111TH CONGRESS
1ST SESSION

H. R. 3936

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow time for pensions to fund benefit obligations in light of economic circumstances in the financial markets of 2008, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 27, 2009

Mr. POMEROY (for himself and Mr. TIBERI) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow time for pensions to fund benefit obligations in light of economic circumstances in the financial markets of 2008, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE, ETC.

4 (a) Short Title.—This Act may be cited as the
5 “Preserve Benefits and Jobs Act of 2009”.
(b) **Table of Contents.**—The table of contents for this Act is as follows:

Sec. 1. Short title, etc.

**TITLE I—SINGLE EMPLOYER PLANS**

Sec. 101. Extended period for single-employer defined benefit plans to amortize certain shortfall amortization bases.
Sec. 102. Expansion of corridor within which single-employer defined benefit plans are allowed to average asset values.
Sec. 103. Lookback for benefit accrual restriction.
Sec. 104. Lookback for credit balance rule.
Sec. 105. Clarification of treatment of expenses.
Sec. 106. Information reporting.
Sec. 107. Benefit restriction effective date for collectively bargained plans.
Sec. 108. Social Security level-income options.
Sec. 109. PBGC guarantee.
Sec. 110. Application of extended amortization period to plans subject to prior law funding rules.
Sec. 111. Additions to funding-based limits on benefits and benefits accruals under single-employer plans.
Sec. 112. Reportable events.

**TITLE II—MULTIEMPLOYER PLANS**

Sec. 201. Adjustments to funding standard account rules; reporting clarification.
Sec. 202. Multiemployer plans in endangered or critical status.
Sec. 203. Multiemployer plan mergers and alliances.
Sec. 204. Strengthening participants’ benefit protections.

**TITLE I—SINGLE EMPLOYER PLANS**

**SEC. 101. EXTENDED PERIOD FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS TO AMORTIZE CERTAIN SHORTFALL AMORTIZATION BASES.**

(a) **Amendments to ERISA.**—

(1) **In general.**—Paragraph (2) of section 303(c) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following subparagraphs:

“(D) **Special rule.**—
“(i) In general.—In the case of the shortfall amortization base of an active plan for any applicable plan year, the shortfall amortization installments are the amounts described in clause (ii) or clause (iii), as applicable, determined pursuant to clause (iv).

“(ii) 7-Year Amortization.—

“(I) In general.—The shortfall amortization installments described in this clause are—

“(aa) in the case of the last 7 plan years in the 9-plan-year period beginning with the applicable plan year, the amounts necessary to amortize the shortfall amortization base of the plan for the applicable plan year in level annual installments over such last 7 plan years, and

“(bb) in the case of the first 2 plan years in such 9-plan-year period, interest on such shortfall amortization base (determined using the effective rate of inter-
est for the plan for the plan year).

“(II) SHORTFALL AMORTIZATION INSTALLMENT.—The shortfall amortization installment for any plan year in the 9-plan-year period under this clause with respect to such shortfall amortization base is the annual installment determined under this clause for that year for that base.

“(III) MINIMUM REQUIRED CONTRIBUTION FOR FIRST 2 YEARS.—Notwithstanding the preceding provisions of this clause, the minimum required contribution for the two plan years described in subclause (I)(bb) shall be increased to the extent necessary so that the minimum required contribution for such plan year is at least equal to the applicable percentage of the minimum required contribution for the plan year preceding the first applicable plan year. If the minimum required contribution is increased by reason of the preceding
sentence, the shortfall amortization installments with respect to the shortfall amortization base for any applicable plan year shall be reduced to take such increase into account, pursuant to rules issued by the Secretary of the Treasury, but only if the shortfall amortization installments with respect to the shortfall amortization base for such applicable plan year are determined under this clause. For purposes of this subclause, any reference to the minimum required contribution for any plan year shall be a reference to the minimum required contribution for such plan year prior to any reduction under subsection (f) and without taking into account any waiver under section 302(c). For purposes of this clause, the applicable percentage shall be determined as follows:

```
For the: The applicable percentage is:
First applicable plan year ................................................. 105
Second applicable plan year .............................................. 110
Plan year following the second applicable plan year ........ 115
```

“(iii) 15-YEAR AMORTIZATION.—The shortfall amortization installments de-
scribed in this clause are the amounts necessary to amortize the shortfall amortization base of the plan for the applicable plan year in level annual installments over 15 years. The shortfall amortization installments for any plan year in the 15-plan-year period under this clause is the annual installment determined under this clause for that year for that base.

“(iv) Election.—The plan sponsor may, with respect to a plan, elect whether to determine shortfall amortization installments under clause (ii), clause (iii), or without regard to this subparagraph. Such election shall be made at such times, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury. In the absence of a timely election to determine shortfall amortization installments under such clause (ii) or clause (iii), such installments shall be determined without regard to this subparagraph.
“(E) Failure to Maintain Active Plan.—

“(i) 2 and 7 Rule.—If the shortfall amortization installments with respect to a shortfall amortization base for an applicable plan year are determined under subparagraph (D)(ii), the plan must remain an active plan for the subsequent plan year. If such plan fails to be an active plan in such plan year, the minimum required contribution for the plan year with respect to which a failure occurs shall be increased by all amounts by which the minimum required contribution for the current plan year or any prior plan year has been reduced by the application of subparagraph (D), plus interest on such amounts at the effective rate of interest for the plan for the plan year for which the increase applies. However, any such increase in the minimum required contribution shall not require a contribution to the extent that the contribution would cause the value of plan assets for the plan year to exceed the funding target of the plan for the plan year.
year (determined without regard to subsection (i)(1)). If the minimum required contribution is increased by reason of this clause, the shortfall amortization installments with respect to the shortfall amortization base for any applicable plan year shall be reduced to take such increase into account, pursuant to rules issued by the Secretary of the Treasury, but only if the shortfall amortization installments with respect to the shortfall amortization base for such applicable plan year are determined under subparagraph (D)(ii). For purposes of this clause, any reference to the minimum required contribution for any plan year shall be a reference to the minimum required contribution for such plan year prior to any reduction under subsection (f) and without taking into account any waiver under section 302(c).

“(ii) 15-YEAR RULE.—If the shortfall amortization installments with respect to a shortfall amortization base for an applicable plan year are determined under subparagraph (D)(iii), the plan must remain
an active plan for the 7 subsequent plan years. If such plan fails to be an active plan in any such plan year, the shortfall amortization base, reduced by the principal portion of prior shortfall amortization installments relating to that base, shall be amortized over 7 years.

“(iii) Special Rule.—In the case of an applicable plan year that ends before July 1, 2009, the plan sponsor may elect not to have the active plan requirement apply for such plan year. If such election is made—

“(I) clause (i) shall be applied so as to require the plan to remain an active plan for the 2 subsequent plan years (instead of 1 subsequent plan year) under rules prescribed by the Secretary of the Treasury, and

“(II) clause (ii) shall be applied by substituting ‘8’ for ‘7’ the first place it appears and by substituting ‘6’ for ‘7’ the second place it appears.

Such election shall be made at such times, and in such form and manner, as shall be
prescribed by the Secretary of the Treasury, and may be revoked only with consent of the Secretary of the Treasury.

“(F) APPLICABLE PLAN YEAR.—For purposes of this paragraph, the term ‘applicable plan year’ means—

“(i) except as provided in clauses (ii) and (iii), any plan year beginning in 2009 or 2010,

“(ii) in the case of a plan with a plan year beginning after October 31 and before January 1, any plan year beginning in 2008 or 2009, and

“(iii) in the case of a plan for which the valuation date is not the first day of the plan year, any plan year beginning in 2008 or 2009.

“(G) ACTIVE PLAN.—

“(i) IN GENERAL.—For purposes of this paragraph, the term ‘active plan’ means a defined benefit plan that is described in clause (ii), (iii), or (iv). A defined benefit plan may satisfy different clauses in different years. Notwithstanding clause (ii), (iii), or (iv), a defined benefit
plan is not an active plan if an election under section 402(a)(1) of the Pension Protection Act of 2006 is in effect with respect to such plan, or if the plan is described under rules prescribed by the Secretary of the Treasury designed to prevent evasion of the purposes of this subparagraph.

“(ii) Defined benefit plan.—

“(I) In general.—A defined benefit plan is described in this clause if minimum benefit accruals are provided on behalf of all employees who have satisfied the plan’s age and service requirements and who would, but for any prior amendment ceasing accruals, be eligible for an accrual under the plan.

“(II) Special rule regarding minimum benefit accruals.—For purposes of this clause, the employees described in this clause shall be treated as receiving minimum benefit accruals for a plan year if all such employees are accruing a benefit and—
“(aa) the rate of benefit accrual for any such employee is not less than the greater of—

“(AA) the rate of benefit accrual that would have been applied to the employee under the benefit formula in effect on July 1, 2009, disregarding any amendments to the plan adopted after June 30, 2009, or

“(BB) the rate of benefit accrual that would have applied to the employee under the benefit formula in effect as of the last date prior to the effective date of any plan amendment adopted prior to July 1, 2009 that ceased providing benefit accruals based on additional service credit with respect to such employee, or

“(bb) the target normal cost (without regard to plan adminis-
trative expenses) for such plan year with respect to such employees is at least 3 percent of the aggregate compensation (as defined in section 415(c)(3) of the Internal Revenue Code of 1986) of such employees for such plan year. Solely for purposes of this paragraph, target normal cost shall be determined by using 5 percent in lieu of the interest rate applicable under subsection (h) and by using the mortality tables described in subsection (h)(3)(A).

"(iii) Defined contribution plan.—

"(I) In general.—A defined benefit plan is described in this clause if—

"(aa) the defined benefit plan satisfies clause (ii) except with respect to employees whose failure to accrue a minimum benefit is attributable to a plan
amendment adopted prior to July 1, 2009, and

“(bb) the plan sponsor (or any member of such sponsor’s controlled group) maintains a defined contribution plan under which allocations are made on behalf of each employee whose failure to accrue a benefit under the defined benefit plan causes the defined benefit plan not to be described in clause (ii).

“(II) MINIMUM ALLOCATIONS.—Such allocations shall not be less than 3 percent of an employee’s compensation (as determined in accordance with section 414(s) of the Internal Revenue Code of 1986). A defined contribution plan shall not fail to satisfy the requirements of this clause solely by reason of the failure to make allocations on behalf of one or more highly compensated employees (as defined in section 414(q) of the Internal Revenue Code of 1986).
“(III) ALLOCATIONS TAKEN INTO ACCOUNT.—For purposes of this clause, only the following types of allocations may be taken into account:

“(aa) Employer contributions or forfeitures allocated without regard to whether an employee makes an elective contribution or an employee contribution.

“(bb) In the case of the first plan year ending after June 30, 2009, matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986).

“(iv) NONQUALIFIED PLAN.—

“(I) IN GENERAL.—A defined benefit plan is described in this clause if no key employee (as defined in section 416(i) of the Internal Revenue Code of 1986 without regard to paragraph (5) thereof) accrues any new benefits for the plan year under any nonqualified deferred compensation
plan (as defined in section 409A(d) of the Internal Revenue Code of 1986) maintained by the sponsor of the defined benefit plan or by any member of such sponsor’s controlled group.

“(II) REVOCATION OF CERTAIN ELECTIONS.—The Secretary of the Treasury shall provide rules under section 409A of the Internal Revenue Code of 1986 under which elections to defer compensation made prior to the date of enactment of this clause may be revoked by an employee within 180 days after the date of enactment of this clause, but only to the extent that, pursuant to this clause, such elections could otherwise cause a failure of the employee to—

“(aa) earn compensation under an arrangement that, but for the election, is not a non-qualified deferred compensation plan (as defined in section 409A(d) of the Internal Revenue Code of 1986), and
“(bb) earn compensation that is not payable to the employee in another form or under a different arrangement.

“(v) MULTIPLE EMPLOYER PLANS.—In the case of a defined benefit plan described in section 413(c)(4)(B) of the Internal Revenue Code of 1986, such plan shall be treated as an active plan if such plan satisfies clause (ii), (iii), or (iv) with respect to at least 85 percent of the employers participating in such plan. In applying the 85 percent requirement, different employers may satisfy different clauses.

“(vi) CONTROLLED GROUP.—For purposes of this paragraph, the term ‘controlled group’ means all employers treated as a single employer pursuant to subsections (b) and (c) of section 414 of the Internal Revenue Code of 1986.”.

(2) CONFORMING AMENDMENT.—Paragraph (1) of section 303(c) of such Act is amended by striking “the shortfall amortization bases for such plan year and each of the 6 preceding plan years” and insert-
(a) Amendments to Internal Revenue Code of 1986.—

(b) Amendments to Internal Revenue Code of 1986.—

(1) In general.—Paragraph (2) of section 430(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following subparagraphs:

“(D) Special rule.—

“(i) In general.—In the case of the shortfall amortization base of an active plan for any applicable plan year, the shortfall amortization installments are the amounts described in clause (ii) or clause (iii), as applicable, determined pursuant to clause (iv).

“(ii) 7-Year amortization.—

“(I) In general.—The shortfall amortization installments described in this clause are—

“(aa) in the case of the last 7 plan years in the 9-plan-year period beginning with the applicable plan year, the amounts necessary to amortize the shortfall...
amortization base of the plan for
the applicable plan year in level
annual installments over such
last 7 plan years, and

“(bb) in the case of the first
2 plan years in such 9-plan-year
period, interest on such shortfall
amortization base (determined
using the effective rate of inter-
rest for the plan for the plan
year).

“(II) SHORTFALL AMORTIZATION
INSTALLMENT.—The shortfall amorti-
ization installment for any plan year in
the 9-plan-year period under this
clause with respect to such shortfall
amortization base is the annual in-
stallment determined under this
clause for that year for that base.

“(III) MINIMUM REQUIRED CON-
TRIBUTION FOR FIRST 2 YEARS.—
Notwithstanding the preceding provi-
sions of this clause, the minimum re-
quired contribution for the two plan
years described in subclause (I)(bb)
shall be increased to the extent nec-

essary so that the minimum required

contribution for such plan year is at

least equal to the applicable percent-

age of the minimum required con-

tribution for the plan year preceding

the first applicable plan year. If the

minimum required contribution is in-

creased by reason of the preceding

sentence, the shortfall amortization

installments with respect to the short-

fall amortization base for any applica-

ble plan year shall be reduced to take

such increase into account, pursuant

to rules issued by the Secretary, but

only if the shortfall amortization in-

stallments with respect to the shortfall

amortization base for such applicable

plan year are determined under this

clause. For purposes of this subclause,

any reference to the minimum re-

quired contribution for any plan year

shall be a reference to the minimum

required contribution for such plan

year prior to any reduction under sub-
section (f) and without taking into ac-
count any waiver under section
412(c). For purposes of this clause,
the applicable percentage shall be de-
determined as follows:

```
For the:                          The applicable
percentage is:
First applicable plan year          105
Second applicable plan year          110
Plan year following the second applicable plan year  115
```

“(iii) 15-YEAR AMORTIZATION.—The
shortfall amortization installments de-
scribed in this clause are the amounts nec-
essary to amortize the shortfall amortiza-
tion base of the plan for the applicable
plan year in level annual installments over
15 years. The shortfall amortization in-
stallments for any plan year in the 15-
plan-year period under this clause is the
annual installment determined under this
clause for that year for that base.

“(iv) ELECTION.—The plan sponsor
may, with respect to a plan, elect whether
to determine shortfall amortization install-
ments under clause (ii), clause (iii), or
without regard to this subparagraph. Such
election shall be made at such times, and
in such form and manner, as shall be pre-
scribed by the Secretary, and may be re-
voked only with the consent of the Sec-
retary. In the absence of a timely election
to determine shortfall amortization install-
ments under such clause (ii) or clause (iii),
such installments shall be determined with-
out regard to this subparagraph.

“(E) Failure to Maintain Active
Plan.—

“(i) 2 and 7 Rule.—If the shortfall
amortization installments with respect to a
shortfall amortization base for an applica-
ble plan year are determined under sub-
paragraph (D)(ii), the plan must remain
an active plan for the subsequent plan
year. If such plan fails to be an active plan
in such plan year, the minimum required
contribution for the plan year with respect
to which a failure occurs shall be increased
by all amounts by which the minimum re-
quired contribution for the current plan
year or any prior plan year has been re-
duced by the application of subparagraph
(D), plus interest on such amounts at the
effective rate of interest for the plan for
the plan year for which the increase applies. However, any such increase in the minimum required contribution shall not require a contribution to the extent that the contribution would cause the value of plan assets for the plan year to exceed the funding target of the plan for the plan year (determined without regard to subsection (i)(1)). If the minimum required contribution is increased by reason of this clause, the shortfall amortization installments with respect to the shortfall amortization base for any applicable plan year shall be reduced to take such increase into account, pursuant to rules issued by the Secretary, but only if the shortfall amortization installments with respect to the shortfall amortization base for such applicable plan year are determined under subparagraph (D)(ii). For purposes of this clause, any reference to the minimum required contribution for any plan year shall be a reference to the minimum required contribution for such plan year prior to any reduction under subsection (f) and
without taking into account any waiver under section 412(c).

“(ii) 15-YEAR RULE.—If the shortfall amortization installments with respect to a shortfall amortization base for an applicable plan year are determined under subparagraph (D)(iii), the plan must remain an active plan for the 7 subsequent plan years. If such plan fails to be an active plan in any such plan year, the shortfall amortization base, reduced by the principal portion of prior shortfall amortization installments relating to that base, shall be amortized over 7 years.

“(iii) SPECIAL RULE.—In the case of an applicable plan year that ends before July 1, 2009, the plan sponsor may elect not to have the active plan requirement apply for such plan year. If such election is made—

“(I) clause (i) shall be applied so as to require the plan to remain an active plan for the 2 subsequent plan years (instead of 1 subsequent plan
year) under rules prescribed by the Secretary, and

“(II) clause (ii) shall be applied by substituting ‘8’ for ‘7’ the first place it appears and by substituting ‘6’ for ‘7’ the second place it appears.

Such election shall be made at such times, and in such form and manner, as shall be prescribed by the Secretary, and may be revoked only with consent of the Secretary.

“(F) APPLICABLE PLAN YEAR.—For purposes of this paragraph, the term ‘applicable plan year’ shall mean—

“(i) except as provided in clauses (ii) and (iii), any plan year beginning in 2009 or 2010,

“(ii) in the case of a plan with a plan year beginning after October 31 and before January 1, any plan year beginning in 2008 or 2009, and

“(iii) in the case of a plan for which the valuation date is not the first day of the plan year, any plan year beginning in 2008 or 2009.

“(G) ACTIVE PLAN.—
“(i) IN GENERAL.—For purposes of this paragraph, the term ‘active plan’ means a defined benefit plan that is described in clause (ii), (iii), or (iv). A defined benefit plan may satisfy different clauses in different years. Notwithstanding clause (ii), (iii), or (iv), a defined benefit plan is not an active plan if an election under section 402(a)(1) of the Pension Protection Act of 2006 is in effect with respect to such plan, or if the plan is described under rules prescribed by the Secretary designed to prevent evasion of the purposes of this subparagraph.

“(ii) DEFINED BENEFIT PLAN.—

“(I) IN GENERAL.—A defined benefit plan is described in this clause if minimum benefit accruals are provided on behalf of all employees who have satisfied the plan’s age and service requirements and who would, but for any prior amendment ceasing accruals, be eligible for an accrual under the plan.
“(II) Special rule regarding minimum benefit accruals.—For purposes of this clause, the employees described in this clause shall be treated as receiving minimum benefit accruals for a plan year if all such employees are accruing a benefit and—

“(aa) the rate of benefit accrual for any such employee is not less than the greater of—

“(AA) the rate of benefit accrual that would have been applied to the employee under the benefit formula in effect on July 1, 2009, disregarding any amendments to the plan adopted after June 30, 2009, or

“(BB) the rate of benefit accrual that would have applied to the employee under the benefit formula in effect as of the last date prior to the effective date of any plan amendment adopt-
ed prior to July 1, 2009,
that ceased providing benefit
accruals based on additional
service credit with respect to
such employee, or
“(bb) the target normal cost
(without regard to plan adminis-
trative expenses) for such plan
year with respect to such employ-
ees is at least 3 percent of the
aggregate compensation (as de-

defined in section 415(c)(3)) of
such employees for such plan
year.
Solely for purposes of this paragraph,
target normal cost shall be determined
by using 5 percent in lieu of the inter-
est rate applicable under subsection
(h) and by using the mortality tables
described in subsection (h)(3)(A).
“(iii) Defined Contribution
Plan.—
“(I) In general.—A defined
benefit plan is described in this clause
if—
“(aa) the defined benefit plan satisfies clause (ii) except with respect to employees whose failure to accrue a minimum benefit is attributable to a plan amendment adopted prior to July 1, 2009, and

“(bb) the plan sponsor (or any member of such sponsor’s controlled group) maintains a defined contribution plan under which allocations are made on behalf of each employee whose failure to accrue a benefit under the defined benefit plan causes the defined benefit plan not to be described in clause (ii).

“(II) Minimum allocations.—Such allocations shall not be less than 3 percent of an employee’s compensation (as determined in accordance with section 414(s)). A defined contribution plan shall not fail to satisfy the requirements of this clause solely by reason of the failure to make allo-
cations on behalf of one or more highly compensated employees (as defined in section 414(q)).

“(III) ALLOCATIONS TAKEN INTO ACCOUNT.—For purposes of this clause, only the following types of allocations may be taken into account:

“(aa) Employer contributions or forfeitures allocated without regard to whether an employee makes an elective contribution or an employee contribution.

“(bb) In the case of the first plan year ending after June 30, 2009, matching contributions (as defined in section 401(m)(4)(A)).

“(iv) NONQUALIFIED PLAN.—

“(I) IN GENERAL.—A defined benefit plan is described in this clause if no key employee (as defined in section 416(i) without regard to paragraph (5) thereof) accrues any new benefits for the plan year under any nonqualified deferred compensation
plan (as defined in section 409A(d))
maintained by the sponsor of the de-
fined benefit plan or by any member
of such sponsor’s controlled group.

“(II) Revocation of certain
elections.—The Secretary shall pro-
vide rules under section 409A under
which elections to defer compensation
made prior to the date of enactment
of this clause may be revoked by an
employee within 180 days after the
date of enactment of this clause, but
only to the extent that, pursuant to
this clause, such elections could other-
wise cause a failure of the employee
to—

“(aa) earn compensation
under an arrangement that, but
for the election, is not a non-
qualified deferred compensation
plan (as defined in section
409A(d)), and

“(bb) earn compensation
that is not payable to the em-
ployee in another form or under
a different arrangement.

“(v) MULTIPLE EMPLOYER PLANS.—
In the case of a defined benefit plan de-
scribed in section 413(c)(4)(B), such plan
shall be treated as an active plan if such
plan satisfies clause (ii), (iii), or (iv) with
respect to at least 85 percent of the em-
ployers participating in such plan. In ap-
plying the 85 percent requirement, dif-
ferent employers may satisfy different
clauses.

“(vi) CONTROLLED GROUP.—For pur-
poses of this paragraph, the term ‘con-
trolled group’ means all employers treated
as a single employer pursuant to sub-
sections (b) and (c) of section 414.’’.

(2) CONFORMING AMENDMENT.—Paragraph (1)
of section 430(c) of such Code is amended by strik-
ing “the shortfall amortization bases for such plan
year and each of the 6 preceding plan years” and in-
serting “any shortfall amortization base which has
not been fully amortized under this subsection”.

•HR 3936 IH
(3) AMENDMENT TO SECTION 409A.—Paragraph (3) of section 409A(a) of the Internal Revenue Code of 1986 is amended to read as follows:

“(3) ACCELERATION OF BENEFITS.—

“(A) IN GENERAL.—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary. The requirements of this paragraph shall not be treated as satisfied if the plan makes any payment described in subparagraph (B) or (C).

“(B) EXCESS PAYMENTS FOR CERTAIN ADJUSTED FUNDING TARGET ATTAINMENT PERCENTAGES BY ACTIVE PLAN.—A payment is described in this subparagraph if—

“(i) such payment is made during a year in which a defined benefit plan maintained by the employer sponsoring a non-qualified deferred compensation plan is required to be an active plan under section 430(c)(2)(E) or section 107(e) of the Pension Protection Act of 2006, and such defined benefit plan has not otherwise failed
to be an active plan in such plan year or any prior plan year,

“(ii) such defined benefit plan is not described in clause (ii) or (iii) of section 430(c)(2)(G) (modified, if applicable by section 107(f)(5) of the Pension Protection Act of 2006),

“(iii) such defined benefit plan is described in paragraph (1) or (3) of section 436(d)(or would be if section 430(g)(3)(C) did not apply), and

“(iv) the nonqualified deferred compensation plan makes any payment in excess of the amounts that would be permitted if the requirements of such paragraph (1) or (3), as applicable, applied to such plan.

In the case of a defined benefit plan to which section 107 of the Pension Protection Act of 2006 applies, clauses (iii) and (iv) shall apply based on rules similar to the rules of section 436, as prescribed by the Secretary, except that the parenthetical regarding section 430(g)(3)(C) shall not apply. Under rules prescribed by the Secretary, a plan shall not fail to
satisfy the requirements of this subsection solely by reason of a modification with respect to the time and form of distribution that is consistent with the requirements of this subparagraph.

“(C) Excess payments by reason of certain interest rates and mortality assumptions.—A payment is described in this subparagraph if—

“(i) the requirements of clauses (i) and (ii) of subparagraph (B) are satisfied, and

“(ii) the nonqualified deferred compensation plan makes any payment in excess of the amount that would be payable if such plan used the interest rate and mortality assumptions from the defined benefit plan described in section 401(a) that would create the smallest payments, determined on a present value basis using the interest rate and mortality assumptions described in section 430(h).

For purposes of this subparagraph, all defined benefit plans maintained by the employer shall be taken into account.”.
(c) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2007.

SEC. 102. EXPANSION OF CORRIDOR WITHIN WHICH SINGLE-EMPLOYER DEFINED BENEFIT PLANS ARE ALLOWED TO AVERAGE ASSET VALUES.

(a) Amendment to ERISA.—Paragraph (3) of section 303(g) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subparagraphs:

“(C) Special rule.—In the case of any applicable plan year, subparagraph (B)(iii) shall be applied—

“(i) by substituting ‘80 percent’ for ‘90 percent’, and

“(ii) by substituting ‘120 percent’ for ‘110 percent’.

“(D) Applicable plan year.—For purposes of this paragraph, the term ‘applicable plan year’ means—

“(i) except as provided in clauses (ii) and (iii), any plan year beginning in 2009 or 2010,

“(ii) in the case of a plan with a plan year beginning after October 31 and before...
January 1, any plan year beginning in 2008 or 2009, and

“(iii) in the case of a plan for which the valuation date is not the first day of the plan year, any plan year beginning in 2008 or 2009.”.

(b) Amendment to Internal Revenue Code of 1986.—Paragraph (3) of section 430(g) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraphs:

“(C) Special rule.—In the case of any applicable plan year, subparagraph (B)(iii) shall be applied—

“(i) by substituting ‘80 percent’ for ‘90 percent’, and

“(ii) by substituting ‘120 percent’ for ‘110 percent’.

“(D) Applicable plan year.—For purposes of this paragraph, the term ‘applicable plan year’ means—

“(i) except as provided in clauses (ii) and (iii), any plan year beginning in 2009 or 2010,

“(ii) in the case of a plan with a plan year beginning after October 31 and before
January 1, any plan year beginning in 2008 or 2009, and

“(iii) in the case of a plan for which
the valuation date is not the first day of
the plan year, any plan year beginning in
2008 or 2009.”.

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

SEC. 103. LOOKBACK FOR BENEFIT ACCRUAL RESTRI-
TION.

(a) AMENDMENT TO ERISA.—Subsection (g) of sec-
tion 206 of the Employee Retirement Income Security Act
of 1974 is amended by adding at the end thereof the fol-
lowing:

“(12) SPECIAL RULE FOR CERTAIN YEARS.—
For purposes of paragraph (4) only—

“(A) IN GENERAL.—For plan years begin-
ing after October 31, 2008, and before No-
vember 1, 2010, the adjusted funding target at-
tainment percentage of a plan for purposes of
paragraph (4) shall be the greater of—

“(i) such percentage, as determined
without regard to this paragraph, or
“(ii) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 31, 2007, and before November 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

“(B) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(i) subparagraph (A) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

“(ii) subparagraph (A)(ii) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary of the Treasury.”.

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 436 of the Internal Revenue Code of 1986—Section 436 of the Internal Revenue Code of 1986 is amended by adding the following at the end thereof:

“(n) SPECIAL RULE FOR CERTAIN YEARS.—For purposes of subsection (e) only—

“(1) IN GENERAL.—For plan years beginning after October 31, 2008, and before November 1,
2010, the adjusted funding target attainment percentage of a plan for purposes of subsection (e) shall be the greater of—

“(A) such percentage, as determined without regard to this subsection, or

“(B) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 31, 2007, and before November 1, 2008, as determined under rules prescribed by the Secretary.

“(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(A) paragraph (1) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

“(B) paragraph (1)(B) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.”.

(c) INTERACTION WITH WRERA RULE.—Section 203 or the Worker, Retiree, and Employer Recovery Act of 2008 shall apply to a plan for any plan year in lieu of the amendments made by this section only to the extent that such section produces a higher adjusted funding tar-
41

get attainment percentage for such plan for such year. In
all other cases, such section shall not be applicable to any
plan.

(d) Effective Date.—

(1) IN GENERAL.—Except as provided in para-
graph (2), the amendments made by this section
shall apply to plan years beginning after October 31,
2008.

(2) SPECIAL RULE.—In the case of a plan for
which the valuation date is not the first day of the
plan year, the amendments made by this section
shall apply to plan years beginning after December

SEC. 104. LOOKBACK FOR CREDIT BALANCE RULE.

(a) Amendment to ERISA.—Paragraph (3) of sec-
tion 303(f) of the Employee Retirement Income Security
Act of 1974 is amended by adding the following at the
end thereof:

“(D) SPECIAL RULE FOR CERTAIN
YEARS.—

“(i) IN GENERAL.—For purposes of
applying subparagraph (C) for plan years
beginning after October 31, 2009, and be-
fore November 1, 2011, the ratio deter-
mined under such subparagraph for the
preceding plan year shall be the greater
of—

“(I) such ratio, as determined
without regard to this subparagraph,
or

“(II) the ratio for such plan for
the plan year beginning after October
31, 2007, and before November 1,
2008, as determined under rules pre-
scribed by the Secretary of the Treas-
ury.

“(ii) SPECIAL RULE.—In the case of a
plan for which the valuation date is not the
first day of the plan year—

“(I) clause (i) shall apply to plan
years beginning after December 31,
2008, and before January 1, 2011,
and

“(II) clause (i)(II) shall apply
based on the last plan year beginning
before November 1, 2007, as deter-
mined under rules prescribed by the
Secretary of the Treasury.”.

(b) AMENDMENT TO INTERNAL REVENUE
CODE OF 1986.—Paragraph (3) of section 430(f) of the
Internal Revenue Code of 1986 is amended by adding the following at the end thereof:

“(D) SPECIAL RULE FOR CERTAIN YEARS.—

“(i) IN GENERAL.—For purposes of applying subparagraph (C) for plan years beginning after October 31, 2009, and before November 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

“(I) such ratio, as determined without regard to this subsection, or

“(II) the ratio for such plan for the plan year beginning after October 31, 2007 and before November 1, 2008, as determined under rules prescribed by the Secretary.

“(ii) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year—

“(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010,
“(II) clause (i)(II) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after October 31, 2009.

(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2008.

SEC. 105. CLARIFICATION OF TREATMENT OF EXPENSES.

(a) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Clause (ii) of section 303(b)(1)(A) of the Employee Retirement Income Security Act of 1974 is amended by striking “plan-related expenses” and inserting “plan-related administrative expenses”.

(2) CONFORMING AMENDMENT.—Subclause (II) of section 303(i)(2)(A)(i) of such Act is amended by
striking “plan-related expenses” and inserting “plan-related administrative expenses”.

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Clause (ii) of section 430(b)(1)(A) of the Internal Revenue Code of 1986 is amended by striking “plan-related expenses” and inserting “plan-related administrative expenses”.

(2) CONFORMING AMENDMENT.—Subclause (II) of section 430(i)(2)(A)(i) of such Code is amended by striking “plan-related expenses” and inserting “plan-related administrative expenses”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in paragraphs (1)(A), (1)(F)(i), (2)(A), and (2)(F)(i) of section 101(b) of the Worker, Retiree, and Employer Recovery Act of 2008.

SEC. 106. INFORMATION REPORTING.

(a) IN GENERAL.—Paragraph (1) of section 4010(b) of the Employee Retirement Security Act of 1974 is amended by striking “80” and inserting “90”.

(b) FUNDING TARGET ATTAINMENT PERCENTAGE.—Subparagraph (B) of section 4010(d)(2) of such Act is amended by striking “303(d)(2).” and inserting
“303(d)(2), without regard to the reduction under section 303(f)(4)(B).”.

(c) CONFIDENTIALITY.—Subsection (c) of section 4010 of such Act is amended—

(1) by striking “and no such information or documentary material may be made public,”, and

(2) by adding at the end the following: “All parties, governmental or otherwise, receiving the information (or summary report of such information) required to be provided under this section shall be required to—

“(1) ensure that the information received will be kept confidential,

“(2) use the information only for the purpose for which it was requested, and

“(3) not further disclose the information except to accomplish that purpose, unless a separate consent from the taxpayer is obtained.

Such requirements shall not apply to information provided under this section that is otherwise publicly available. The corporation shall notify each person providing information under this section of any public disclosure of such information not permitted by this subsection within a reasonable time of such disclosure becoming known to the corporation. If any party, governmental or otherwise, makes
an unauthorized disclosure, the person required to provide
such information under this section may bring suit against
such party in Federal district court. No liability results
from a disclosure based upon a good faith, but erroneous,
interpretation of this section. Upon a finding of a liability,
such person can recover an amount not to exceed
$100,000 per act of unauthorized disclosure plus reason-
able attorney fees. The person shall have two years from
the date of discovery of the unauthorized disclosure to
bring suit.”.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in para-
graph (2), the amendments made by this section
shall apply to plan years beginning after December
31, 2009.

(2) CONFIDENTIALITY.—The amendment made
by subsection (c) shall take effect on the date of the
enactment of this Act.

SEC. 107. BENEFIT RESTRICTION EFFECTIVE DATE FOR
COLLECTIVELY BARGAINED PLANS.

(a) AMENDMENTS WITH RESPECT TO ERISA.—

(1) PLAN AMENDMENTS.—Paragraph (2) of
section 103(e) of the Pension Protection Act of 2006
is amended—
(A) by striking “In the case” and inserting “Except as provided in paragraph (3), in the case”, and

(B) by striking “the amendments made by this section” and inserting “section 206(g)(2) of the Employee Retirement Income Security Act of 1974 (and other provisions of such section 206(g) to the extent that they apply to such section 206(g)(2)), as added by this section.”

(2) OTHER BENEFIT RESTRICTIONS.—

(A) IN GENERAL.—Subsection (c) of section 103 of the Pension Protection Act of 2006 is amended by adding at the end thereof the following:

“(3) COLLECTIVE BARGAINING DELAY EXCEPT REGARDING CERTAIN PLAN AMENDMENTS.—

“(A) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the amendments made by this section shall apply to plan years beginning after December 31, 2011, except that paragraph (2) shall apply to plan amendments made pursuant to a collective bar-
gaining agreement ratified after the date of introduction of the Preserve Benefits and Jobs Act of 2009.

“(B) TRANSITION RULE.—

“(i) In the case of a plan described in clause (ii), such plan shall not be required to comply with this section and the amendments made by this section until the date that is 60 days after the date of the enactment of this paragraph, but such a plan may comply on any otherwise permitted earlier date.

“(ii) A plan is described in this clause if a limit on benefits or benefit accruals has been or is, pursuant to section 206(g) of the Employee Retirement Income Security Act of 1974 and section 436 of the Internal Revenue Code of 1986, in effect with respect to such plan as of the date of the enactment of this paragraph.”.

(3) CONFORMING AMENDMENT.—The heading of paragraph (2) of section 103(c) of the Pension Protection Act of 2006 is amended to read as follows: “COLLECTIVE BARGAINING EXCEPTION REGARDING CERTAIN PLAN AMENDMENTS”.

HR 3936 IH
(b) Amendments With Respect to Internal Revenue Code of 1986.—

(1) Plan Amendments.—Paragraph (2) of section 113(b) of the Pension Protection Act of 2006 is amended by—

(A) striking “In the case” and inserting “Except as provided in paragraph (3), in the case”, and

(B) striking “the amendments made by this section” and inserting “section 436(c) of the Internal Revenue Code of 1986 (and other provisions such section 436 to the extent that they apply to such section 436(c)), as added by this section.”.

(2) Other Benefit Restrictions.—

(A) In General.—Subsection (b) of section 113 of the Pension Protection Act of 2006 is amended by adding at the end thereof the following:

“(3) Collective bargaining delay except regarding certain plan amendments.—

“(A) In General.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, the
amendments made by this section shall apply to plan years beginning after December 31, 2011, except that paragraph (2) shall apply to plan amendments made pursuant to a collective bargaining agreement ratified after the date of introduction of the Preserve Benefits and Jobs Act of 2009.

“(B) Transition rule.—

“(i) In the case of a plan described in clause (ii), a plan shall not be required to comply with this section and the amendments made by this section until the date that is 60 days after the date of the enactment of this paragraph, but such a plan may comply on any otherwise permitted earlier date.

“(ii) A plan is described in this clause if a limit on benefits or benefit accruals has been or is, pursuant to section 206(g) of the Employee Retirement Income Security Act of 1974 and section 436 of the Internal Revenue Code of 1986, in effect with respect to such plan as of the date of the enactment of this paragraph.”.
(3) CONFORMING AMENDMENT.—The heading of paragraph (2) of section 103(b) of the Pension Protection Act of 2006 is amended to read as follows: “COLLECTIVE BARGAINING EXCEPTION REGARDING CERTAIN PLAN AMENDMENTS”.

(c) EFFECTIVE DATE.—Except as provided in the amendments made by this section, the amendments made by this section shall apply as if included in sections 103(c) and 113(b) of such Act.

SEC. 108. SOCIAL SECURITY LEVEL-INCOME OPTIONS.

(a) AMENDMENT TO ERISA.—Subparagraph (E) of section 206(g)(3) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end thereof the following:

“For purposes of this paragraph, any stream of payments that is structured to be similar in amount and duration to social security supplements described in the last sentence of section 204(b)(1)(G) shall be treated in the same manner as such supplements.”.

(b) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Paragraph (5) of section 436(d) of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following:

“For purposes of this subsection, any stream of payments that is structured to be similar in amount and duration
to social security supplements described in the last sentence of section 411(a)(9) shall be treated in the same manner as such supplements.”.

(c) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply as if included in sections 103(a) and 113(a)(1) of the Pension Protection Act of 2006.

(2) Transition rule.—

(A) In the case of a plan described in subparagraph (B), a plan shall not be required to comply with the amendments made by this section until the date that is 60 days after the date of enactment of this Act, but such a plan may comply on any otherwise permitted earlier date.

(B) A plan is described in this subparagraph (B) if a limit on prohibited payments is or has been, pursuant to section 206(g) of the Employee Retirement Income Security Act of 1974 and section 436 of the Internal Revenue Code of 1986, in effect with respect to such plan as of the date of enactment of this Act.
SEC. 109. PBGC GUARANTEE.

(a) GUARANTEE.—Section 4022 of the Employee retirement Income Security Act of 1974 is amended by striking subsection (g).

(b) ALLOCATION OF ASSETS AMONG PRIORITY GROUPS.—Section 4044 of such Act is amended by striking subsection (e).

(c) EFFECTIVE DATE.—The amendments made by this section shall be as if included in section 404 of the Pension Protection Act of 2006, except that such amendments shall not apply to proceedings initiated under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, on or before the date of enactment of this Act.

SEC. 110. APPLICATION OF EXTENDED AMORTIZATION PERIOD TO PLANS SUBJECT TO PRIOR LAW FUNDING RULES.

(a) IN GENERAL.—Title I of the Pension Protection Act of 2006 is amended by redesignating section 107 as section 108 and by inserting the following after section 106:

"SEC. 107. APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE.

"(a) IN GENERAL.—In the case of plans to which section 104, 105, or 106 of this Act apply, section 302 of
the Employee Retirement Income Security Act of 1974
and section 412 of the Internal Revenue Code of 1986
(as in effect before the amendments made by this subtitle
and subtitle B) shall apply in the manner described in this
section. All references in this section to ‘such Act’ or ‘such
Code’ shall be to such Act or such Code as in effect before
the amendments made by this subtitle and subtitle B.

“(b) Application of 2 and 7 Rule.—

“(1) In general.—In the case of an active
plan to which this subsection applies, section 302 of
such Act and section 412 of such Code shall apply
in the manner described in this subsection.

“(2) Two year suspension of deficit re-
duction contributions for certain plans.—
For purposes of applying section 302(d)(9) of such
Act and section 412(l)(9) of such Code to a plan de-
scribed in paragraph (1), the funded current liability
percentage for such plan for any applicable plan
year shall be the funded current liability percentage
of such plan for the pre-applicable plan year.

“(3) Calculation of deficit reduction
contribution.—For purposes of applying section
302(d) of such Act and section 412(l) of such Code
to a plan to which such subsections apply (after tak-
ing into account paragraph (2)), the applicable per-
percentage described in section 302(d)(4)(C) of such Act and section 412(l)(4)(C) of such Code shall be the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act, provided that such applicable percentage shall only apply to the increased unfunded new liability. The applicable percentage determined without regard to this section shall apply to the excess of the unfunded new liability over the increased unfunded new liability.

“(c) Application of 15-Year Amortization.—

“(1) In General.—In the case of an active plan to which this subsection applies, section 302 of such Act and section 412 of such Code shall apply in the manner described in this subsection.

“(2) Calculation of Deficit Reduction Contribution.—For purposes of applying section 302(d) of such Act and section 412(l) of such Code to a plan described in paragraph (1), the applicable percentage described in section 302(d)(4)(C) of such Act and section 412(l)(4)(C) of such Code for any pre-effective date plan year shall be the ratio of—

“(A) the annual installments payable in each year if the increased unfunded new liability for such plan year were amortized over 15 years, using an interest rate equal to the third
segment rate described in sections 104(b),
105(b), and 106(b) of this Act, to

“(B) the increased unfunded new liability
for such plan year.

However, such applicable percentage shall only apply
to the increased unfunded new liability. The applica-
ble percentage determined without regard to this
section shall apply to the excess of the unfunded new
liability over the increased unfunded new liability.

“(d) Election.—The plan sponsor may, with re-
spect to a plan, elect whether to apply subsection (b) or
subsection (c) or whether neither subsection shall apply.

Such election shall be made at such times, and in such
form and manner, as shall be prescribed by the Secretary
of the Treasury, and may be revoked only with the consent
of the Secretary of the Treasury. In the absence of a time-
ly election regarding which subsection shall apply to a
plan, neither subsection shall apply to such plan.

“(e) Failure To Maintain Active Plan.—If the
minimum contribution required for a plan to avoid an ac-
cumulated funding deficiency under section 302 of such
Act and section 412 of such Code is determined under
subsection (b) or (e) for a plan year, the plan must remain
an active plan for the subsequent plan year. If such plan
fails to be an active plan in such plan year, the minimum
contribution requirement to avoid an accumulated funding deficiency shall be increased by all amounts by which such minimum contribution was reduced by the application of subsection (b) or (c), plus interest on such amounts at the third segment rate described in sections 104(b), 105(b), and 106(b) of this Act. However, any such increase in such minimum contribution shall not require a contribution to the extent that the contribution would cause the value of plan assets (determined under section 302(c)(2) of such Act and section 412(c)(2) of such Code) to exceed the current liability of such plan for such year.

“(f) Definitions.—

“(1) Applicable plan year.—For purposes of this section, the term ‘applicable plan year’ means—

“(A) except as provided in subparagraphs (B), (C), and (D), any plan year beginning in 2010 or 2011,

“(B) in the case of a plan with a plan year beginning after June 30 and before January 1, any plan year beginning in 2009 or 2010,

“(C) in the case of a plan for which the valuation date is not the first day of the plan year, any plan year beginning in 2009 or 2010,
“(D) in the case of a plan to which section 106 of the Pension Protection Act of 2006 applies, subparagraphs (A), (B), and (C) shall be applied by inserting ‘2008’, ‘2009’, or ‘2010’ for ‘2009’, ‘2010’, or ‘2011’, respectively, each place such year is referenced.

“(2) Pre-applicable plan year.—For purposes of this section, the term ‘pre-applicable plan year’ means, with respect to a plan, the second plan year preceding the first applicable plan year of such plan, except that in the case of a plan described in paragraph (1)(D), such term means the first plan year preceding the first applicable plan year of such plan.

“(3) Pre-effective date plan year.—For purposes of this section, the term ‘pre-effective date plan year’ means, with respect to a plan, any plan year prior to the first year in which the amendments made by this subtitle and subtitle B apply to the plan, provided that the first pre-effective date plan year shall be the first applicable plan year with respect to the plan.

“(4) Increased unfunded new liability.—For purposes of this section, the term ‘increased unfunded new liability’ means, with respect to a year,
the excess (if any) of the unfunded new liability over
the amount of unfunded new liability determined as
if the value of the plan's assets determined under
subsection 302(c)(2) of such Act and section
412(c)(2) of such Code equaled the product of the
current liability of the plan for the year multiplied
by the funded current liability percentage of the plan
for the pre-applicable plan year.

“(5) ACTIVE PLAN.—For purposes of this sec-
tion, the term 'active plan' shall have the meaning
given such term by section 303(e)(2)(G) of the Em-
ployee Retirement Income Security Act of 1974 and
in section 430(c)(2)(G) of the Internal Revenue
Code of 1986, except that 'target normal cost' (with-
out regard to plan administrative expenses) shall be
determined as if section 303 of the Employee Retire-
ment Income Security Act of 1974 and section 430
of the Internal Revenue Code of 1986 applied to
such plan with the modification regarding the inter-
est rate used, as set forth in section 303(e)(2)(G) of
the Employee Retirement Income Security Act of
1974 and in section 430(c)(2)(G) of the Internal

“(6) OTHER DEFINITIONS.—For purposes of
this section, the terms ‘funded current liability per-
centage’, ‘unfunded new liability’, and ‘current liabil-
ity’ shall have the meanings set forth in section
302(d) of such Act and section 412(l) of such
Code.”.

(b) ELIGIBLE CHARITY PLANS.—Section 104 of the
Pension Protection Act of 2006 is amended by—

(1) striking “eligible cooperative plan” wherever
it appears in subsections (a) and (b) and inserting
“eligible cooperative plan or an eligible charity
plan”, and

(2) adding at the end the following new sub-
section:

“(d) ELIGIBLE CHARITY PLAN DEFINED.—For pur-
poses of this section, a plan shall be treated as an eligible
charity plan for a plan year if the plan is maintained by
more than one employer and 100 percent of the employers
are described in section 501(c)(3) of such Code.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by
subsection (a) shall take effect as if included in the
Pension Protection Act of 2006.

(2) ELIGIBLE CHARITY PLAN.—The amend-
ments made by subsection (b) shall apply to plan
years beginning after December 31, 2008.
SEC. 111. ADDITIONS TO FUNDING-BASED LIMITS ON BENEFITS AND BENEFITS ACCRUALS UNDER SINGLE-EMPLOYER PLANS.

(a) Amendments to Internal Revenue Code of 1986.—

(1) Subsection (c) of section 436 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following:

“(3) Special limitations on ad hoc amendments.—

“(A) In general.—No ad hoc amendment to a defined benefit plan which is 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 of which benefits become nonforfeitable may take effect during the plan year if the adjusted funding target attainment percentage for such plan year is—

“(i) less than 120 percent, or

“(ii) would be less than 120 percent taking into account such amendment.

“(B) Exemption.—Subparagraph (A) shall cease to apply with respect to any plan
year, effective as of the first day 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 430) equal to—

“(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

“(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in an adjusted funding target attainment percentage of 120 percent.

“(C) Special rule.—An ad hoc amendment that is otherwise permitted to take effect under this subsection may not take effect unless the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated as of the effective date of such ad hoc amendment. This subparagraph shall not apply
to an ad hoc amendment that takes effect by
to an ad hoc amendment that takes effect by
reason of subparagraph (B)(i).

“(D) AD HOC AMENDMENT.—For purposes
of this paragraph, the term ‘ad hoc amendment’
means an amendment to a plan which—

“(i) increases the nonforfeitable bene-
fits payable to one or more participants,

“(ii) applies only to a subset of the
employees otherwise eligible to accrue ben-
fits under the plan,

“(iii) applies by its terms only to em-
ployees who, during a limited period of
time, terminate employment, and

“(iv) provides that the increase de-
scribed in clause (i) is payable in the form
of a prohibited payment (as defined in sub-
section (d)(5)).”.

(2) Paragraph (4) of section 436(c) of such
Code, as redesignated by paragraph (1), is amend-
ed—

(A) by inserting ““(A)” before “Paragraph
(1)” and moving the text thereof 2 ems to the
right, and

(B) by adding at the end the following:
“(B) Paragraph (3) shall not apply to any amendment of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.”.

(b) Amendments to ERISA.—

(1) Paragraph (2) of section 206(g) of the Employee Retirement Income Security Act of 1974 is amended by redesignating subparagraph (C) as subparagraph (D) and by inserting after subparagraph (B) the following:

“(C) Special limitations on ad hoc amendments.—

“(i) In general.—No ad hoc amendment to a defined benefit plan which is 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 of which benefits become nonforfeitable may take effect during the plan year if the adjusted funding target attainment percentage for such plan year is—

“(I) less than 120 percent, or
“(II) would be less than 120 per-
cent taking into account such amend-
ment.

“(ii) EXEMPTION.—Clause (i) shall
cease to apply with respect to any plan
year, effective as of the first day 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 clause (i)(I),
the amount of the increase in the
funding target of the plan (under sec-
tion 303) for the plan year attrib-
utable to the amendment, and

“(II) in the case of clause (i)(II),
the amount sufficient to result in an
adjusted funding target attainment
percentage of 120 percent.

“(iii) SPECIAL RULE.—An ad hoc
amendment that is otherwise permitted to
take effect under this paragraph may not
take effect unless the plan provides that
the accrued pension benefits of any partici-
pant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated as of the effective date of such ad hoc amendment. This subparagraph shall not apply to an ad hoc amendment that takes effect by reason of clause (ii)(I).

“(iv) AD HOC AMENDMENT.—For purposes of this subparagraph, the term ‘ad hoc amendment’ means an amendment to a plan which—

“(I) increases the nonforfeitable benefits payable to one or more participants,

“(II) applies only to a subset of the employees otherwise eligible to accrue benefits under the plan,

“(III) applies by its terms only to employees who, during a limited period of time, terminate employment, and

“(IV) provides that the increase described in subclause (I) is payable in the form of a prohibited payment (as defined in paragraph (3)(E)).”.
(2) Subparagraph (D) of section 202(g)(2) of such Act, as redesignated by paragraph (1), is amended—

(A) by inserting “(i)” before “Subparagraph (A)” and moving the text thereof 2 ems to the right, and

(B) by adding at the end the following:

“(ii) Subparagraph (C) shall not apply to any amendment of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan amendments adopted more than 180 days after the date of the enactment of this Act.

SEC. 112. REPORTABLE EVENTS.

(a) IN GENERAL.—Section 4043 of the Employee Retirement Income Security Act of 1974 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following:

“(f) SPECIAL RULE.—

“(1) IN GENERAL.—A reportable event described in paragraph (3) of subsection (e) (without regard to this subsection) shall not be treated as oc-
curring with respect to a plan for an applicable plan year if—

“(A) the number of employees of the contributing sponsor is at least 80 percent of the number of employees of the contributing sponsor at the beginning of the plan year, and is at least 75 percent of the number of employees of the contributing sponsor at the beginning of the previous plan year,

“(B) the funded vested benefit percentage (as defined for purposes of subsection (b)(1)(B)) for the pre-applicable plan year was at least 80 percent, and

“(C) the contributing sponsor notifies the corporation of the use of the rule described in this subsection by the date that such contributing sponsor would (but for this subsection) be required to notify the corporation of an event described in subsection (c)(3).

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) EMPLOYEE.—The term ‘employee’ means, in connection with a contributing sponsor, an employee of the contributing sponsor or
of any member of such sponsor’s controlled group.

“(B) APPLICABLE PLAN YEAR.—The term ‘applicable plan year’ means—

“(i) except as provided in this subparagraph, any plan year beginning in 2010 or 2011,

“(ii) in the case of a plan with a plan year beginning after October 31 and before January 1, any plan year beginning in 2009 or 2010, and

“(iii) in the case of a plan for which the valuation date is not the first day of the plan year, any plan year beginning in 2009 or 2010.

“(C) PRE-APPLICABLE PLAN YEAR.—The term ‘pre-applicable plan year’ means, in connection with a plan, the second plan year preceding the first applicable plan year of such plan.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.
TITLE II—MULTIEMPLOYER PLANS

SEC. 201. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT RULES; REPORTING CLARIFICATION.

(a) Amortization Periods.—

(1) Amendment to ERISA.—Section 304(b) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new paragraph:

“(8) Elective special relief rules.—

“(A) Plan sponsor election.—

“(i) In general.—Notwithstanding any other provision of this subsection, effective with the actuarial valuation for either of the first two plan years beginning after August 31, 2008, the plan sponsor of a multiemployer plan that meets the solvency test in subparagraph (B) may elect to use either the rule in clause (ii) or the rule in clause (iii) in maintaining its funding standard account.

“(ii) Combined outstanding balance.—Under this clause, the outstanding balances of all amounts required to be amortized under both paragraph (2) and
paragraph (3) may be combined into one amount under each such paragraph, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

“(iii) Certain Investment Losses.—Under this clause, the total amount of the net investment losses, if any, incurred in either or both of the first two plan years ending after August 31, 2008, may be charged as an item separate from other experience losses and amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

“(B) Solvency Test.—An election may be made under this paragraph if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended.

“(C) Restriction on Benefit Increases.—In the case of a plan for which a rule described in subparagraph (A) is elected, in addition to any other applicable restrictions on benefit increases, an amendment increasing
benefits may not go into effect during the period of two plan years immediately following the plan year for which the rule is first effective, unless—

“(i) the plan actuary certifies that such increase is paid for out of additional contributions not allocated to the plan at the time the election was made and the plan’s funded percentage and projected credit balances for those two plan years are reasonably expected to be generally at the same levels as they would have been if the benefit increase had not been adopted, or

“(ii) the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.”.

(2) Amendment to Internal Revenue Code of 1986.—Section 431(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(8) Elective special relief rules.—

“(A) Plan sponsor election.—

• HR 3936 IH
“(i) IN GENERAL.—Notwithstanding any other provision of this subsection, effective starting with the actuarial valuation for either of the first two plan years beginning after August 31, 2008, the plan sponsor of a multiemployer plan that meets the solvency test in subparagraph (B) may elect to use either the rule in clause (ii) or the rule in clause (iii) in maintaining its funding standard account.

“(ii) COMBINED OUTSTANDING BALANCE.—Under this clause, the outstanding balances of all amounts required to be amortized under both paragraph (2) and paragraph (3) may be combined into one amount under each such paragraph, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

“(iii) CERTAIN INVESTMENT LOSSES.—Under this clause, the total amount of the net investment losses, if any, incurred in either or both of the first two plan years ending after August 31, 2008, may be charged as an item separate
from other experience losses and amortized
in equal annual installments (until fully
amortized) over a period of 30 plan years.

“(B) Solvency Test.—An election may
be made under this paragraph if the plan actu-
ary certifies that the plan is projected to have
sufficient assets to timely pay expected benefits
and anticipated expenditures over the amortiza-
tion period as extended.

“(C) Restriction on Benefit In-
creases.—In the case of a plan for which a
rule described in subparagraph (A) is elected, in
addition to any other applicable restrictions on
benefit increases, an amendment increasing
benefits may not go into effect during the pe-
riod of two plan years immediately following the
plan year for which the rule is first effective,
unless—

“(i) the plan actuary certifies that
such increase is paid for out of additional
contributions not allocated to the plan
when the election was made and the plan’s
funded percentage and projected credit bal-
ances for those two plan years are reason-
ably expected to be generally at the same
levels as they would have been if the ben-

efit increase had not been adopted, or

“(ii) the amendment is required as a

condition of qualification under part I of

subchapter D of chapter 1 or to comply

with other applicable law.”.

(b)-automatic amortization extensions.—

(1) Amendment to ERISA.—Section

304(d)(1)(A) of the Employee Retirement Income

Security Act of 1974 is amended—

(A) by striking “(not in excess of 5 years)”

and inserting “(not in excess of 10 years)”, and

(B) by redesignating subparagraph (C) as

subparagraph (D) and inserting after subpara-

graph (B) the following new subparagraph:

“(C) deemed approval.—

“(i) In general.—An application

under this paragraph shall be deemed ap-

proved unless, within 45 days after it is

submitted, the Secretary notifies the plan

sponsor that the actuary has failed to cer-

tify to one or more of the criteria listed in

subparagraph (B).

“(ii) Corrections.—If, within 30
days after receiving a notice under this
subparagraph, the plan sponsor corrects any omissions identified in the notice under this subparagraph or otherwise demonstrates that the actuary’s certification satisfies subparagraph (B), the application shall be deemed approved.”.

(2) Amendment to Internal Revenue Code of 1986.—Section 431(d)(1)(A) of the Internal Revenue Code of 1986 is amended—

(A) by striking “(not in excess of 5 years)” and inserting “(not in excess of 10 years)”, and

(B) by redesignating subparagraph (C) as subparagraph (D) and inserting after subparagraph (B) the following new subparagraph:

“(C) DEEMED APPROVAL.—

“(i) IN GENERAL.—An application under this paragraph shall be deemed approved unless, within 45 days after it is submitted, the Secretary notifies the plan sponsor that the actuary has failed to certify to one or more of the criteria listed in subparagraph (B).

“(ii) CORRECTIONS.—If, within 30 days after receiving a notice under this subparagraph, the plan sponsor corrects
any omissions identified in the notice under this subparagraph or otherwise demonstrates that the actuary’s certification satisfies subparagraph (B), the application shall be deemed approved.”.

(c) **Extended Smoothing Period and Wider Asset Valuation Corridor for Certain Losses.**—

(1) **In General.**—

(A) The Secretary of the Treasury shall not treat the asset valuation method of a multi-employer plan as unreasonable solely because the plan elects to use either or both of the options described in subparagraph (B) or (C). A plan may elect to use any or all of such options. The election of such options shall apply for purposes of sections 431 and 432 of the Internal Revenue Code of 1986.

(B) With respect to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, the plan may utilize a smoothing period of not more than ten years.

(C) For either or both of the first two plan years beginning after August 31, 2008, the asset value reflected by the method may not be
more than 130 percent of the current fair market value.

(2) DEEMED APPROVAL.—The election by a plan of either or both of the options described in paragraph (1) shall be deemed approved by the Secretary of the Treasury under section 412(d)(1) of the Internal Revenue Code of 1986.

(d) MODIFICATION OF CERTAIN AMORTIZATION EXTENSIONS UNDER PRIOR LAW.—Any amortization extensions under the terms of section 412(e) of the Internal Revenue Code of 1986 (prior to enactment of the Pension Protection Act of 2006) that were granted to multiemployer plans shall remain in effect notwithstanding the impact of investment losses incurred by the plans in 2008, 2009 or 2010, unless the plan sponsor elects otherwise.

(e) CLARIFICATION OF MULTIEMPLOYER REPORTING AND DISCLOSURE REQUIREMENTS.—Sections 103(f)(2)(C) and 104(d)(1)(D) of the Employee Retirement Income Security Act of 1974 are both amended by striking “as an employer of the participant”.

(f) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect as of the first day of the first plan year beginning after August 31, 2008, provided however that any election a plan makes pursuant to this sec-
tion that affects the plan’s funding standard account
for the first plan year beginning after August 31, 2008 shall be disregarded for purposes of applying
the provisions of section 305 of the Employee Re-
tirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to that
plan year.

(2) Notwithstanding paragraph (1), the restric-
tions on plan amendments increasing benefits in sec-
tions 304(b)(8)(C) of the ERISA and 431(b)(8)(C)
of the Internal Revenue Code, as added by this sec-
tion, shall be effective 30 days after the date of en-
actment of this Act.

SEC. 202. MULTIEMPLOYER PLANS IN ENDANGERED OR
CRITICAL STATUS.

(a) Optional Longer Correction Periods.—

(1) Amendment to ERISA.—

(A) Funding Improvement Period.—

Section 305(c)(4) of the Employee Retirement
Income Security Act of 1974 is amended by re-
designating subparagraphs (C) and (D) as sub-
paragraphs (D) and (E), respectively, and by
inserting after subparagraph (B) the following
new subparagraph:
“(C) Election to Extend Period.—The plan sponsor of an endangered or seriously endangered plan may elect to extend the applicable funding improvement period by up to 5 years, including any extension of the period previously elected pursuant to section 205 of the Worker, Retiree and Employer Relief Act of 2008.”.

(B) Rehabilitation Period.—Section 305(e)(4) of such Act is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) Election to Extend Period.—The plan sponsor of a plan in critical status may elect to extend the rehabilitation period by up to five years, including any extension of the period previously elected pursuant to section 205 of the Worker, Retiree and Employer Relief Act of 2008.”.

(2) Amendment to Internal Revenue Code of 1986.—

(A) Funding Improvement Period.—

Section 432(c)(4) of the Internal Revenue Code of 1986 is amended by redesignating subpara-
graphs (C) and (D) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) ELECTION TO EXTEND PERIOD.—The plan sponsor of an endangered or seriously endangered plan may elect to extend the applicable funding improvement period by up to 5 years, including any extension of the period previously elected pursuant to section 205 of the Worker, Retiree and Employer Relief Act of 2008.”.

(B) REHABILITATION PERIOD.—Section 432(e)(4) of such Code is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) ELECTION TO EXTEND PERIOD.—The plan sponsor of a plan in critical status may elect to extend the rehabilitation period by up to five years, including any extension of the period previously elected pursuant to section 205 of the Worker, Retiree and Employer Relief Act of 2008.”.
(b) SIMPLIFICATION OF THE FUNDING IMPROVEMENT PERIOD FOR CERTAIN SERIOUSLY ENDANGERED PLANS.—

(1) AMENDMENT TO ERISA.—Section 305(c) of the Employee Retirement Income Security Act of 1974 is amended—

(A) by striking paragraph (5) and redesignating paragraph (6) as paragraph (5), and

(B) in paragraph (1) by striking “(as modified by paragraph (5))”.

(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 432(c) of the Internal Revenue Code of 1986 is amended—

(A) by striking paragraph (5) and redesignating paragraph (6) as paragraph (5), and

(B) in paragraph (1) by striking “(as modified by paragraph (5))”.

(c) SOCIAL SECURITY LEVEL INCOME OPTION.—

(1) AMENDMENT TO ERISA.—Subparagraph (B)(i) of section 305(f)(2) of the Employee Retirement Income Security Act of 1974 is amended by striking “204(b)(1)(G)),” and inserting “204(b)(1)(G) or any stream of payments that is structured to be similar in amount and duration to such supplements),”.
(2) Amendment to Internal Revenue Code of 1986.—Subparagraph (A)(i) of section 432(f)(2) of the Internal Revenue Code of 1986 is amended by striking “411(b)(1)(A)),” and inserting “411(b)(1)(A) or any stream of payments that is structured to be similar in amount and duration to such supplements),”.

(3) Effective date.—

(A) In general.—Except as provided in paragraph (2), the amendments made by this subsection shall apply as if included in sections 202(a) and 212(a) of the Pension Protection Act of 2006.

(B) Transition rule.—

(i) In the case of a plan described in clause (ii), a plan shall not be required to comply with the amendments made by this section until the date that is 60 days after the date of enactment of this Act, but such a plan may comply on any otherwise permitted earlier date.

(ii) A plan is described in this clause if a restriction on benefit payments is or has been imposed, pursuant to section 305(f) of the Employee Retirement Income
security Act of 1974 and section 432(f) of
the Internal Revenue Code of 1986, in ef-
fect with respect to such plan as of the
date of enactment of this Act.

(d) TECHNICAL CORRECTIONS.—

(1) AMENDMENTS TO ERISA.—Section 305(c) of
the Employee Retirement Income Security Act of
1974 is amended—

(A) in paragraph (1)(B)(i)—

(i) by striking “plan, including—”
and all that follows through “one proposal
for reductions” and inserting “plan, in-
cluding one proposal for reductions”,

(ii) by striking “, and” at the end of
subclause (I) and inserting a period, and

(iii) by striking subclause (II),

(B) in paragraph (7)(A), by striking
“(1)(B)(i)(I)” and inserting “(1)(B)(i)”,

(C) in paragraph (4) by adding at the end
the following:

“(E) PLANS THAT ACHIEVE FUNDING IM-
PROVEMENT BENCHMARKS WHILE IN ENDAN-
GERED OR SERIously ENDANGERED STATUS.—
If the plan’s actuary certifies under subsection
(b)(3)(A) that the plan has achieved the appli-
cable increase in the funding percentage described in paragraph (3) of this subsection and that the plan is nevertheless still in endangered status, the provisions of this subsection and subsection (d) shall remain in effect until the earlier of the expiration of the funding improvement period or the last day preceding the plan year for which the actuary certifies that the plan is no longer in endangered status.””, and

(D) in paragraph (4)(C)(ii) by striking all that follows “whichever is applicable,” and inserting the following: “shall end as of the close of the preceding plan year, except that, until the start of the rehabilitation plan adoption period—

“(I) the rules of subparagraphs (A) and (B) of subsection (d)(1) shall apply if, prior to the date the of the critical-status certification, the plan was in the funding improvement plan adoption period for the plan year, and

“(II) the rules of subsection (d)(2) shall apply if, prior to the date of the critical-status certification, the
(2) Amendments to Internal Revenue Code of 1986.—Section 432(c) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1)(B)(i)—

(i) by striking “plan, including—” and all that follows through “one proposal for reductions” and inserting “plan, including one proposal for reductions”,

(ii) by striking “, and” at the end of subclause (I) and inserting a period, and

(iii) by striking subclause (II),

(B) in paragraph (7)(A), by striking “(1)(B)(i)(I)” and inserting“(1)(B)(i)”,

(C) in paragraph (4) by adding at the end the following:

“(E) Plans that achieve funding improvement benchmarks while in endangered or seriously endangered status.—If the plan’s actuary certifies under subsection (b)(3)(A) that the plan has achieved the applicable increase in the funding percentage described in paragraph (3) of this subsection and that the plan is nevertheless still in endangered
status, the provisions of this subsection and
subsection (d) shall remain in effect until the
earlier of the expiration of the funding improve-
ment period or the last day preceding the plan
year for which the actuary certifies that the
plan is no longer in endangered status.”, and

(D) in paragraph (4)(C)(ii) by striking all
that follows “whichever is applicable,” and in-
serting the following: “shall end as of the close
of the preceding plan year, except that, until
the start of the rehabilitation plan adoption pe-
riod—

“(I) the rules of subparagraphs
(A) and (B) of subsection (d)(1) shall
apply if, prior to the date the of the
critical-status certification, the plan
was in the funding improvement plan
adoption period for the plan year, and

“(II) the rules of subsection
(d)(2) shall apply if, prior to the date
of the critical-status certification, the
plan was in the funding improvement
period for the plan year.”.
SEC. 203. MULTIEMPLOYER PLAN MERGERS AND ALLIANCES.

(a) MULTIEMPLOYER PLAN ALLIANCES.—

(1) AMENDMENTS TO ERISA.—

(A) Section 4231 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

“(e) MULTIEMPLOYER PLAN ALLIANCES.—

“(1) IN GENERAL.—The plan sponsor of a multiemployer plan into which another multiemployer plan has been merged may designate the merger as an alliance to which the rules of this subsection apply by amending the plan—

“(A) to identify the allied plan, and

“(B) to delineate the terms of operation of the alliance, including the allocation of employer contributions and experience gains and losses between the merged plan and the partially separate frozen allied plan described in paragraphs (2) and (3).

“(2) APPLICABLE PROVISIONS.—Except to the extent otherwise provided in the plan amendment under paragraph (1), sections 302, 304 and 305 (minimum funding), Part 1 of Subtitle E (withdrawal liability), sections 4244A and 4281 (plan ter-
mination), part 3 of subtitle E (plan reorganization and insolvency) and section 4261 (financial assistance from the corporation) shall apply to the frozen allied plan and the plan into which the allied plan was merged as if they were separate plans.

“(3) **FROZEN ALLIED PLAN TREATED AS SEPARATE PLAN.**—

“(A) **ASSETS AND LIABILITIES.**—The frozen allied plan that is treated in part as a separate plan pursuant to this paragraph comprises the assets and liabilities of the allied plan as if it had been amended, effective immediately before the effective date of the merger, to cease all benefit accruals.

“(B) **EMPLOYERS MAINTAINING PLAN.**—
The employers that were obligated to contribute to the allied plan immediately before the effective date of the merger, and any successors thereto whether by sale, reorganization or otherwise, shall be considered to be the employers maintaining the partially separate frozen allied plan, to the extent they continue to have an obligation to contribute with respect to participants or facilities covered by the allied plan.
“(C) Participants and Beneficiaries.—The participants and beneficiaries of the allied plan immediately before the effective date of the merger shall be considered to be the participants and beneficiaries of the partially separate frozen allied plan thereafter.

“(4) Treatment of Merged Plan as Single Plan.—Except as provided in paragraphs (2) and (3), the allied plan and the plan into which it has been merged shall be treated as a single plan.

“(5) Other Rules.—

“(A) Adoption of Initial Plan Amendment.—The plan amendment initially designating a merger as an alliance, identifying the allied plan and delineating the terms of the alliance must be adopted by no later than the last day of the plan year in which the merger takes effect.

“(B) Subsequent Amendments.—That initial plan amendment may subsequently be modified or repealed, except that the plan gives notice of the change to the employers and participants of the allied plan at least 15 days before the subsequent amendment takes effect.
“(C) Discretion to treat mergers differently.—The plan sponsor of a multi-employer plan may, in its discretion, treat some mergers as alliances and others as full mergers, and may prescribe different terms of operation for different alliances, if the basis for the distinctions is not unreasonable.”

(B) Subsection (b) of section 4231 of such Act is amended by striking “and” at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting “, and”, and by inserting after paragraph (4) adding at the end the following:

“(5) a merger that is designated as an alliance under subsection (e) shall not be treated as failing to meet any of the criteria of this subsection solely because benefits under the allied plan are, or are expected to be, reduced or eliminated pursuant to section 305 as a result of the endangered or critical status of the frozen allied plan.”.

(C) Section 404(a) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new paragraph:
“(3) With respect to a merger of multiemployer plans, including a merger that is designated as an alliance under section 4231(e), the plan sponsors of the merging plans shall be considered to meet the requirements of paragraph (1)(A) if the plan sponsors determine that the merger is not reasonably likely to be adverse to the long-term interests of the participants and beneficiaries of the plan for which the plan sponsors are responsible prior to the merger.”.

(i) Section 4231(c) of the Employee Retirement Income Security Act of 1974 is amended by striking “The merger of multi-employer plans or the transfer” and inserting “The merger of multiemployer plans, including a merger that is designated as an alliance, or the transfer”.

(2) Amendments to Internal Revenue Code of 1986.—Section 412 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(e) Multiemployer Plan Alliances.—

“(1) In general.—Except to the extent otherwise provided in the plan amendment under section 4231(e)(1) of the Employee Retirement Income Se-
curity Act of 1974 designating a multiemployer plan
merger as an alliance, this section and sections 431
and 432 shall apply to the frozen allied plan and the
plan into which the allied plan was merged as if they
were separate plans.

“(2) EMPLOYERS MAINTAINING PLAN.—The
employers that were obligated to contribute to the
allied plan immediately before the effective date of
the merger, and any successors thereto whether by
sale, reorganization or otherwise, shall be considered
to be the employers maintaining the partially sepa-
rate frozen allied plan to the extent they continue to
have an obligation to contribute with respect to par-
ticipants or facilities covered by the allied plan.

“(3) PARTICIPANTS AND BENEFICIARIES.—The
participants and beneficiaries of the allied plan im-
mediately before the effective date of the merger
shall be considered to be the participants and bene-
ficiaries of the partially separate frozen allied plan
thereafter.

“(4) TREATMENT OF MERGED PLAN AS SINGLE
PLAN.—Except as provided in paragraphs (2) and
(3) of section 4231(e) of the Employee Retirement
Income Security Act of 1974, the allied plan and the
plan into which it has been merged shall be treated as a single plan.

“(5) ALLIANCE; ALLIED PLAN.—For purposes of this subsection, the terms ‘alliance’ and ‘allied plan’ shall have the same meanings as they have under section 4231(e) of the Employee Retirement Income Security Act of 1974.”.

(b) PBGC ASSISTANCE FOR MULTIEMPLOYER PLAN MERGERS.—Section 4231 of the Employee Retirement Income Security Act of 1974, as amended by this Act, is amended by adding at the end the following:

“(f) FACILITATED MERGERS.—

“(1) IN GENERAL.—When requested to do so by the plan sponsors, the corporation shall take reasonable actions to promote and facilitate the merger of two or more multiemployer plans, including a merger that is designated as an alliance, if it determines that the transaction is in the interests of the participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the long-term interests of the participants and beneficiaries of the other plan or plans. Such facilitation may include training, technical assistance, mediation, communication with stakeholders and
support with related requests to other government agencies, among other activities.

“(2) **FINANCIAL ASSISTANCE.**—To facilitate mergers, including mergers designated as alliances, which it determines are reasonably necessary to enable one or more of the plans involved to avoid or postpone insolvency, the corporation may provide financial assistance to the merged plan if it reasonably expects that such financial assistance will reduce the corporation’s likely long-term loss with respect to the plans involved.”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as of the first day of the first plan year beginning on or after January 1, 2009.

**SEC. 204. STRENGTHENING PARTICIPANTS’ BENEFIT PROTECTIONS.**

(a) **INCREASE IN MULTIEmployER BENEFIT GUARANTEE.**—Paragraph (1) of section 4022A(c) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

“(1) Except as provided in subsection (g), the monthly benefit of a participant or a beneficiary which is guaranteed under this section by the corporation with respect to a plan is the product of the
number of the participant’s years of credited service multiplied by the sum of—

“(A) 100 percent of the accrual rate up to $11, plus 75 percent of the lesser of—

“(i) $33, or

“(ii) the accrual rate, if any, in excess of $11, and

“(B) 50 percent of the lesser of—

“(i) $40 or

“(ii) the accrual rate, if any, in excess of $44.”.

(b) Qualified Partition of Eligible Multiemployer Plans.—

(1) Qualified partitions.—Section 4233 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

“(g) Qualified Partition of Eligible Multiemployer Plans.—

“(1) In general.—Notwithstanding subsections (a) through (f), upon the election by the plan sponsor of an eligible multiemployer plan of a qualified partition, the corporation shall order a partition of the electing multiemployer plan in accordance with this subsection, effective on the first day of the first month that begins at least 90 days after
the date the multiemployer plan made the qualified
partition election.

“(2) Eligible multiemployer plan.—An el-
ligible multiemployer plan is a multiemployer plan as
to which—

“(A) the plan actuary has certified pursu-
ant to section 305(c) that the plan is currently
in critical status (within the meaning of section
305(b)(2));

“(B) a substantial reduction in the amount
of aggregate contributions under the plan has
resulted or will result from—

“(i) cases or proceedings under title
11, United States Code, with respect to
employers, or

“(ii) employers’ ceasing to be in busi-

ness, if such employers did not pay the full
amount of withdrawal liability demanded
by the plan under section 4219;

“(C) the plan sponsor has certified, con-
sistent with projections provided by the plan ac-
tuary, that the plan is likely to become insol-
vent;

“(D) the plan sponsor has certified, con-
sistent with projections provided by the plan ac-
tuary, that contributions will have to be increased significantly to prevent insolvency;

“(E) the plan sponsor has certified that, as of the last day of each of the two immediately preceding plan years—

“(i) the ratio of the number of the plan’s retirees, beneficiaries of deceased participants, and terminated vested participants to the number of the plan’s active participants for each such year was at least 2 to 1; and

“(ii) the ratio of benefit payments made by the plan for each such year to contributions required to be made to the plan under section 304 or 305(e), as applicable, for each such year was at least 2 to 1; and

“(F) the plan sponsor has certified, consistent with projections provided by the plan actuary, that partition would significantly reduce the likelihood that the plan will become insolvent.

“(3) TRANSFERS UNDER QUALIFIED PARTITION ORDER.—The corporation’s qualified partition order shall provide for transfers as follows:
“(A) An initial transfer of—

“(i) no more than the nonforfeitable benefits directly attributable to service with the employers referred to in paragraph (2)(ii), and

“(ii) assets attributable to any withdrawal liability payments by such employers and, as adjusted by any gains or losses thereon, and reduced by any benefit payments made with regard to service with the employers.

“(B) As of the last day of each plan year following a plan year in which a qualified partition has occurred, the plan sponsor shall determine whether during such plan year, the aggregate contributions under the plan declined by 10 percent or more as a result of events described in paragraph (2)(ii); and if such decline has occurred, an additional transfer of—

“(i) no more than the nonforfeitable benefits directly attributable to service with employers that meets the requirements of paragraph (2)(ii) after the election of a qualified partition, and
“(ii) assets attributable to any withdrawal liability payments by such employers, as adjusted by any gains or losses thereon, and reduced by any benefit payments made with regard to service with the employers.

“(4) Plan created by qualified partition.—The plan created by the qualified partition is—

“(A) a successor plan to which section 4022A applies, and

“(B) a terminated multiemployer plan to which section 4041A(d) applies, with respect to which only the employers described in paragraphs (2)(ii) and (3)(ii) have withdrawal liability.”.

(2) Effect of qualified partition on premiums.—

(A) Clause (i) of section 4006(a)(3)(C) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

“For purposes of this subparagraph, the value of assets held by the corporation and the basic benefits guaranteed for multiemployer plans shall not include assets and
liabilities transferred pursuant to a qualified partition order under section 4233(g).”.

(B) Section 4022A(f) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

“(5) Basic benefits guaranteed in connection with assets and liabilities transferred to the corporation pursuant to a qualified partition order under section 4233(g) shall be disregarded under subparagraphs (1), (2), and (3)”.

(3) PBGC GUARANTEE OF PARTITIONED BENEFITS.—

(A) Section 4022A of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following:

“(i) The monthly benefit of a participant or a beneficiary whose benefit was transferred pursuant to a qualified partition which is guaranteed under this section by the corporation with respect to a plan is the nonforfeitable benefits of the participant or beneficiary transferred pursuant to the qualified partition.”.

(B) Section 4022A(c)(1) of the Employee Retirement Income Security Act of 1974 is amended by striking “subsection (g)” and inserting “subsections (g) and (i)”.

•HR 3936 IH
(c) Financing for Qualified Partitions and Other Special Matters.—

(1) Obligations of the Corporation.—The second sentence of section 4002(g)(2) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

“The United States Government is not liable for any obligation or liability incurred by the corporation, except with respect to liabilities transferred pursuant to a qualified partition of a multiemployer plan under section 4233(g) and such other special matters as may be designated in legislation making funding available therefor.”.

(2) PBGC Fund Established.—

(A) Fund Established. Section 4005 of the Employee Retirement Income Security Act of 1974 is amended by deleting subsections (d) and (e), redesignating existing subsections (f) through (h) as subsections (e) through (g), and inserting a new subsection (d), as follows:

“(d) Establishment of Fifth Fund; Purpose; Availability, etc.—

“(1) In General.—A fifth fund is hereby established on the books of the Treasury of the United States. Such fund shall be for the support of special matters undertaken by the corporation to minimize

•HR 3936 IH
its reasonably expected long-term risk of loss with
respect to a plan and protect the reasonable benefit
expectations of plan participants and beneficiaries
pursuant to its responsibilities under section 4002(a)
to encourage the continuation and maintenance of
voluntary private pension plans for the benefit of
their participants while maintaining premiums at the
lowest level consistent with that objective.

“(2) USE OF FUND.—The fund established by
this subsection shall be used to finance obligations
undertaken by the corporation under section 4233
(partition of multiemployer plans) and such other
matters as may be identified from time to time in
legislation making funding available therefor.

“(3) CREDITS TO FUND.—The fund established
under this subsection shall be credited with funds
made available to the corporation that are des-
ignated for special matters and the earnings thereon,
including any amounts received in connection with a
qualified partition under section 4233(g), and shall
not include premiums paid under section 4007, em-
ployer liability or withdrawal liability payments, the
assets of terminated plans or repayments of finan-
cial assistance under section 4261 or other amounts
received in connection with terminated or insolvent plans.

“(4) Transactions with other funds.—Notwithstanding paragraph (3), this fund may engage in transactions with the other funds established under this section to the extent reasonable and necessary to meet liquidity demands and maximize the ability of the corporation to accomplish its mission under section 4002(a) without increasing the premiums payable under section 4006.

“(5) Investments.—The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

“(6) Obligations of United States.—Notwithstanding any other provision of this title, obligations of the corporation that are financed by the fund created by this subsection shall be obligations of the United States.”.

(3) Conforming amendments.—

(A) Section 4022A(g) of such Act is amended by striking paragraph (2).

(B) Part 1 of subtitle E of title IV of such Act is amended by striking section 4222, and the table of contents for such Act is amended by striking the item relating to section 4222.
(d) Effective Date.—

(1) The amendments made by subsection (a) shall apply with respect to plans that first apply for financial assistance from the Pension Benefit Guarantee Corporation after the date of enactment of this Act.

(2) The amendments made by subsections (b) and (c) shall take effect on the date of enactment of this Act.