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| **A. ALL MULTIS** | | | |
| **1. Funding in general** | Changes attributable to benefit increases or decreases and changes in actuarial assumptions amortized over 15 years | Same | Same |
| | New benefits payable over less than 15 years to be amortized over the payout period | Generally the same, but clarifies that this applies only to benefits payable under the terms of the plan over no more than 14 years from the effective date of the amendment | Generally the same as Senate Bill, but need to clarify (in bill or legislative history) that short-term benefit rule does not apply to benefits payable as a life annuity (even though expected annuity payout period for participants with short life expectancies may be less than 15 years) |
| **2. Deductions** | DB plan deduction limit raised to 140% of current liability | Same | Same |
| | Combined DB/DC limit - no special multi rule; general exception from combined limit for DC contributions up to 6% of pay | Combined DB/DC deduction limit under 404(a)(7) repealed for multis | Same as Senate Bill:<br><br>Multiemployer contributions are rarely linked to participants' pay, so a pay-based rule would be very |

[1] The House approved H.R. 2830 on December 15, 2005.
[2] The Senate approved S. 1783 on November 16, 2005.

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| | | | cumbersome both for employers and for plans; since contribution rates are collectively bargained, the competing interests of the union and employers provide an automatic check on potential abuse |
| **3. 412(e) extension** | ♦ 5-year extension available automatically if plan is facing a funding deficiency within 10 years and trustees have adopted a program to improve plan funding<br>♦ Additional extension of up to 5 years available at IRS's discretion, based on current-law standards<br>♦ Interest at the higher of rate used for plan funding or 150% of federal mid-term rate<br>♦ Current-law interest rate would apply to extensions granted and in effect on the day | ♦ 5-year extension available automatically if actuary certifies that plan is facing a funding deficiency within 10 years and trustees have adopted a program to improve plan funding<br>♦ Additional extension of up to 5 years available at IRS's discretion, based on current-law standards; IRS required to act upon application within 180 days and provide specific reasons for rejection<br>♦ Plan's general funding interest rate would apply, except that current law rules, including use of | Senate Bill, generally:<br>♦ Imposes some discipline on IRS to give timely attention to requests for discretionary extensions (beyond 5 years) and respond based on the statutory standards<br>♦ Requiring use of the plan rate makes the interest rate neutral with respect to the extension. Requiring use of the higher of the plan rate or 150% of the federal mid-term rate would penalize plans seeking an amortization extension |

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| | before enactment pursuant to applications submitted before 6/30/2005 | federal short-term rate, would remain in effect with respect to extensions (and modifications thereof) applied for by 6/30/2005 | ♦ Plans receiving amortization extensions under current law need certainty about the interest rate, as they design their recovery programs. The most recent extensions have included caveats that could cancel the extension if the plan suffers investment losses, which would force the plan to return to the IRS for modification and reinstatement of the extension. The right to continue using the current-law interest rate must be guaranteed if a pre-existing extension is modified<br><br>♦ Legislative history should clarify that the terms of a program to improve plan funding developed in support of |

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| | | | an amortization extension (under current law or under the new rules provided in the Act) may serve as the plan's Funding Improvement Plan or Rehabilitation Plan if such terms otherwise satisfy the requirements of the Act regarding Funding Improvement or Rehabilitation Plans |
| **4. Shortfall method** | N/A | Plans could go on or off shortfall once every five years without IRS permission, provided they are not at the same time on a 412(e) amortization extension; such plans on automatic shortfall could not have benefit increases, unless IRS determines they are *de minimis* or they are required to preserve tax qualification | Senate Bill:<br><br>The shortfall funding method enables a multiemployer plan that would otherwise have a funding deficiency to postpone it until the bargaining agreements that set plan contribution rates expire (but for no more than 3 years), so the parties can negotiate increased contributions in order to avoid the funding deficiency. Because it is, by definition, an emergency relief provision, it needs to |

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| | | | be readily available when the need arises. Given the competing demands for IRS attention, that has not been the case in recent years. |
| **B. Endangered Status ("yellow zone")** | | | |
| **1. Triggers** | Plan is less than 80% funded (based on actuarial value of assets and funding assumptions) or has a projected funding deficiency in 7 years | Same, except that plans meeting the critical-status triggers are specifically excluded from endangered status and ratio is calculated based on the unit credit funding method (this appears in the definition of Actuarial Accrued Liability, toward the end of the new ERISA/Code sections) | Senate Bill, generally:<br><br>♦ Almost all critical-status plans will fit the profile for endangered-status plans as well, but they should not have to fulfill the requirements of both sections simultaneously<br><br>♦ The Senate bill's provision for universal use of the unit credit funding method for this part of the calculation will ease the compliance challenge<br><br>♦ As recommended by the American Academy of Actuaries, for quality |

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| | | | assurance the bill should specify that, in determining a plan's status, the plan actuary's projections are to be based on "reasonable actuarial estimates, assumptions, and methods that, except where otherwise expressly provided, offer the actuary's best estimate of anticipated experience under the plan." |
| **2. Improvement Program** | Trustees to adopt a Funding Improvement Plan (FIP) formulated to achieve the statutory benchmarks, amend the pension plan to include it | Same, except that plan document would not be amended to include the FIP | Senate Bill, generally:<br><br>♦ The FIP may include alternative approaches to benefits and funding as well as proposals for contribution increases, none of which should be incorporated into a plan document<br><br>♦ However, Senate bill calls for the FIP to include measures that "under reasonable |

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| | | | actuarial assumptions, will result in the plan meeting" the benchmarks. Instead it should require that "under reasonable actuarial assumptions, [the plan] is reasonably projected to result in …" Plan sponsors cannot predict the outcome (which is what the word "will" implies) and they must act on reasonable expectations, which go beyond actuarial assumptions to include such items as the prospect of industry contraction, positions covered by the agreements, negotiated contribution rates, short-term asset earnings, etc. |

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| **Schedule to determine endangered status, develop and update FIP** | ♦ Actuary must determine, within 90 days after the start of the plan year, based on most recent actuarial valuation, whether the plan is in either endangered or critical status<br><br>♦ FIP must be added to the pension plan by amendment within 240 days after the date of the actuary's certification that the plan is endangered | ♦ Same, except that determination could be based either on the most recently filed Form 5500 or the actuarial valuation for the prior year; determination of actuarial accrued liability and normal cost are based on unit credit funding method<br><br>♦ Same, except that the FIP would be due within 240 days after the due date for the actuary's certification regardless of the actual date of the certification, and would not be added to pension plan<br><br>♦ FIP, must be updated annually. | Senate Bill:<br><br>♦ Provides for more reliable and manageable data requirements in light of the tight deadlines for these annual determinations<br><br>♦ Sets an objective deadline for adoption of the FIP rather than linking it to the vagaries of each actuary's work schedule; avoids requirement for inappropriate plan amendments<br><br>♦ Adjustments to the FIP will be necessary as time progresses and unanticipated events occur |
| **3. Benchmarks** | ♦ No funding deficiency projected by the end of the Funding Improvement Period | ♦ Same, except that in the case of plans that do not have a projected funding deficiency within 7 years, the plans must improve | Senate Bill, except that a plan that does not have a projected funding deficiency within 7 years should be required only to |

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| | ♦ For plans funded above 70%, FIP must aim to reduce the percentage of underfunding by 1/3, by the end of the Funding Improvement Period; less demanding standards if actuary determines that 1/3-10 year benchmark is not feasible<br><br>♦ For plans funded at 70% or below, FIP must aim to reduce the percentage of underfunding by 1/5 over 15 years | their funded percentage to 80% or, if lower, by 10% of the funded percentage at the start of the period<br><br>♦ Safety valve for plans that cannot make the 1/3-10 year benchmark clarified: actuary can base determination on current contribution rates and benefit levels | improve its funded percentage by the end of the FIP rather than meet more specific benchmarks:<br><br>♦ Potentially dramatic changes in benefits and contributions should not hinge on the happenstance of an arithmetic ratio at a fixed point in time; regardless of its funded ratio, a multiemployer plan is not really in peril unless it is facing a funding deficiency, with limited time to resolve it. Accordingly, the more demanding endangered-zone benchmarks and requirements should be focused only on the plans with projected funding deficiencies<br><br>♦ The American Academy of Actuaries has endorsed the technical |

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| | | | clarifications in the Senate bill as necessary to enable plan actuaries to determine eligibility for the alternative benchmarks |
| **Period for achieving FIP benchmarks ("funding improvement period")** | 10-year period (15 years, for seriously troubled plans) from the earlier of (a) 3rd plan year after the year of adoption of FIP or (b) the plan year following expiration of CBAs covering 75% of active participants | Same, except that period expressly ends earlier if plan leaves endangered status or goes into critical status | Senate Bill:<br><br>Additional technical precision of Senate bill will help with compliance |
| **4. Tools and options to achieve benchmarks** | Trustees can/must take all available steps, including recommending that bargaining parties increase contributions, cutting or eliminating future accruals and/or non-protected benefits, and seeking IRS relief | Same | Same |
| **Benefit and contribution restrictions** | ♦ Pending adoption of FIP, (1) plan may not be amended to provide for reduction in contribution rates, funding holiday, or exclusion of new hires, (2) | ♦ Generally the same restrictions pending adoption of FIP, but no restriction on lump sums | House bill, but without the ban on lump sums; since this restriction would be in place for no more than 11 months, its impact would either be arbitrary or easily |

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| | no lump sums payable, except for benefits worth less than $5,000, and (3) no amendments to increase benefits (except as a condition of qualification)<br><br>♦ Upon approval of FIP, benefit increases allowed only if consistent with FIP and if actuary certifies in advance, after taking into account the increase, that plan is reasonably expected to meet benchmarks. | ♦ During the funding improvement period, trustees cannot accept a CBA that reduces contribution rates, grants a funding holiday, or "directly or indirectly" excludes new hires<br><br>♦ After adoption of FIP, plan may not be amended to increase benefits, including future accruals, unless, in case of a seriously endangered plan, actuary certifies that plan is reasonably expected to meet benchmarks even after increase, and, in case of a plan not in seriously endangered status, actuary certifies that increase is paid out of contributions not required by FIP to meet the benchmarks in accordance with applicable schedule | avoidable, depending on whether the participant is able to delay applying for benefits; the administrative burden of implementation, would outweigh the benefit to plans' financial security.<br><br>♦ Senate ban on contribution rate reductions for the whole time the plan is in endangered status unduly impairs the bargaining parties' flexibility, as the FIP will control in any event; temporary rule, pending adoption of FIP (see item 6, below) is more appropriate<br><br>♦ Same restriction on benefit increases after adoption of FIP should apply to both seriously endangered and "mildly" endangered plans |

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| **5. Role of bargaining parties** | Within 90 days after plan is certified as endangered, trustees must inform bargaining parties of (1) the cuts in future benefit accruals needed to achieve benchmarks without contribution increases or with minimum contribution increases needed if benefit cuts alone cannot achieve goals; (2) the contribution increases needed to achieve goals without benefit cuts. Parties representing 5% of participants can request other combinations, and trustees may offer additional options at their discretion. | Within 30 days after adoption of the Funding Improvement Plan, trustees of an endangered plan that is facing a funding deficiency within 7 years (a "seriously endangered plan") must provide bargaining parties with a schedule showing the cuts in future benefit accruals needed to achieve benchmarks without contribution increases or with the minimum contribution increases needed if benefit cuts alone would not achieve benchmarks. Trustees may provide alternative schedules or other information at their discretion<br><br>The trustees may periodically update any schedule to reflect experience of plan, and are required to update the schedule(s) at least every 3 years, except that a schedule on which parties | Senate Bill:<br><br>♦ Schedules of actions to be taken cannot be developed until after adoption of the Funding Improvement Plan, which the schedules are to carry out<br><br>♦ These extra steps are only needed if the plan is seriously troubled<br><br>♦ Many plans would not be able to accommodate separate benefit provisions for separate groups of bargaining parties – trustees need to be able to prescribe one schedule for the plan as a whole, and the Act should allow those that can handle more diversity in their benefit and funding designs to offer or accept more choices |

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| | | rely in bargaining remains in effect for the term of the CBA. | |
| **6. Interim steps** | ♦ Pending action by bargaining parties covering 75% of participants to approve FIP, trustees must take necessary action, including reducing future benefit accruals, to the extent necessary to (1) postpone the funding deficiency by one year and (2) improve the funding ratio<br><br>♦ Pending approval of FIP by bargaining parties, no plan amendment to reduce contribution rates, grant a funding holiday, or "directly or indirectly" exclude new hires from plan coverage | ♦ This requirement applies to trustees of seriously endangered plans, pending commencement of the funding improvement period<br><br>♦ Before the first day of funding improvement period, trustees cannot accept a CBA that reduces contribution rates, grants a funding holiday, or "directly or indirectly" excludes new hires from plan coverage; note, these restrictions then continue during the funding improvement period | Generally similar to Senate Bill, but restrictions on accepting a CBA that reduces contribution rates, etc. should not apply once FIP is adopted:<br><br>♦ The interim steps regarding postponing a funding deficiency by one year and improving the funding ratio are only needed if the plan is seriously troubled.<br><br>♦ Contribution rates should be preserved pending adoption of the Funding Improvement Plan, but beyond that the law should not interfere with the steps chosen by the trustees or through collective bargaining to stabilize the plan, as long as the choices fit within the |

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| | | | Funding Improvement Plan<br><br>♦ Technically, the Act should recognize that the FIP needs to be adopted by the trustees, as reflected in the language of the Senate version, not by the bargaining parties as in the House bill. |
| **Trustee disputes** | NA | If trustees have not agreed on an FIP within 60 days of the date it is due, any trustee can invoke an expedited dispute resolution procedure | Senate Bill |
| **7. Transition out/in** | ♦ Out: any plan year in which the endangered-status triggers are no longer tripped; plan sinks to critical status if actuary fails to certify plan's status or trustees fail to come up with a timely FIP<br><br>♦ In: plan emerging from critical status would immediately be subject to | ♦ Out: any plan year in which the endangered-status triggers are no longer tripped, or the plan goes into critical status<br><br>♦ In: plan in critical status would stay there until it no longer projects a funding deficiency in 10 years, thus would not pass through endangered | Senate Bill, generally:<br><br>♦ Shifting the plan into critical status, which directly imperils the continuation of benefits, penalizes the participants and employers for failures of the actuary or trustees. That is clearly punishing the wrong parties. (See |

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| | endangered-status mandates if any of the endangered-status triggers apply | status on its way to financial health | attached paper on suggested sanctions)<br><br>♦ A plan should not be released from critical status until it is strong enough to function on its own. A "recovering" critical-status plan should not be required to work through all of the ins and outs of endangered status immediately after emerging from critical status. |
| 8. **Sanctions for noncompliance** | ♦ Failure to certify status or amend plan to adopt an FIP by 240-day deadline puts plan in critical status<br><br>♦ DOL may assess a civil penalty of up to $1,100 a day on any person who violates any of the endangered-plan or critical-zone provisions.<br><br>♦ A separate $1,100/day | ♦ Penalty on board of trustees of up to $1,100/day for actuary's failure to certify status or trustees' failure to adopt an FIP<br><br>♦ If FIP is not adopted by the deadline, an employer or union can sue to compel adoption<br><br>♦ If plan does not meet its | [See attached document for explanation of Coalition position] |

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| | civil penalty applies to a board of trustees that fails to implement their plan's FIP | benchmarks by the last year of the FIP, there is a funding deficiency excise tax on employers, based on contribution increase that would be required to achieve the benchmark; IRS may waive or reduce the tax if (a) it is excessive or inequitable relative to the failure and (b) the failure is due to reasonable cause and not willful neglect | |
| **C. Critical Status ("Red Zone")** | | | |
| **1. Triggers** | a) plan less than 65% funded, assets plus anticipated contributions = less than 7 years' benefit payments;<br><br>b) assets plus anticipated contributions = less than 5 years' benefit payments;<br><br>c) plan less than 65% funded, funding | Same, except that, under the first test, a plan less than 65% funded would not be in critical status unless its assets plus anticipated contributions = less than 6 years' benefit payments | No preference<br><br>Recommended technical adjustments to the endangered-zone determination rules (i.e., providing for use of the unit credit funding method and the actuary's best-estimate assumptions) apply here as well |

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| | deficiency projected in 5 years (not taking into account any amortization extension);<br><br>d) funding deficiency projected in next 4 years (not taking into account any amortization extension); or<br><br>e) PV of inactive participants greater than PV of actives, funding deficiency projected in 5 years (not taking into account any amortization extension), and contributions for the year are less than normal cost plus interest on unfunded.<br><br>Ratios based on AVA, funding assumptions; other tests based on funding methods and assumptions | | |
| **2. Benefit limitations** | Pending approval of Rehabilitation Plan by bargaining parties, no lump sums payable, except for | Pending approval of Rehabilitation Plan by trustees, no amendment to increase benefits allowed, | Senate Bill, generally:<br><br>♦ Rehabilitation Plan is approved by trustees, |

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| | benefits worth less than $5,000, and no amendment to increase benefits (except as a condition of qualification) | except as a condition of qualification; after approval of Rehab Plan, benefit increases only allowed if funded from new contributions and will not delay the plan's emergence from critical status<br><br>No lump sums or other accelerated benefit payments (except for small benefit cashouts or makeup payments in case of a retroactive annuity starting date) may be made once notice that the plan is in critical status has been sent | not bargaining parties,<br><br>♦ Restriction on lump sums and other accelerated payouts should apply the whole time the plan is in critical status – once notice has been given to participants – and not just until adoption of the Rehabilitation Plan.<br><br>♦ Overall greater technical precision of Senate bill will aid compliance. |
| **3. Improvement Program** | Plan must be amended, with all operational aspects agreed-to by bargaining parties, to include a Rehabilitation Plan that will enable it to exit critical status or, if not feasible, to postpone insolvency | Generally the same in concept, except that:<br><br>♦ Rehabilitation Plan is not added as an amendment to the pension plan or its individual features made subject to collective bargaining, and<br><br>♦ Trustees must consider impact of Rehabilitation | Senate Bill, but without requirement that Trustees consider impact on employers with less than 500 employees:<br><br>♦ The law should respect the principle that multiemployer-plan trustees, as fiduciaries, can consider only the interests of participants |

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| | | Plan and contribution schedules on employers with less than 500 employees and implement it in manner that encourages continued participation and minimizes financial harm | and beneficiaries. Legislative history could recognize that, not only in this instance but in managing the plan generally, the trustees can consider the impact of their actions on the likelihood that the plan will continue in operation, for which it needs the support of the sponsoring employers and unions.<br><br>♦ The great majority of multiemployer-plan trust agreements give the trustees authority to manage the plan's operations, funding policy and strategies and benefit design, without express approval from the bargaining parties. This Act should not override those fundamental decisions by the private sector. Contribution |

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| | | | rates, however, should not be changed without collective bargaining, as is generally the case at present<br><br>♦ Greater technical precision in Senate Bill would aid compliance |
| **Schedule to determine critical zone status, develop Rehab Plan** | Status determined by 90 days after the start of a plan year; Rehab Plan adopted by 240 days after the plan enters critical status (240 days after start of plan year) | Same, except that Rehab Plan must be adopted by 240 days after deadline for determination of critical status (330 days after start of plan year) | Senate Bill |
| **4. Benchmarks** | Plan must get out of critical status by end of rehabilitation period, i.e., reverse all of the triggers, or, if trustees determines that plan would not cease to be in critical status during rehabilitation period, take reasonable measures to postpone insolvency. Rehabilitation Plan must set annual standards toward achievement of its goals | Generally the same, except that: if trustees determine that plan cannot reasonably be expected to emerge from critical status by end of rehabilitation period, trustees must take reasonable measures to emerge from critical status at later time or to postpone insolvency; *plus* no funding deficiency projected for at least 10 years and *minus* requirement that Rehab Plan set annual standards | Senate Bill |

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| **Period for achieving benchmarks ("rehabilitation period")** | 10 years from earlier of (a) 3d plan year after the adoption of Rehab Plan or (b) 1st plan year beginning after expiration of CBAs covering 75% of active participants | Same | Same |
| **5. New tools and options to achieve benchmarks** | Reductions in "adjustable benefits" authorized:<br><br>Payment forms and features, subsidized early retirement benefits and benefit options, benefit increases adopted or effective less than 60 months before plan entered critical status; provides that plan shall not fail to meet anti-cutback requirements in ERISA or Code solely by reason of adoption of plan amendment necessary to meet requirements of critical status section<br><br>Temporary employer contribution surcharges imposed: 5% for 1 year, 10% thereafter until new | No funding-deficiency sanctions on employers so long as trustees comply with Rehabilitation Plan | House Bill, with minor technical clarifications:<br><br>Exemption from funding-deficiency sanctions should be linked to trustees' compliance with Rehabilitation Plan (which is part of Coalition position on sanctions) |

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| | CBA negotiated<br><br>No funding-deficiency excise taxes while plan is in critical status | | |
| **Benefit safeguards** | ♦ Plans cannot: (1) reduce normal retirement benefits, except for recent benefit increases; (2) reduce benefits of people in pay status one year or more before entry into critical status, except for recent benefit increases<br><br>♦ Schedules may not reduce future accrual rates below the equivalent of 1% of contributions or, if lower, current accrual rate<br><br>♦ No schedule is allowed to reduce future accruals below the "restored accrual rate", defined as a rate of accruals that was reduced and then restored before the plan entered critical status | Schedules may not reduce future accrual rates below the equivalent of 1% of contributions (payable at NRA) or, if lower, current accrual rate | House Bill generally, except that:<br><br>♦ Need to clarify that the 1% floor on future accrual rates only applies in the default schedule, thereby allowing bargaining parties to agree to allow trustees to go below that<br><br>♦ Need to clarify that the 1% floor is based on the benefit payable at NRA<br><br>♦ The ban on dropping accrual rates below the "restored accrual rate" should be deleted, as imposing too much constraint on trustees' decision-making into the future. Instead, what is |

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| | | | needed is a grandfather rule from the new rules restricting benefit increases and tightening the requirements for funding them, to preserve the ability of trustees that cut benefits during the early part of this century to keep formal promises that they made to employers and plan participants to restore those cuts if contributions were increased by specified amounts (see item F. below) |
| **6. Role of bargaining parties** | ♦ Within 90 days after the date of the plan's entry into critical status, the trustees must provide parties with a range of proposals for achieving the goals, including (1) a schedule of maximum cuts in future accrual rates, and minimum | ♦ Within 30 days after adoption of the Rehab Plan, the trustees must provide parties with a schedule of maximum benefit cuts, and minimum contribution increases if benefit cuts are not sufficient, needed to meet the | Senate Bill:<br><br>♦ Schedules of actions to be taken cannot be developed until after adoption of Rehab Plan, which the schedules are to carry out |

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| | contribution increases if benefit cuts are not sufficient, needed to meet the Rehab Plan, and (2) if requested by employer or union representing 5% or more of the actives, alternative schedules<br><br>♦ If the parties adopt a schedule, that governs benefits for their active employees; if they do not, the default schedule (maximum cuts, minimum contribution increases) applies and contribution surcharges remain in effect. Impact on inactives' benefits is determined by trustees. | Rehab Plan, and may provide any other information or alternatives that the trustees deem appropriate<br><br>♦ If the parties adopt a CBA consistent with a schedule, that governs benefits for their active employees; if they do not, the default schedule (maximum cuts, minimum contribution increases) applies<br><br>♦ Analogous provisions for non-bargained participants<br><br>♦ For plans with no realistic prospect of recovery, Rehab Plan would aim to postpone insolvency | ♦ Many plans would not be able to accommodate separate benefit provisions for separate groups of bargaining parties – trustees need to be able to prescribe one schedule for the plan as a whole, and the Act should allow those that can handle more diversity in their benefit and funding designs to offer or accept more choices<br><br>♦ Senate bill's greater technical precision would aid compliance |
| **7. Surcharges/Interim steps** | ♦ 5% surcharge on employer contribution rates the first year, rising to 10% the second year, | ♦ No surcharge requirements | House Bill, generally, with the addition of a transition rule for groups that are already in the process of |

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| | until parties agree to a schedule; surcharges are not counted for benefits, withdrawal liability allocations (except attributable method), and are collectable as if negotiated contributions<br><br>♦ Pending adoption of Rehabilitation Plan, same restrictions on benefit increases and contribution reductions that apply to endangered plans pending adoption of FIP | ♦ Pending adoption of Rehabilitation Plan, same restrictions on benefit increases and contribution reductions that apply to seriously endangered plans pending adoption of FIP | taking special steps to resolve their funding problems: in the case of a plan that goes into critical status within 3 years after the effective date of these new rules, a contribution rate increase of 5% or more that went into effect on or after January 1, 2006 shall be credited against the surcharge requirement, provided it is still in effect at the time the surcharge would otherwise become applicable |

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| **8. Withdrawal liability** | a) Reductions in protected benefits not reflected in withdrawal liability; (b) employer that does not comply with default-schedule contribution requirements deemed withdrawn or partially withdrawn | Benefit reductions made while plan is in critical status not reflected in withdrawal liability | House Bill, generally, except that, as recommended by the American Academy of Actuaries, the PBGC should be given authority to prescribe simplified methods to determine withdrawal liability after a reduction in protected benefits under a critical-status plan, as the data-retrieval and calculations could become extremely complex with the passage of time |
| **9. Insolvency** | Sponsor must determine whether plan will be insolvent in any of the next 5 years and, if so, must perform annual insolvency valuations | Same | Same |
| **10. Trustee disputes** | NA | If trustees are unable to reach agreement on Rehab Plan within 60 days of the deadline, any trustee may invoke expedited dispute resolution procedure to determine a plan | Senate Bill |

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| **11. Sanctions for noncompliance** | Trustees' failure to amend the multiemployer plan to add a Rehab Plan by the 240-day deadline for its adoption automatically puts the default schedule into effect<br><br>Trustees may treat an employer's failure to contribute as required by the schedule adopted by the parties as a withdrawal<br><br>DOL may assess:<br>♦ A civil penalty of up to $1,100 a day on any person who violates any of the critical-zone provisions,<br>♦ A separate $1,100/day civil penalty on a board of trustees that fails to implement their plan's Rehabilitation Plan<br><br>Excise tax penalties:<br>♦ $1,100/day (calculated based on the number of days from the first day of | ♦ Penalty on board of trustees of up to $1,100/day for actuary's failure to certify status or trustees' failure to adopt a Rehabilitation Plan;<br><br>♦ Relief from minimum funding sanctions (excise tax and contributions) available only if trustees comply with the Rehabilitation Plan<br><br>♦ If Rehabilitation Plan not adopted by the deadline, an employer or union can sue to compel adoption<br><br>♦ If plan does not meet its benchmarks by the last year of the rehabilitation period, or if it fails to make scheduled progress for 3 plan years in a row (as certified by the actuary), there is a funding deficiency excise tax on employers, based on contribution increase | [See attached document for explanation of Coalition position] |

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| | 240-day period to date Rehab Plan is adopted) or, if greater, the 5% excise tax that would be imposed on a funding deficiency, on a Board of Trustees that fails to adopt a Rehab Plan by the deadline;<br>♦ 100% of the amount of any delinquent contribution, on any employer that fails to contribute the full amount required of it under the Rehab Plan (note, this might not reach a failure to pay the statutory surcharge) | that would be required to meet those standards; IRS may waive or reduce the tax if (a) it is excessive or inequitable relative to the failure and (b) the failure is due to reasonable cause and not willful neglect | |
| **12. Protection for Trustee Determinations** | N/A | N/A | In order to stabilize plan finances, the new law will require plan trustees to make significant decisions, relying on their professional advisors, within a fairly short time frame. These will immediately and directly affect benefits and may be highly controversial. When made |

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| | | | responsibly, their decisions cannot be subject to second-guessing and possible retroactive nullification, through litigation challenges<br><br>As recommended by the American Academy of Actuaries, a provision to safeguard responsible trustee actions should be added at the end of the new ERISA section on troubled multiemployer plans. It should provide that, as is the case with withdrawal liability (ERISA section 4221(a)(3)), a determination by the plan sponsor under this new ERISA section will be presumed correct unless shown to be unreasonable or clearly erroneous. Also, the actuary's determinations and projections are similarly presumed correct unless it is shown that the actuarial assumptions and methods |

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| | | | used were, in the aggregate, unreasonable or that the actuary made a significant error in applying them |
| **13. Study; Sunset** | NA | ♦ DOL, Treasury and PBGC to study the effect of the multiemployer funding changes and report to Congress by 12/31/2011, including impact on small employers<br><br>♦ Multiemployer funding changes made by this Act generally do not apply to plan years after 12/31/2014, except that if plan is operating under a FIP or Rehab Plan for last plan year beginning before 1/1/2015, plan shall continue to operate under such FIP or Rehab Plan during any period after 12/31/2014 such FIP or Rehab Plan is in effect, and that any amortization schedule | Should not be included, as it undermines the certainty regarding applicable funding rules that plans and bargaining parties need for long-term planning |

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| | | extension granted under the Act shall remain in effect | |
| **D. TRANSPARENCY** | | | |
| **1. Notices to various stakeholders of endangered, critical status** | Notice must be given within 30 days after certification of endangered or critical status; summary of FIP (endangered status) or Rehabilitation Plan (critical status) must be given with annual funding notice | Same | Same |
| **2. Changes in PFEA plan funding notice** | Must be given within 90 days after close of plan year (apparently – caption not consistent with text)<br><br>Must include:<br><br>♦ Funding policy and asset allocations, as percentages<br><br>♦ Number of participants in pay status, terminated vesteds and actives | Must be given 90 days after close of plan year, and must include:<br><br>♦ Funded percentage – up to 100% -- for the plan year reported on and 2 preceding years<br><br>♦ Value of assets and liabilities as of the last day of the year reported on<br><br>♦ Funding policy and asset allocations, as percentages<br><br>♦ Number of participants in | No strong preference, technical clarifications desirable in either case:<br><br>♦ Under the House bill, the due date for giving the notice is unclear;<br><br>♦ Under the Senate Bill, the provision requiring disclosure, upon request, of the "actuarial and financial data demonstrating the" FIP or Rehab Plan should be clarified to require, instead, a summary of the actuarial and |

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| | | pay status, terminated vesteds and actives;<br><br>♦ If the plan is endangered or critical status, a summary of the FIP or Rehab Plan<br><br>♦ An offer to provide, upon request, a copy of the FIP or Rehab Plan (if there is one) and the actuarial and financial data "that demonstrate any action taken by the plan toward fiscal improvement",<br><br>♦ In the case of a change in benefits or other "known event" that will have a material effect on plan assets or liabilities, an explanation and projection, to the end of the year, of the impact on liabilities | financial data and conclusions underlying the Plan that was adopted, including any certifications by the actuary or auditor. It should be clear that disclosure is not required of studies and data on alternatives that the Trustees may have considered but did not adopt. |
| **3. 5500 reports** | Must include:<br><br>♦ Ratio of actives to inactives; | Must include:<br><br>♦ Number of contributing employers | House bill because of general preference for less data gathering and distribution of complex |

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| | ♦ Data showing impact of mergers on funding ratio;<br>♦ Explanation of the actuarial basis for projecting future retirements and payment forms;<br>♦ Number of contributing employers and number of participants for whom no employer contributions were made for the plan year<br><br>Must be submitted in internet-ready electronic format, and posted on the plan's website (if any) | ♦ List of employers that contributed more than 5% of the total<br>♦ Number of participants with respect to whom no employer contributions were made for 3 years in a row<br>♦ Ratio of participants with no employer contribution in the year to participants with no employer contribution for 3 years in a row (DOL can waive for the construction and entertainment industries)<br>♦ Length of any amortization extension and resulting reduction in contributions<br>♦ Reduction in contributions if plan used the shortfall method<br>♦ If in critical or endangered status, summary of FIP or rehab plan, and the plan's funding ratio<br>♦ The number of employer withdrawals and total withdrawal liability billed | information of only tangential interest – prefer to make the information available on request, including standing request for annual report<br><br>Clarification desirable – for all reporting and disclosure purposes -- that count or listing of "employers" is based on the information maintained in the plan's records, which may not include up-to-date data on controlled group relationships.<br><br>Technical clarification or legislative history would be helpful, confirming that report on estimate of impact of use of shortfall method or amortization extension can be based on actuarial estimates, with PBGC or Treasury authority to prescribe estimation process |

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| | | ♦ Actuarial value of assets and liabilities of any plans merged with the reporting plan<br><br>Must be submitted in internet-ready electronic format, and posted on the plan's website (if any) | |
| **4. Summary Annual Report** | ♦ Circulated by 15 business days after due date of 5500<br><br>♦ Must include asset and liability figures for each of the 2 prior plan years as well as the year covered by the report | ♦ Circulated by 30 business days after due date of 5500; deadline deemed met if posted on the plan's website by that date, if physically circulated within 30 business days after that<br><br>♦ Same | Senate Bill: provides necessary administrative flexibility |
| **5. New notices to employers** | NA | ♦ Annual summary of the new items added to the Form 5500 (also sent to sponsoring unions)<br><br>♦ Advance notice of reductions in future | House bill because of general preference for less data gathering and distribution of complex information of only tangential interest – prefer to make the information |

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| | | benefits (204(h)), when sent to the participants | available on request, including standing request for regular report or notice |
| **6. Available to participants, employers on request once a year** | A copy of any actuarial report for the plan year, or any financial report prepared by a plan fiduciary, which the plan has had for at least 30 days | When the plan has had it for at least 30 business days:<br><br>♦ A copy of any periodic actuarial report "including sensitivity testing"<br>♦ A copy of any quarterly, semi-annual or annual financial report or, if requested by person asking for the information, a quarterly summary of such reports<br><br>Exemption from disclosure for individually identifiable information or proprietary business information | When the plan has had it for at least 30 business days:<br><br>♦ copy of the plan's actuarial valuation for the plan year;<br>♦ the actuarial projections and analysis used to determine whether the plan was in endangered or critical status, and<br>♦ quarterly, semi-annual or annual financial reports summarizing the investment portfolio and experience (or, at discretion of trustees, a quarterly summary of such reports)<br><br>No disclosure of individually identifiable information or proprietary business information |

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| **7. Available to employers on request once a year** | Amount of their liability for a withdrawal as of the last day of the preceding plan year, and a statement of (apparently) the added withdrawal liability attributable to participants for whom no employer contributions were due | Estimated withdrawal liability as of the last day of the preceding plan year<br><br>Also, an explanation of and underlying data for the withdrawal liability estimate, showing, among other things, the application of any relevant limitations on the liability | Amount of their estimated withdrawal liability as of the last day of the preceding plan year and a detailed explanation of the methods and data used to determine that liability |
| **E. WITHDRAWAL LIABILITY REFORMS** | | | |
| | ♦ Repeal 4225 limits; repeal 20-year cap on payments; clarify that employer cannot evade a partial withdrawal by outsourcing work; repeal the special trucking-industry rule; allow construction-industry plans to use a 5-year "free-look"<br><br>♦ Eliminate plan collection safeguards in the case of a determination by plan of a complete or partial withdrawal based on finding of intent of | Repeal 4225 limits applicable to insolvent employers; allow construction-industry plans to use a 5-year "free look" | House Bill, except for:<br><br>♦ Provision relaxing plan safeguards against transactions intended to evade or avoid withdrawal liability should not be included in current form; in particular, it raises problems for plans that may be unaware of the circumstances surrounding the transaction at issue; if conferees decide to include a provision of |

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| | transaction to evade or avoid withdrawal liability, unless claim is made within 5 years of the transaction, or 2 years in the case of a small employer (small = up to 500 total employees, up to 250 covered by the plan) | | this nature, a better alternative would be to require notice and the posting of a bond or letter of credit for the payments that otherwise would be required in these circumstances<br><br>♦ Partial repeal of section 4225 limits, as reflected in the Senate bill, is okay<br><br>♦ Conference report should also allow construction-industry plans to use "fresh-start" rule when plan as a whole is fully funded, to eliminate old remnants of individual employer's liability |
| **F. EFFECTIVE DATES** | | | |
| | Generally, plan years or taxable years beginning after 2005; withdrawal liability changes generally apply to events occurring on | Generally, plan years beginning after 2006 for the funding changes, with grandfathers for plans that a) applied for amortization | Senate Bill: effective date should be 2007 (at earliest) because neither plans nor their advisors would be able to accommodate the |

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| | or after 1/1/06 | extensions by 6/30/2005 (see item A.3., above) and b) cut benefits between 1/1/2002 and 6/30/2005, with a promise to restore them if the parties negotiate additional funding (see discussion on "Benefit safeguards" in item C.5., above)<br><br>Generally, plan years beginning after 2005 for the disclosure-related changes | new funding rules if they were immediately effective |