the plan's valuation date, a plan sponsor may adopt an amendment which increases plan liabilities only if the plan sponsor makes a contribution to the plan in that year equal to the amount of the increase in the minimum required contribution attributable to the plan amendment and the amount of the increase in the plan's funding target; or (b) if a plan's funding target is over 80 percent in a plan year, as of the plan's valuation date, a plan sponsor may adopt an amendment which increases plan liabilities to the extent that the plan's funding target is no longer at 80 percent if the plan sponsor makes a contribution in the amount necessary to ensure that the plan's funding target is at least 80 percent. This provision is not applicable to a new plan for the first five years.

Section 103 prohibits lump sum distributions or any other accelerated form of benefits if a plan's funding target is less than 80 percent as of the plan's valuation date. However, this provision does not apply to any plan for any plan year if the terms of the plan (as in effect prior to or beginning on June 29, 2005) provide for no benefit accruals with respect to any participant.

The bill prohibits all future benefit accruals for plans that have a funding target of less than 60 percent. This provision does not apply to a new plan for the first five plan years. If a plan is subject to any of the above benefit limitations and restrictions, the plan must provide notice of same to all participants and beneficiaries within such time that the plan sponsor knew or should have know that the plan would be subject to the benefit limitations.

Timing rules to implement limitations: A series of special timing rules apply for determining whether a plan's funded percentage is below one of the thresholds for applying the benefit limitation thresholds, based on annual certifications that are to be provided by the plan actuary. If a plan was subject to a benefit limitation in the prior year, then the funding percentage is presumed not to have improved in the current year until the plan actuary certifies that the funded status at the valuation date for the current plan year has improved sufficiently so that the benefit limitation does not apply for the current year. If a benefit limitation did not apply in the prior year, but the funding percentage for that year was no more than 10 percentage points above the threshold for applying that benefit limitation, then the plan's funding percentage is automatically presumed to have been reduced by 10 percentage points for the current plan year as of the first day of the fourth month of the plan year unless and until the actuary certifies that the funded status is such that the benefit limitation does not apply for the current plan year. If an actuarial certification fails to be completed by the first day of the 10th month of the plan year, then the plan's funding percentage for the plan year is presumed not to ex-

ceed 60 percent for the current year for purposes of the benefit limitations.

Restoration of plan benefits: Plans that are frozen or for which lump sums or other accelerated benefit forms are prohibited would be permitted to resume accruals and accelerated benefit forms in a subsequent plan year only by a plan amendment. The plan amendment may be adopted at any time after the first valuation date on which the plan's assets exceed the applicable threshold percentage. If a plan's accruals are ceased by reason of a failure of its actuary to make an appropriate certification, the restoration of such plan benefits does not require a plan amendment.

Notice requirement: The plan administrator must provide written notice to plan participants and beneficiaries within 30 days after the plan has become subject to any of the above restrictions. Any failure to provide notice will automatically result in a civil penalty.

Effective date: The benefit limitation provisions apply to a plan after 2006, with the exception that in the case of a collectively bargained plan, the benefit limitation provisions apply to plan years beginning the earlier of: (1) the date on which the last collective bargaining agreement expires; or (2) 2009. A plan does not fail to meet the requirements of the anti-cutback rule under ERISA or the IRC solely by reason of compliance with the requirements of this section.[98]

SUBTITLE B—AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986

SUBTITLE C—OTHER PROVISIONS

Sec. 121. Modification of transition rule to pension funding requirements

Section 121 creates a transition rule to the pension funding requirements for any plan sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service for any plan year beginning after 2005. For purposes of the quarterly contributions requirement, the plan is treated as not having a funding shortfall for any plan year; therefore, no quarterly contributions are required. The plan may also use its own mortality table and not the standard table prescribed under the bill for purposes of determining any present value or making any calculation under the minimum funding rules for the plan and the amount of unfunded vested benefits under the plan for purposes of calculating PBGC variable rate premiums.

For the purpose of calculating the plan's funding target under this section, the applicable percentage is determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is:
2006	90 percent.
2007	92 percent.
2008	94 percent.
2009	96 percent.

[98] See ERISA § 204(g) and IRC § 411(d)(6).

In the case of a plan year beginning in calendar year:	The applicable percentage is:
2010	98 percent.

Sec. 122. Treatment of nonqualified deferred compensation plans when employer defined benefit plan is in at-risk status

Section 122 provides that, if during any period in which a defined benefit pension plan of an employer is in at-risk status, assets are set aside (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation, such assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under section 83 of the Internal Revenue Code.

If a nonqualified deferred compensation plan of an employer provides that assets will be restricted to the provision of benefits under the plan in connection with the at-risk status (or other similar financial measure determined by the Secretary of Treasury) of any defined benefit pension plan of the employer, or assets are so restricted, such assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under section 83 of the Internal Revenue Code.

Any subsequent increases in the value of, or any earnings with respect to, transferred or restricted assets are treated as additional transfers of property. In addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the amounts been includable in income for the taxable year in which first deferred or, if later, the first taxable year not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to an additional 20 percent tax.

The provision is effective for transfers and other restrictions of assets on or after January 1, 2006. Assets set aside or transferred before January 1, 2006, for purposes of paying nonqualified deferred compensation, are not subject to the provision.

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

SUBTITLE A—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 201. Funding rules for multiemployer defined benefit plans

Minimum funding standards for multiemployer plans: Section 201 provides that any amounts attributable to unfunded past service liability (for plans established after 1974), plan amendments, investment gains and losses, actuarial changes, and any waived funding deficiency are to be amortized over a fifteen year period. These new amortization periods apply to any amortization bases established after the date of enactment of the bill. Each plan is required to establish a funding standard account, which will be charged or credited with the normal cost of the plan and any amortization shortfall amount. The value of a plan's assets shall be de-

termined on the basis of reasonable actuarial methods of valuation which offer the best estimate of anticipated experience under the plan. Interest must be charged or credited to the funding standard account (as prescribed by the Secretary of the Treasury) at an appropriate rate consistent with the rate or rates of interest used to determine costs under the plan.

Extension of amortization periods: Section 201 provides that the Secretary of the Treasury shall, upon application, automatically extend the period of years required to amortize any unfunded liability of a plan for a period of time not in excess of five years if the Secretary determines that, absent the extension, the plan would have an accumulated funding deficiency in any of the next 10 plan years, the plan sponsor has adopted a plan to improve the plan's funded status, and the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenses. Prior to the Secretary granting the automatic extension, each applicant is required to provide notice of the filing of the application for such extension to each contributing employer, employee organization, and the PBGC. The notice must also include a description of the extent to which the plan is funded for benefits which are guaranteed by the PBGC and for benefit liabilities.

The Secretary may grant an additional amortization extension for cause, for a period of time not in excess of five years, if he determines that the failure to permit the extension would result in a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or employee compensation, and would be adverse to the interests of plan participants in the aggregate.

Interest rate for extensions: The rate of interest applicable in connection with an extension granted is the greater of: (1) 150 percent of the federal mid-term rate, or (2) the rate of interest used under the plan for determining costs.

Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status

Certification: Beginning on the first day of each plan year, the plan actuary must certify within 90 days to the Secretary of the Treasury whether a plan is in endangered or critical status for a plan year. If certification is not made before the end of the 90-day period, the plan is presumed to be in critical status until the actuary makes a contrary certification. Any certification must take into account any reasonable actuarial assumptions and methods of the current value of plan assets and the present value of all liabilities for the current and succeeding plan years as well as any reasonably anticipated employer and employee contributions for the current and succeeding plan years. If certification is not made before the end of the 90-day period, the plan is presumed to be in critical status for the plan year until such time as the plan actuary makes a contrary certification.

Notice requirements: If a plan is determined to be an endangered or critical plan, notice must be given no later than 30 days after certification is made that the plan is in endangered or critical status. The notice must be provided to the participants, contributing employers, unions, the Secretary of Labor, and the Secretary of the Treasury.

Funding improvement plan: If a plan is certified to be in endangered status for a plan year, the plan sponsor must amend the plan to include a funding improvement plan upon approval by the bargaining parties within 240 days after the date on which the plan is certified to be in endangered status. The funding improvement plan must result in a ⅓ projected improvement in the plan's funded percentage and a prevention of an accumulated funding deficiency during the funding improvement period, taking into account any extension of amortization periods. A summary of the funding improvement plan, as well as any modifications to the plan, must be included in the plan's annual report.

Endangered status: A plan is considered an endangered plan if the plan has a funded liability percentage of less than 80 percent, or there is a projected deficiency in the any of the next seven plan years (including the current plan year).

Standard funding improvement period: Unless the special rules for certain seriously underfunded plans apply, the funding improvement period is the 10-year period beginning on the earlier of the second anniversary of the date of adoption of the funding improvement plan or the first day of the first plan year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

Special rule for seriously underfunded plans: A plan is also considered to be an endangered plan if the plan has a funded liability percentage of 70 percent or less; for such plans, the funding improvement plan must result in a ⅕ projected improvement in the plan's funded percentage and a prevention of an accumulated funding deficiency during the funding improvement period, taking into account any extension of amortization periods. For purposes of this paragraph, the funding improvement period is the 15 year period beginning on the earlier of the second anniversary of the date of adoption of the funding improvement plan or the first day of the first plan year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

A plan is also considered to be an endangered plan if the plan has a funded percentage of greater than 70 percent but less than 80 percent and the plan actuary certifies within 30 days after the plan is certified to be an endangered plan that the plan is not able to meet the standard ⅓ projected improvement in the plan's funded percentage and a prevention of an accumulated funding deficiency during the funding improvement period, taking into account any extension of amortization periods within the 10 year period. However, such plan meeting this special rule must adopt a funding improvement plan that will improve the plan's funded percentage by ⅕ during the funding improvement period. For purposes of this paragraph, the funding improvement period is the 15 year period beginning on the earlier of the second anniversary of the date of adoption of the funding improvement plan or the first day of the first plan year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

Actions taken by plan sponsor pending approval: A plan sponsor must take all permitted action (under the terms of the plan and applicable law) necessary to increase the plan's funded liability percentage, and postpone an accumulated funding deficiency by at least one additional year. Such actions may include requesting an

amortization extension, use of the shortfall method, modification of the plan's benefit structure and/or the reduction of future benefit accruals, and any other reasonable action consistent with the terms of the plan and applicable law.

Recommendations by a plan sponsor: Within 90 days following a plan's certification, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit and contribution structures which, if adopted, may reasonably be expected to meet the funding improvement benchmarks. Proposals by the plan sponsor must include: (1) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law); and (2) at least one proposal for increases in contributions necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

Upon the request of any bargaining party who employs at least five percent of the active plan participants or represents an employee organization representing at least five percent of active participants, the plan sponsor shall provide the parties with information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks. A plan sponsor may prepare and provide the bargaining parties with any additional information relating to the contribution or benefit structures or any other information relevant to the funding improvement plan.

Maintenance of contributions pending approval: Pending approval of a funding improvement plan by the bargaining parties, a plan may not be amended to reduce the level of contributions for participants not in pay status, to suspend contributions, or to directly or indirectly exclude any younger or newly hired employees from plan participation.

Benefit restrictions pending approval of funding improvement plan: Pending approval of a funding improvement plan, a plan may not be amended to distribute, as a lump sum distribution or as any other accelerated form, the present value of a participant's accrued benefit exceeding $5,000. In addition, the plan may not adopt any amendment that would result in an increase of plan liabilities by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan, unless the amendment is required as a condition of plan qualification under the Internal Revenue Code.

Default if no funding improvement plan adoption: If no funding improvement plan is adopted by the end of the 240-day period, the plan is considered in critical status as of the first day of the succeeding plan year.

Restrictions upon approval of funding improvement plan: Once a funding improvement plan has been adopted by the bargaining parties, the plan may not be amended so as to be inconsistent with the funding improvement plan or to increase future benefit accruals, unless the plan actuary certifies, after taking into account the proposed increase, that the plan is reasonably expected to meet the funding improvement benchmarks.

Critical status: A plan is considered to be in critical status if it is an endangered plan that does not comply with requirements appertaining to such plans, or if it is projected to meet one of several tests: (1) if, as of the first day of the plan year, the plan's funded liability percentage is less than 65 percent, and the sum of the market value of assets plus anticipated contributions for the current and each of the six succeeding plan years is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current and each of the six succeeding plan years plus administrative expenses; (2) if, as of the first day of the plan year, the plan's market value of assets plus anticipated contributions for the current and each of the four succeeding plan years equals less than the present value of all nonforfeitable benefits projected to be payable during the current and each of the four succeeding plan years; (3) if, as of the first day of the plan year, the plan is less than 65 percent funded and will have an accumulated funding deficiency for any of the four succeeding plan years (taking into account any amortization extensions); (4) if the plan's normal cost for the year plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year exceeds the present value, as of the beginning of the current plan year, of the projected contributions for the current plan year, and the present value of the nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and the plan is projected to have an accumulated funding deficiency in the current or any of the 4 succeeding plan years; or (5) if the funded liability percentage of the plan is greater than 65 percent for the current plan year and the plan is projected to have an accumulated funding deficiency during either of the following three plan years, not taking into account any extension of amortization periods.

In any case in which a plan is certified to be in critical status for a plan year, the plan sponsor must amend the plan to include a rehabilitation plan upon approval by the bargaining parties within 240 days after the date on which the plan is certified to be in endangered status.

Rehabilitation plan: A rehabilitation plan shall consist of plan amendments that would take the plan out of critical status within 10 plan years. The rehabilitation plan may include a combination of contribution increases, expense reductions (including possible mergers), funding relief measures, and/or benefit reductions. These changes must be adopted by all bargaining parties. If the plan cannot emerge from reorganization within 10 years, the rehabilitation plan must describe alternatives, explain why emergence from reorganization is not feasible, and develop actions that the trustees must take to postpone insolvency. A summary of the rehabilitation plan, as well as any modifications to the plan, must be included in the plan's annual report.

Rehabilitation period: The rehabilitation period is the 10-year period beginning on the earlier of the second anniversary of the date of adoption of the rehabilitation plan or the first day of the first plan year in which collective bargaining agreements covering at least 75 percent of active participants have expired.

Development of rehabilitation plan: Within 90 days following a plan's certification, the plan sponsor shall develop and provide to the bargaining parties proposals for revised benefit and contribution structures which, if adopted, reasonably would be expected to ensure that the plan is no longer a critical plan. Proposals by the plan sponsor shall include: (1) at least one proposal for reductions in the amount of future benefit accruals necessary to cause the plan to cease to be in critical status, assuming no amendments increasing contributions under the plan; and (2) at least one proposal for increases in contributions necessary to cause the plan to cease to be in critical status, assuming all future benefit accruals were reduced to the maximum extent permitted by law.

Upon the joint request of all bargaining parties who employ at least five percent of the active plan participants or represent at least five percent of active participants, the plan sponsor shall provide the parties with information as to other combinations of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

Limitation on reduction in rates of future accruals: Any schedule must not reduce the rate of future accruals below the lower of: (1) a monthly benefit equal to one percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreement in effect as of the first day of the plan year in which the plan enters critical status; or (2) if lower, the accrual rate under the plan on such date. The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

Default schedule: If no default schedule is adopted by the end of the 240 day period following certification, the plan sponsor shall amend the plan to implement one of the proposals for reductions in the amount of future benefit accruals necessary to cause the plan to cease to be in critical status, assuming no amendments increasing contributions under the plan are made.

Allocation of reductions in future benefit accruals: Any schedule containing reductions in future benefit accruals is applicable to active participants in proportion to the extent to which increases in contributions under the schedule apply to such bargaining party.

Maintenance of contributions pending approval: Pending approval of a rehabilitation plan by the bargaining parties, the plan may not be amended to reduce the level of contributions for participants not in pay status, to suspend contributions, or to directly or indirectly exclude any younger or newly hired employees from plan participation.

Special rules—automatic employer surcharge: For the first plan year in which the plan is in critical status, each contributing employer in the plan is obligated to pay to the plan a surcharge equal to five percent of the contribution otherwise required under the collective bargaining agreement in effect (or other agreement pursuant to which the employer contributes). For each consecutive plan year thereafter in which the plan is in critical status, the surcharge is 10 percent of the contribution otherwise required under the collective bargaining agreement in effect (or other agreement pursu-

ant to which the employer contributes). The surcharges are required to be paid to the plan on the same schedule as the plan contributions. Any failure to pay the surcharge is treated as a delinquent contribution. The requirement to pay the surcharge ceases on the date on which the agreement is renegotiated to include the rehabilitation plan. The amount of any surcharge shall not be the basis for any benefit accruals under the plan.

Special rules—benefit adjustments: The trustees of a plan in critical status may not reduce adjustable benefits of any participant or beneficiary in pay status at least one year before the first day of the first plan year in which the plan enters into critical status. The trustees shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted and considered appropriate based on the plan's then current overall funding status and its future prospects in light of the results of the parties negotiations.

An adjustable benefit is defined as any benefit, right, or feature (other than the accrued benefit payable at normal retirement age, except as otherwise provided under this bill), such as post-retirement death benefits, 60–month guarantees, disability benefits not yet in pay status and similar benefits, retirement-type subsidies, early retirement benefits and benefit payment options (other than the 50 percent qualified joint-and-survivor benefit and single life annuity), and benefit increases that would not be eligible for a guarantee by the PBGC on the first day of the first plan year in which the plan enters into critical status because they were adopted, or if later, took effect less than 60 months before reorganization.

Any benefit reductions shall be disregarded in determining a plan's unfunded vested benefits and any surcharges shall be disregarded for purposes of determining an employer's withdrawal liability.

Benefit restrictions pending approval of rehabilitation plan: Pending approval of the funding improvement plan, the plan may not be amended to distribute, as a lump sum distribution or as any other accelerated form, the present value of a participant's accrued benefit exceeding $5,000. In addition, the plan may not adopt any amendment that would result in an increase of plan liabilities by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan, unless the amendment is required as a condition of plan qualification under the Internal Revenue Code.

Deemed withdrawal: The failure of any contributing employer to make the required contributions in compliance with the rehabilitation plan may, at the discretion of the plan sponsor, be treated as a partial or complete withdrawal by that contributing employer from the plan.

Sec. 203. Measures to forestall insolvency of multiemployer plans

Section 203 provides that if a plan sponsor makes a determination that the plan will be insolvent in any of the next five plan years, the plan sponsor shall make an annual assessment of the current rehabilitation plan and take any steps necessary within the

limitations of this bill until a determination is made that the plan will not be insolvent in any of the next five plan years.

Sec. 204. Withdrawal liability reforms

Repeal of ERISA section 4225: The current law provision reduces or subordinates withdrawal liability claims involving employer liquidation and insolvency. The liability of insolvent employers is capped at 50 percent of withdrawal liability plus 50 percent of the remaining liquidation value under current law. H.R. 2830 repeals this provision.

Repeal of ERISA section 4219(c): The current law provision arbitrarily limits an employer's withdrawal liability payments to twenty years of payments. H.R. 2830 repeals this provision.

Partial withdrawal by means of outsourcing: This provision clarifies that an employer who performs the same work formerly covered by a pension plan incurs partial (or complete) withdrawal liability from the plan if contractor employees are performing the same work as any former employees for whom contributions in the plan used to be made.

Repeal of special trucking industry rule: The current law rules created a withdrawal liability exemption for those companies in the long and short haul trucking industry. H.R. 2830 repeals this provision.

Application of forgiveness rule to plans in building and construction: The bill allows certain plans covering employees in the building and construction industry to elect to adopt a rule under which an employer who withdraws from the plan in a complete or partial termination is not liable to the plan if the employer was a contributing employer for less than five years. This rule is applicable to plans in other industries under current law.

Effective Date: The amendments made by this subsection apply to plan withdrawals occurring on or after January 1, 2006.

Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability

Section 205 provides that a plan sponsor may only make a claim against an employer alleging that the principle purpose of a transaction was to evade or avoid withdrawal liability for transactions occurring in the previous five plan years or two plan years in the case of a small employer. A small employer is any employer who (immediately before the transaction) employs not more than 500 employees and is required to make contributions to the plan for not more than 250 employees.

SUBTITLE B—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

TITLE III—OTHER PROVISIONS

Sec. 301. Interest rate assumption for determination of lump sum distributions

Section 301 amends the ERISA and the Internal Revenue Code to provide applicable mortality tables and interest rate assumptions for determination of lump sum distributions. The mortality table used for determination of lump sum distributions must be the same mortality table used under section 102 of the bill; however,

plans must consider that an equal number of male and female participants will take a lump sum distribution. The three segment rates determined by the Secretary of Treasury's modified yield curve used to calculate a plan's liability under section 102 of the Pension Protection Act must also be used to calculate minimum lump sum distributions for participants. The applicable segment rate used for calculating a participant's lump sum distribution is the same rate that is used to fund for the pension liability of that individual. There is a five-year phase-in of this provision.

Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions

Section 302 provides that in adjusting a lump sum benefit for purposes of applying the limits on benefits payable under a defined benefit plan, the interest rate used must be not less than the greater of 5.5 percent or the rate that provides a benefit of not more than 105 percent of the benefit that would be provided by the applicable segment rate or the rate of interest specified under the plan.

Sec. 303. Distributions during working retirement

Section 303 amends the definition of an employee pension plan to include that a distribution from a plan, fund, or program shall not be treated as made in a form other than retirement income or as a distribution prior to termination of covered employment solely because such distribution is made to an employee who has attained age 62 and who is not separated from employment at the time of the distribution.

Sec. 304. Other amendments relating to prohibited transactions

Section 304 amends ERISA to clarify certain prohibited transaction rules:

Definition of "Amount Involved." The "amount involved" in a transaction is clarified to mean the amount of money and/or the fair market value of property either given or received as of the date on which the prohibited transaction occurs. The definition of "amount involved" is clarified to provide that the civil penalties imposed for any prohibited transaction may not exceed 5 percent of the amount involved.

Exemption for Block Trading. This exemption includes any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary with respect to the plan) if the transaction involves a block trade, if at the time of the transaction, the interests of the plan (together with the interests of any other plans maintained by the same plan sponsor) does not exceed 10 percent of the aggregate size of the block trade, and if the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction.

Bonding Relief. This exemption amends ERISA's bonding rules to reflect the regulation of broker-dealers and investment advisers under federal securities law;

Conforming ERISA's Prohibited Transaction Provision to Federal Employee Retirement System Act (FERSA). This provision exempts certain transactions between a plan and a party in interest solely by reason of providing services, but only if in connection with such

transaction, the plan receives no less and pays no more than adequate consideration. Adequate consideration is the price of a security prevailing on a national securities exchange registered under the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability. If the security is not traded on a national securities exchange, a price not less favorable to the plan than the offering price for the security must be used as established by the current bid and asked prices quoted by persons independent of the issuer and party in interest, taking into account factors such as the size of the transaction and marketability. In the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset shall be determined in good faith by a fiduciary in accordance with regulations prescribed by the Secretary of the Treasury.

Exemption for Electronic Communication Network. This exemption allows for any transaction involving the purchase or sale of securities or other property between a plan and a party in interest if the transaction is executed through an exchange, electronic communications network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by the applicable governmental regulating entity, provided that the identity of the parties in the execution of the transaction are not taken into account and the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the communications network.

Definition of Plan Asset Vehicle. This provision excludes the underlying assets of entities which hold less than 50 percent of plan assets from the fiduciary rules under ERISA. For purposes of determining the 50 percent threshold, the value of any equity interest owned by a person (other than the employee benefit plan) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect), is disregarded.

Exemption for Foreign Exchange Transactions. This provision exempts any foreign transactions between a bank or broker-dealer, or any affiliate, and a plan to which any bank or broker-dealer, or any affiliate, is a trustee, custodian, fiduciary, or other party in interest, provided that the transaction is in connection with the purchase or sale of securities, at the time the transaction is entered into and the terms of the transaction are not less favorable to the plan than the terms generally available or afforded in a comparable arm's length foreign exchange transaction between unrelated parties. In addition, the exchange rate used by the bank or broker-dealer for a foreign exchange transaction must be at a rate no less favorable than the rate quoted for transactions of similar size at the time of the transaction as displayed on an independent service that reports rates of exchange, and there is no investment discretion or advice provided by the bank or broker-dealer, or any affiliate with respect to the transaction.

Sec. 305. Correction period for certain transactions involving securities and commodities

This provision provides a 14-day correction period, beginning on the date on which the fiduciary or party in interest or other person discovers or reasonably should have discovered the prohibited

transaction, for any transactions that occurs by mistake between a plan and a party-in-interest or fiduciary.

Sec. 306. GAO study

This provision calls upon the Comptroller General of the Government Accountability Office to transmit to the Congress a pension funding report not later than one year after the date of enactment of the bill that will include an analysis of the feasibility, advantages, and disadvantages of requiring an employee pension benefit plan to insure a portion of such plan's total investments; requiring an employee pension benefit plan to adhere to uniform solvency standards set by the PBGC which are similar to those applied on a state level in the insurance industry; and amortizing a single-employer defined benefit pension plan's shortfall amortization base over various periods of not more than seven years.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

Sec 401. Increases in PBGC premiums

This section provides for an increase in the PBGC yearly insurance premium paid by plans to the PBGC. Plans with a funding target percentage less than 80 percent will have a three year phase-in of premiums from the current $19 dollars to $30 dollars per participant per year, including an inflation adjustment each year to the national wage index. Plans with a funding target percentage of 80 percent or higher funded will have a five year phase-in of $19 dollars to $30, including inflation adjustment each year to the national wage index.

TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notices

Section 501 amends section 101(f) of ERISA to apply such notices to all defined benefit (single employer and multiemployer) plans. The notice is now due 90 days after the end of the plan year. The notice must include a statement of the ratio of inactive participants to active participants in the plan. This section also requires that plan sponsors include in the notice a statement of a reasonable estimate of the value of plans assets and projected liabilities as well as the plan's funded ratio. The notice must also include a statement of the plan's funding policy and the asset allocation of investment under the plan (as expressed as a percentage of the total assets).

For multiemployer plans, this notice shall include a summary of any funding improvement plan or rehabilitation plan as well as the statement of the ratio, as of the end of the plan year to which the notice relates, of the number of participants who are not in covered service and are in pay status under the plan or have a nonforfeitable right to benefits under the plan to the number of participants who are in covered service under the plan.

Sec. 502. Additional disclosure requirements

Section 502 provides new requirements for plans filing a Form 5500 report with the Department of Labor. Specifically, this section

provides that defined benefit plans (both single and multiemployer plans) will be required to file the ratio of the number of inactive participants to the number of active participants as of the end of the plan year. If plans have merged and are making one filing, the funded percentage of the preceding plan year and the new funded percentage after the plan merger must also be reported. On the Schedule B, the plan's enrolled actuary must provide an explanation detailing the basis for all plan retirement assumptions. With respect to multiemployer plans, the plan sponsor must include in the filing the number of contributing employers in a plan as well as the number of employees in the plan who no longer have a contributing employer on their behalf must also be reported. The deadline for filing the annual report for any plan year is 275 days after the close of the plan year. The Secretary of Labor may grant an extension only in cases of hardship in accordance with regulations.

Summary Annual Report: A Summary Annual Report must be filed within 15 days after the deadline for the filing of the Annual Report.

Information to be made available: Section 502 requires that the trustees of a multiemployer plan make available upon request by any contributing employer, participant, or beneficiary, within 30 days of receipt by the plan sponsor, copies of all actuary reports and financial reports received by the plan for a plan year. Plans are permitted to charge reasonable fees for copying and mailing this information. The bill also provides that the Secretary of Labor shall identify alternative methods of disclosure within 90 days from the date of enactment of the bill.

Withdrawal liability notice: This section gives contributing employers the right to a notice of the amount of their withdrawal liability. Only one notice can be provided within any 12–month period. The plan sponsor may make any reasonable charge to cover copying, mailing, and other costs attributable to furnishing such notice. This information must be provided within 180 days after a written request.

Sec. 503. Section 4010 filings with the PBGC

Section 503 makes changes to the requirements under Section 4010 of ERISA which require the reporting of actuarial and financial information by certain controlled groups with plans that have significant unfunded vested benefits. Additional requirements are established for single employer plans that will require the sponsoring employer to notify all participants and beneficiaries (including those participants and beneficiaries that are members of the sponsoring employer's controlled group), within 90 days after the 4010 filing is due, of the following information: (1) notification that a 4010 filing has been made for the plan year; (2) the number of plans maintained by the sponsoring employer (including plans maintained by any controlled group member) that are less than 60 percent funded, and (3) the assets, liabilities, and funded ratio for those plans that are less than 60 percent funded. The notice must also include, in the aggregate, the total values of plan assets and funding targets of such plans, taking into account only those benefits to which participants and beneficiaries have a nonforfeitable

right as well as the aggregate funding target attainment percentage of the plan.

The requirements for filing a 4010 are amended to require a filing if the aggregate funding target percentage of the plan, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of the applicable plan year, is less than 60 percent; or the aggregate funding target of a plan, taking into account the aggregate values of plan assets and funding targets of all plans maintained by the contributing sponsor and the members of its controlled group as of the end of the applicable plan year, is less than 75 percent and the plan sponsor is in an industry, determined by the PBGC, in which there is substantial unemployment or underemployment and in which the sales and profits are depressed or declining.

TITLE VI—INVESTMENT ADVICE

Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice

Section 601 provides a statutory exemption from the prohibited transaction rules of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (a new §408(b)(14) of ERISA and a new §4975(d)(14) of the IRC) for: (1) the provision of investment advice regarding plan assets subject to the direction of plan participants and beneficiaries plan to a plan, its participants and beneficiaries; (2) the sale, acquisition, or holding of securities or other property pursuant to such investment advice; and (3) the direct or indirect receipt of fees or other compensation in connection with providing the advice.

In order to qualify for the exemption, an entity must be a "fiduciary adviser" and must meet a series of detailed requirements. The bill defines the following regulated entities to qualify as fiduciary advisers: registered investment advisers, the trust department of banks or similar institutions, insurance companies, registered broker-dealers, and the affiliates, employees, agents, or registered representatives of those entities who satisfy the requirements of the applicable insurance, banking and securities laws with respect to the provision of such advice.

The fiduciary adviser, at a time reasonably contemporaneous with the initial delivery of investment advice on a security or other property, must provide a clear and conspicuous written (including electronic) disclosure of: (1) the fees or other compensation that the fiduciary adviser and its affiliates receive relating to the provision of investment advice or a resulting sale or acquisition of securities or other property (including from third parties); (2) any interest of the fiduciary adviser (and its affiliates) in any security or other property recommended, purchased or sold; (3) any limitation placed on the fiduciary's ability to provide advice; (4) the advisory services offered; (5) the fact that the adviser is acting as a fiduciary of the plan in connection with the provision of such advice; (6) any information required to be disclosed under applicable securities laws; and (7) the plan participant's right to seek advice from an unaffiliated adviser. This disclosure must be written in a way that the average plan participant could understand the information. This ma-

terial must be maintained in currently accurate form. The Secretary of Labor will issue a model disclosure form.

Any investment advice provided to participants or beneficiaries may be implemented (through a purchase or sale of securities or other property) only at their direction. The terms of the transaction must be at least as favorable to the plan as an arm's length transaction would be, and the compensation received by the fiduciary adviser (and its affiliates) in connection with any transaction must be reasonable. The fiduciary adviser must also provide a written acknowledgement that it is acting as a fiduciary of the plan to the plan sponsor.

Fiduciary advisers must comply with a six-year record-keeping requirement (for records necessary to determine whether the conditions of the exemption have been met).

A plan sponsor or other fiduciary that arranges for a fiduciary adviser to provide investment advice to participants and beneficiaries has no duty to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of advice. The plan sponsor or other fiduciary retains the duty of prudent selection and periodic review of the fiduciary adviser. The fiduciary adviser must acknowledge in writing to the plan sponsor that it is acting as a fiduciary of the plan with respect to the advice provided. Plan assets may be used to pay for the expenses of providing investment advice to participants and beneficiaries.

Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice

Section 602 conforms the Internal Revenue Code to allow for the provision of certain investment advice.

TITILE VII—BENEFIT ACCRUAL STANDARDS

Sec. 701. Improvements in benefit accrual standards

Section 701 clarifies the rules relating to the reduction in accrued benefits under ERISA. A plan is not treated as failing to meet plan requirements under ERISA section 204(b)(1)(H) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents would be equal to or greater than that of any similarly situated, younger individual. An individual is similarly situated to another participant if such individual is identical in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age. In determining the entire accrued benefit, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening account balance or other transition benefits) shall be disregarded.

A plan to which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account does not fail to meet the requirements under ERISA section 204(b)(1)(H) because interest accruing on the account balance is taken into account.

A plan does not fail to meet the requirements under ERISA section 204(b)(1)(H) because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, the Railroad Retirement Act of 1974, or another plan described in IRC section 401(a), and are maintained by the same employer, or under any retirement program or officers or employees of the Federal or State government or one of its political subdivisions. Allowable offsets consist of offsets equal to all or part of the actual benefit payment amounts, or reasonable projections or estimations of such benefit payment amounts.

A plan does not fail to meet the requirements under ERISA section 204(b)(1)(H) because the plan provides a disparity in contributions or benefits with respect to which the requirements of IRC section 401(l) are met.

A plan does not fail to meet the requirements under ERISA section 204(b)(1)(H) because the plan provides for pre-retirement indexing of accrued benefits under the plan. Pre-retirement indexing is the periodic adjustment of the accrued benefit by means of the application of a recognized index or methodology so as to protect the economic value of the benefit against inflation prior to distribution.

Determinations of accrued benefit as balance of benefit account: A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of the hypothetical account for each participant may make available for such distribution under the terms of the plan the balance of the account, calculated by using the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age, so long as the interest rate used does not provide for a return that is greater than a market rate of return, as determined by the Secretary of the Treasury.

The effective date of this provision applies to periods beginning on or after June 29, 2005.

TITLE VIII—DEDUCTION LIMITATIONS

Sec. 801. Increase in deduction limit for single-employer plans

Section 801 provides for an increase in the deduction limit for single-employer plans up to a new higher maximum deductible amount equal to the greater of: (1) the excess of the sum of 150 percent of the plan's funding target plus the target normal cost over the value of plan assets, or (2) the excess of the sum of the plan's at-risk normal cost and at-risk funding target for the plan year over the value of plan assets to 150 percent of the plan's funding target plus the target normal cost.

The increase in the deduction limit for multiemployer plans is the excess of 140 percent of the plan's current liability over the value of plan assets.

The provision also modifies the rules relating to the limitation on deductions for plan sponsors maintaining both defined benefit and defined contribution plans. The bill provides that in the case of employer contributions to one or more defined contribution plans, the

limit shall only apply to the extent that such contributions exceed six percent of the compensation otherwise paid or accrued during the year to beneficiaries under the plan.

EXPLANATION OF AMENDMENTS

The provisions of the Amendment in the Nature of a Substitute are explained in this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This Bill allows amends the Employee Retirement Income Security Act (ERISA) to provide for pension security. Since ERISA excludes governmental plans, the bill does not apply to legislative branch employees. As public employees, legislative branch employees are eligible to participate in the Federal Employee Retirement System.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This bill amends the voluntary pension system provided under the Employee Retirement Income Security Act (ERISA). As such, the bill does not contain any unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

ROLLCALL VOTES

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 BILL H.R. 2830 DATE June 30, 2005
AMENDMENT NUMBER 5 DEFEATED 20 – 25
SPONSOR/AMENDMENT Mr. Tierney / amendment regarding restrictions to plan termination including those in bankruptcy

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON				X
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS				X
Mr. TIBERI		X		
Mr. KELLER		X		
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE				X
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW				X
TOTALS	20	25		4

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 2 BILL H.R. 2830 DATE June 30, 2005
AMENDMENT NUMBER 7 DEFEATED 20 - 25
SPONSOR/AMENDMENT Mr. Wu / amendment regarding limitations on pension plan benefits

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON				X
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS				X
Mr. TIBERI		X		
Mr. KELLER		X		
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE				X
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW				X
TOTALS	20	25		4

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 3 BILL H.R. 2830 DATE June 30, 2005

AMENDMENT NUMBER 8 DEFEATED 21 - 27

SPONSOR/AMENDMENT Ms. Woolsey/ amendment limiting executive compensation in certain circumstances

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER		X		
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW				X
TOTALS	21	27		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 4 BILL H.R. 2830 DATE June 30, 2005
AMENDMENT NUMBER 9 DEFEATED 21 – 27
SPONSOR/AMENDMENT Mr. Miller / amendment regarding cash balance conversions

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD		X		
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER		X		
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE		X		
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW				X
TOTALS	21	27		1

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 5 BILL H.R. 2830 DATE June 30, 2005
AMENDMENT NUMBER 13 DEFEATED 15 - 30
SPONSOR/AMENDMENT Mr. Tierney / amendment regarding investment advice

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD				X
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER		X		
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE				X
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY		X		
Mr. TIERNEY				X
Mr. KIND		X		
Mr. KUCINICH	X			
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN				X
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	15	30		4

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 6 BILL H.R. 2830 DATE June 30, 2005

AMENDMENT NUMBER 16 DEFEATED 22 - 25

SPONSOR/AMENDMENT Mr. Van Hollen / amendment regarding benefit limitations for salary plans

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON		X		
Mr. SOUDER		X		
Mr. NORWOOD				X
Mr. EHLERS		X		
Mrs. BIGGERT		X		
Mr. PLATTS		X		
Mr. TIBERI		X		
Mr. KELLER		X		
Mr. OSBORNE		X		
Mr. WILSON		X		
Mr. PORTER		X		
Mr. KLINE		X		
Mrs. MUSGRAVE				X
Mr. INGLIS		X		
Ms. McMORRIS		X		
Mr. MARCHANT		X		
Mr. PRICE		X		
Mr. FORTUNO		X		
Mr. JINDAL		X		
Mr. BOUSTANY		X		
Mrs. FOXX		X		
Mrs. DRAKE		X		
Mr. KUHL		X		
Mr. MILLER	X			
Mr. KILDEE	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mr. ANDREWS	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. HINOJOSA	X			
Mrs. McCARTHY	X			
Mr. TIERNEY	X			
Mr. KIND	X			
Mr. KUCINICH	X			
Mr. WU	X			
Mr. HOLT	X			
Mrs. DAVIS	X			
Ms. McCOLLUM	X			
Mr. DAVIS	X			
Mr. GRIJALVA	X			
Mr. VAN HOLLEN	X			
Mr. RYAN	X			
Mr. BISHOP	X			
Mr. BARROW	X			
TOTALS	22	25		2

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 7 BILL H.R. 2830 DATE June 30, 2005

H.R. 2830 was ordered favorably reported, as amended, by a vote of 27 Ayes and 22 voting Present

SPONSOR/AMENDMENT Mr. Petri / motion to report the bill to the House with an amendment and with the recommendation that the bill as amended do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. SOUDER	X			
Mr. NORWOOD	X			
Mr. EHLERS	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. TIBERI	X			
Mr. KELLER	X			
Mr. OSBORNE	X			
Mr. WILSON	X			
Mr. PORTER	X			
Mr. KLINE	X			
Mrs. MUSGRAVE	X			
Mr. INGLIS	X			
Ms. McMORRIS	X			
Mr. MARCHANT	X			
Mr. PRICE	X			
Mr. FORTUNO	X			
Mr. JINDAL	X			
Mr. BOUSTANY	X			
Mrs. FOXX	X			
Mrs. DRAKE	X			
Mr. KUHL	X			
Mr. MILLER			X	
Mr. KILDEE			X	
Mr. OWENS			X	
Mr. PAYNE			X	
Mr. ANDREWS			X	
Mr. SCOTT			X	
Ms. WOOLSEY			X	
Mr. HINOJOSA			X	
Mrs. McCARTHY			X	
Mr. TIERNEY			X	
Mr. KIND			X	
Mr. KUCINICH			X	
Mr. WU			X	
Mr. HOLT			X	
Mrs. DAVIS			X	
Ms. McCOLLUM			X	
Mr. DAVIS			X	
Mr. GRIJALVA			X	
Mr. VAN HOLLEN			X	
Mr. RYAN			X	
Mr. BISHOP			X	
Mr. BARROW			X	
TOTALS	27		22	

CORRESPONDENCE

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 12, 2005.

Hon. JOHN BOEHNER,
Chairman, Committee on Education and the Workforce,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Due to a Base Realignment and Closure (BRAC) Regional Hearing in Atlanta regarding a possible closure in my district, I was unable to attend the Committee's mark-up of H.R. 2830, "Pension Protection Act of 2005". Consequently, I was unable to vote on the following amendments: Representative Tierney's amendment regarding defined benefit terminations; Representatives Wu and Van Hollen's amendment regarding shutdown benefits; Representatives Woolsey and Van Hollen's amendment regarding executive parity in benefit restrictions; and Representative Miller's amendment regarding cash balance plans. Had I been present, I would have voted in favor of each of these amendments.

I would appreciate your including this letter in the Committee Report to accompany H.R. 2830. Thank you for your attention in this matter.

Sincerely,

JOHN BARROW.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2830 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 9, 2005.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2830, the Pension Protection Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Geoffrey Gerhardt.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 2830—Pension Protection Act of 2005

Summary: H.R. 2830 would make changes to the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC) that would affect the operations of private pension plans. It would do so mostly by changing the funding requirements for tax-qualified, defined-benefit pension plans and the premiums paid to the Pension Benefit Guaranty Corporation (PBGC).

The budgetary effects of the bill would result from:

• Increased income to the PBGC from premiums paid by the sponsors of pension plans—totaling an estimated $5.1 billion over the next 10 years.

• A loss of federal income tax revenue, primarily because more rigorous funding rules would be imposed on plans' sponsors; the Joint Committee on Taxation (JCT) estimates that enacting H.R. 2830 would reduce federal revenues by $5.5 billion over the 2006–2015 period.

• Additional benefit payments—totaling an estimated $0.5 billion over 10 years—that the PBGC would have to make as a result of a number of changes made by the bill.

In combination, those effects would add $0.8 billion to federal budget deficits over the 2006–2015 period, CBO estimates. The additional premium income would have another effect: it would increase the balances in the PBGC's on-budget revolving fund and therefore forestall the need for significant transfers to that revolving fund from the PBGC's nonbudgetary trust fund in order pay insured benefits. Because those transfers are treated in the budget as offsetting collections (that is, offsets to outlays), smaller transfers would result in higher net outlays for PBGC's on-budget revolving fund. The improvement in the financial condition of that fund would eliminate the need for $7.4 billion in transfers to the fund from 2013 through 2015, CBO estimates, thereby increasing on-budget outlays by that amount. Adding that effect to the other impacts of the bill, CBO projects that enacting H.R. 2830 would increase federal budget deficits by $8.2 billion over the 2006–2015 period.

The bill would improve the budget outlook in the near term but would increase budget deficits in later years because of the way some of the provisions would phase in and because the reduction in transfers to the on-budget revolving fund would occur towards the end of the 10-year period. CBO estimates that enacting the bill would reduce federal deficits by $5.7 billion over the 2006–2008 period, but would add $13.9 billion to budget shortfalls from 2009 through 2015.

Major provisions of H.R. 2830 would:

• Require sponsors of single-employer pension plans to meet a funding target that is at least 100 percent of current liabilities;

• Specify that the discount rate used to calculate the present value of current pension liabilities be based on a segmented yield curve of corporate bonds rather than the interest rate on 30-year Treasury bonds;

• Restrict the use of credit balances to offset required pension contributions;

• Place limits on benefit accruals for participants in certain underfunded plans;

• Increase the limits on the tax-deductible contributions sponsors may make to plans;

• Increase the per-participant premium paid to the PBGC for single-employer plans;

• Change the funding rules for multiemployer pension plans;

• Enhance disclosure requirements for both single-employer and multiemployer pension plans; and

• Address the legal status of so-called hybrid defined-benefit pension plans.

Not all of these policies would directly affect federal spending or revenues.

Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting H.R. 2830 would not cause an increase in direct spending greater than $5 billion in any of the 10-year periods between 2016 and 2055.

CBO has reviewed the nontax portions of H.R. 2830 and determined that they contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Those provisions would impose a number of mandates on sponsors and administrators of single-employer and multiemployer private pension plans. CBO estimates that the direct cost of those private-sector mandates, less the direct savings from those mandates, would exceed the annual threshold specified in UMRA ($123 million in 2005, adjusted annually for inflation) in 2009 and subsequent years.

JCT has determined that the tax provisions of H.R. 2830 contain no intergovernmental or private-sector mandates as defined in UMRA.

Estimated cost the Federal Government: The estimated budgetary impact of H.R 2830 is shown in the following table. The costs of this legislation would fall within budget function 600 (income security).

Basis of estimate: H.R. 2830 contains changes to both ERISA and the Internal Revenue Code that would affect sponsors of defined-benefit pension plans. Under current law, the funding rules are exactly the same in both ERISA and IRC. In certain instances, however, changes made by the bill to the pension funding requirements of ERISA are inconsistent with changes made to the funding rules in the IRC. CBO's and JCT's budget estimates assume that, if H.R. 2830 is enacted, additional changes would be made to the IRC to make it consistent with those changes made to ERISA by H.R. 2830. Those estimates also assume that H.R. 2830 and the corresponding changes to the IRC will be enacted by December 2005.

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Changes in Flat-Rate Premiums Paid to PBGC:										
Estimated Budget Authority	−79	−158	−240	−314	−552	−586	−655	−690	−759	−828
Estimated Outlays	−79	−158	−240	−314	−552	−586	−655	−690	−759	−828
Changes in Variable Premiums Paid to PBGC:										
Estimated Budget Authority	0	−25	−170	−246	−255	−191	−68	66	237	360
Estimated Outlays	0	−25	−170	−246	−255	−191	−68	66	237	360
Changes in Net Benefit Payments:										
Estimated Budget Authority	−1	*	6	19	35	54	72	88	101	112
Estimated Outlays	−1	*	6	19	35	54	72	88	101	112
Subtotal:										
Estimated Budget Authority	−80	−184	−404	−541	−771	−722	−651	−536	−421	−356
Estimated Outlays	−80	−184	−404	−541	−771	−722	−651	−536	−421	−356
Changes in Transfers from PBGC's Nonbudgetary Trust Fund:										
Estimated Budget Authority	0	0	0	0	0	0	0	1,068	3,092	3,222
Estimated Outlays	0	0	0	0	0	0	0	1,068	3,092	3,222
Total Changes in Direct Spending:										
Estimated Budget Authority	−80	−184	−404	−541	−771	−722	−651	532	2,671	2,866
Estimated Outlays	−80	−184	−404	−541	−771	−772	−651	532	2,671	2,866
CHANGES IN REVENUES										
Changes to Funding Rules for Single-Employer Plans	778	2,584	1,761	−1,420	−2,502	−2,185	−1,757	−1,070	−758	−659
Changes to Funding Rules for Multiemployer Plans	*	−2	−8	−18	−28	−34	−40	−46	−52	−58
Changes to Benefit Accrual Standards	−24	−9	1	6	−3	−8	6	25	29	13
Total Changes in Revenue	754	2,573	1,754	−1,432	−2,533	−2,227	−1,791	−1,091	−781	−704
NET INCREASE OR DECREASE (−) IN BUDGET DEFICITS										
Net of Transfers from PBGC's Nonbudgetary Trust Fund	−834	−2,757	−2,158	891	1,762	1,505	1,140	1,623	3,452	3,570
Excluding Transfers from PBGC's Nonbudgetary Trust Fund	−834	−2,757	−2,158	891	1,762	1,505	1,140	555	360	348

SOURCES: Congressional Budget Office and Joint Committee on Taxation.
NOTES: PBGC = Pension Benefit Guaranty Corporation.
* = less than $500,000.

Direct spending

Increase in Flat-Rate Premium. Under current law, sponsors of single-employer pension plans insured by the PBGC are required

to pay the agency a premium of $19 per participant. H.R. 2830 would increase the flat-rate premium to $30 per participant in 2006 and index it to wage growth starting in 2007. However, no plans would pay the full increase immediately. The bill would phase in the rate increase differently depending on whether the ratio of a plan's assets to its liabilities (known as its funding ratio) is above or below 80 percent. For plans that have a funding ratio of 80 percent or higher, the increased rate would be phased in over a five-year period; for plans with a funding ratio of less than 80 percent, the rate increase would be phased in over a three-year period. Both phase-in periods would begin in 2006 and the premium rate for all single-employer plans would be the same—approximately $35 per participant—by 2010.

About 35 million people currently participate in tax-qualified, single-employer pension plans. This figure includes active workers, former workers who are vested but have not started collecting retirement benefits, and annuitants. The number of participants in single-employer plans insured by the PBGC has remained nearly constant for the past decade, and CBO assumes it would remain steady for the next 10 years.

The current premium of $19 per participant generates about $650 million in premium income annually for the PBGC. CBO estimates changes to the flat-rate premiums made by H.R. 2830 would increase receipts by $1.3 billion over the 2006–2010 period and $4.9 billion over the 2006–2015 period. The varying amounts of additional premiums from year to year reflect both the phase-in of the rate increase and the rounding of the new rates to the nearest dollar, as specified by the bill. Because the PBGC's premiums are recorded as offsetting collections to a mandatory spending account, increases in premium collections are reflected in the budget as decreases in direct spending.

Variable Premiums. Under current law, sponsors of single-employer plans with assets less than liabilities are generally required to pay a variable premium, which is based on the amount of underfunding in the plan. The variable premium rate is $9 per $1,000 of underfunding. The amount of income from this type of premium varies from year to year; in 2004 it generated approximately $800 million in receipts.

H.R. 2830 would affect how much the PBGC collects from variable premiums because it would change the way plans' sponsors calculate the amount of underfunding. Starting in 2006, current law will require plans to discount their current liabilities, in order to determine the amount of underfunding, using an interest rate that is the four-year moving average of the rate on 30-year Treasury bonds;[1] H.R. 2830 would allow plans to discount their pension obligations using a yield curve based on a three-year weighted average of yields on investment-grade corporate bonds. The yield curve, which would be determined by the Secretary of the Treasury, would be divided into three segments: yields for bonds maturing in the five-year period following the first day of each new plan-

[1] Public Law 108–218, the Pension Funding Equity Act, changed how current liabilities of covered plans are discounted during plan-years 2004 and 2005. During those two years, current liabilities are discounted using an interest rate on high-grade corporate bonds, as determined by the Department of the Treasury. Prior to those years, the discount rate was based on the interest rates on 30-year Treasury bonds.

year; yields for bonds maturing during the next 15-year period; and yields for bonds maturing after the initial 20-year period. These segments would be used to discount benefit payments expected to be made by plans during each of the three periods.

When compared to interest rates on 30-year Treasury bonds, the segmented yield curve would generally result in lower discount rates for participants whose benefits will be paid in the near term, and higher discount rates for participants whose benefits will be paid in later years. Discount rates and the present value of pension liabilities have an inverse relationship: increasing the discount rate results in a lower valuation of liability, while lowering the discount rate produces a higher valuation of liability. Based on information provided by the PBGC, CBO estimates that the segmented yield curve would reduce the total present value of current liabilities among all underfunded plans by about 5 percent.

Reducing the present value of current liabilities would generally reduce future contributions that plans' sponsors would be required to make. Other changes to the funding rules (which are discussed in more detail later) would increase contributions. CBO estimates that, under H.R. 2830, firms initially would have to contribute less to their plans, but later would have to contribute more than under current law. The change in contributions would have significant effects on federal revenues, as discussed later in this estimate. The change in contribution patterns would also affect how many plans are underfunded and how much underfunding exists in those plans. This, in turn, would affect the PBGC's income from variable premiums.

H.R. 2830 would also have an effect on which plans are required to make a variable premium payment. Current law provides underfunded plans with ways to reduce or avoid variable premium payments. Plans that have reached a statutory "full funding limit" are exempt from paying a variable premium, even though they may be substantially underfunded. H.R. 2830 would eliminate the full funding limit exemption and would require all plans that are underfunded to pay the variable premium on any underfunding.

CBO estimates that enacting H.R. 2830 would increase receipts from variable premiums by $696 million over the 2007–2010 period and by $292 million over the 2007–2015 period.[2] As with flat-rate premiums, increases in receipts from variable premiums are reflected as decreases in direct spending.

PBGC's Disbursements. H.R. 2830 would affect both how much sponsors are required to contribute to their plans and how much benefits may increase under certain plans insured by the PBGC. Such changes would affect the amount of unfunded liabilities that the PBGC assumes in the event that a pension plan is terminated (i.e., claims) and thus the payments the agency makes to beneficiaries in terminated plans. CBO estimates that the policies contained in H.R. 2830 would increase benefit outlays by $59 million over the 2006–2010 period and by $486 million over the 2006–2015 period.

Several of the changes to the pension funding rules would have countervailing effects on the contributions plans' sponsors would be

[2] Because plans are estimated to be better funded on a current liability basis in the long run, collections of variable premiums under H.R. 2830 would fall starting in 2013.

required to make over the next 10 years. Basing the discount rate for calculating the present value of liabilities on corporate bonds instead of Treasuries would cause the present value of current liabilities among underfunded plans to shrink by more than $50 billion in 2006, CBO estimates. This policy would have the effect of reducing required contributions by plans' sponsors.

Other changes made by the bill would also have an effect on required contributions. Current funding rules require that sponsors of insured plans make contributions to cover the costs of benefits accrued in a given year and that contributions above that amount are required only if the actuarial value of a plan's assets is less than 90 percent of current liabilities. These additional payments (referred to as "deficit reduction contributions") can be amortized over periods ranging from three to 30 years, depending on how the underfunding occurred.[3] H.R. 2830 would require that, in addition to covering its normal costs, a sponsor must make additional contributions if assets are less than 100 percent of current liabilities (referred to as its "funding target"). The bill generally would require the shortfall to be amortized over a period of seven years. These changes would have the effect of reducing required contributions for some plans (due to the seven-year amortization period) and increasing required contributions for others (because of the higher funding target).

The bill also would limit the use of previously accumulated funding balances, which can be used to offset required contributions. Funding balances usually occur when a sponsor contributes more than the minimum required in a given year. Under current law, no matter how underfunded a plan is, its sponsor may use funding balances to reduce or eliminate required contributions. In addition, the value of funding balances is not adjusted for actual gains or losses on the assets in which they are invested. Instead, these balances are increased each year by the same rate of return assumed for other assets held by the plan. H.R. 2830 would allow only plans that have a funding ratio of 80 percent or higher to use funding balances to offset required pension contributions. In addition, the bill would require plans to adjust the value of any balances for net gains or losses on the plan's assets. These changes to the use of funding balances would generally have the effect of increasing required contributions.

H.R. 2830 would also affect required contributions by: reducing the "smoothing" period used to calculate the actuarial value of assets and liabilities; updating the mortality table used to project future benefits; and adding a "loading factor" to the funding target of plans that are less than 60 percent funded.

In addition to changes in the funding rules, H.R. 2830 would also restrict some benefit payments for certain underfunded plans. Specifically, the bill would limit the ability of plans with a funding ratio of less than 80 percent to make lump-sum payments or amend the plan to increase benefits. It also would effectively freeze normal benefit increases in plans with funding ratios of less than 60 percent. In addition, the bill would prohibit plans from paying benefits for unpredictable contingent events, such as shutdown

[3] Under certain circumstances, plans can be between 80 percent and 90 percent funded before being required to make deficit reduction contributions.

benefits to workers in facilities that are closed. If enacted, these policies would reduce liabilities, and therefore reduce benefit payments that the PBGC would be required to make for plans that are terminated in the future.

Accounting for all the policy changes contained in H.R. 2830, CBO estimates that the annual shortfall between assets and liabilities (on a present-value basis) among plans that the PBGC takes over during the 2006–2015 period would increase by several hundred million dollars. The larger shortfall would manifest itself in higher outlays for benefit payments by the PBGC, as those liabilities eventually come due, with a significant portion of those claims being paid well after 2015. The biggest reason for the increase in claims is the projected decrease in required contributions, at least during the first several year of the period, due to use of the corporate bond yield curve to discount current liabilities.[4] This effect would be offset to some degree, especially during the second half of the budget window, by the higher funding target and limits on benefit accruals. Overall, however, CBO estimates that the bill would lead to an increase in underfunding among plans that would be terminated over the next decade, thus increasing outlays by the PBGC for pension benefits.

Transfers from PBGC's Trust Fund. The PBGC's assets are held in two separate funds: an on-budget revolving fund and a nonbudgetary trust fund.[5] "The on-budget fund receives premium payments and makes outlays for benefit payments and administrative costs. The nonbudgetary trust fund holds assets from terminated plans until they are needed to help pay for benefits and other expenses. The PBGC makes periodic transfers from the nonbudgetary fund to the on-budget fund, where they are used to cover about half of all benefit payments and most of the PBGC's administrative costs. As with premiums, these transfers are offsetting collections to a mandatory account, and so are reflected in the budget as offsets to outlays.

In CBO's current-law projections, the combination of rising benefit payments and level premium income will cause the agency's on-budget fund to be completely exhausted in about 2013. No precedent exists for how the PBGC would proceed if its on-budget fund is depleted. However, CBO assumes that the agency would cover its expenses by increasing the percentage of benefits and other expenses being paid through transfers from its nonbudgetary trust fund, thus increasing offsetting collections above what they would have been if the fund had remained solvent.

CBO estimates the increases in Premium receipts resulting from H.R. 2830 would cause the on-budget fund to remain solvent through at least 2015. Because the bill would improve the finances of the on-budget fund, the PBGC would not need to increase the amounts transferred from the nonbudgetary fund in order to help cover benefit payments and other expenses during the 10-year pro-

[4] The higher discount rate would be used to calculate plans' "current liability," which is used to determine funding requirements and any premium payments on underfunding. The bill would not, however, affect the discount rate used to calculate plans' "termination liability," which represents the present value of all future benefit payments owed by the PBGC upon termination of a plan.

[5] The PBGC has several different on-budget revolving funds and two nonbudgetary trust funds. For simplicity in the budgetary presentation, CBO combines the various on-budget and nonbudgetary funds into just two funds.

jection period. By allowing the on-budget fund to remain solvent through the next decade, the bill would reduce those transfers by $7.4 billion over the 2013–2015 period. Because this change would reduce an offset to mandatory spending, it would result in a net increase in such spending.

Revenues

H.R. 2830 would alter existing tax law related to the treatment of pension plans. CBO and JCT estimate that, if enacted, those changes would increase receipts to the federal government during the 2006–2008 period, but decrease receipts after that. As a result, JCT estimates, enacting H.R. 2830 would increase revenues by about $1.1 billion over the 2006–2010 period and would reduce revenues by about $5.5 billion over the 2006–2015 period.

Most of the revenue effects would come from the altered funding rules for single-employer, defined-benefit pension plans. By affecting the amount of tax-deductible contributions firms make to their pension plans, these changes would increase revenues by $5.1 billion over the 2006–2008 period and then decrease revenues by $10.4 billion over the 2009–2015 period. The change from increases to decreases in revenues is due to the differing phase-in rates of the stricter funding rules and the new discount rates. In the short run, the higher discount rates would reduce contributions and increase revenues before the stricter funding rules come fully into effect. Over the longer term, however, the stricter funding rules would more than offset the effect of the higher discount rates, leading to overall revenue losses.

H.R. 2830 also would affect federal revenues by:

• Changing funding rules for multiemployer defined-benefit plans. Currently, payments to cover many costs of plans (for example, their unfunded past service liability) are spread over a period of years. The amortization periods range from 15 years to 40 years. H.R. 2830 would require plans' sponsors to amortize most costs over a 15-year period, thereby accelerating contributions and reducing corporate tax payments. JCT estimates this change would decrease revenues by less than $500,000 in 2006, by $56 million over the 2006–2010 period, and by $287 million over the 2006–2015 period.

• Changing benefit accrual standards. Under current law, an employee's accrual of benefits may not be stopped because of age. Under H.R. 2830, a plan would not violate this requirement if a participant's accrued benefit is as much or more than that of a similarly situated, but younger individual. In other words, age discrimination would not be present in such a case. As a result, firms might change the type of pension plans they offer and the amount of tax-deductible contributions to those plans. JCT estimates that this change would decrease revenues by $29 million over the 2006–2010 period and would increase revenues by $36 million over the 2006–2015 period.

Long-term effects on direct spending: Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting H.R. 2830 would not cause an increase in direct spending greater than $5 billion in any of the 10-year periods between 2016 and 2055. During the four decades following 2015, reductions in outlays due to higher premium

10 receipts would be larger than increases in outlays resulting from changes to transfers from the nonbudgetary fund and additional benefit payments.

Estimated impact on state, local, and tribal governments: CBO and JCT have reviewed the provisions of H.R. 2830 and determined they contain no intergovernmental mandates as defined in UMRA. State, local, and tribal governments are exempt from the provisions of ERISA that the bill would amend, and the remaining provisions of the bill contain no intergovernmental mandates and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: Some of the bill's changes to ERISA would impose mandates on sponsors and administrators of single-employer and multiemployer private-pension plans. CBO estimates that the direct cost to affected entities of the mandates in the bill, less the direct savings resulting from those mandates, would exceed the annual threshold specified in UMRA ($123 million in 2005, adjusted annually for inflation) in 2009 and thereafter. Most of that cost would result from the increase in premiums paid to the PBGC. JCT has determined that the tax provisions in the bill contain no private-sector mandates.

Premiums

The bill would increase the premiums that sponsors of single-employer plans are required to pay to the PBGC. CBO estimates that the additional premiums would total $2.0 billion over the 2006–2010 period.

Disclosures

Title II would require multiemployer plans to provide certain information to participants and beneficiaries when a plan enters into "endangered" or "critical" status. Title V would require single-employer plans to provide certain information to participants and beneficiaries when one or more plans sponsored by the employer are in "at risk" status. Both single-employer and multiemployer plans would be required to provide annual funding notices to all participants and beneficiaries within 90 days of the end of the plan-year. CBO estimates that the direct cost of those new requirements would be less than $30 million annually.

Funding rules

Title I would make several changes to the funding rules in ERISA for single-employer, defined-benefit pension plans. Changes in the discount rate plans are required to use to value future liabilities would decrease the contributions sponsors would be required to make to their pension plans. Several other changes in funding rules would increase the amount of annual contributions that they would be required to make. Title II would change the funding rules in ERISA for multiemployer defined-benefit pension plans such that some sponsors would be required to increase the amount of annual contributions that they make to their plans.

The net effect of those changes would be to decrease the total amount of required pension contributions for sponsors of single-employer plans in the early years, and increase total required contributions in later years. CBO estimates that the changes in funding rules would increase required contributions for sponsors of

multiemployer plans throughout the five-year period. The changes in funding rules in the bill would not change the liabilities that plans' sponsors have to current and future pension recipients, however. They would only affect the timing of the sponsors' contributions. Because we have little basis for estimating the costs or benefits to sponsors of changes in the amounts contributed to their pension plans (for example, the cost of borrowing additional funds or of using funds that would otherwise be available for other purposes), CBO cannot estimate the direct cost or savings from those provisions.

Lump-sum distributions

Title III would change the rules in ERISA used for determining the amounts of lump-sum distributions to plans' participants. A segmented interest rate based on corporate bond yields and an updated mortality table would be phased in for use in such calculations. Although the updated mortality table would cause a short-term increase in the amount of distributions, the substitution of the segmented interest rate for the 30-year Treasury rate would decrease that cost in most cases. Taken together, CBO estimates that these changes would likely have the net effect of reducing plans' costs.

Estimate prepared by: Federal Spending: Geoffrey Gerhardt. Federal Revenues: Emily Schlect. Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Peter Richmond.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House Rule XIII, the goal of the bill is to strengthen the private pension system by amending the Employee Retirement Income Security Act (ERISA). The Committee expects the Department of Labor and the Pension Benefit Guaranty Corporation to implement the changes to the law in accordance with this stated goal.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 2830. The Employee Retirement Income Security Act (ERISA) has been determined by the federal courts to be within Congress' Constitutional authority. In *Commercial Mortgage Insurance, Inc.* v. *Citizens National Bank of Dallas*, 526 F.Supp. 510 (N.D. Tex. 1981), the court held that Congress legitimately concluded that employee benefit plans so affected interstate commerce as to be within the scope of Congressional powers under Article 1, Section 8, Clause 3 of the Constitution of the United States. In *Murphy* v. *Wal-Mart Associates' Group Health Plan*, 928 F. Supp. 700 (E.D. Tex 1996), the court upheld the preemption provisions of ERISA. Because H.R. 2830 modifies the regu-

lation of pensions, the Committee believes that the Act falls within the same scope of Congressional authority as ERISA.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2830. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to the terms of the referral of the bill to the Committee, the Committee adopted an amendment striking those provisions which were referred to the Committee and inserting new text.

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the provisions of the bill referred to the Committee, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Employee Retirement Income Security Act of 1974".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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Subtitle B—Regulatory Provisions

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PART 2—PARTICIPATION AND VESTING

* * * * * * *

[Sec. 207. Temporary variances from certain vesting requirements.]

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PART 3—FUNDING

Sec. 301. Coverage.
[Sec. 302. Minimum funding standards.
[Sec. 303. Variance from minimum funding standard.
[Sec. 304. Extension of amortization periods.
[Sec. 305. Alternative minimum funding standard.
[Sec. 306. Security for waivers of minimum funding standard and extensions of amortization period.
[Sec. 307. Security required upon adoption of plan amendment resulting in significant underfunding.
[Sec. 308. Effective dates.]
Sec. 302. Minimum funding standards.
Sec. 303. Minimum funding standards for single-employer defined benefit pension plans.

Sec. 304. Minimum funding standards for multiemployer plans.
Sec. 305. Additional funding rules for multiemployer plans in endangered status or critical status.

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Subtitle D—Liability

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PART 1—EMPLOYER WITHDRAWALS

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[Sec. 4225. Limitation on withdrawal liability.]

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE A—GENERAL PROVISIONS

* * * * * * *

DEFINITIONS

SEC. 3. For purposes of this title:

(1) * * *

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) * * *

* * * * * * *

(42) the term "plan assets" means plan assets as defined by such regulations as the Secretary may prescribe, except that under such regulations the assets of any entity shall not be treated as plan assets if, immediately after the most recent acquisition of any equity interest in the entity, less than 50 percent of the total value of all equity interests in the entity are held by employee benefit plan investors. For purposes of determinations pursuant to this paragraph, the value of any equity interest owned by a person (other than such an employee benefit plan) who has discretionary authority or control with respect to the assets of the entity or any person who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded for purposes of calculating the 50 percent threshold. An entity shall be considered to hold plan assets only to the extent of the percentage of the equity interest owned by benefit plan investors. For purposes of this paragraph, the term "benefit plan investor" means an employee benefit plan subject to this part and any plan to which section 4975 of the Internal Revenue Code of 1986 applies.

SUBTITLE B—REGULATORY PROVISIONS

PART 1—REPORTING AND DISCLOSURE

DUTY OF DISCLOSURE AND REPORTING

SEC. 101. (a) * * *

* * * * * * *

(d) NOTICE OF FAILURE TO MEET MINIMUM FUNDING STANDARDS.—

(1) * * *

* * * * * * *

(3) DEFINITIONS.—For purposes of this subsection, the terms "required installment" and "due date" have the same meanings given such terms by [section 302(e)] *section 303(j)*.

(e) NOTICE OF TRANSFER OF EXCESS PENSION ASSETS TO HEALTH BENEFITS ACCOUNTS.—

(1) * * *

* * * * * * *

(3) DEFINITIONS.—For purposes of paragraph (1), any term used in such paragraph which is also used in section 420 of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of the [American Jobs Creation Act of 2004] *Pension Protection Act of 2005*) shall have the same meaning as when used in such section.

(f) [MULTIEMPLOYER] DEFINED BENEFIT PLAN FUNDING NOTICES.—

(1) IN GENERAL.—The administrator of a defined benefit plan [which is a multiemployer plan] shall for each plan year provide a plan funding notice to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation.

(2) INFORMATION CONTAINED IN NOTICES.—

(A) * * *

(B) SPECIFIC INFORMATION.—A plan funding notice under paragraph (1) shall include—

[(i) a statement as to whether the plan's funded current liability percentage (as defined in section 302(d)(8)(B)) for the plan year to which the notice relates is at least 100 percent (and, if not, the actual percentage);

[(ii) a statement of the value of the plan's assets, the amount of benefit payments, and the ratio of the assets to the payments for the plan year to which the notice relates;

[(iii) a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and]

(i) a statement as to whether—

(I) in the case of a single-employer plan, the plan's funding target attainment percentage (as defined in section 303(d)(2)), or

(II) in the case of a multiemployer plan, the plan's funded percentage (as defined in section 305(d)(2)),

is at least 100 percent (and, if not, the actual percentage);

(ii) a statement of a reasonable estimate of—

(I) the value of the plan's assets for the plan year to which the notice relates,

(II) projected liabilities of the plan for the plan year to which the notice relates, and

(III) the ratio of the estimated amount determined under subclause (I) to the estimated amount determined under subclause (II);

(iii)(I) in the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV, or

(II) in the case of a multiemployer plan, a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan);

(iv) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply**[**.**]***;*

(v) a statement of the ratio, as of the end of the plan year to which the notice relates, of—

(I) the number of participants who are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

(II) the number of participants who are in covered service under the plan;

(vi) a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates; and

(vii) a summary of any funding improvement plan, rehabilitation plan, or modification thereof adopted under section 305 during the plan year to which the notice relates.

For purposes of determining a plan's projected liabilities for a plan year under clause (ii)(II), such projected liabilities shall be determined by projecting forward in a reasonable manner to the end of the plan year the liabilities of the plan to participants and beneficiaries as of the first day of the plan year, taking into account any significant events that occur during the plan year and that have a material effect on such liabilities, including any plan amendments in effect for the plan year.

* * * * * * *

(3) TIME FOR PROVIDING NOTICE.—Any notice under paragraph (1) shall be provided no later than **[**two months after the deadline (including extensions) for filing the annual report for the plan year**]** *90 days after the end of the plan year* to which the notice relates.

* * * * * * *

(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restriction described in section 206(h)(2) or at such other time as may be determined by the Secretary.

(k) MULTIEMPLOYER PLAN INFORMATION MADE AVAILABLE ON REQUEST.—

(1) IN GENERAL.—Each administrator of a multiemployer plan shall furnish to any plan participant or beneficiary or any employer having an obligation to contribute to the plan, who so requests in writing—

(A) a copy of any actuarial report received by the plan for any plan year which has been in receipt by the plan for at least 30 days, and

(B) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary which has been in receipt by the plan for at least 30 days.

(2) COMPLIANCE.—Information required to be provided under paragraph (1) —

(A) shall be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed in regulations of the Secretary, and

(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the information is required to be provided.

(3) LIMITATIONS.—In no case shall a participant, beneficiary, or employer be entitled under this subsection to receive more than one copy of any report described in paragraph (1) during any one 12-month period. The administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies of information pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(l) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY.—

(1) IN GENERAL.—The plan sponsor or administrator of a multiemployer plan shall furnish to any employer who has an obligation to contribute under the plan and who so requests in writing notice of—

(A) the amount which would be the amount of such employer's withdrawal liability under part 1 of subtitle E of title IV if such employer withdrew on the last day of the plan year preceding the date of the request, and

(B) the average increase, per participant under the plan, in accrued liabilities under the plan as of the end of such plan year to participants under such plan on whose behalf no employer contributions are payable (or their beneficiaries), which would be attributable to such a withdrawal by such employer.

For purposes of subparagraph (B), the term "employer contribution" means, in connection with a participant, a contribution made by an employer as an employer of such participant.

(2) COMPLIANCE.—Any notice required to be provided under paragraph (1)—

(A) shall be provided to the requesting employer within 180 days after the request in a form and manner prescribed in regulations of the Secretary, and

(B) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to employers to whom the information is required to be provided.

(3) LIMITATIONS.—In no case shall an employer be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The Secretary may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

[(j)**]** *(m)* CROSS REFERENCE.—For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 3004.

* * * * * * *

ANNUAL REPORTS

SEC. 103. (a)(1)(A) * * *

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable **[**subsections (d) and (e)**]** *subsections (d), (e), and (f)* and shall also include—

(i) * * *

* * * * * * *

(d) With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 301(b), or (C) a plan described both in section 4021(b) and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 301(a)) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) * * *

* * * * * * *

(8) A statement by the enrolled actuary—

(A) * * *

(B) **[**the requirements of section 302(c)(3)**]** *the applicable requirements of sections 303(h) and 304(c)(3)* (relating to reasonable actuarial assumptions and methods) have been complied with.

* * * * * * *

[(11) If the current value of the assets of the plan is less than 70 percent of the current liability under the plan (within the meaning of section 302(d)(7)), the percentage which such value is of such liability.**]**

(11) If the current value of the assets of the plan is less than 70 percent of—

(A) in the case of a single-employer plan, the funding target (as defined in section 303(d)(1)) of the plan, or

(B) in the case of a multiemployer plan, the current liability (as defined in section 304(c)(6)(D)) under the plan,

the percentage which such value is of the amount described in subparagraph (A) or (B).

(12) A statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.

[(12)**]** *(13)* Such other information regarding the plan as the Secretary may by regulation require.

[(13)**]** *(14)* Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

* * * * * * *

(f)(1) With respect to any defined benefit plan, an annual report under this section for a plan year shall include the following:

(A) The ratio, as of the end of such plan year, of—

(i) the number of participants who, as of the end of such plan year, are not in covered service under the plan and are in pay status under the plan or have a nonforfeitable right to benefits under the plan, to

(ii) the number of participants who are in covered service under the plan as of the end of such plan year.

(B) In any case in which any liabilities to participants or their beneficiaries under such plan as of the end of such plan year consist (in whole or in part) of liabilities to such participants and beneficiaries borne by 2 or more pension plans as of immediately before such plan year, the funded ratio of each of such 2 or more pension plans as of immediately before such plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of such plan year.

(C) For purposes of this paragraph, the term "funded ratio" means, in connection with a plan, the percentage which—

(i) the value of the plan's assets is of

(ii) the liabilities to participants and beneficiaries under the plan.

(2) With respect to any defined benefit plan which is a multiemployer plan, an annual report under this section for a plan year shall include the following:

(A) The number of employers obligated to contribute to the plan as of the end of such plan year.

(B) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year. For purposes of this subparagraph, the term "employer contribution" means, in connection with a participant, a contribution made by an employer as an employer of such participant.

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

SEC. 104. (a)(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing). *In the case of a pension plan, the Secretary may extend the deadline for filing the annual report for any plan year past 275 days after the close of the plan year only on a case by case basis and only in cases of hardship, in accordance with regulations which shall be prescribed by the Secretary.* The Secretary shall make copies of such annual reports available for inspection in the public document room of the Department of Labor.

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) * * *

(2) The administrator shall make copies of the latest updated summary plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) ❚Within 210 days after the close of the fiscal year of the plan,❚ *(A) Within 15 business days after the due date under subsection (a)(1) for the filing of the annual report for the fiscal year of the plan,* the administrators shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material (including the percentage determined under section 103(d)(11)) as is necessary to fairly summarize ❚the latest❚ *such* annual report.

(B) The material provided pursuant to subparagraph (A) to summarize the latest annual report shall be written in a manner calculated to be understood by the average plan participant and shall set forth the total assets and liabilities of the plan for the plan year for which the latest annual report was filed and for each of the 2 preceding plan years, as reported in the annual report for each such plan year under this section.

* * * * * * *

(5) Identification and basic plan information and actuarial information included in the annual report for any plan year shall be filed with the Secretary in an electronic format which accommodates display on the Internet, in accordance with regulations which shall be prescribed by the Secretary. The Secretary shall provide for display of such information included in the annual report, within 90 days after the date of the filing of the annual report, on a website maintained by the Secretary on the Internet and other appropriate media. Such information shall also be displayed on any website

maintained by the plan sponsor (or by the plan administrator on behalf of the plan sponsor) on the Internet, in accordance with regulations which shall be prescribed by the Secretary.

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PART 2—PARTICIPATION AND VESTING

* * * * * * *

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in [section 302(c)(8)] *section 302(d)(2)*.

* * * * * * *

(f)(1) A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2) and section 205(g) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant's account balance to normal retirement age is not greater than a market rate of return.

(2) The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of paragraph (1) and for permissible methods of crediting interest to the account (including variable interest rates) resulting in effective rates of return meeting the requirements of paragraph (1).

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) * * *

(b)(1)(A) * * *

* * * * * * *

(H)(i) * * *

* * * * * * *

(vii)(I) A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

(II) For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such partici-

pant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(III) In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

(viii) A plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of clause (i) solely because interest accruing on such balance is taken into account.

(ix) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, the Railroad Retirement Act of 1974, another plan described in section 401(a) of the Internal Revenue Code of 1986 maintained by the same employer, or under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

(x) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of the Internal Revenue Code of 1986 are met.

(xi)(I) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for pre-retirement indexing of accrued benefits under the plan.

(II) For purposes of this clause, the term "pre-retirement indexing" means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized index or methodology so as to protect the economic value of the benefit against inflation prior to distribution.

* * * * * * *

(g)(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in [section 302(c)(8)] *section 302(d)(2)* or 4281.

* * * * * * *

(i)(1) * * *

(2) Paragraph (1) shall not apply to any plan amendment that—

(A) * * *

(B) only repeals an amendment described in [section 302(c)(8)] *section 302(d)(2)*,

* * * * * * *

(3) This subsection shall apply only to plans (other than multiemployer plans) covered under section 4021 of this Act for which the [funded current liability percentage (within the meaning of section 302(d)(8) of this Act)] *funding target attainment percentage (as defined in section 303(d)(2))* is less than 100 percent after taking into account the effect of the amendment.

(4) For purposes of this subsection, the term "employer" has the meaning set forth in [section 302(c)(11)(A), without regard to section 302(c)(11)(B)] *section 302(b)(1), without regard to section 302(b)(2)*.

* * * * * * *

REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) * * *

* * * * * * *

(g)(1) * * *

* * * * * * *

[(3) DETERMINATION OF PRESENT VALUE.—

[(A) IN GENERAL.—

[(i) PRESENT VALUE.—Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

[(ii) DEFINITIONS.—For purposes of clause (i)—

[(I) APPLICABLE MORTALITY TABLE.—The term "applicable mortality table" means the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5) of such Code).

[(II) APPLICABLE INTEREST RATE.—The term "applicable interest rate" means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

[(B) EXCEPTION.—In the case of a distribution from a plan that was adopted and in effect prior to the date of the enactment of the Retirement Protection Act of 1994, the present value of any distribution made before the earlier of—

[(i) the later of when a plan amendment applying subparagraph (A) is adopted or made effective, or

[(ii) the first day of the first plan year beginning after December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before such date of enactment; but only if such provisions of the plan met the requirements of section 205(g)(3) as in effect on the day before such date of enactment.]

(3)(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) For purposes of subparagraph (B)—

(i) The term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under section 303(h)(3).

(ii) The term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 303(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 303(h)(2)(C) if—

(I) section 303(h)(2)(D)(i) were applied by substituting "the yields" for "a 3-year weighted average of yields",

(II) section 303(h)(2)(G)(i)(II) were applied by substituting "section 205(g)(3)(B)(ii)" for "section 302(b)(5)(B)(ii)(II)", and

(III) the applicable percentage under section 303(h)(2)(G) were determined in accordance with the following table:

In the case of plan years beginning in:	*The applicable percentage is:*
2006	*20 percent*
2007	*40 percent*
2008	*60 percent*
2009	*80 percent.*

* * * * * * *

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) * * *

* * * * * * *

(e) LIMITATION ON DISTRIBUTIONS OTHER THAN LIFE ANNUITIES PAID BY THE PLAN.—

(1) IN GENERAL.—Notwithstanding any other provision of this part, the fiduciary of a pension plan that is subject to the additional funding requirements of [section 302(d)] *section 303(j)(4)* shall not permit a prohibited payment to be made from a plan during a period in which such plan has a liquidity

shortfall (as defined in [section 302(e)(5)] *section 303(j)(4)(E)(i)*).

* * * * * * *

(3) PERIOD OF SHORTFALL.—For purposes of this subsection, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under [section 302(e) by reason of paragraph (5)(A) thereof] *section 303(j)(3) by reason of section 303(j)(4)(A)*.

* * * * * * *

(g) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

(1) IN GENERAL.—No pension plan which is a single-employer plan may provide benefits to which participants are entitled solely by reason of the occurrence of—

(A) a plant shutdown, or

(B) any other unpredictable contingent event.

(2) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term "unpredictable contingent event" means an event other than—

(A) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability, or

(B) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

(h) FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.—

(1) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

(A) IN GENERAL.—No amendment to a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

(i) less than 80 percent, or

(ii) would be less than 80 percent taking into account such amendment.

For purposes of this subparagraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation shall be treated as affected by plan amendment.

(B) EXEMPTION.—Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 303) equal to—

(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under

section 303) for the plan year attributable to the amendment, and

(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in a funding target attainment percentage of 80 percent.

(2) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

(A) IN GENERAL.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any prohibited payment (as defined in section 206(e)).

(B) EXCEPTION.—Subparagraph (A) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

(3) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A single-employer plan shall provide that, in any case in which the plan's funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

(4) NEW PLANS.—Paragraphs (1) and (3) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this paragraph, the reference in this paragraph to a plan shall include a reference to any predecessor plan.

(5) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.—

(A) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under paragraph (1), (2), or (3) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

(B) PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such paragraphs, to be the valuation date of the plan for the current plan year.

(C) PRESUMPTION OF UNDERFUNDING AFTER 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—In any case in which—

(i) a benefit limitation under paragraph (1), (2), or (3) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

(6) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under paragraph (2) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under paragraph (3) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of paragraph (5).

(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—

(A) IN GENERAL.—For purposes of this subsection, the term "funding target attainment percentage" means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

(i) the value of plan assets for the plan year (as determined under section 303(g)) reduced by the prefunding balance and the funding standard carryover balance (within the meaning of section 303(f)), bears to

(ii) the funding target of the plan for the plan year (as determined under section 303(d)(1), but without regard to section 303(i)(1)).

(B) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this subparagraph and without regard to the reduction under subparagraph (A)(i) for the pre-funding balance and the funding standard carryover balance), subparagraph (A) shall be applied without regard to such reduction.

* * * * * * *

[TEMPORARY VARIANCES FROM CERTAIN VESTING REQUIREMENTS

[SEC. 207. In the case of any plan maintained on January 1, 1974, if not later than 2 years after the date of enactment of this Act, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 203(a)(2) or 204(b)(1) (other than subparagraph (D) thereof) of this title or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

[(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

[(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

[(3) a waiver or extension of time granted under section 303 or 304 of this Act would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.]

* * * * * * *

PART 3—FUNDING

COVERAGE

SEC. 301. (a) * * *

* * * * * * *

[(d) Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary of the Treasury.]

[MINIMUM FUNDING STANDARDS

[SEC. 302. (a)(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 305) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

[(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for

such plan years over the total credits to such account for such years.

[(3) In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 4243.

[(b)(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

[(2) For a plan year, the funding standard account shall be charged with the sum of—

[(A) the normal cost of the plan for the plan year,

[(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

[(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

[(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 30 plan years (20 plan years in the case of a multiemployer plan),

[(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (20 plan years in the case of a multiemployer plan),

[(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

[(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

[(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 303(c), for each prior plan year in equal annual installments (until fully amortized) over a period of 5 plan years (15 plan years in the case of a multiemployer plan),

[(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D), and

[(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of subsection (c)(7)(A)(i)(I).

[(3) For a plan year, the funding standard account shall be credited with the sum of—

[(A) the amount considered contributed by the employer to or under the plan for the plan year,

[(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

[(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (20 plan years in the case of a multiemployer plan),

[(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

[(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

[(C) the amount of the waived funding deficiency (within the meaning of section 303(c)) for the plan year, and

[(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

[(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

[(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

[(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

[(5) INTEREST.—

[(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

[(B) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 302(d) for any plan year—

[(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

[(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

[(I) IN GENERAL.—Except as provided in subclause (II) or (III), the term "permissible range" means a rate of interest which is not more than 10 percent above, and not more than 10 percent below, the the weighted

average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

[(II) SPECIAL RULE FOR YEARS 2004 AND 2005.—In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the term "permissible range" means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary of the Treasury on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.

[(III) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) or (II) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

[(iii) ASSUMPTIONS.—Notwithstanding subsection (c)(3)(A)(i), the interest rate used under the plan shall be—

[(I) determined without taking into account the experience of the plan and reasonable expectations, but

[(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

[(6) In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

[(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

[(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

[(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

[(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one

benefit level to another benefit level under a schedule of plan benefits which—

[(i) was adopted before such date, and

[(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the increase arises.

[(7) For purposes of this part—

[(A) Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

[(B) If a plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

[(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

[(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) of the Internal Revenue Code of 1986 as of the end of the last plan year that the plan was in reorganization.

[(C) Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 or to a fund exempt under section 501(c)(22) of such Code pursuant to section 4223 shall reduce the amount of contributions considered received by the plan for the plan year.

[(D) Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

[(E) For purposes of the full funding limitation under subsection (c)(7), unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

[(F) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—

[(i) IN GENERAL.—With respect to the net experience loss of an eligible multiemployer plan for the first plan year beginning after December 31, 2001, the plan sponsor may elect to defer up to 80 percent of the

amount otherwise required to be charged under paragraph (2)(B)(iv) for any plan year beginning after June 30, 2003, and before July 1, 2005, to any plan year selected by the plan from either of the 2 immediately succeeding plan years.

[(ii) INTEREST.—For the plan year to which a charge is deferred pursuant to an election under clause (i), the funding standard account shall be charged with interest on the deferred charge for the period of deferral at the rate determined under section 304(a) for multiemployer plans.

[(iii) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any period for which a charge is deferred pursuant to an election under clause (i), unless—

[(I) the plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

[(II) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any such plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any such plan year ending on or after the date on which such amendment is adopted.

[(iv) ELIGIBLE MULTIEMPLOYER PLAN.—For purposes of this subparagraph, the term "eligible multiemployer plan" means a multiemployer plan—

[(I) which had a net investment loss for the first plan year beginning after December 31, 2001, of at least 10 percent of the average fair market value of the plan assets during the plan year, and

[(II) with respect to which the plan's enrolled actuary certifies (not taking into account the application of this subparagraph), on the basis of the acutuarial assumptions used for the last plan year ending before the date of the enactment of this subparagraph, that the plan is projected to have an accumulated funding deficiency (within the meaning of subsection (a)(2)) for any plan year beginning after June 30, 2003, and before July 1, 2006.

For purposes of subclause (I), a plan's net investment loss shall be determined on the basis of the actual loss and not under any actuarial method used under subsection (c)(2).

[(v) EXCEPTION TO TREATMENT OF ELIGIBLE MULTIEMPLOYER PLAN.—In no event shall a plan be treated as an eligible multiemployer plan under clause (iv) if—

[(I) for any taxable year beginning during the 10-year period preceding the first plan year for which an election is made under clause (i), any employer required to contribute to the plan failed to timely pay any excise tax imposed under section 4971 of the Internal Revenue Code of 1986 with respect to the plan,

[(II) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), the average contribution required to be made by all employers to the plan does not exceed 10 cents per hour or no employer is required to make contributions to the plan, or

[(III) with respect to any of the plan years beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), a waiver was granted under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1986 with respect to the plan or an extension of an amortization period was granted under section 304 of this Act or section 412(e) of such Code with respect to the plan.

[(vi) NOTICE.—If a plan sponsor makes an election under this subparagraph or section 412(b)(7)(F) of the Internal Revenue Code of 1986 for any plan year, the plan administrator shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation. Such notice shall include with respect to any election the amount of any charge to be deferred and the period of the deferral. Such notice shall also include the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

[(vii) ELECTION.—An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.

[(c)(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

[(2)(A) For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

[(B) For purposes of this part, the value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary of the Treasury. In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary of the Treasury may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5).

[(3) For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

[(A) in the case of—

[(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

[(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

[(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

[(4) For purposes of this section, if—

[(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

[(B) a change in the definition of the term "wages" under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of the Internal Revenue Code of 1986,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

[(5)

[(A) IN GENERAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

[(B) APPROVAL REQUIRED FOR CERTAIN CHANGES IN ASSUMPTIONS BY CERTAIN SINGLE-EMPLOYER PLANS SUBJECT TO ADDITIONAL FUNDING REQUIREMENT.—

[(i) IN GENERAL.—No actuarial assumption (other than the assumptions described in subsection (d)(7)(C)) used to determine the current liability for a

plan to which this subparagraph applies may be changed without the approval of the Secretary of the Treasury.

[(ii) PLANS TO WHICH SUBPARAGRAPH APPLIES.—This subparagraph shall apply to a plan only if—

[(I) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV applies;

[(II) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

[(III) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the unfunded current liability of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

[(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under section 305) in excess of the full funding limitation—

[(A) the funding standard account shall be credited with the amount of such excess, and

[(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

[(7) FULL-FUNDING LIMITATION.—

[(A) IN GENERAL.—For purposes of paragraph (6), the term "full-funding limitation" means the excess (if any) of—

[(i) the lesser of (I) in the case of plan years beginning before January 1, 2004, the applicable percentage of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

[(ii) the lesser of—

[(I) the fair market value of the plan's assets, or

[(II) the value of such assets determined under paragraph (2).

[(B) CURRENT LIABILITY.—For purposes of subparagraph (D) and subclause (I) of subparagraph (A)(i), the term "current liability" has the meaning given such term by sub-

section (d)(7) (without regard to subparagraphs (C) and (D) thereof) and using the rate of interest used under subsection (b)(5)(B).

[(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

[(D) REGULATORY AUTHORITY.—The Secretary of the Treasury may by regulations provide—

[(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants, and

[(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i).

[(E) MINIMUM AMOUNT.—

[(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

[(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

[(II) the value of the plan's assets determined under paragraph (2).

[(ii) CURRENT LIABILITY; ASSETS.—For purposes of clause (i)—

[(I) the term "current liability" has the meaning given such term by subsection (d)(7) (without regard to subparagraph (D) thereof), and

[(II) assets shall not be reduced by any credit balance in the funding standard account.

[(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

[In the case of any plan year beginning in calendar year—	The applicable percentage is—
2002	165
2003	170.

[(8) For purposes of this part, any amendment applying to a plan year which—

[(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

[(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

[(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the

Secretary has approved such amendment or, within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 303(b) and that waiver under section 303(a) is unavailable or inadequate.

[(9)(A) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

[(B)(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

[(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (7)(B)).

[(iii) Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

[(iv) A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

[(10) For purposes of this section—

[(A) In the case of a defined benefit plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

[(i) beginning on the day after the last day of such plan year, and

[(ii) ending on the date which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

[(B) In the case of a plan not described in subparagraph (A), any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

[(11) LIABILITY FOR CONTRIBUTIONS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (e) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

[(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

[(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

[(ii) CONTROLLED GROUP.—For purposes of clause (i), the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

[(12) ANTICIPATION OF BENEFIT INCREASES EFFECTIVE IN THE FUTURE.—In determining projected benefits, the funding method of a collectively bargained plan described in section 413(a) of the Internal Revenue Code of 1986 (other than a multiemployer plan) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.

[(d) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

[(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) to which this subsection applies under paragraph (9) for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

[(A) the excess (if any) of—

[(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

[(ii) the sum of the charges for such plan year under subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3), plus

[(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

[(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

[(A) the unfunded old liability amount,

[(B) the unfunded new liability amount,

[(C) the expected increase in current liability due to benefits accruing during the plan year, and

[(D) the aggregate of the unfunded mortality increase amounts.

[(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

[(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount

necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

[(B) UNFUNDED OLD LIABILITY.—The term "unfunded old liability" means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 28, 1987).

[(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

[(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and the employer ratified before October 29, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

[(I) the plan year in which the benefit increase with respect to such liability occurs, or

[(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

[(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

[(I) by taking into account only liabilities attributable to such benefit increase, and

[(II) by reducing (but not below zero) the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

[(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 28, 1987, shall not be taken into account.

[(D) SPECIAL RULE FOR REQUIRED CHANGES IN ACTUARIAL ASSUMPTIONS.—

[(i) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year shall be increased by the amount necessary to amortize the amount of additional unfunded old liability under the plan in equal annual installments over a period of 12 plan years (beginning with the first plan year beginning after December 31, 1994).

[(ii) ADDITIONAL UNFUNDED OLD LIABILITY.—For purposes of clause (i), the term "additional unfunded old liability" means the amount (if any) by which—

[(I) the current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

[(II) the current liability of the plan as of the beginning of such first plan year, valued using the same assumptions used under subclause (I) (other than the assumptions required by paragraph (7)(C)), using the prior interest rate, and using such mortality assumptions as were used to determine current liability for the first plan year beginning after December 31, 1992.

[(iii) PRIOR INTEREST RATE.—For purposes of clause (ii), the term "prior interest rate" means the rate of interest that is the same percentage of the weighted average under subsection (b)(5)(B)(ii)(I) for the first plan year beginning after December 31, 1994, as the rate of interest used by the plan to determine current liability for the first plan year beginning after December 31, 1992, is of the weighted average under subsection (b)(5)(B)(ii)(I) for such first plan year beginning after December 31, 1992.

[(E) OPTIONAL RULE FOR ADDITIONAL UNFUNDED OLD LIABILITY.—

[(i) IN GENERAL.—If an employer makes an election under clause (ii), the additional unfunded old liability for purposes of subparagraph (D) shall be the amount (if any) by which—

[(I) the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

[(II) the unamortized portion of the unfunded old liability under the plan as of the beginning of the first plan year beginning after December 31, 1994.

[(ii) ELECTION.—

[(I) An employer may irrevocably elect to apply the provisions of this subparagraph as of the beginning of the first plan year beginning after December 31, 1994.

[(II) If an election is made under this clause, the increase under paragraph (1) for any plan year beginning after December 31, 1994, and before January 1, 2002, to which this subsection applies (without regard to this subclause) shall not be less than the increase that would be required under paragraph (1) if the provisions of this title as in effect for the last plan year beginning before January 1, 1995, had remained in effect.

[(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

[(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

[(B) UNFUNDED NEW LIABILITY.—The term "unfunded new liability" means the unfunded current liability of the plan for the plan year determined without regard to—

[(i) the unamortized portion of the unfunded old liability, the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase, and the unamortized portion of the unfunded existing benefit increase liability, and

[(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

[(C) APPLICABLE PERCENTAGE.—The term "applicable percentage" means, with respect to any plan year, 30 percent, reduced by the product of—

[(i) .40 multiplied by

[(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 60 percent.

[(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

[(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greatest of—

[(i) the applicable percentage of the product of—

[(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

[(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary of the Treasury) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits,

[(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs), or

[(iii) the additional amount that would be determined under paragraph (4)(A) if the unpredictable contingent event benefit liabilities were included in unfunded new liability notwithstanding paragraph (4)(B)(ii).

[(B) APPLICABLE PERCENTAGE.—

[In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990	5
1991	10
1992	15
1993	20
1994	30
1995	40
1996	50

1997	60
1998	70
1999	80
2000	90
2001 and thereafter	100.

[(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before the first plan year beginning after December 31, 1988.

[(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary of the Treasury to reflect the application of this subparagraph.

[(E) LIMITATION.—The present value of the amounts described in subparagraph (A) with respect to any one event shall not exceed the unpredictable contingent event benefit liabilities attributable to that event.

[(6) SPECIAL RULES FOR SMALL PLANS.—

[(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

[(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

[(i) such increase determined without regard to this subparagraph, multiplied by

[(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

[(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

[(7) CURRENT LIABILITY.—For purposes of this subsection—

[(A) IN GENERAL.—The term "current liability" means all liabilities to participants and their beneficiaries under the plan.

[(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

[(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

[(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term "unpredictable contingent event benefit"

means any benefit contingent on an event other than—

[(I) age, service, compensation, death, or disability, or

[(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury).

[(C) INTEREST RATE AND MORTALITY ASSUMPTIONS USED.—Effective for plan years beginning after December 31, 1994—

[(i) INTEREST RATE.—

[(I) IN GENERAL.—The rate of interest used to determine current liability under this subsection shall be the rate of interest used under subsection (b)(5), except that the highest rate in the permissible range under subparagraph (B)(ii) thereof shall not exceed the specified percentage under subclause (II) of the weighted average referred to in such subparagraph.

[(II) SPECIFIED PERCENTAGE.—For purposes of subclause (I), the specified percentage shall be determined as follows:

[In the case of plan years beginning in calendar year:	The specified percentage is:
1995	109
1996	108
1997	107
1998	106
1999 and thereafter	105.

[(III) SPECIAL RULE FOR 2002 AND 2003.—For a plan year beginning in 2002 or 2003, notwithstanding subclause (I), in the case that the rate of interest used under subsection (b)(5) exceeds the highest rate permitted under subclause (I), the rate of interest used to determine current liability under this subsection may exceed the rate of interest otherwise permitted under subclause (I); except that such rate of interest shall not exceed 120 percent of the weighted average referred to in subsection (b)(5)(B)(ii).

[(IV) SPECIAL RULE FOR 2004 AND 2005.—For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).

[(ii) MORTALITY TABLES.—

[(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this subsection shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners' standard table (described in sec-

tion 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

[(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

[(III) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

[(iii) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (ii)—

[(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

[(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

[(III) PLAN YEARS BEGINNING IN 1995.—In the case of any plan year beginning in 1995, a plan may use its own mortality assumptions for individuals who are entitled to benefits under the plan on account of disability.

[(D) CERTAIN SERVICE DISREGARDED.—

[(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

[(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

[If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.

[(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

[(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member,

[(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987, and

[(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.

[(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary of the Treasury.

[(8) OTHER DEFINITIONS.—For purposes of this subsection—

[(A) UNFUNDED CURRENT LIABILITY.—The term "unfunded current liability" means, with respect to any plan year, the excess (if any) of—

[(i) the current liability under the plan, over

[(ii) value of the plan's assets determined under subsection (c)(2).

[(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term "funded current liability percentage" means, with respect to any plan year, the percentage which—

[(i) the amount determined under subparagraph (A)(ii), is of

[(ii) the current liability under the plan.

[(C) CONTROLLED GROUP.—The term "controlled group" means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

[(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary of the Treasury shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits.

[(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subpara-

graph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary of the Treasury may provide for such reduction for purposes of any other provision which references this subsection.

[(9) APPLICABILITY OF SUBSECTION.—

[(A) IN GENERAL.—Except as provided in paragraph (6)(A), this subsection shall apply to a plan for any plan year if its funded current liability percentage for such year is less than 90 percent.

[(B) EXCEPTION FOR CERTAIN PLANS AT LEAST 80 PERCENT FUNDED.—Subparagraph (A) shall not apply to a plan for a plan year if—

[(i) the funded current liability percentage for the plan year is at least 80 percent, and

[(ii) such percentage for each of the 2 immediately preceding plan years (or each of the 2d and 3d immediately preceding plan years) is at least 90 percent.

[(C) FUNDED CURRENT LIABILITY PERCENTAGE.—For purposes of subparagraphs (A) and (B), the term "funded current liability percentage" has the meaning given such term by paragraph (8)(B), except that such percentage shall be determined for any plan year—

[(i) without regard to paragraph (8)(E), and

[(ii) by using the rate of interest which is the highest rate allowable for the plan year under paragraph (7)(C).

[(D) TRANSITION RULES.—For purposes of this paragraph:

[(i) FUNDED PERCENTAGE FOR YEARS BEFORE 1995.—The funded current liability percentage for any plan year beginning before January 1, 1995, shall be treated as not less than 90 percent only if for such plan year the plan met one of the following requirements (as in effect for such year):

[(I) The full-funding limitation under subsection (c)(7) for the plan was zero.

[(II) The plan had no additional funding requirement under this subsection (or would have had no such requirement if its funded current liability percentage had been determined under subparagraph (C)).

[(III) The plan's additional funding requirement under this subsection did not exceed the lesser of 0.5 percent of current liability or $5,000,000.

[(ii) SPECIAL RULE FOR 1995 AND 1996.—For purposes of determining whether subparagraph (B) applies to any plan year beginning in 1995 or 1996, a plan shall be treated as meeting the requirements of subparagraph (B)(ii) if the plan met the requirements of clause (i) of this subparagraph for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive).

[(10) UNFUNDED MORTALITY INCREASE AMOUNT.—

[(A) IN GENERAL.—The unfunded mortality increase amount with respect to each unfunded mortality increase

is the amount necessary to amortize such increase in equal annual installments over a period of 10 plan years (beginning with the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III)).

[(B) UNFUNDED MORTALITY INCREASE.—For purposes of subparagraph (A), the term "unfunded mortality increase" means an amount equal to the excess of—

[(i) the current liability of the plan for the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III), over

[(ii) the current liability of the plan for such plan year which would have been determined if the mortality table in effect for the preceding plan year had been used.

[(11) PHASE-IN OF INCREASES IN FUNDING REQUIRED BY RETIREMENT PROTECTION ACT OF 1994.—

[(A) IN GENERAL.—For any applicable plan year, at the election of the employer, the increase under paragraph (1) shall not exceed the greater of—

[(i) the increase that would be required under paragraph (1) if the provisions of this title as in effect for plan years beginning before January 1, 1995, had remained in effect, or

[(ii) the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) for the applicable plan year to a percentage equal to the sum of the initial funded current liability percentage of the plan plus the applicable number of percentage points for such applicable plan year.

[(B) APPLICABLE NUMBER OF PERCENTAGE POINTS.—

[(i) INITIAL FUNDED CURRENT LIABILITY PERCENTAGE OF 75 PERCENT OR LESS.—Except as provided in clause (ii), for plans with an initial funded current liability percentage of 75 percent or less, the applicable number of percentage points for the applicable plan year is:

[In the case of applicable plan years beginning in:	The applicable number of percentage points is:
1995	3
1996	6
1997	9
1998	12
1999	15
2000	19
2001	24.

[(ii) OTHER CASES.—In the case of a plan to which this clause applies, the applicable number of percentage points for any such applicable plan year is the sum of—

[(I) 2 percentage points;

[(II) the applicable number of percentage points (if any) under this clause for the preceding applicable plan year;

[(III) the product of .10 multiplied by the excess (if any) of (a) 85 percentage points over (b) the sum of the initial funded current liability percentage and the number determined under subclause (II);

[(IV) for applicable plan years beginning in 2000, 1 percentage point; and

[(V) for applicable plan years beginning in 2001, 2 percentage points.

[(iii) PLANS TO WHICH CLAUSE (ii) APPLIES.—

[(I) IN GENERAL.—Clause (ii) shall apply to a plan for an applicable plan year if the initial funded current liability percentage of such plan is more than 75 percent.

[(II) PLANS INITIALLY UNDER CLAUSE (i).—In the case of a plan which (but for this subclause) has an initial funded current liability percentage of 75 percent or less, clause (ii) (and not clause (i)) shall apply to such plan with respect to applicable plan years beginning after the first applicable plan year for which the sum of the initial funded current liability percentage and the applicable number of percentage points (determined under clause (i)) exceeds 75 percent. For purposes of applying clause (ii) to such a plan, the initial funded current liability percentage of such plan shall be treated as being the sum referred to in the preceding sentence.

[(C) DEFINITIONS.—For purposes of this paragraph—

[(i) The term "applicable plan year" means a plan year beginning after December 31, 1994, and before January 1, 2002.

[(ii) The term "initial funded current liability percentage" means the funded current liability percentage as of the first day of the first plan year beginning after December 31, 1994.

[(12) ELECTION FOR CERTAIN PLANS.—

[(A) IN GENERAL.—In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of—

[(i) 20 percent of the increased amount under paragraph (1) determined without regard to this paragraph, or

[(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan

year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

[(B) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any applicable plan year, unless—

[(i) the plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary of the Treasury) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

[(ii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any applicable plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any applicable plan year ending on or after the date on which such amendment is adopted.

[(C) APPLICABLE EMPLOYER.—For purposes of this paragraph, the term "applicable employer" means an employer which is—

[(i) a commercial passenger airline,

[(ii) primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or

[(iii) an organization described in section 501(c)(5) of the Internal Revenue Code of 1986 and which established the plan to which this paragraph applies on June 30, 1955.

[(D) APPLICABLE PLAN YEAR.—For purposes of this paragraph—

[(i) IN GENERAL.—The term "applicable plan year" means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

[(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED.—An election may not be made under this paragraph with respect to more than 2 plan years.

[(E) NOTICE REQUIREMENTS FOR PLANS ELECTING ALTERNATIVE DEFICIT REDUCTION CONTRIBUTIONS.—

[(i) IN GENERAL.—If an employer elects an alternative deficit reduction contribution under this paragraph and section 412(l)(12) of the Internal Revenue Code of 1986 for any year, the employer shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries and to the Pension Benefit Guaranty Corporation.

[(ii) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—The notice under clause (i) to participants and beneficiaries shall include with respect to any election—

[(I) the due date of the alternative deficit reduction contribution and the amount by which such contribution was reduced from the amount which would have been owed if the election were not made, and

[(II) a description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation and an explanation of the limitations on the guarantee and the circumstances under which such limitations apply, including the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

[(iii) NOTICE TO PBGC.—The notice under clause (i) to the Pension Benefit Guaranty Corporation shall include—

[(I) the information described in clause (ii)(I),

[(II) the number of years it will take to restore the plan to full funding if the employer only makes the required contributions, and

[(III) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer making the election.

[(F) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.

[(e) QUARTERLY CONTRIBUTIONS REQUIRED.—

[(1) IN GENERAL.—If a defined benefit plan (other than a multiemployer plan) which has a funded current liability percentage (as defined in subsection (d)(8)) for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

[(A) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

[(B) the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B)).

[(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1)—

[(A) AMOUNT.—The amount of the underpayment shall be the excess of—

[(i) the required installment, over

[(ii) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

[(B) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this subsection with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion

is contributed to or under the plan (determined without regard to subsection (c)(10)).

[(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

[(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

[(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

[(B) TIME FOR PAYMENT OF INSTALLMENTS.—

[In the case of the following required installments:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

[(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

[(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

[(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term "required annual payment" means the lesser of—

[(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 of the Internal Revenue Code of 1986 (without regard to any waiver under subsection (c) thereof), or

[(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

[(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

[For plan years beginning in:	The applicable percentage is:
1989	6.25
1990	12.5
1991	18.75
1992 and thereafter	25.

[(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (d) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

[(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

[(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greatest of—

[(I) the unfunded percentage of the amount of benefits described in subsection (d)(5)(A)(i) paid

during the 3-month period preceding the month in which the due date for such installment occurs,

[(II) 25 percent of the amount determined under subsection (d)(5)(A)(ii) for the plan year, or

[(III) 25 percent of the amount determined under subsection (d)(5)(A)(iii) for the plan year.

[(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term "unfunded percentage" means the percentage determined under subsection (d)(5)(A)(i)(I) for the plan year.

[(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (d)(8)(B)) for the plan year to 100 percent.

[(5) LIQUIDITY REQUIREMENT.—

[(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

[(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a defined benefit plan (other than a multiemployer plan or a plan described in subsection (d)(6)(A)) which—

[(i) is required to pay installments under this subsection for a plan year, and

[(ii) has a liquidity shortfall for any quarter during such plan year.

[(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (1), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

[(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

[(E) DEFINITIONS.—For purposes of this paragraph—

[(i) LIQUIDITY SHORTFALL.—The term "liquidity shortfall" means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of the base amount with respect to such quarter over the value (as of such last day) of the plan's liquid assets.

[(ii) BASE AMOUNT.—

[(I) IN GENERAL.—The term "base amount" means, with respect to any quarter, an amount

equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

[(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

[(iii) DISBURSEMENTS FROM THE PLAN.—The term "disbursements from the plan" means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

[(iv) ADJUSTED DISBURSEMENTS.—The term "adjusted disbursements" means disbursements from the plan reduced by the product of—

[(I) the plan's funded current liability percentage (as defined in subsection (d)(8)) for the plan year, and

[(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

[(v) LIQUID ASSETS.—The term "liquid assets" means cash, marketable securities and such other assets as specified by the Secretary of the Treasury in regulations.

[(vi) QUARTER.—The term "quarter" means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

[(F) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

[(6) FISCAL YEARS AND SHORT YEARS.—

[(A) FISCAL YEARS.—In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this subsection, the months which correspond thereto.

[(B) SHORT PLAN YEAR.—This section shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

[(7) SPECIAL RULE FOR 2002.—In any case in which the interest rate used to determine current liability is determined under subsection (d)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (d)(7)(C)(i)(II).

[(f) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

[(1) IN GENERAL.—In the case of a plan covered under section 4021 of this Act, if—

[(A) any person fails to make a required installment under subsection (e) or any other payment required under this section before the due date for such installment or other payment, and

[(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

[(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (d)(8)(B)) of such plan is less than 100 percent.

[(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

[(A) for plan years beginning after 1987, and

[(B) for which payment has not been made before the due date.

[(4) NOTICE OF FAILURE; LIEN.—

[(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

[(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

[(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

[(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

[(6) DEFINITIONS.—For purposes of this subsection—

[(A) DUE DATE; REQUIRED INSTALLMENT.—The terms "due date" and "required installment" have the meanings given such terms by subsection (e), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.

[(B) CONTROLLED GROUP.—The term "controlled group" means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

[(g) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—For purposes of this section, in the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986)—

[(1) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of subsection (c)(7), be treated as assets in the plan as of the valuation date for such year, and

[(2) the plan shall be treated as having a net experience loss under subsection (b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the plan under section 420(c)(1)(B) of such Code) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such subsection shall be applied to such amount by substituting "10 plan years" for "5 plan years".

[(h) CROSS REFERENCE.—For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

[VARIANCE FROM MINIMUM FUNDING STANDARD

[SEC. 303. (a) If an employer, or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 302(a) for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 302(b)(2)(C). The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years. The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—

[(1) in the case of a plan other than a multiemployer plan, the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs (including adjustments under section 302(b)(5)(B)), and

[(2) in the case of a multiemployer plan, the rate determined under section 6621(b) of such Code.

[(b) For purposes of this part, the factors taken into account in determining temporary substantial business hardship (substantial

business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether—

[(1) the employer is operating at an economic loss,

[(2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

[(3) the sales and profits of the industry concerned are depressed or declining, and

[(4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

[(c) For purposes of this part, the term "waived funding deficiency" means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 302) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

[(d) SPECIAL RULES.—

[(1) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this section with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

[(2) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

[(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of subsection (a) shall be treated as met only if such requirements are met—

[(i) with respect to such employer, and

[(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this subsection.

[(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

[(e)(1) The Secretary of the Treasury shall, before granting a waiver under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each employee organization representing employees covered by the affected plan, and each affected party (as defined in section 4001(a)(21)) other than the Pension Benefit Guaranty Corporation. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

[(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

[(f) CROSS REFERENCE.—For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412(d) of such Code.

[EXTENSION OF AMORTIZATION PERIODS

[SEC. 304. (a) The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 302) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

[(1) result in—

[(A) a substantial risk to the voluntary continuation of the plan, or

[(B) a substantial curtailment of pension benefit levels or employee compensation, and

[(2) be adverse to the interests of plan participants in the aggregate.

In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or (B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b) of such Code.

[(b)(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 303(a) or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 302(c)(8) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

[(2) Paragraph (1) shall not apply to any plan amendment which—

[(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

[(B) only repeals an amendment described in section 302(c)(8), or

[(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of the Internal Revenue Code of 1986.

[(c)(1) The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each employee organization representing employees covered by the affected plan.

[(2) The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

[ALTERNATIVE MINIMUM FUNDING STANDARD

[SEC. 305. (a) A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section.

[(b) For a plan year the alternative minimum funding standard accounts shall be—

[(1) charged with the sum of—

[(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

[(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

[(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

[(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 302(c)(10)) for the plan year.

[(c) The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 302(b)(5) with respect to the funding standard account.

[SECURITY FOR WAIVERS OF MINIMUM FUNDING STANDARD AND EXTENSIONS OF AMORTIZATION PERIOD

[SEC. 306. (a) SECURITY MAY BE REQUIRED.—

[(1) IN GENERAL.—Except as provided in subsection (c), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under section 303 or an extension under section 304.

[(2) SPECIAL RULES.—Any security provided under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation or, at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)) or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

[(b) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subsection (c), the Secretary of the Treasury shall, before granting or modifying a waiver under section 303 or an extension under section 304 with respect to a plan described in subsection (a)(1)—

[(1) provide the Pension Benefit Guaranty Corporation with—

[(A) notice of the completed application for any waiver, extension, or modification, and

[(B) an opportunity to comment on such application within 30 days after receipt of such notice, and

[(2) consider—

[(A) any comments of the Corporation under paragraph (1)(B), and

[(B) any views of any employee organization representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the corporation under this subsection shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

[(c) EXCEPTION FOR CERTAIN WAIVERS AND EXTENSIONS.—

[(1) IN GENERAL.—The preceding provisions of this section shall not apply to any plan with respect to which the sum of—

[(A) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 302(a)(2) of this Act and section 412(a) of the Internal Revenue Code of 1986) of the plan,

[(B) the outstanding balance of the amount of waived funding deficiencies of the plan waived under section 303 of this Act or section 412(d) of such Code, and

[(C) the outstanding balance of the amount of decreases in the minimum funding standard allowed under section 304 of this Act or section 412(e) of such Code,

is less than $1,000,000.

[(2) ACCUMULATED FUNDING DEFICIENCIES.—For purposes of paragraph (1)(A), accumulated funding deficiencies shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1986 and for extensions of the amortization period under section 304 of this Act or section 412(e) of such Code which are pending with respect to such plan were denied.

[SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING

[SEC. 307. (a) IN GENERAL.—If—

[(1) a defined benefit plan (other than a multiemployer plan) to which the requirements of section 302 apply adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

[(2) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than

60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the contributing sponsor (or any member of the controlled group of the contributing sponsor) shall provide security to the plan.

[(b) FORM OF SECURITY.—The security required under subsection (a) shall consist of—

[(1) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412,

[(2) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

[(3) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

[(c) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

[(1) the lesser of—

[(A) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

[(B) the amount of the increase in current liability under the plan attributable to the plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment, over

[(2) $10,000,000.

[(d) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary of the Treasury may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

[(e) NOTICE.—A contributing sponsor which is required to provide security under subsection (a) shall notify the Pension Benefit Guaranty Corporation within 30 days after the amendment requiring such security takes effect. Such notice shall contain such information as the Corporation may require.

[(f) DEFINITIONS.—For purposes of this section, the terms "current liability", "funded current liability percentage", and "unfunded current liability" shall have the meanings given such terms by section 302(d), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.

[EFFECTIVE DATES

[SEC. 308. (a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after the date of the enactment of this Act.

[(b) Except as otherwise provided in subsections (c) and (d), in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

[(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be

collective bargaining agreements between employee representatives and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagraph (A) or (B) of section 211(c)(1).

[(2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

[(d) In the case of a plan the administrator of which elects under section 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.

[(e) In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of the Internal Revenue Code 1954 exclusively for the benefit of its employees and their beneficiaries, this part shall be applied by substituting for the term "December 31, 1975" in subsection (b), the earlier of—

[(1) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

[(2) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subsection (c) be substituted.

[(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after the date of the enactment of this Act.]

MINIMUM FUNDING STANDARDS

SEC. 302. (a) REQUIREMENT TO MEET MINIMUM FUNDING STANDARD.—

(1) IN GENERAL.—A plan to which this part applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 303 for the plan for the plan year,

(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 304 as of the end of the plan year.

(b) LIABILITY FOR CONTRIBUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 303(j)) shall be paid by the employer responsible for making contributions to or under the plan.

(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—

(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—

(A) IN GENERAL.—If—

(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan is) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

(B) EFFECTS OF WAIVER.—If a waiver is granted under subparagraph (A) for any plan year—

(i) in the case of a single-employer plan, the minimum required contribution under section 303 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 303(e), and

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 304(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 304(b)(2)(C).

(C) WAIVER OF AMORTIZED PORTION NOT ALLOWED.—The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(C) the sales and profits of the industry concerned are depressed or declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(3) WAIVED FUNDING DEFICIENCY.—For purposes of this part, the term "waived funding deficiency" means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

(A) SECURITY MAY BE REQUIRED.—

(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15)) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

(i) provide the Pension Benefit Guaranty Corporation with—

(I) notice of the completed application for any waiver or modification, and

(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

(ii) consider—

(I) any comments of the Corporation under clause (i)(II), and

(II) any views of any employee organization (within the meaning of section 3(4)) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of the Internal Revenue Code of 1986.

(C) EXCEPTION FOR CERTAIN WAIVERS.—

(i) IN GENERAL.—The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

(I) the aggregate unpaid minimum required contribution for the plan year and all preceding plan years, and

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 303(e)(2),

is less than $1,000,000.

(ii) TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(iii) UNPAID MINIMUM REQUIRED CONTRIBUTION.—For purposes of this subparagraph—

(I) IN GENERAL.—The term "unpaid minimum required contribution" means, with respect to any plan year, any minimum required contribution under section 303 for the plan year which is not paid on or before the due date (as determined under section 303(j)(1)) for the plan year.

(II) ORDERING RULE.—For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 303 for the plan year.

(5) SPECIAL RULES FOR SINGLE-EMPLOYER PLANS.—

(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

(6) ADVANCE NOTICE.—

(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) RESTRICTION ON PLAN AMENDMENTS.—

(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1 of the Internal Revenue Code of 1986.

(8) CROSS REFERENCE.—For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1986, see section 412(c) of such Code.

(d) MISCELLANEOUS RULES.—

(1) CHANGE IN METHOD OR YEAR.—If the funding method, the valuation date, or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary of the Treasury.

(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 304(d)) is unavailable or inadequate.

(3) CONTROLLED GROUP.—For purposes of this section, the term "controlled group" means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

SEC. 303. (a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 302(a)(2)(A), except as provided in subsection (f), the term "minimum required contribution" means, with respect to any plan year of a defined benefit plan which is a single employer plan—

(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is less than the funding target of the plan for the plan year, the sum of—

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or

(3) in any other case, the target normal cost of the plan for the plan year.

(b) TARGET NORMAL COST.—For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term "target normal cost" means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

(c) SHORTFALL AMORTIZATION CHARGE.—

(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

(2) SHORTFALL AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(3) SHORTFALL AMORTIZATION BASE.—For purposes of this section, the shortfall amortization base of a plan for a plan year is the excess (if any) of—

(A) the funding shortfall of such plan for such plan year, over

(B) the sum of—

(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(4) FUNDING SHORTFALL.—

(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph (B), the funding shortfall of a plan for any plan year is the excess (if any) of—

(i) the funding target of the plan for the plan year, over

(ii) the value of plan assets of the plan (as reduced under subsection (f)(4)) for the plan year which are held by the plan on the valuation date.

(B) TRANSITION RULE.—

(i) IN GENERAL.—For purposes of paragraph (3), in the case of a non-defecit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2005 and before 2010 by substituting for the amount described in subparagraph (A)(i) the applicable percentage of the funding target of the plan for the plan year determined under the following table:

In the case of a plan year beginning in calendar year:	***The applicable percentage is:***
2006	*92 percent*
2007	*94 percent*
2008	*96 percent*
2009	*98 percent.*

(ii) NON-DEFICIT REDUCTION PLAN.—For purposes of clause (i), the term "non-deficit reduction plan" means any plan—

(I) to which this part (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2005, and

(II) to which section 302(d) (as so in effect) did not apply for such plan year.

(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

(d) RULES RELATING TO FUNDING TARGET.—For purposes of this section—

(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The "funding target attainment percentage" of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

(e) WAIVER AMORTIZATION CHARGE.—

(1) DETERMINATION OF WAIVER AMORTIZATION CHARGE.—The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

(2) WAIVER AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize

such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

(3) INTEREST RATE.—In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(4) WAIVER AMORTIZATION BASE.—The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 302(c).

(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

(f) REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—

(1) ELECTION TO MAINTAIN BALANCES.—

(A) PRE-FUNDING BALANCE.—The plan sponsor of a single-employer plan may elect to maintain a pre-funding balance.

(B) FUNDING STANDARD CARRYOVER BALANCE.—

(i) IN GENERAL.—In the case of a single-employer plan described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) PLANS MAINTAINING FUNDING STANDARD ACCOUNT IN 2005.—A plan is described in this clause if the plan—

(I) was in effect for a plan year beginning in 2005, and

(II) had a positive balance in the funding standard account under section 302(b) as in effect for such plan year and determined as of the end of such plan year.

(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 302(c).

(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)), bears to

(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent.

(4) EFFECT OF BALANCES ON AMOUNTS TREATED AS VALUE OF PLAN ASSETS.—In the case of any plan maintaining a pre-funding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

(A) APPLICABILITY OF SHORTFALL AMORTIZATION CHARGE AND WAIVER AMORTIZATION CHARGE.—For purposes of subsection (c)(3), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of subsections (a), (c)(4)(A)(ii), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.

(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.

(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—

(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

(6) PRE-FUNDING BALANCE.—

(A) IN GENERAL.—A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

(B) INCREASES.—As of the valuation date for each plan year beginning after 2006, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

(i) the aggregate total of employer contributions to the plan for the preceding plan year, over

(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

(C) DECREASES.—As of the valuation date for each plan year after 2006, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) any reduction in such balance elected under paragraph (5).

(7) FUNDING STANDARD CARRYOVER BALANCE.—

(A) IN GENERAL.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

(C) DECREASES.—As of the valuation date for each plan year after 2006, the funding standard carryover balance of

a plan shall be decreased (but not below zero) by the sum of—

(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) any reduction in such balance elected under paragraph (5).

(8) ADJUSTMENTS TO BALANCES.—In determining the prefunding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary of the Treasury, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

(9) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary of the Treasury.

(g) VALUATION OF PLAN ASSETS AND LIABILITIES.—

(1) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

(2) VALUATION DATE.—For purposes of this section—

(A) IN GENERAL.—Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury, except that—

(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 3 most recent plan years (including the current plan year), and

(B) any such method may not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2006 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the preceding plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

(5) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

(1) IN GENERAL.—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(2) INTEREST RATES.—

(A) EFFECTIVE INTEREST RATE.—For purposes of this section, the term "effective interest rate" means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

(B) INTEREST RATES FOR DETERMINING FUNDING TARGET.—For purposes of determining the funding target of a plan for any plan year, the interest rate used in determining the present value of the liabilities of the plan shall be—

(i) in the case of liabilities reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

(ii) in the case of liabilities reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

(C) SEGMENT RATES.—For purposes of this paragraph—

(i) FIRST SEGMENT RATE.—The term "first segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

(ii) SECOND SEGMENT RATE.—The term "second segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) THIRD SEGMENT RATE.—The term "third segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the cor-

porate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

(i) IN GENERAL.—The term "corporate bond yield curve" means, with respect to any month, a yield curve which is prescribed by the Secretary of the Treasury for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

(ii) 3-YEAR WEIGHTED AVERAGE.—The term "3-year weighted average" means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

(E) APPLICABLE MONTH.—For purposes of this paragraph, the term "applicable month" means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan administrator, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary of the Treasury.

(F) PUBLICATION REQUIREMENTS.—The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 205(g)(3)(B)(iii)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary of the Treasury shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

(G) TRANSITION RULE.—

(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2005), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 33 1/3 percent for

plan years beginning in 2006 and 66⅔ percent for plan years beginning in 2007.

(3) MORTALITY TABLE.—

(A) IN GENERAL.—Except as provided in subparagraph (C), the mortality table used in determining any present value or making any computation under this section shall be the RP–2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B).

(B) PERIODIC REVISION.—The Secretary of the Treasury shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

(C) SUBSTITUTE MORTALITY TABLE.—

(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary of the Treasury for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

(ii) REQUIREMENTS.—A mortality table meets the requirements of this clause if the Secretary of the Treasury determines that—

(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

(II) such table is significantly different from the table described in subparagraph (A).

(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary of the Treasury for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless the Secretary of the Treasury, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii).

(D) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2005) shall be phased in ratably over the first period of 5 plan years beginning in or after 2006 so as to be fully effective for the fifth plan year.

(4) PROBABILITY OF BENEFIT PAYMENTS IN THE FORM OF LUMP SUMS OR OTHER OPTIONAL FORMS.—For purposes of determining any present value or making any computation under this section, there shall be taken into account—

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits

provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a single-employer plan to which this paragraph applies may be changed without the approval of the Secretary of the Treasury.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors' controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000; and

(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

(i) SPECIAL RULES FOR AT-RISK PLANS.—

(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is the sum of—

(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (g), the supplemental actuarial assumptions described in subparagraph (B), plus

(ii) a loading factor determined under subparagraph (C).

(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

(i) $700, times the number of participants in the plan, plus

(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

(2) TARGET NORMAL COST OF AT-RISK PLANS.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

(B) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

(3) DETERMINATION OF AT-RISK STATUS.—For purposes of this subsection, a plan is in "at-risk status" for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.

(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET NORMAL COSTS.—

(A) IN GENERAL.—In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

(i) the amount determined under this section without regard to this subsection, plus

(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

(B) TRANSITION PERCENTAGE.—For purposes of this paragraph, the "transition percentage" for a plan year is the product derived by multiplying—

(i) 20 percent, by

(ii) the number of plan years during the period described in subparagraph (A).

(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—

(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

(2) INTEREST.—Any payment required under paragraph (1) for a plan year made after the valuation date for such plan year shall be increased by interest, for the period from the valuation date to the payment date, at the effective rate of interest for the plan for such plan year.

(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—

(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE.—In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full,

then the minimum required contribution for the plan year (as increased under paragraph (2)) shall be further increased by an amount equal to the interest on the amount of the underpayment for the period of the underpayment, using an interest rate equal to the excess of—

(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), over

(ii) the effective rate of interest for the plan for the plan year.

(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

(i) AMOUNT.—The amount of the underpayment shall be the excess of—

(I) the required installment, over

(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—

(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

In the case of the following required installment:	***The due date is:***
1st	*April 15*
2nd	*July 15*
3rd	*October 15*
4th	*January 15 of the following year*

(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—

(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.

(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term "required annual payment" means the lesser of—

(I) 90 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the plan year under this section, or

(II) in the case of a plan year beginning after 2006, 100 percent of the minimum required contribution (without regard to any waiver under section 302(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

(E) FISCAL YEARS AND SHORT YEARS.—

(i) FISCAL YEARS.—In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary of the Treasury.

(4) LIQUIDITY REQUIREMENT IN CONNECTION WITH QUARTERLY CONTRIBUTIONS.—

(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (f)(2)(B) if "100" were substituted for "500" therein) which—

(i) is required to pay installments under paragraph (3) for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) PERIOD OF UNDERPAYMENT.—For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

(E) DEFINITIONS.—For purposes of this subparagraph:

(i) LIQUIDITY SHORTFALL.—The term "liquidity shortfall" means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

(I) the base amount with respect to such quarter, over

(II) the value (as of such last day) of the plan's liquid assets.

(ii) BASE AMOUNT.—

(I) IN GENERAL.—The term "base amount" means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) SPECIAL RULE.—If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary of the Treasury that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) DISBURSEMENTS FROM THE PLAN.—The term "disbursements from the plan" means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) ADJUSTED DISBURSEMENTS.—The term "adjusted disbursements" means disbursements from the plan reduced by the product of—

(I) the plan's funding target attainment percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall provide in regulations.

(v) LIQUID ASSETS.—The term "liquid assets" means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury in regulations.

(vi) QUARTER.—The term "quarter" means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

(F) REGULATIONS.—The Secretary of the Treasury may prescribe such regulations as are necessary to carry out this paragraph.

(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

(1) IN GENERAL.—In the case of a plan covered under section 4021 of this Act and to which this subsection applies (as provided under paragraph (2)), if—

(A) any person fails to make a contribution payment required by section 302 and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan which is a single-employer plan for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 302 for which payment has not been made before the due date.

(4) NOTICE OF FAILURE; LIEN.—

(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) DEFINITIONS.—For purposes of this subsection—

(A) CONTRIBUTION PAYMENT.—The term "contribution payment" means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

(B) DUE DATE; REQUIRED INSTALLMENT.—The terms "due date" and "required installment" have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 303.

(C) CONTROLLED GROUP.—The term "controlled group" means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986.

(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.—In the case of a qualified transfer (as defined in section 420 of the Internal Revenue Code of 1986), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS

SEC. 304. (a) IN GENERAL.—For purposes of section 302, the accumulated funding deficiency of a multiemployer plan for any plan year is—

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243.

(b) FUNDING STANDARD ACCOUNT.—

(1) ACCOUNT REQUIRED.—Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) CHARGES TO ACCOUNT.—For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 302(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account

under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 302(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 305 (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2006.—In the case of any amount amortized under section 302(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2006, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) INTEREST.—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 3(37) as in effect immediately before such date)—

(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

(D) any change in past service liability which arises during the period of 2 plan years beginning on or after such date, and results from the changing of a group of participants from one benefit level to another benefit level under a schedule of plan benefits which—

(i) was adopted before such date, and

(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this part—

(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits

to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) as of the end of the last plan year that the plan was in reorganization.

(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of this Act or to a fund exempt under section 501(c)(22) of the Internal Revenue Code of 1986 pursuant to section 4223 of this Act shall reduce the amount of contributions considered received by the plan for the plan year.

(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 302(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary of the Treasury.

(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past serv-

ice liability by substituting the number of years of the period during which such benefits are payable for "15".

(c) ADDITIONAL RULES.—

(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) VALUATION OF ASSETS.—

(A) IN GENERAL.—For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121 of the Internal Revenue Code of 1986, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of such Code,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (5), the term "full-funding limitation" means the excess (if any) of—

(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) MINIMUM AMOUNT.—

(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) FULL FUNDING LIMITATION.—For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of the Internal Revenue Code of 1986).

(D) CURRENT LIABILITY.—For purposes of this paragraph—

(i) IN GENERAL.—The term "current liability" means all liabilities to employees and their beneficiaries under the plan.

(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

(iv) MORTALITY TABLES.—

(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the

Treasury which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) of the Internal Revenue Code of 1986) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) SECRETARIAL AUTHORITY.—The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) SPECIAL RULE FOR DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(vi) PERIODIC REVIEW.—The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability for purposes of this paragraph—

(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

(I) IN GENERAL.—Except as provided in subclause (II), the term "permissible range" means a

rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) SECRETARIAL AUTHORITY.—If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) ANNUAL VALUATION.—

(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B) VALUATION DATE.—

(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

(9) INTEREST RULE FOR WAIVERS AND EXTENSIONS.—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 of the Internal Revenue Code of 1986 for the 1st month of such plan year), or

(B) the rate of interest used under the plan for determining costs.

(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

(1) EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (2)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if such Secretary determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

(A) result in—

(i) a substantial risk to the voluntary continuation of the plan, or

(ii) a substantial curtailment of pension benefit levels or employee compensation, and

(B) be adverse to the interests of plan participants in the aggregate.

(2) ADDITIONAL EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary of the Treasury for a period of time (not in excess of 5 years) if such Secretary determines that—

(A) absent the extension, the plan would have an accumulated funding deficiency in any of the next 10 plan years,

(B) the plan sponsor has adopted a plan to improve the plan's funding status, and

(C) taking into account the extension, the plan is projected to have suficient assets to timely pay its expected benefit liabilities and other anticipated expenditures

(3) ADVANCE NOTICE.—

(A) IN GENERAL.—The Secretary of the Treasury shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing

of the application for such extension to each affected party (as defined in section 4001(a)(21)) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

(1) IN GENERAL.—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

(2) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

(A) IN GENERAL.—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d).

(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the plan actuary makes a contrary certification.

(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit

Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (a)—

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year under section 304 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 304(d).

(3) FUNDING IMPROVEMENT PLAN.—

(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan's funded percentage such that—

(I) the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement period, is not more than

(II) ⅔ of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement period.

(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 304(d)).

(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

(C) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—

(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting "4/5" for "2/3" and subparagraph (B) shall be applied by substituting "the 15-year period" for "the 10-year period".

(ii) In the case of a plan in which the funded percentage of a plan for the plan year is more than 70 percent but less than 80 percent, and—

(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

(II) the plan year is prior to the day described in subparagraph (B)(ii),

subparagraph (A)(i)(II) shall be applied by substituting "4/5" for "2/3" and subparagraph (B) shall be applied by substituting "the 15-year period" for "the 10-year period".

(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting "the 15-year period" for "the 10-year period".

(D) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

(i) an increase in the plan's funded percentage, and

(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(B) RECOMMENDATIONS BY PLAN SPONSOR.—

(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

(I) employs at least 5 percent of the active participants, or

(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

(A) a reduction in the level of contributions for participants who are not in pay status,

(B) a suspension of contributions with respect to any period of service, or

(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

(A) RESTRICTIONS ON LUMP SUM AND SIMILAR DISTRIBUTIONS.—In any case in which the present value of a participant's accrued benefit under the plan exceeds $5,000, such

benefit may not be distributed as an immediate distribution or in any other accelerated form.

(B) PROHIBITION ON BENEFIT INCREASES.—

(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986.

(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

(A) so as to be inconsistent with the funding improvement plan, or

(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

(A) the plan is in endangered status for the preceding plan year and the requirements of subsection (b)(1) were not met with respect to the plan for such preceding plan year, or

(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the market value of plan assets, plus

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

(i) the market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(C) A plan is described in this subparagraph if—

(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 304(d).

(D) A plan is described in this subparagraph if—

(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account

any extension of amortization periods under section 304(d).

(E) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 304(d).

(4) REHABILITATION PLAN.—

(A) IN GENERAL.—A rehabilitation plan shall consist of—

(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

(ii) reasonable measures to forestall possible insolvency (within the meaning of section 4245) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan's entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) and in the summary annual report described in section 104(b)(3).

(5) DEVELOPMENT OF REHABILITATION PLAN.—

(A) PROPOSALS BY PLAN SPONSOR.—

(i) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in

future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party who—

(i) employs at least 5 percent of the active participants, or

(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,

the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

(E) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below the lower of—

(i) a monthly benefit equal to 1 percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the plan year in which the plan enters critical status, or

(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term "rehabilitation plan" for "funding improvement plan".

(7) SPECIAL RULES.—

(A) AUTOMATIC EMPLOYER SURCHARGE.—

(i) 5 PERCENT AND 10 PERCENT SURCHARGE.—For the first plan year in which the plan is in critical status, each employer otherwise obligated to make a contribution for that plan year shall be obligated to pay to the plan a surcharge equal to 5 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each consecutive plan year thereafter in which the plan is in critical status, the surcharge shall be 10 percent of the contribution otherwise required under the respective collective bargaining agreement (or other agreement pursuant to which the employer contributes).

(ii) ENFORCEMENT OF SURCHARGE.—The surcharges under clause (i) shall be due and payable on the same schedule as the contributions on which they are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.

(iii) SURCHARGE TO TERMINATE UPON CBA RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement, beginning on the date on which that agreement is renegotiated to include—

(I) a schedule of benefits and contributions published by the trustees pursuant to the plan's rehabilitation plan, or

(II) otherwise collectively bargained benefit changes.

(iv) SURCHARGE NOT TO APPLY UNTIL EMPLOYER RECEIVES 30-DAY NOTICE.—The surcharge under this subparagraph shall not apply to an employer until 30 days after the employer has been notified by the trustees that the plan is in critical status and that the surcharge is in effect.

(v) SURCHARGE NOT TO GENERATE INCREASED BENEFIT ACCRUALS.—Notwithstanding any provision of a plan to the contrary, the amount of any surcharge shall not be the basis for any benefit accruals under the plan.

(B) BENEFIT ADJUSTMENTS.—

(i) IN GENERAL.—The trustees shall make appropriate reductions, if any, to adjustable benefits based upon the outcome of collective bargaining over the schedules provided under paragraph (5).

(ii) RETIREE PROTECTION.—Except as provided in subparagraph (C), the trustees of a plan in critical status may not reduce adjustable benefits of any participant or beneficiary who was in pay status at least one year before the first day of the first plan year in which the plan enters into critical status.

(iii) TRUSTEE FLEXIBILITY.—The trustees shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate based on the plan's then current overall funding status and its future prospects in light of the results of the parties' negotiations.

(C) ADJUSTABLE BENEFIT DEFINED.—For purposes of this paragraph, the term "adjustable benefit" means—

(i) benefits, rights, and features, such as post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(ii) retirement-type subsidies, early retirement benefits, and benefit payment options (other than the 50 percent qualified joint-and-survivor benefit and single life annuity), and

(iii) benefit increases that would not be eligible for a guarantee under section 4022A on the first day of the plan year in which the plan enters into critical status because they were adopted, or if later, took effect less than 60 months before reorganization.

(D) NORMAL RETIREMENT BENEFITS PROTECTED.—Nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age which is not an adjustable benefit.

(E) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

(i) BENEFIT REDUCTIONS.—Any benefit reductions under this paragraph shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

(ii) SURCHARGES.—Any surcharges under this paragraph shall be disregarded in determining an employer's withdrawal liability under section 4211, except for purposes of determining the unfunded vested benefits attributable to an employer or under a modified attributable method adopted with the approval of the Pension Benefit Guaranty Corporation under subsection (c)(5) of that section.

(8) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

(A) so as to be inconsistent with the rehabilitation plan, or

(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

(9) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

(10) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 or a partial withdrawal by the employer under section 4205.

(d) DEFINITIONS.—For purposes of this section—

(1) BARGAINING PARTY.—The term "bargaining party" means, in connection with a multiemployer plan—

(A) an employer who has an obligation to contribute under the plan, and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(2) FUNDED PERCENTAGE.—The term "funded percentage" means the percentage expressed as a ratio of which—

(A) the numerator of which is the value of the plan's assets, as determined under section 304(c)(2), and

(B) the denominator of which is the accrued liability of the plan.

(3) ACCUMULATED FUNDING DEFICIENCY.—The term "accumulated funding deficiency" has the meaning provided such term in section 304(a).

(4) ACTIVE PARTICIPANT.—The term "active participant" means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

(5) INACTIVE PARTICIPANT.—The term "inactive participant" means, in connection with a multiemployer plan, a participant who—

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) PAY STATUS.—A person is in "pay status" under a multiemployer plan if—

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit

under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

(7) OBLIGATION TO CONTRIBUTE.—The term "obligation to contribute" has the meaning provided such term under section 4212(a).

(8) ENTRY INTO CRITICAL STATUS.—A plan shall be treated as entering into critical status as of the date that such plan is certified to be in critical status under subsection (a)(1), is presumed to be in critical status under subsection (a)(3), or enters into critical status under subsection (b)(7).

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PART 4—FIDUCIARY RESPONSIBILITY

COVERAGE

* * * * * * *

ESTABLISHMENT OF TRUST

SEC. 403. (a) * * *

* * * * * * *

(c)(1) Except as provided in paragraph (2), (3), or (4) or subsection (d), or under section 4042 and 4044 (relating to termination of insured plans), or under section 420 of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of the ⟦American Jobs Creation Act of 2004⟧ *Pension Protection Act of 2005*), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

* * * * * * *

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) * * *

(b) The prohibitions provided in section 406 shall not apply to any of the following transactions:

(1) * * *

* * * * * * *

(13) Any transfer made before January 1, 2014, of excess pension assets from a defined benefit plan to a retiree health account in a qualified transfer permitted under section 420 of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of the ⟦American Jobs Creation Act of 2004⟧ *Pension Protection Act of 2005*).

(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection

with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

(B) The transactions described in this subparagraph are the following:

(i) the provision of the advice to the plan, participant, or beneficiary;

(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

(15)(A) Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary) with respect to a plan if—

(i) the transaction involves a block trade,

(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade, and

(iii) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction.

(B) For purposes of this paragraph, the term "block trade" includes any trade which will be allocated across two or more client accounts of a fiduciary.

(16) Any transaction involving the purchase and sale of securities or other property between a plan and a fiduciary or a party in interest if—

(A) the transaction is executed through an exchange, electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by the applicable governmental regulating entity,

(B) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system, and

(D) the price and compensation associated with the purchase and sale are not greater than an arm's length transaction with an unrelated party.

(17)(A) transactions described in subparagraphs (A), (B), and (D) of section 406(a)(1) between a plan and a party that is a party in interest (under section 3(14)) solely by reason of providing services, but only if in connection with such transaction

the plan receives no less, nor pays no more, than adequate consideration.

(B) For purposes of this paragraph, the term "adequate consideration" means—

(i) in the case of a security for which there is a generally recognized market—

(I) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

(II) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(ii) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary.

(18) Any foreign exchange transactions, between a bank or broker-dealer, or any affiliate of either thereof, and a plan with respect to which the bank or broker-dealer, or any affiliate, is a trustee, custodian, fiduciary, or other party in interest, if—

(A) the transaction is in connection with the purchase or sale of securities,

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or the broker-dealer (or any affiliate thereof) in comparable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by the bank or broker-dealer for a particular foreign exchange transaction must be at a rate no less favorable than the rate quoted for transactions of similar size at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer, or any affiliate, does not have investment discretion, or provide investment advice, with respect to the securities transaction.

(19)(A) Except as provided in subparagraphs (B) and (C), a transaction described in section 406(a) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

(B) Subparagraph (A) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in

section 407(d)(1)) or the acquisition, sale, or lease of employer real property (as defined in section 407(d)(2)).

(C) In the case of any fiduciary or other party in interest (or any other person knowingly participating in such transaction), subparagraph (A) does not apply to any prohibited transaction if, at the time such transaction is discovered, such fiduciary or party in interest (or other person) knew that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

(D) For purposes of this paragraph, the term "correction period" means, in connection with a fiduciary or party in interest (or other person knowingly participating in the transaction), the 14-day period beginning on the date on which such fiduciary or party in interest (or other person) discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph) constitute a violation of section 406(a).

(E) For purposes of this paragraph—

(i) The term "security" has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof).

(ii) The term "commodity" has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).

(iii) The term "correct" means, with respect to a transaction, to undo the transaction to the extent possible, but in any case, to make good to the plan or affected account any losses resulting from the transaction and to restore to the plan or affected account any profits made through use of the plan.

* * * * * * *

(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in

currently accurate form and in the manner described in paragraph (2) or fails—

(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the spe-

cific investment advice given by the fiduciary adviser to any particular recipient of the advice.

(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

(A) FIDUCIARY ADVISER.—The term "fiduciary adviser" means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(ii) a bank or similar financial institution referred to in section 408(b)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(iii) an insurance company qualified to do business under the laws of a State,

(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

(v) an affiliate of a person described in any of clauses (i) through (iv), or

(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

(B) AFFILIATE.—The term "affiliate" of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

(C) REGISTERED REPRESENTATIVE.—The term "registered representative" of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

* * * * * * *

BONDING

SEC. 412. (a) Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan

(hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, [and]

(2) no bond shall be required of an entity which is subject to regulation as a broker or a dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or an entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), including requirements imposed by a self-regulatory organization (within the meaning of section 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)), or any affiliate with respect to which the broker or dealer agrees to be liable to the same extent as if they held the assets directly.

[(2)] *(3)* no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) * * *

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PART 5—ADMINISTRATION AND ENFORCEMENT

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CIVIL ENFORCEMENT

SEC. 502. (a) * * *

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(c)(1) * * *

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(4) The Secretary may assess a civil penalty of not more than $1,000 a day for each violation by any person of [section 302(b)(7)(F)(vi)] *sections 101(j), 101(k), 101(l), and 302(b)(7)(F)(vi).*

* * * * * * *

[(i) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of such Code.]

(i)(1) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in inter-

est. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

(2) For purposes of paragraph (1)—

(A) Except as provided in subparagraphs (C) and (D), the term "amount involved" means, with respect to a prohibited transaction, the greater of—

(i) the amount of money and the fair market value of the other property given, or

(ii) the amount of money and the fair market value of the other property received.

(B) For purposes of subparagraph (A), fair market value—

(i) shall be determined as of the date on which the prohibited transaction occurs; and

(ii) shall be the highest fair market value during the period between the date of the transaction and the date of correction.

(C) In the case of services described in subsection (b)(2) or (c)(2) of section 408, the term "amount involved" means only the amount of excess compensation.

(D) In the case of principal transactions involving securities or commodities, the term "amount involved" means only the amount received by the disqualified person in excess of the amount such person would have received in an arm's length transaction with an unrelated party as of the same date.

(E) For the purposes of this paragraph—

(i) the term "security" has the meaning given such term by section 475(c)(2) of the Internal Revenue Code of 1986 (without regard to subparagraph (F)(iii) and the last sentence thereof) , and

(ii) the term "commodity" has the meaning given such term by section 475(e)(2) of such Code (without regard to subparagraph (D)(iii) thereof).

* * * * * * *

TITLE IV—PLAN TERMINATION INSURANCE

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

DEFINITIONS

SEC. 4001. (a) For purposes of this title, the term—

(1) * * *

* * * * * * *

(13) "contributing sponsor", of a single-employer plan, means a person described in section [302(c)(11)(A)] *302(b)(1)* of this Act (without regard to section [302(c)(11)(B)] *302(b)(2)* of this Act) or section [412(c)(11)(A)] *412(b)(1)* of the Internal Rev-

enue Code of 1986 (without regard to section [412(c)(11)(B)] *412(b)(2)* of such Code).

* * * * * * *

INVESTIGATORY AUTHORITY; COOPERATION WITH OTHER AGENCIES; CIVIL ACTIONS

SEC. 4003. (a) * * *

* * * * * * *

(e)(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to enforce (A) the provisions of this title, and (B) in the case of a plan which is covered under this title (other than a multiemployer plan) and for which the conditions for imposition of a lien described in section [302(f)(1)(A) and (B)] *303(k)(1)(A) and (B)* of this Act or section [412(n)(1)(A) and (B)] *430(k)(1)(A) and (B)* of the Internal Revenue Code of 1986 have been met, section 302 of this Act and section 412 of such Code.

* * * * * * *

PREMIUM RATES

SEC. 4006. (a)(1) * * *

* * * * * * *

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

[(i) in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;]

(i) in the case of a single-employer plan, an amount equal to—

(I) for plan years beginning after December 31, 1990, and before January 1, 2006, $19, or

(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (F),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

* * * * * * *

(E)(i) * * *

* * * * * * *

[(iii) For purposes of clause (ii)—

[(I) Except as provided in subclause (II) or (III), the term "unfunded vested benefits" means the amount which would be the unfunded current liability (within the meaning of section 302(d)(8)(A)) if only vested benefits were taken into account.

[(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the applicable percentage of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the first tables prescribed under section 302(d)(7)(C)(ii)(II) apply, and 100 percent for such 1st plan year and subsequent plan years.

[(III) In the case of any plan year for which the applicable percentage under subclause (II) is 100 percent, the value of the plan's assets used in determining unfunded current liability under subclause (I) shall be their fair market value.

[(IV) In the case of plan years beginning after December 31, 2001, and before January 1, 2004, subclause (II) shall be applied by substituting "100 percent" for "85 percent". Subclause (III) shall be applied for such years without regard to the preceding sentence. Any reference to this clause or this subparagraph by any other sections or subsections (other than sections 4005, 4010, 4011, and 4043) shall be treated as a reference to this clause or this subparagraph without regard to this subclause.

[(V) In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the annual yield taken into account under subclause (II) shall be the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the month in which the plan year begins. For purposes of the preceding sentence, the Secretary of the Treasury shall determine such rate of interest on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the rate, publicly available.

[(iv) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of the Internal Revenue Code of 1986.**]**

(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term "unfunded vested benefits" means, for a plan year, the amount which would be the plan's funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and only vested benefits were taken into account.

(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were applied by substituting "the yields" for "the 3-year weighted average of yields", as applicable under rules similar to the rules under section 303(h)(2)(B).

(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of $30 or the adjusted amount determined under clause (ii).

(ii) For plan years beginning after 2006, the adjusted amount determined under this clause is the product derived by multiplying $30 by the ratio of—

(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to

(II) the national average wage index (as so defined) for 2004, with such product, if not a multiple of $1, being rounded to the next higher multiple of $1 where such product is a multiple of $0.50 but not of $1, and to the nearest multiple of $1 in any other case.

(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2005 and before 2010—

(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

If the plan year begins in:	***The amount is:***
2006	*$21.20*
2007	*$23.40*
2008	*$25.60*
2009	*$27.80; or*

(II) if the plan's funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

If the plan year begins in:	***The amount is:***
2006	*$22.67*
2007	*$26.33*
2008 or 2009	*the amount provided under clause (i).*

(iv) For purposes of this subparagraph, the term "funding target attainment percentage" has the meaning provided such term in section 303(d)(2).

* * * * * * *

SEC. 4010. AUTHORITY TO REQUIRE CERTAIN INFORMATION.

(a) * * *

(b) PERSONS REQUIRED TO PROVIDE INFORMATION.—The persons covered by subsection (a) are each contributing sponsor, and each member of a contributing sponsor's controlled group, of a single-employer plan covered by this title, if—

[(1) the aggregate unfunded vested benefits at the end of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of plans maintained by the contributing sponsor and the members of its controlled group exceed $50,000,000 (disregarding plans with no unfunded vested benefits);]

(1) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 60 percent;

(2)(A) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 75 percent, and

(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining;

[(2)**]** *(3)* the conditions for imposition of a lien described in section **[**302(f)(1)(A) and (B)**]** *303(k)(1)(A) and (B)* of this Act or section **[**412(n)(1)(A) and (B)**]** *430(k)(1)(A) and (B)* of the Internal Revenue Code of 1986 have been met with respect to any plan maintained by the contributing sponsor or any member of its controlled group; or

[(3)**]** *(4)* minimum funding waivers in excess of $1,000,000 have been granted with respect to any plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding.

* * * * * * *

(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and

(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

(2) DEFINITIONS.—For purposes of this subsection—

(A) VALUE OF PLAN ASSETS.—The term "value of plan assets" means the value of plan assets, as determined under section 303(g)(3).

(B) FUNDING TARGET.—The term "funding target" has the meaning provided under section 303(d)(1).

(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term "funding target attainment percentage" has the meaning provided in section 303(d)(2).

(D) AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.—The term "aggregate funding targets attainment percentage" with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

(E) AT-RISK STATUS.—The term "at-risk status" has the meaning provided in section 303(i)(3).

(3) COMPLIANCE.—

(A) IN GENERAL.—Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.

(B) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(4) NOTICE TO CONGRESS.—Concurrent with the provision of any notice under paragraph (1), such person shall provide such notice to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, which shall be treated as materials provided in executive session.

SEC. 4011. NOTICE TO PARTICIPANTS.

(a) * * *

(b) EXCEPTION.—Subsection (a) shall not apply to any plan [to which section 302(d) does not apply for the plan year by reason of paragraph (9) thereof.] *for any plan year for which the plan's funding target attainment percentage (as defined in section 303(d)(2)) is at least 90 percent.*

* * * * * * *

Subtitle D—Liability

* * * * * * *

LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS UNDER A DISTRESS TERMINATION OR A TERMINATION BY THE CORPORATION

SEC. 4062. (a) * * *

* * * * * * *

(c) LIABILITY TO SECTION 4042 TRUSTEE.—A person described in subsection (a) shall be subject to liability under this subsection to the trustee appointed under subsection (b) or (c) of section 4042. The liability of such person under this subsection shall consist of—

[(1) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 302(a)(2) of this Act and section 412(a) of the Internal Revenue Code of 1986) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 303 of this Act or section 412(d) of such Code and for extensions of the amortization period under section 304 of this Act or section 412(e) of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

[(2) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 303 of this Act or section 412(d) of such Code (if any), and

[(3) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304 of this Act or section 412(e) of such Code (if any),]

(1)(A) in the case of a single-employer plan, the sum of the shortfall amortization charge (within the meaning of section 303(c)(1) of this Act and 430(c)(1) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of shortfall amortization installments (if any) determined for succeeding plan years under section 303(c)(2) of this Act and section 430(c)(2) of such Code (which, for purposes of this subparagraph, shall include any increase in such sum which would result if all applications for waivers of the minimum funding standard under section 302(c) of this Act and section 412(c) of such Code which are pending with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year), or

(B) in the case of a multiemployer plan, the outstanding balance of the accumulated funding deficiencies (within the meaning of section 304(a)(2) of this Act and section 431(a) of the Internal Revenue Code of 1986) of the plan (if any) (which, for purposes of this subparagraph, shall include the amount of any increase in such accumulated funding deficiencies of the plan which would result if all pending applications for waivers of the minimum funding standard under section 302(c) of this Act or section 412(c) of such Code and for extensions of the amortization period under section 304(d) of this Act or section 431(d)

of such Code with respect to such plan were denied and if no additional contributions (other than those already made by the termination date) were made for the plan year in which the termination date occurs or for any previous plan year),

(2)(A) in the case of a single-employer plan, the sum of the waiver amortization charge (within the meaning of section 303(e)(1) of this Act and 430(j)(2) of the Internal Revenue Code of 1986) with respect to the plan (if any) for the plan year in which the termination date occurs, plus the aggregate total of waiver amortization installments (if any) determined for succeeding plan years under section 303(e)(2) of this Act and section 430(j)(3) of such Code, or

(B) in the case of a multiemployer plan, the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 302(c) of this Act or section 412(c) of such Code (if any), and

(3) in the case of a multiemployer plan, the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304(d) of this Act or section 431(d) of such Code (if any);

together with interest (at a reasonable rate) calculated from the termination date in accordance with regulations prescribed by the corporation. The liability under this subsection shall be due and payable to such trustee as of the termination date, in cash or securities acceptable to such trustee.

* * * * * * *

PENALTY FOR FAILURE TO TIMELY PROVIDE REQUIRED INFORMATION

SEC. 4071.The corporation may assess a penalty, payable to the corporation, against any person who fails to provide any notice or other material information required under this subtitle, subtitle A, B, or C, as section [302(f)(4)] *303(k)(4)* or 307(e) or any regulations prescribed under any such subtitle or such section, within the applicable time limit specified therein. Such penalty shall not exceed $1,000 for each day for which such failure continues.

* * * * * * *

SUBTITLE E—SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS

PART 1—EMPLOYER WITHDRAWALS

* * * * * * *

COMPLETE WITHDRAWAL

SEC. 4203. (a) * * *

* * * * * * *

[(d)(1) Notwithstanding subsection (a), in the case of an employer who—

[(A) has an obligation to contribute under a plan described in paragraph (2) primarily for work described in such paragraph, and

[(B) does not continue to perform work within the jurisdiction of the plan,

a complete withdrawal occurs only as described in paragraph (3).

[(2) A plan is described in this paragraph if substantially all of the contributions required under the plan are made by employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry.

[(3) A withdrawal occurs under this paragraph if—

[(A) an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, and

[(B) either—

[(i) the corporation determines that the plan has suffered substantial damage to its contribution base as a result of such cessation, or

[(ii) the employer fails to furnish a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412, or an amount held in escrow by a bank or similar financial institution satisfactory to the plan, in an amount equal to 50 percent of the withdrawal liability of the employer.

[(4) If, after an employer furnishes a bond or escrow to a plan under paragraph (3)(B)(ii), the corporation determines that the cessation of the employer's obligation to contribute under the plan (considered together with any cessations by other employers), or cessation of covered operations under the plan, has resulted in substantial damage to the contribution base of the plan, the employer shall be treated as having withdrawn from the plan on the date on which the obligation to contribute or covered operations ceased, and such bond or escrow shall be paid to the plan. The corporation shall not make a determination under this paragraph more than 60 months after the date on which such obligation to contribute or covered operations ceased.

[(5) If the corporation determines that the employer has no further liability under the plan either—

[(A) because it determines that the contribution base of the plan has not suffered substantial damage as a result of the cessation of the employer's obligation to contribute or cessation of covered operations (considered together with any cessation of contribution obligation, or of covered operations, with respect to other employers), or

[(B) because it may not make a determination under paragraph (4) because of the last sentence thereof,

then the bond shall be cancelled or the escrow refunded.

[(6) Nothing in this subsection shall be construed as a limitation on the amount of the withdrawal liability of any employer.]

* * * * * * *

PARTIAL WITHDRAWALS

SEC. 4205. (a) * * *

(b) For purposes of subsection (a)—

(1) * * *

(2)(A) There is a partial cessation of the employer's contribution obligation for the plan year if, during such year—

(i) the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location *or to another party or parties*, or

* * * * * * *

NO WITHDRAWAL LIABILITY FOR CERTAIN TEMPORARY CONTRIBUTION OBLIGATION PERIODS

SEC. 4210. (a) * * *

(b) Subsection (a) shall apply to an employer with respect to a plan only if—

[(1) the plan is not a plan which primarily covers employees in the building and construction industry;**]**

[(2)**]** *(1)* the plan is amended to provide that subsection (a) applies;

[(3)**]** *(2)* the plan provides, or is amended to provide, that the reduction under section 411(a)(3)(E) of the Internal Revenue Code of 1986 applies with respect to the employees of the employer; and

[(4)**]** *(3)* the ratio of the assets of the plan for the plan year preceding the first plan year for which the employer was required to contribute to the plan to the benefit payments made during that plan year was at least 8 to 1.

* * * * * * *

NOTICE, COLLECTION, ETC., OF WITHDRAWAL LIABILITY

SEC. 4219. (a) * * *

* * * * * * *

(c)(1)(A) * * *

[(B) In any case in which the amortization period described in subparagraph (A) exceeds 20 years, the employer's liability shall be limited to the first 20 annual payments determined under subparagraph (C).**]**

* * * * * * *

RESOLUTION OF DISPUTES

SEC. 4221. (a) * * *

* * * * * * *

(f) PROCEDURES APPLICABLE TO CERTAIN DISPUTES.—

(1) IN GENERAL.—If—

(A) a plan sponsor of a plan determines that—

(i) * * *

(ii) an employer is liable for withdrawal liability payments with respect to the complete or partial withdrawal of an employer from the plan, *and*

[(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of a transaction that occurred before January 1, 1999, was to evade or avoid withdrawal liability under this subtitle, and

[(C) such transaction occurred at least 5 years before the date of the complete or partial withdrawal,]

(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of any transaction which occurred at least 5 years (2 years in the case of a small employer) before the date of the complete or partial withdrawal was to evade or avoid withdrawal liability under this subtitle,

then the special rules under paragraph (2) shall be used in applying subsections (a) and (d) of this section and section 4219(c) to the employer.

(2) SPECIAL RULES.—

(A) DETERMINATION.—[Notwithstanding] *In the case of a transaction occurring before January 1, 1999, and at least 5 years before the date of the complete or partial withdrawal, notwithstanding* subsection (a)(3)—

(i) * * *

* * * * * * *

(B) PROCEDURE.—Notwithstanding subsection (d) and section 4219(c), if an employer contests the plan sponsor's determination *with respect to withdrawal liability payments* under paragraph (1) through an arbitration proceeding pursuant to subsection (a), or through a claim brought in a court of competent jurisdiction, the employer shall not be obligated to make [any] *the* withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination.

(C) SMALL EMPLOYER.—For purposes of paragraph (1)(B)—

(i) IN GENERAL.—The term "small employer" means any employer who (as of immediately before the transaction referred to in paragraph (1)(B))—

(I) employs not more than 500 employees, and

(II) is required to make contributions to the plan for not more than 250 employees.

(ii) CONTROLLED GROUP.—Any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subparagraph.

* * * * * * *

[LIMITATION ON WITHDRAWAL LIABILITY

[SEC. 4225. (a)(1) In the case of bona fide sale of all or substantially all of the employer's assets in an arm's-length transaction to an unrelated party (within the meaning of section 4204(d)), the unfunded vested benefits allocable to an employer (after the application of all sections of this part having a lower number designation

than this section), other than an employer undergoing reorganization under title 11, United States Code, or similar provisions of State law, shall not exceed the greater of—

[(A) a portion (determined under paragraph (2)) of the liquidation or dissolution value of the employer (determined after the sale or exchange of such assets), or

[(B) the unfunded vested benefits attributable to employees of the employer.

[(2) For purposes of paragraph (1), the portion shall be determined in accordance with the following table:

[If the liquidation or dissolution value of the employer after the sale or exchange is—	The portion is—
Not more than $2,000,000	30 percent of the amount.
More than $2,000,000, but not more than $4,000,000	$600,000, plus 35 percent of the amount in excess of $2,000,000.
More than $4,000,000, but not more than $6,000,000	$1,300,000, plus 40 percent of the amount in excess of $4,000,000.
More than $6,000,000, but not more than $7,000,000	$2,100,000, plus 45 percent of the amount in excess of $6,000,000.
More than $7,000,000, but not more than $8,000,000	$2,550,000, plus 50 percent of the amount in excess of $7,000,000.
More than $8,000,000, but not more than $9,000,000	$3,050,000, plus 60 percent of the amount in excess of $8,000,000.
More than $9,000,000, but not more than $10,000,000	$3,650,000, plus 70 percent of the amount in excess of $9,000,000.
More than $10,000,000	$4,350,000, plus 80 percent of the amount in excess of $10,000,000.

[(b) In the case of an insolvent employer undergoing liquidation or dissolution, the unfunded vested benefits allocable to that employer shall not exceed an amount equal to the sum of—

[(1) 50 percent of the unfunded vested benefits allocable to the employer (determined without regard to this section), and

[(2) that portion of 50 percent of the unfunded vested benefits allocable to the employer (as determined under paragraph (1)) which does not exceed the liquidation or dissolution value of the employer determined—

[(A) as of the commencement of liquidation or dissolution, and

[(B) after reducing the liquidation or dissolution value of the employer by the amount determined under paragraph (1).

[(c) To the extent that the withdrawal liability of an employer is attributable to his obligation to contribute to or under a plan as an individual (whether as a sole proprietor or as a member of a partnership), property which may be exempt from the estate under section 522 of title 11, United States Code or under similar provisions of law, shall not be subject to enforcement of such liability.

[(d) For purposes of this section—

[(1) an employer is insolvent if the liabilities of the employer, including withdrawal liability under the plan (determined without regard to subsection (b), exceed the assets of the employer (determined as of the commencement of the liquidation or dissolution), and

[(2) the liquidation or dissolution value of the employer shall be determined without regard to such withdrawal liability.

[(e) In the case of one or more withdrawals of an employer attributable to the same sale, liquidation, or dissolution, under regulations prescribed by the corporation—

[(1) all such withdrawals shall be treated as a single withdrawal for the purpose of applying this section, and

[(2) the withdrawal liability of the employer to each plan shall be an amount which bears the same ratio to the present value of the withdrawal liability payments to all plans (after the application of the preceding provisions of this section) as the withdrawal liability of the employer to such plan (determined without regard to this section) bears to the withdrawal liability of the employer to all such plans (determined without regard to this section).]

* * * * * * *

PART 3—REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENTS FOR MULTIEMPLOYER PLANS

* * * * * * *

MINIMUM CONTRIBUTION REQUIREMENT

SEC. 4243. (a)(1) For any plan year for which a plan is in reorganization—

(A) * * *

(B) the plan's accumulated funding deficiency under section [302(a)] *304(a)* for such plan year shall be equal to the excess (if any) of—

(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 4244(a)) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such year or under section [302(a)] *304(a)* if the plan was not in reorganization), over

* * * * * * *

(f)(1) The Secretary of the Treasury may waive any accumulated funding deficiency under this section in accordance with the provisions of section [303(a)] *302(c)*.

(2) Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section [303(c)] *302(c)(3)*).

(g) For purposes of making any determination under this part, the requirements of section [302(c)(3)] *304(c)(3)* shall apply.

* * * * * * *

INSOLVENT PLANS

SEC. 4245. (a) * * *

* * * * * * *

(d)(1) As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall

compare the value of plan assets (determined in accordance with section 4243(b)(3)(B)(ii)) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next ⟦3 plan years⟧ *5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.*

* * * * * * *

SECTION 106 OF THE REORGANIZATION PLAN NO. 4 OF 1978

[The italic typeface of the heading for section 106 of the Reorganization Plan No. 4 of 1978 appears in this manner in the original text.]

SECTION 106. *Coordination for Section 101 Transfers.*

(a) * * *

(b) The documents to which this Section applies are:

(i) * * *

(ii) regulations issued pursuant to subsections 204(b)(3)(D), ⟦302(c)(8)⟧ *302(d)(2)*, and ⟦304(a) and (b)(2)(A)⟧ *304(d)(1), (d)(2), and (e)(2)(A)* of ERISA, and subsections 411(b)(3)(D), ⟦412(c)(8), (e), and (f)(2)(A)⟧ *412(d)(2) and 431(d)(1), (d)(2), and (e)(2)(A)* of the Code; and

* * * * * * *

SECTION 769 OF THE RETIREMENT PROTECTION ACT OF 1994

SEC. 769. SPECIAL FUNDING RULES FOR CERTAIN PLANS.

(a) * * *

* * * * * * *

⟦(c) TRANSITION RULES FOR CERTAIN PLANS.—

⟦(1) IN GENERAL.—In the case of a plan that—

⟦(A) was not required to pay a variable rate premium for the plan year beginning in 1996;

⟦(B) has not, in any plan year beginning after 1995 and before 2009, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor); and

⟦(C) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

except as provided in paragraph (3), the transition rules described in paragraph (2) shall apply for any plan year beginning after 1996 and before 2010.

[(2) TRANSITION RULES.—The transition rules described in this paragraph are as follows:

[(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974—

[(i) the funded current liability percentage for any plan year beginning after 1996 and before 2005 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage is at least 85 percent, and

[(ii) the funded current liability percentage for any plan year beginning after 2004 and before 2010 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage satisfies the minimum percentage determined according to the following table:

[In the case of a plan year beginning in:	The minimum percentage is:
2005	86 percent
2006	87 percent
2007	88 percent
2008	89 percent
2009 and thereafter	90 percent.

[(B) Sections 412(c)(7)(E)(i)(I) of such Code and 302(c)(7)(E)(i)(I) of such Act shall be applied—

[(i) by substituting "85 percent" for "90 percent" for plan years beginning after 1996 and before 2005, and

[(ii) by substituting the minimum percentage specified in the table contained in subparagraph (A)(ii) for "90 percent" for plan years beginning after 2004 and before 2010.

[(C) In the event the funded current liability percentage of a plan is less than 85 percent for any plan year beginning after 1996 and before 2005, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan if contributions for such a plan year are made to the plan in an amount equal to the lesser of—

[(i) the amount necessary to result in a funded current liability percentage of 85 percent, or

[(ii) the greater of—

[(I) 2 percent of the plan's current liability as of the beginning of such plan year, or

[(II) the amount necessary to result in a funded current liability percentage of 80 percent as of the end of such plan year.

For the plan year beginning in 2005 and for each of the 3 succeeding plan years, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan for such plan year only if contributions to the plan for such plan year equal at least the expected increase in current liability due to benefits accruing during such plan year.

[(3) SPECIAL RULES.—In the case of plan years beginning in 2004 and 2005, the following transition rules shall apply in lieu of the transition rules described in paragraph (2):

[(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Em-

ployee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

[(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

[(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.]

MINORITY VIEWS

During Committee consideration of H.R. 2830, we voted "present" because neither the proponents of the bill nor the Pension Benefit Guaranty Corporation (PBGC) was able to provide any information on the effect the legislation would have on corporate sponsors, employees, or the PBGC. As we file this report, we still are awaiting information on the effect of this bill.

The defined benefit pension system, which protects the retirement security of over 44 million workers, retirees, and their families, is at a critical moment. The number of defined benefit plans has declined precipitously from over 100,000 in 1985 to under 32,000 in 2004.[1] While the number of active workers covered by such plans has dropped from over 40 million to under 20 million, an additional 20 million retirees depend on defined benefit plans for their retirement security.[2]

The funding levels of these plans have dropped dramatically in recent years, with the fall of both the stock market and interest rates, from over 100% to approximately 85% on average (for an ongoing plan).[3] Approximately 1200 plans have terminated and shifted unfunded liabilities onto the PBGC leaving it with a $23–27.5 billion deficit.[4] The PBGC estimates that it faces additional possible liabilities of $100 billion; the Congressional Budget Office believes the market value of PBGC's liabilities could be as high as $146 billion.[5] The PBGC reports that total pension underfunding by pension plans exceeds $450 billion.[6]

Given these dynamics, the challenge for the Congress is how to address pension underfunding in a way that does not lead to additional pension plan terminations, or jeopardize the retirement security of the 44 million individuals who depend on these retirement plans.

Congress was first alerted to the severity of this problem in 2002 when the PBGC first, reported its shift from a $10 billion surplus to an $11 billion deficit in less than 2 years.[7] Throughout this period, Democratic members of the Committee repeatedly called for action by the Bush Administration and the Majority to act on pension reform. Unfortunately, years passed before they took the crisis seriously; since those warnings pension underfunding has doubled,

[1] PBGC Annual Report, 2004.
[2] U.S. Department of Labor, preliminary Private Pension Plan Bulletin Abstract of 2000 Form 5500 Annual Report, July 2005.
[3] Watson Wyatt Worldwide, Pension Fund Finances and Business Risk, July 2005.
[4] PBGC Annual Report, 2004; PBGC letter to the Honorable George Miller dated July 29, 2005.
[5] Congressional Budget Office, The Risk Exposure of the Pension Benefit Guaranty Corporation, September 2005.
[6] PBGC Annual Report, 2004.
[7] PBGC Annual Report, 2002.

and the problem now puts taxpayers and employees at risk for billions of dollars.

When the Administration finally responded to the pension crisis, it proposed a measure that would have given a jolt to already struggling pension plans by increasing contributions by $430 billion over 7 years: such an action would create a strong disincentive for many employers to continue to offer plans.[8] We want to encourage employers to stay in the system, not force them out. All major groups representing pension plans and employers have expressed serious concerns with the Administration's legislation.

Chairman Boehner introduced H.R. 2830 on July 9, and the bill was ordered reported out of the full committee within three weeks. During the Committee's one hearing on the bill both the employer and worker representative witnesses expressed serious reservations as to the effects on employers, workers, and the defined benefit system. Democratic members repeatedly asked Chairman Boehner to share with the Minority any analysis his office had undertaken in preparation of the bill, but no information was provided. Democratic members also asked the Administration for its analysis of the effects of H.R. 2830, but no information has been provided.

Retirement security is one of the foremost issues facing this country. The overwhelming majority of workers and retirees depend on Social Security, private pensions, and personal savings to support them in retirement and live out their non-working years in dignity and comfort. Without private pensions, millions of older workers will not be able to retire or will be forced to live in poverty. The financial pressures on Social Security will only be made greater. Congress has a responsibility to know the consequences of its actions on the retirement security of the nation. Our comments, below, focus on the provisions of the bill for which we have insufficient information on the effects on employers and workers, or in which we believe the bill does not sufficiently protect workers' retirement security.

H.R. 2830 SINGLE EMPLOYER FUNDING REFORM IMPACTS UNKNOWN

The centerpiece of H.R. 2830 is its pension funding reforms for single employer defined benefit pension plans. Under current law, employers generally are permitted to fund their pension promises over a 30 year period. Employers are permitted to value the assets and liabilities of the plan using what are known as smoothing techniques and to vary funding within certain permissible ranges. Employers also are permitted to earn credit balances for making more than a minimum contribution in a given year.

H.R. 2830 would generally reduce the funding period for unfunded pension liabilities to 7 years based upon an interest rate calculation that is tied to what is being called a "modified yield curve". The Department of Treasury would issue 3 monthly interest rates based upon liabilities due within 0–5, 5–20, and 20+ years, but would continue to permit smoothing over a 3-year period. Pension plans less than 80% funded would not be able to use credit balances, and credit balances could not be used for purposes of determining pension funding levels. If a pension plan is deter-

[8] PBGC letter to the Honorable George Miller dated July 29, 2005.

mined to be less than 80% funded during the prior year, then in the following year the plan cannot provide benefit or salary increases to the participants in the plan. If a pension plan is determined to be less than 60% funded during the prior year, then participants cannot accrue any additional benefits under the plan which effectively freezes the plan.

Neither Chairman Boehner nor the Administration has provided any analysis of the effects on these funding rule changes on employers or workers. We do not know how many employers will face increased pension contributions. We do not know how much contributions will increase at the average, median or aggregate. We do not know how many plans would be funded under 60 or 80% and thus, how many workers would face frozen pension benefits. We do not know how many plans could be expected to freeze or terminate should these contribution increases be enacted. [Again, subsequent to our mark-up we did receive an analysis by the PBGC of 369 plans that found that 163 would face benefit reductions and 28 would be forced to be frozen (based on 2002 data).[9]]

In addition, certain aspects of H.R. 2830 unfairly change the rules at the end of the game. The bill's adoption of a modified yield curve will more negatively impact employers with older workforces than those with younger ones. Similarly, the eventual use of a modified yield curve to calculate the present value of lump sum distributions will reduce workers' retirement benefits based on an imperfect and overly aggressive interest rate measure. The bill's changes in the treatment of credit balances also will negatively impact workers through benefit reductions and freezes. Under H.R. 2830, many plans that are well funded will be treated as severely underfunded and forced to freeze benefits. This occurs because H.R. 2830 treats plan assets as reduced by the amount of the plan's credit balance. Thus, for example, a plan that is 95% funded based on actual assets is treated as 55% funded if it has a credit balance equal to 40% of plan liabilities. Such a plan must be frozen under H.R. 2830.

Because of the modified yield curve's unnecessary complexity and volatility at a time when employers are in need of predictable contribution rates, Representatives McCarthy and Wu offered an amendment to H.R. 2830 which would strike the yield curve language from the bill and replace it with current law. Both employer and worker advocates have urged Congress to adopt a rate that is easily understood, predictable, stable, and transparent. The Majority rejected the McCarthy-Wu amendment on a voice vote.

H.R. 2830 provides new reporting and disclosure requirements for single-employer plans. While these new requirements generally are a step forward, out of concerns that the reporting and disclosure schedule is such that small employers with limited resources may face dramatic increases in administrative costs to comply with the new annual funding notice, 90 days after the end of a plan year, in addition to the Summary Annual Report and Form 5500 filings 7 months later, Subcommittee on Employer-Employee Relations Ranking Member Andrews offered an amendment that would allow small employers to provide the new annual funding notice at

[9] PBGC letter to the Honorable George Miller dated August 9, 2005.

the same time that the Summary Annual Report is provided to participants. With the Chairman's assertion that he would work with Subcommittee Ranking Member Andrews on dealing with the issue of administrative burdens on small employers as this bill proceeds, the amendment was withdrawn. The Minority strongly supports reporting and disclosure that is timely, accurate, and public.

H.R. 2830 CONTAINS NO PROVISIONS TO PREVENT OR ENCOURAGE ALTERNATIVES TO TERMINATION

In addition to not knowing the effects of H.R. 2830, the bill fails to address the rising problem of runaway pension plan terminations. Provisions to deal with unfair pension plan terminations must be included in any serious pension reform. The Congress has failed to pass meaningful pension funding reform for several years, allowing industrywide plan underfunding to fester while more and more companies have filed for bankruptcy, particularly in the airline and steel industries. As we have seen from the recent plan terminations at United Airlines, there are grave shortcomings in the Employee Retirement Income Security Act's (ERISA) provisions governing involuntary terminations. Indeed, rather than stopping unfair terminations, H.R. 2830 invariably speeds up terminations. The bill increases funding requirements on companies precisely at a time when they are at their weakest, undoubtedly encouraging some number of companies on the margin—the breadth and depth of which no one knows—to terminate their pension plans sooner rather than later. Under H.R. 2830, the way for companies to dump their plans onto the PBGC in bankruptcy remains free and clear.

Unfortunately, United Airlines has become a poster child for the need to reform ERISA's plan termination provisions. The company entered bankruptcy in December 2002 and soon sought to terminate its four pension plans, covering flight attendants, pilots, mechanics, and public contact employees.[10] Because the plans were collectively bargained, the company could not initiate a termination without first exhausting goodfaith bargaining over the plans. Also, because the company—not the PBGC—sought to terminate the plans, pursuant to ERISA Section 4041, it would ultimately have to show the bankruptcy court that it could not continue in business without terminating the plans. Throughout bargaining, rather than offering alternatives to termination, the company insisted that the plans must be terminated. The unions offered alternatives which were rejected again and again. The PBGC maintained, after commissioning an independent analysis of United's financial situation, that the company could afford to keep one or more of its plans and successfully exit bankruptcy. Nevertheless, at a time when at least two of the employees' unions continued to bargain with the company to save their plans and were legally challenging the company's claim that it needed to terminate its plans, the PBGC sud-

[10] For accounts of the bankruptcy and termination process used by United Airlines, see generally "Broken Promises: The United Airlines Pension Crisis," E-Hearing by Rep. George Miller and Rep. Jan Schakowsky, June 13, 2005 (available at *http://edworkforce.house.gov/democrats/unitedhearing.html*); Testimony of Patricia A. Friend, Hearing on "Preventing the Next Pension Collapse: Lessons from the United Airlines Case," Committee on Finance, U.S. Senate, June 7, 2005.

denly reversed course and struck a deal with United to terminate all four of its plans pursuant to the PBGC's authority under ERISA Section 4042. Because PBGC initiated terminations do not provide plan participants with the same protections as employer-initiated terminations, this deal effectively ended any bargaining to save the plans. It spared United from having to prove that the terminations were financially necessary. It denied employees and retirees their day in court to challenge the companies' claims of necessity, and it came at a time when the company still had not filed any business reorganization plan with the bankruptcy court.

If the termination of all four plans at United Airlines is allowed to stand, the Congress will have stood by while over a hundred thousand American families saw their retirement nest eggs unfairly ripped from under them. In the first-ever e-hearing, sponsored by the Committee's ranking Democrat, we received over 2,000 witness statements from United employees, retirees, and their families revealing the deep impact these terminations would have on their lives, forcing retirees to return to work in their golden years, sell their home, or struggle anew to pay or a child's college tuition or elderly parent's health care.[11] The economic devastation caused by this termination is wide and deep. United employees and retirees will lose over $3 billion in promised benefits—deferred wages which they earned with years of hard work and loyalty.

Moreover, the termination of all four plans at United Airlines marks the single largest pension liability imposed on the PBGC in the nation's history. Underfunded by over $9 billion, the plans impose over $6 billion in new liabilities on the PBGC.[12] Shortly after the PBGC's deal with United was announced, the Ranking Member Miller introduced a bill, H.R. 2327, to put a halt to the terminations for six months to give the parties and the Congress an opportunity to craft alternative solutions to the crisis. It has been referred to this Committee. The Committee, however, has failed to act on H.R. 2327, even though a clear majority of the House (219–185) rejected the PBGC deal with United, with the passage of the Miller Amendment to the Labor-HHS Appropriations bill, H.R. 3010, on June 24, 2005.[13]

At markup of H.R. 2830, the Democratic Minority supported an amendment offered by, Representatives Tierney and Miller to reform the provisions of ERISA Sections 4041 and 4042 to strengthen protections against abuse of the bankruptcy and termination process. Current law does not sufficiently protect against the termination of plan which may in fact be affordable. The Tierney-Miller Amendment would have required—in both employer-initiated and PBGC-initiated terminations—that the parties make reasonable efforts to consider alternatives to termination, and it provided a non-exhaustive list of such alternatives. The Amendment also would have provided a greater voice for participants and their representatives in ensuring that all reasonable efforts to find alternatives to dumping have been explored. It would have established a presump-

[11] The e-hearing record is available at *http://edworkforce.house.gov/democrats/unitedhearing.html*

[12] PBGC, "PBGC Reaches Pension Settlement with United Airlines," Press Release, April 22, 2005.

[13] H. Amdt. 352 to H.R. 3010, Roll Call No. 309, 109th Cong., June 24, 2005.

tion against PBGC-initiated terminations where a company can continue in Business without terminating a pension plan. The Majority rejected this Amendment. As a result, H.R. 2830 has left the bankruptcy and termination process open to the kind abuse we have seen in the United Airlines case. Since the mark-up, Delta and Northwest Airlines have followed United's example. Congress must act to discourage further terminations.

H.R. 2830 DOES NOT PROVIDE FAIR TREATMENT OF WORKERS AND EXECUTIVES

H.R. 2830 is remarkably inequitable in its treatment of retirement benefits for executives and rank-and-file employees. The bill imposes restrictions on rank-and-file employee benefits when a plan is underfunded. The initial restrictions, ranging from no new benefit increases to no lump sums, are triggered when the plan is less than 80% funded. No similar restriction is imposed on executives. Instead, restrictions on executive benefits are not triggered until the plan is less than 60% funded. Only at 60%, are employers prohibited from transferring funds to executive deferred compensation plans. Meanwhile, if the employer does not fund above 60%, then the workers' plan must be frozen with no new benefits allowed to accrue. If the plan ultimately fails, workers lose their pension plan and are relegated to PBGC guarantees while any restrictions on executive benefits would be lifted.

This scheme is patently unfair. Employees have no control over single employer plans. Executives make the critical decisions on whether and how much to fund a plan—yet they do not share the pain in those decisions. Any fair pension reform legislation must repeal special protections for executive pension plans that allow CEO's golden parachutes at the same time employees are suffering deep cuts in their promised retirement benefits.

In practice, extensive executive packages are often increased at the very same time their employees' pensions are cut. As employees are asked to give back benefits they have earned, executives are often padding their own retirement packages. A 2003 Executive Excess report by United for a Fair Economy and the Institute for Policy Studies found that the median pay for executives at the 30 companies with the most underfunded pension plans in 2002 was $5.9 million, or 59 percent higher than the median pay for executives at the typical large company. These 30 companies had a combined $131 billion pension deficit in 2002, but paid their executives a combined $352 million. While the underfunding threatened employee pensions, nineteen of these executives saw their pay rise, and ten saw their pay more than double in 2002.[14]

The executive pensions themselves are exorbitant. A review of 2004 proxy statements from 500 large companies by Corporate Library for the New York Times revealed that 113 chief executives could expect retirement benefits more than $1 million per year. At least 31 would see $2 million or more per year.[15]

[14] Sarah Anderson, John Cavanagh, Chris Hartman, and Scott Klinger, "Executive Excess Report 2003: CEOs Win, Workers and Taxpayers Lose," Tenth Annual CEO Compensation Survey, Institute for Policy Studies & United for a Fair Economy, August 26,2003.

[15] Eric Dash, "The New Executive Bonanza: Retirement," New York Times, April 3, 2005.

The business press is rife with stories of outrageous executive retirement schemes, even in the very industries with the most underfunded rank-and-file retirement plans. For example, in 2002, US Airways CEO Stephen Wolftook his pension in a lump sum of $15 million (calculated with 24 years of service Wolf never performed), just six months before the company filed for Chapter 11 bankruptcy. The bankruptcy resulted in the termination of the pilots" pension plan, along with other major worker concessions.[16] In November 1999, the steel company LTV Corp. established trusts for executive retirement plans. At the end of 2000, LTV filed for bankruptcy. Four months later, the company promised an executive that it would transfer assets in those trusts to a new one in the executive's name. Less than a year after this executive agreement was reached, the LTV workers' pension plan was dumped onto the PBGC, with many of the 82,000 covered workers seeing their earned benefits cut as a result.[17]

Members Woolsey and Bishop offered an amendment to provide for parity in the bill's treatment of executive and rank-and-file retirement benefits. Under their amendment, when restrictions on rank-and-file benefits are triggered, that is, when the rank-and-file defined benefit plan is less than 80% funded, similar restrictions are triggered for executives. Specifically, during such time rank-and-file workers may not receive new retirement benefits, neither would executives. Unfortunately, the Woolsey-Bishop amendment was defeated on a party-line vote.

Additional amendments to deal with the unfair restrictions on workers' benefits were offered by the Minority. Members Wu, Van Hollen, and Kucinich offered an amendment to make fairer the benefit restrictions imposed on workers when employers do not make certain pension contributions. Their amendment would have modified H.R. 2830's provisions that eliminate plant shut down benefits, prohibit recognition of salary increases, prohibit workers within five years of retirement from receiving lump sum payments, and freeze accruals of new benefits. Member Van Hollen offered an amendment to provide comparable treatment between salary and flat benefit provided pension plans. Both amendments were defeated by the Majority.

MULTIEMPLOYER FUNDING REFORMS NEEDED

The Democratic Minority strongly supports efforts to strengthen the multiemployer pension system. As of 2004, the PBGC covered more than 9.8 million participants in the nation's 1,600 multiemployer pension plans.[18] These plans are the product of collective bargaining and are governed by joint trusteeships composed of rep-

[16] Janice Revell et al., "CEO Pensions: The Latest Way to Hide Millions," Fortune, April 28, 2003; John Crawley, "US Airways in Tentative Giveback Deal with Pilots (Update 1), Reuters, October 1, 2004.

[17] Theo Francis and Ellen E. Schultz, "Employers Spare Execs from Pension-Cut Pain," Wall Street Journal Online, April 7, 2003. For additional press reports on executives receiving excessive new retirement benefits while cutting rank-and-file benefits, see, e.g., Lisa Yoon, "Former CFO Now CEO at American Airlines," CFO.com, April 28, 2003; "Corporate Books Hide Another Ticking Time Bomb: Deferred Compensation—Tab for Executive 'Top Hat' Plans Rises Yearly, Usually Isn't Disclosed," Wall Street Journal Europe, October 11, 2002; Ellen E. Schultz, "While Executives See Their Pensions Grow, Regular Workers See Their Pensions Shrink," Wall Street Journal, June 20, 2001.

[18] PBGC, Pension Insurance Data Book 2004, Number 9 (Spring 2005) at 20, 87.

resentatives from both labor and management. Such design lends itself to cooperative problem-solving among the plans' stakeholders. The plans' pooling of risk among employers has ensured a remarkably stable system for decades. In the past 25 years, only 38 multiemployer plans have required PBGC assistance.[19] In the plans' design also enables small employers, which could not administer a plan on their own, to offer defined benefits to their employees. Out of an estimated 65,000 employers which contribute to multiemployer plans, approximately 90% are small businesses employing fewer than 20 worker.[20] Particularly in industries where employment is seasonal and tenure with anyone firm is short, multiemployer plans provide workers with a guaranteed retirement benefit that accrues even as these workers move from one participating employer to another. In short, these plans set an example for how retirement security can be ensured in the private sector through the cooperative efforts of labor and management.

Multiemployer plans, however, have experienced many of the same financial shocks as single employer plans from unexpected declines in investment returns and interest rates. The multiemployer plan funding rules prevent these plans from building a cushion against future losses so surpluses in the 1990's necessitated benefit increases to avoid excise taxes on overfunding. Employer attacks on the right to organize and strong labor laws have severely depressed the number of newly unionized employers and employees to help support these plans.

For these reasons, it is critical that the Congress pass reform to give plans the flexibility to employ their greatest strengths—collective bargaining and joint trusteeships—to formulate their own solutions to funding problems. Unfairly denied meaningful relief in last year's temporary pension reform legislation, many multiemployer pension plans remain in trouble, facing funding obligation triggers which pose a risk to the viability of both the plans and their participating employers. According to the Segal Company consulting firm, approximately 30% of multiemployer plans are facing a funding deficiency by the end of the decade.[21]

The multiemployer pension reform provisions of H.R. 2830 are crafted from proposals offered by a coalition of labor and management representatives in the multiemployer plan community. These proposals are the result of good-faith negotiations by the stakeholders of this system. They come from the plans, the businesses, and the unions which are best situated to understand the problems they face and the real-world consequences of any changes in the law. The adoption of proposals from such a deliberative, cooperative process is markedly different from H.R. 2830's approach to single employer pension funding reform, the economic impact of which remains unknown. The multiemployer provisions reflect an approach based on shared commitments and sacrifices and are designed to

[19] Id. at 85.

[20] Testimony of Randy G. DeFrehn, Executive Director, National Coordinating Committee for Multiemployer Plans, Hearing on "A Pension Doubleheader: Reforming Hybrid and Multiemployer Pension Plans," U.S. Senate Committee on Health, Education, Labor, and Pensions Subcommittee on Retirement Security and Aging, June 7, 2005.

[21] Testimony of Judith Mazo, Senior Vice President and Director of Research, The Segal Company, "Hearing on H.R. 2830, The Pension Protection Act", U.S. House of Representatives Committee on Education & the Workforce, June 15, 2005.

empower labor and management with the tools necessary to return their plans to sound financial footing.

H.R. 2830's multiemployer pension reform is a step in the right direction which the Democratic Minority supports. The Minority urges Congress to continue working with the stakeholders of the multiemployer community as the bill proceeds through the legislative process and take care not to create unintended problems for well-functioning plans. We support adjustments and improvements where necessary to ensure the continued viability of multiemployer pension plans and delivery of promised benefits.

H.R. 2830 REDUCES OLDER WORKERS' PENSIONS UNDER CASH BALANCE PLANS

The Chairman's mark to H.R. 2830 added provisions that effectively legalize what are known as "cash balance pension plans" without protecting the millions of older workers who have and would have their pension benefits reduced by such plans. Under H.R. 2830, as ordered reported out of Committee, cash balance plans would be legal, under ERISA and the Internal Revenue Code (IRC), if younger and older workers with identical characteristics of wages and service are provided the same accrued benefit. The provision requires cash balance plans to comply with all of the defined benefit pension plan rules except for the rule on accrual of benefits where they could use the 401(k) rule. This change permits cash balance plans to freeze older workers benefits under the traditional plan and replace it with a lower benefit. The change would permit employers to change the rules at the end of the game when older workers have no time or bargaining power to protect their retirement benefits. The privatization of Social Security, attack on defined benefit plans, and legalization of cash balance plans are all part of a systematic attack on and effort to reduce the retirement security of middle class workers.

Cash balance plans were created by the consulting industry during the 1980s to compete with the growth of 401(k) plans. Congress did not know much about these plans, and neither ERISA nor the Code recognizes them. The Internal Revenue Service (IRS) gave informal approval to some aspects of these plans, but did not alert Congress to the legal issues that were brought to its attention in the early 1990's. Cash balance plans grew slowly, but their adoption sped up rapidly during the mid-to-late 1990's. The strong stock market had created overfunded pension plans and employers were interested in reaping the surplus funds without being subject to existing excise taxes on overfunded pension plan terminations.

In 1999, IBM sought to convert its defined benefit plan to cash balance and its workers appealed to the media and Congress to oppose the conversion. The Wall Street Journal ran a detailed series of articles on how cash balance plans could harm workers' retirement benefits. Congress held hearings and several members of Congress asked the General Accounting Office (GAO) to investigate.[22] The Clinton Administration also responded to the public outcry and imposed a moratorium on IRS approval of conversions. In 2000, the GAO reported that older workers could lose up to 50%

[22] U.S. Senate Committee on Finance, Hearing on Pension Reform Legislation, June 30, 1999.

of their benefits under a cash balance conversion.[23] In response, Reps. Sanders and Miller and Senator Harkin introduced legislation to require plans to protect workers over age 40 or with 10 or more years of service a choice between the old and new plans.[24]

One of the reasons the cash balance controversy was so explosive was the way these plans were marketed and publicized. Employees were often led to believe that the change was either a neutral change or an improvement in the pension plan. Because the old plan expressed benefits in the form of a monthly payment at age 65 and the cash balance plan expressed benefits as a current bank account amount, workers did not know, and employers intentionally did not tell them, which benefit was greater. Many employers never clearly explained to workers that early retirement subsidies were being eliminated or benefits frozen through a practice known as "wearaway". When some workers did figure out that their benefits were being cut, they felt deeply betrayed. Congress did amend the law in 2001 to require employers to explain to workers the relative value of a change in benefits, but this change occurred only after the moratorium on cash balance approvals was imposed.[25]

In 2001, the Bush Administration issued proposed regulations that would have legalized the plans, but a bipartisan majority of Congress pressured the Administration to withdraw the proposed regulations through a series of letters, meetings and riders to the Treasury Department appropriations acts. Secretary of the Treasury John Snow promised that the Treasury Department would reconsider the issue and protect older workers. On several occasions, Secretary Snow recalled his own experience at the CSX Corp, where the company gave its workers a choice of plans. In its FY2005 budget proposal, the Administration asked Congress to pass legislation to protect all workers for 5 years after a conversion.

Cash balance plans hurt older workers in several ways. First, they lose benefits under the old plan because the traditional plan is frozen at a lower rate of salary and years of service. Under the traditional plan, older workers earn the bulk of their benefits at the end of their work service. Second, under the cash balance plan workers earn benefits at a flatter rate yet older workers do not have time to earn significant benefits under the new plan. Some cash balance plans prevent older workers from earning any new benefits by offsetting their new benefits by their old earned benefits (known as "wearaway"). Finally, cash balance plans may eliminate early retirement options to which older workers otherwise would have been eligible.

A new GAO report to be issued in the coming weeks will further report on the losses to older workers under cash balance plans. The GAO surveyed over 100 actual plans and workers and found that workers of almost all ages lose benefits under a cash balance plan. Over 80% of 30 year-olds and almost all workers over age 40 lose benefits under a converted cash balance plan unless they are

[23] GAO, Implications of Conversions to Cash Balance Plans, September 2000.

[24] H.R. 2902, the Pension Benefits Protection and Preservation Act of 1999; S. 1300 and S. 1600, The Older Workers' Pension Protection Act, 106th Congress.

[25] Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107–16.

grandfathered into the former plan. Despite employer claims that cash balance plans benefit younger workers, the GAO found that 40% of younger workers never vest a right to benefits under the plan. The GAO report also documents the weaknesses and biases of the so-called "independent" research on cash balance plans promoted by the Majority and employers.

Numerous lawsuits are pending in the courts. Workers lost several cases and settled others, but won the largest case against IBM at the district court level.[26] The IBM case is pending appeal in the 7th circuit. Other cases are awaiting trial.

Committee Ranking Member Miller offered an amendment in Committee to provide basic protections for older workers who are unfairly impacted when employers convert their traditional defined benefit plan to a cash balance plan. Under the Miller amendment, workers who are at least 40 years old and who have at least 10 years of service must be given a choice between the benefits of the traditional plan or the benefits of the cash balance plan. This rule would not require employers to maintain two separate plans—but only two formulas for calculating benefits. Hundreds of companies have offered their workers a similar choice, including the Federal Government, CSX, Honeywell, Eaton and others. The Miller amendment reflected the best practices of the industry in this relatively uncharted area for ERISA. The Committee rejected the Miller amendment on a party-line vote.

H.R. 2830, as amended, would simply deny all of these concerns and effectively legalize the plans without any protections for older workers. The provision would permit employers to reduce older workers' pensions without any requirements that protect their promised pensions; millions of older workers would lose needed retirement benefits if this provision were to be enacted. The Minority believes the law can be modified to recognize cash balance plans in a way that is fair to all employees. Both the Senate Committees on Health, Education, Labor and Pensions and Finance have passed provisions, on a bipartisan basis, which would establish minimum protections for older workers and minimum standards for cash balance plans. This Committee should do no less.

H.R. 2830 ENCOURAGES CONFLICTED PENSION INVESTMENT ADVICE

Many of the Democratic members of the Committee have concerns about H.R. 2830's provision to amend ERISA's longstanding prohibition on conflicts of interest and permit certain "fiduciary advisors" to provide self-interested investment advice to pension plan participants when selecting among investment options for their retirement savings.[27]

The private pension system is changing—defined benefit plans now cover 20 million active participants and definded contribution, primarily 401(k) plans, cover almost 50 million active participants.[28] As 401(k) plans emerge as the dominant form of retirement savings for workers, it is becoming clearer that 401(k) plans

[26] *Cooper* v. *IBM*, 274 F. Supp.2d 1010 (S.D. Ill. 2003).

[27] Members S. Davis, Holt, Kind, McCarthy, and Wu voted in Committee to retain the provisions on investment advice.

[28] U.S. Department of Labor, Preliminary Private Pension Plan Bulletin Abstract of 2000 Form 5500 Annual Report, July 2005.

need to be restructured to meet workers' long term retirement needs. There is a growing consensus that the 401(k) plan rules need to be updated to encourage automatic enrollment (to get more workers in plans), automatic escalation of contributions (to get workers saving at adequate levels), automatic default investment options (to get workers in well managed investments), and automatic rollover (to retain workers' savings until retirement).

Automatic enrollment is a key example. 401(k) plans generally require individuals to affirmatively elect to join the plan. Because of the affirmative election requirement, over ¼ of workers fail to elect, often simply due to inertia. Several reports have documented studies showing that when workers are automatically enrolled in a 401(k) plan, participation jumps from an average of 75% to 85–95%.[29]

Similar behavior patterns exist with respect to 401(k) investment behavior. Almost all employer sponsored 401(k) plans select a variety of investment options amongst which participants must allocate their and usually their employer's contributions. The average 401(k) plan provides more than 10 investment options.[30] Numerous studies have concluded that both financially and not-financially knowledgeable participants do not know how or want to be solely responsible for the investment of their retirement savings. Studies also have shown that excessive investment choices actually negatively affect investment returns.[31] When participants are offered automatic default investments or are offered automatic investment as a plan investment option, again participants overwhelmingly select or retain automatic investment.[32]

In the 109th Congress a number of bills have been introduced by Democrats and Republicans that would improve the way 401(k) plans are offered and structured by encouraging automatic enrollment and investment, These bills represent the best opportunity to address 401(k) investment issues.[33]

Under H.R. 2830, pension plan administrators would be able to contract with "fiduciary advisors" to provide investment advice to pension plan participants. The definition of investment advisor includes not only certified securities investment brokers, but also insurance agents who need not be licensed investment advisors. Many advisors would entice plans to offer investment advice by not charging a separate fee for advice, thus making it appear "free". Advisors would then be free to contact participants by email, phone, in writing or in person and offer them investment advice. The advisor would be required to notify the participant "at the time advice is selected" that the advisor receives a fee or other compensation for his or her advice. This notice need not be provided in advance so the participant has time to think about it and possibly decide not to receive the advice. The disclosure can be buried

[29] W. Gale, J.M. Iwry, P. Orszag, "Automatic 401 (k): A Simple Way to Strengthen Retirement Savings", The Retirement Security Project, 2005.

[30] Defined Contribution Survey, Plan Sponsor, 2004.

[31] J. Brown and S. Weisbenner, "What are the effects of Portfolio Choice on Retirement Wealth Outcomes?", presented at the 2005 Annual Retirement Research Center Conference, August 11, 2005.

[32] W. Gale, J.M. Iwry, P. Orszag, "Automatic 401(k): A Simple Way to Strengthen Retirement Savings", The Retirement Security Project, 2005.

[33] S. 875, the Save More for Retirement Act; H.R. 1508, the 401(k) Automatic Enrollment Act of 2005 (109th Cong.).

in voluminous documents. There is no requirement that the disclosure be prominently displayed or that the participant signifies, in writing, that he or she has read and agreed to the disclosure. Once a participant receives advice, he or she would have limited recourse to show improper advice.

Further, H.R. 2830's investment advice provisions have been superceded by market actions. Every major investment firm has contracted with an independent advice firm to offer advice services.

We also have learned much in the past few years about the dangers of conflicts of interest in the investment markets. Almost all of New York Attorney General Elliott Spitzer's litigation was against investment firms for conflicts of interest that harmed investors. Notably, in 2003, Attorney General Spitzer reached a $1.4 billion settlement against 10 investment houses in which they agreed to prevent future conflicts, in 2004, settled conflict charges with 2 financial service firms for $675 million and in 2005, settled similar charges for $850 million.[34]

A 2005 Securities and Exchange Commission report found rampant conflicts in the pension consulting industry. One of the major findings of the SEC was that "[m]oney managers appear to have relationships with multiple consultants, appear to purchase overlapping products from more than one consultant, and are recommended by those consultants to plan sponsors. It appears that many money managers do not disclose their relationships with consultants to their pension plan clients to whom they are recommended . . ." The SEC recommended several changes in pension industry policies and procedures to "eliminate or mitigate conflicts of interest".[35]

For these reasons, many believe the investment advice provisions of the bill should be reconsidered. Two amendments were offered to amend HR 2830's rollback of worker protections against conflicted investment advice. First, Member Tierney offered an amendment to strike the investment advice language from the bill. Second, Subcommittee on Employer-Employee Relations Ranking Member Andrews offered a compromise amendment that would have permitted self-interested investment advice provided that an independent advice option also was provided so that participants have a choice. The Majority opposed both amendments.

In conclusion, our private pension system is in crisis and the bill passed by the Majority in many ways represents a missed opportunity to stabilize and revitalize the system. If we want to encourage employers to maintain defined benefit plans, then the law must recognize and support their ability to do so in a way that is fair to both employers and workers. Millions of workers are depending on employer provided benefits for their retirement security. Congress must protect this promise.

George Miller, Bobby Scott, Timothy Bishop, Dale E. Kildee, Ruben Hinojosa, Chris Van Hollen, Major R. Owens, Lynn Woolsey, Donald M. Payne, David Wu, Robert Andrews, John F. Tierney, Tim Ryan, Raul

[34] Press Releases, Office of New York State Attorney General, April 28, 2003, March 15, 2004, January 31, 2005.

[35] SEC, Staff Report on Current Examinations of Select Pension Consultants, p. 7, May 16, 2005.

M. Grijalva, Betty McCollum, Danny K. Davis, Dennis J. Kucinich, Susan Davis, Carolyn McCarthy, Ron Kind, Rush Holt.

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