116TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 116–159
Part 1

REHABILITATION FOR MULTIEMPLOYER PENSIONS ACT OF 2019

JULY 18, 2019.—Ordered to be printed

Mr. NEAL, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 397]

The Committee on Ways and Means, to whom was referred the bill (H.R. 397) to amend the Internal Revenue Code of 1986 to create a Pension Rehabilitation Trust Fund, to establish a Pension Rehabilitation Administration within the Department of the Treasury to make loans to multiemployer defined benefit plans, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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89–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rehabilitation for Multiemployer Pensions Act of 2019".

SEC. 2. PENSION REHABILITATION ADMINISTRATION; ESTABLISHMENT; POWERS.

(a) ESTABLISHMENT.—There is established in the Department of the Treasury an agency to be known as the "Pension Rehabilitation Administration".

(b) DIRECTOR.—

(1) ESTABLISHMENT OF POSITION.—There shall be at the head of the Pension Rehabilitation Administration a Director, who shall be appointed by the President.

(2) TERM.—

(A) IN GENERAL.—The term of office of the Director shall be 5 years.

(B) SERVICE UNTIL APPOINTMENT OF SUCCESSOR.—An individual serving as Director at the expiration of a term may continue to serve until a successor is appointed.

(3) POWERS.—

(A) APPOINTMENT OF DEPUTY DIRECTORS, OFFICERS, AND EMPLOYEES.—The Director may appoint Deputy Directors, officers, and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

(B) CONTRACTING.—

(i) IN GENERAL.—The Director may contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Pension Rehabilitation Administration in such amounts as may be agreed upon by the Director and the head of the Federal agency providing the services.

(ii) SUBJECT TO APPROPRIATIONS.—Contract authority under clause (i) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.

(c) TRANSFER OF FUNDS.—The Secretary of the Treasury may transfer for any fiscal year, from unobligated amounts appropriated to the Department of the Treasury, to the Pension Rehabilitation Administration such sums as may be reasonably necessary for the administrative and operating expenses of the Pension Rehabilitation Administration.

SEC. 3. PENSION REHABILITATION TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 9512. PENSION REHABILITATION TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Pension Rehabilitation Trust Fund' (hereafter in this section referred to as the 'Fund'), consisting of such amounts as may be appropriated or credited to the Fund as provided in this section and section 9602(b).

"(b) TRANSFERS TO FUND.—

"(1) AMOUNTS ATTRIBUTABLE TO TREASURY BONDS.—There shall be credited to the Fund the amounts transferred under section 6 of the Rehabilitation for Multiemployer Pensions Act of 2019.

"(2) LOAN INTEREST AND PRINCIPAL.—

"(A) IN GENERAL.—The Director of the Pension Rehabilitation Administration established under section 2 of the Rehabilitation for Multiemployer Pensions Act of 2019 shall deposit in the Fund any amounts received from a plan as payment of interest or principal on a loan under section 4 of such Act.

"(B) INTEREST.—For purposes of subparagraph (A), the term 'interest' includes points and other similar amounts.

"(3) TRANSFERS FROM SECRETARY.—The Director of the Pension Rehabilitation Administration shall deposit in the Fund any amounts received from the Secretary under section 2(c) of such Act.

"(4) AVAILABILITY OF FUNDS.—Amounts credited to or deposited in the Fund shall remain available until expended.

"(c) EXPENDITURES FROM FUND.—Amounts in the Fund are available without further appropriation to the Pension Rehabilitation Administration—

"(1) for the purpose of making the loans described in section 4 of the Rehabilitation for Multiemployer Pensions Act of 2019,

"(2) for the payment of principal and interest on obligations issued under section 6 of such Act, and

"(3) for administrative and operating expenses of such Administration.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 9512. Pension Rehabilitation Trust Fund.".

SEC. 4. LOAN PROGRAM FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.

(a) LOAN AUTHORITY.—

(1) IN GENERAL.—The Pension Rehabilitation Administration established under section 2 is authorized—

(A) to make loans to multiemployer plans (as defined in section 414(f) of the Internal Revenue Code of 1986) which are defined benefit plans (as defined in section 414(j) of such Code) and which—

(i) are in critical and declining status (within the meaning of section 432(b)(6) of such Code and section 305(b)(6) of the Employee Retirement and Income Security Act) as of the date of the enactment of this section, or with respect to which a suspension of benefits has been approved under section 432(e)(9) of such Code and section 305(e)(9) of such Act as of such date;

(ii) as of such date of enactment, are in critical status (within the meaning of section 432(b)(2) of such Code and section 305(b)(2) of such Act), have a modified funded percentage of less than 40 percent, and have a ratio of active to inactive participants which is less than 2 to 5; or

(iii) are insolvent for purposes of section 418E of such Code as of such date of enactment, if they became insolvent after December 16, 2014, and have not been terminated; and

(B) subject to subsection (b), to establish appropriate terms for such loans.

For purposes of subparagraph (A)(ii), the term "modified funded percentage" means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 3(26) of such Act) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) of such Code and section 304(c)(6)(D) of such Act).

(2) CONSULTATION.—The Director of the Pension Rehabilitation Administration shall consult with the Secretary of the Treasury, the Secretary of Labor, and the Director of the Pension Benefit Guaranty Corporation before making any loan under paragraph (1), and shall share with such persons the application and plan information with respect to each such loan.

(3) ESTABLISHMENT OF LOAN PROGRAM.—

(A) IN GENERAL.—A program to make the loans authorized under this section shall be established not later than September 30, 2019, with guidance regarding such program to be promulgated by the Director of the Pension Rehabilitation Administration, in consultation with the Director of the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor, not later than December 31, 2019.

(B) LOANS AUTHORIZED BEFORE PROGRAM DATE.—Without regard to whether the program under subparagraph (A) has been established, a plan may apply for a loan under this section before either date described in such subparagraph, and the Pension Rehabilitation Administration shall approve the application and make the loan before establishment of the program if necessary to avoid any suspension of the accrued benefits of participants.

(b) LOAN TERMS.—

(1) IN GENERAL.—The terms of any loan made under subsection (a) shall state that—

(A) the plan shall make payments of interest on the loan for a period of 29 years beginning on the date of the loan (or 19 years in the case of a plan making the election under subsection (c)(5));

(B) final payment of interest and principal shall be due in the 30th year after the date of the loan (except as provided in an election under subsection (c)(5)); and

(C) as a condition of the loan, the plan sponsor stipulates that—

(i) except as provided in clause (ii), the plan will not increase benefits, allow any employer participating in the plan to reduce its contributions, or accept any collective bargaining agreement which provides for reduced contribution rates, during the 30-year period described in subparagraphs (A) and (B);

(ii) in the case of a plan with respect to which a suspension of benefits has been approved under section 432(e)(9) of the Internal Revenue Code of 1986 and section 305(e)(9) of the Employee Retirement Income Security Act of 1974, or under section 418E of such Code, before the loan, the plan will reinstate the suspended benefits (or will not carry out any suspension which has been approved but not yet implemented);

(iii) the plan sponsor will comply with the requirements of section 6059A of the Internal Revenue Code of 1986;

(iv) the plan will continue to pay all premiums due under section 4007 of the Employee Retirement Income Security Act of 1974; and

(v) the plan and plan administrator will meet such other requirements as the Director of the Pension Rehabilitation Administration provides in the loan terms.

The terms of the loan shall not make reference to whether the plan is receiving financial assistance under section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d)) or to any adjustment of the loan amount under subsection (d)(2)(A)(ii).

(2) INTEREST RATE.—Except as provided in the second sentence of this paragraph and subsection (c)(5), loans made under subsection (a) shall have as low an interest rate as is feasible. Such rate shall be determined by the Pension Rehabilitation Administration and shall—

(A) not be lower than the rate of interest on 30-year Treasury securities on the first day of the calendar year in which the loan is issued, and

(B) not exceed the greater of—

(i) a rate .2 percent higher than such rate of interest on such date, or

(ii) the rate necessary to collect revenues sufficient to administer the program under this section.

(c) LOAN APPLICATION.—

(1) IN GENERAL.—In applying for a loan under subsection (a), the plan sponsor shall—

(A) demonstrate that, except as provided in subparagraph (C)—

(i) the loan will enable the plan to avoid insolvency for at least the 30-year period described in subparagraphs (A) and (B) of subsection (b)(1) or, in the case of a plan which is already insolvent, to emerge from insolvency within and avoid insolvency for the remainder of such period; and

(ii) the plan is reasonably expected to be able to pay benefits and the interest on the loan during such period and to accumulate sufficient funds to repay the principal when due;

(B) provide the plan's most recently filed Form 5500 as of the date of application and any other information necessary to determine the loan amount under subsection (d);

(C) stipulate whether the plan is also applying for financial assistance under section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d)) in combination with the loan to enable the plan to avoid insolvency and to pay benefits, or is already receiving such financial assistance as a result of a previous application;

(D) state in what manner the loan proceeds will be invested pursuant to subsection (d), the person from whom any annuity contracts under such subsection will be purchased, and the person who will be the investment manager for any portfolio implemented under such subsection; and

(E) include such other information and certifications as the Director of the Pension Rehabilitation Administration shall require.

(2) STANDARD FOR ACCEPTING ACTUARIAL AND PLAN SPONSOR DETERMINATIONS AND DEMONSTRATIONS IN THE APPLICATION.—In evaluating the plan sponsor's application, the Director of the Pension Rehabilitation Administration shall accept the determinations and demonstrations in the application unless the Director, in consultation with the Director of the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor, concludes that any such determinations or demonstrations in the application (or any underlying assumptions) are unreasonable or are inconsistent with any rules issued by the Director pursuant to subsection (g).

(3) REQUIRED ACTIONS; DEEMED APPROVAL.—The Director of the Pension Rehabilitation Administration shall approve or deny any application under this subsection within 90 days after the submission of such application. An application shall be deemed approved unless, within such 90 days, the Director notifies the plan sponsor of the denial of such application and the reasons for such denial. Any approval or denial of an application by the Director of the Pension Rehabilitation Administration shall be treated as a final agency action for purposes of section 704 of title 5, United States Code. The Pension Rehabilitation Administration shall make the loan pursuant to any application promptly after the approval of such application.

(4) CERTAIN PLANS REQUIRED TO APPLY.—The plan sponsor of any plan with respect to which a suspension of benefits has been approved under section 432(e)(9) of the Internal Revenue Code of 1986 and section 305(e)(9) of the Employee Retirement Income Security Act of 1974 or under section 418E of such Code, before the date of the enactment of this Act shall apply for a loan under this section. The Director of the Pension Rehabilitation Administration shall provide for such plan sponsors to use the simplified application under subsection (d)(2)(B).

(5) INCENTIVE FOR EARLY REPAYMENT.—The plan sponsor may elect at the time of the application to repay the loan principal, along with the remaining interest, at least as rapidly as equal installments over the 10-year period beginning with the 21st year after the date of the loan. In the case of a plan making this election, the interest on the loan shall be reduced by 0.5 percent.

(d) LOAN AMOUNT AND USE.—

(1) AMOUNT OF LOAN.—

(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (2), the amount of any loan under subsection (a) shall be, as demonstrated by the plan sponsor on the application under subsection (c), the amount needed to purchase annuity contracts or to implement a portfolio described in paragraph (3)(C) (or a combination of the two) sufficient to provide benefits of participants and beneficiaries of the plan in pay status, and terminated vested benefits, at the time the loan is made.

(B) PLANS WITH SUSPENDED BENEFITS.—In the case of a plan with respect to which a suspension of benefits has been approved under section 432(e)(9) of the Internal Revenue Code of 1986 and section 305(e)(9) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)) or under section 418E of such Code—

(i) the suspension of benefits shall not be taken into account in applying subparagraph (A); and

(ii) the loan amount shall be the amount sufficient to provide benefits of participants and beneficiaries of the plan in pay status and terminated vested benefits at the time the loan is made, determined without regard to the suspension, including retroactive payment of benefits which would otherwise have been payable during the period of the suspension.

(2) COORDINATION WITH PBGC FINANCIAL ASSISTANCE.—

(A) IN GENERAL.—In the case of a plan which is also applying for financial assistance under section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d))—

(i) the plan sponsor shall submit the loan application and the application for financial assistance jointly to the Pension Rehabilitation Administration and the Pension Benefit Guaranty Corporation with the information necessary to determine the eligibility for and amount of the loan under this section and the financial assistance under section 4261(d) of such Act; and

(ii) if such financial assistance is granted, the amount of the loan under subsection (a) shall not exceed an amount equal to the excess of—

(I) the amount determined under paragraph (1)(A) or (1)(B)(ii) (whichever is applicable); over

(II) the amount of such financial assistance.

(B) PLANS ALREADY RECEIVING PBGC ASSISTANCE.—The Director of the Pension Rehabilitation Administration shall provide for a simplified application for the loan under this section which may be used by an insolvent plan which has not been terminated and which is already receiving financial assistance (other than under section 4261(d) of such Act) from the Pension Benefit Guaranty Corporation at the time of the application for the loan under this section.

(3) USE OF LOAN FUNDS.—

(A) IN GENERAL.—Notwithstanding section 432(f)(2)(A)(ii) of the Internal Revenue Code of 1986 and section 305(f)(2)(A)(ii) of such Act, the loan received under subsection (a) shall only be used to purchase annuity contracts which meet the requirements of subparagraph (B) or to implement a portfolio described in subparagraph (C) (or a combination of the two) to provide the benefits described in paragraph (1).

(B) ANNUITY CONTRACT REQUIREMENTS.—The annuity contracts purchased under subparagraph (A) shall be issued by an insurance company which is licensed to do business under the laws of any State and which is rated A or better by a nationally recognized statistical rating organization, and the purchase of such contracts shall meet all applicable fiduciary standards under the Employee Retirement Income Security Act of 1974.

(C) PORTFOLIO.—

(i) IN GENERAL.—A portfolio described in this subparagraph is—

(I) a cash matching portfolio or duration matching portfolio consisting of investment grade (as rated by a nationally recognized statistical rating organization) fixed income investments, including United States dollar-denominated public or private debt obligations issued or guaranteed by the United States or a foreign issuer, which are tradeable in United States currency and are issued at fixed or zero coupon rates; or

(II) any other portfolio prescribed by the Secretary of the Treasury in regulations which has a similar risk profile to the portfolios described in subclause (I) and is equally protective of the interests of participants and beneficiaries.

Once implemented, such a portfolio shall be maintained until all liabilities to participants and beneficiaries in pay status, and terminated vested participants, at the time of the loan are satisfied.

(ii) FIDUCIARY DUTY.—Any investment manager of a portfolio under this subparagraph shall acknowledge in writing that such person is a fiduciary under the Employee Retirement Income Security Act of 1974 with respect to the plan.

(iii) TREATMENT OF PARTICIPANTS AND BENEFICIARIES.—Participants and beneficiaries covered by a portfolio under this subparagraph shall continue to be treated as participants and beneficiaries of the plan, including for purposes of title IV of the Employee Retirement Income Security Act of 1974.

(D) ACCOUNTING.—

(i) IN GENERAL.—Annuity contracts purchased and portfolios implemented under this paragraph shall be used solely to provide the benefits described in paragraph (1) until all such benefits have been paid and shall be accounted for separately from the other assets of the plan.

(ii) OVERSIGHT OF NON-ANNUITY INVESTMENTS.—

(I) IN GENERAL.—Any portfolio implemented under this paragraph shall be subject to oversight by the Pension Rehabilitation Administration, including a mandatory triennial review of the adequacy of the portfolio to provide the benefits described in paragraph (1) and approval (to be provided within a reasonable period of time) of any decision by the plan sponsor to change the investment manager of the portfolio.

(II) REMEDIAL ACTION.—If the oversight under subclause (I) determines an inadequacy, the plan sponsor shall take remedial action to ensure that the inadequacy will be cured within 2 years of such determination.

(E) OMBUDSPERSON.—The Participant and Plan Sponsor Advocate established under section 4004 of the Employee Retirement Income Security Act of 1974 shall act as ombudsperson for participants and beneficiaries on behalf of whom annuity contracts are purchased or who are covered by a portfolio under this paragraph.

(e) COLLECTION OF REPAYMENT.—Except as provided in subsection (f), the Pension Rehabilitation Administration shall make every effort to collect repayment of loans under this section in accordance with section 3711 of title 31, United States Code.

(f) LOAN DEFAULT.—If a plan is unable to make any payment on a loan under this section when due, the Pension Rehabilitation Administration shall negotiate with the plan sponsor revised terms for repayment (including installment payments over a reasonable period or forgiveness of a portion of the loan principal), but only to the extent necessary to avoid insolvency in the subsequent 18 months.

(g) AUTHORITY TO ISSUE RULES, ETC.—The Director of the Pension Rehabilitation Administration, in consultation with the Director of the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor, is authorized to issue rules regarding the form, content, and process of applications for loans under this section, actuarial standards and assumptions to be used in making estimates and projections for purposes of such applications, and assumptions regarding interest rates, mortality, and distributions with respect to a portfolio described in subsection (d)(3)(C).

(h) COORDINATION WITH TAXATION OF UNRELATED BUSINESS INCOME.—Subparagraph (A) of section 514(c)(6) of the Internal Revenue Code of 1986 is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking the period at the end of clause (ii)(II) and inserting ", or"; and

(3) by adding at the end the following new clause:

"(iii) indebtedness with respect to a multiemployer plan under a loan made by the Pension Rehabilitation Administration pursuant to section 4 of the Rehabilitation for Multiemployer Pensions Act of 2019.".

SEC. 5. COORDINATION WITH WITHDRAWAL LIABILITY AND FUNDING RULES.

(a) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.—Section 432 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(k) SPECIAL RULES FOR PLANS RECEIVING PENSION REHABILITATION LOANS.—

"(1) DETERMINATION OF WITHDRAWAL LIABILITY.—

"(A) IN GENERAL.—If any employer participating in a plan at the time the plan receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 withdraws from the plan before the end of the 30-year period beginning on the date of the loan, the withdrawal liability of such employer shall be determined under the Employee Retirement Income Security Act of 1974—

"(i) by applying section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 as if the plan were terminating by the withdrawal of every employer from the plan, and

"(ii) by determining the value of nonforfeitable benefits under the plan at the time of the deemed termination by using the interest assumptions prescribed for purposes of section 4044 of the Employee Retirement Income Security Act of 1974, as prescribed in the regulations under section 4281 of the Employee Retirement Income Security Act of 1974 in the case of such a mass withdrawal.

"(B) ANNUITY CONTRACTS AND INVESTMENT PORTFOLIOS PURCHASED WITH LOAN FUNDS.—Annuity contracts purchased and portfolios implemented under section 4(d)(3) of the Rehabilitation for Multiemployer Pensions Act of 2019 shall not be taken into account as plan assets in determining the withdrawal liability of any employer under subparagraph (A), but the amount equal to the greater of—

"(i) the benefits provided under such contracts or portfolios to participants and beneficiaries, or

"(ii) the remaining payments due on the loan under section 4(a) of such Act,

shall be taken into account as unfunded vested benefits in determining such withdrawal liability.

"(2) COORDINATION WITH FUNDING REQUIREMENTS.—In the case of a plan which receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019—

"(A) annuity contracts purchased and portfolios implemented under section 4(d)(3) of such Act, and the benefits provided to participants and beneficiaries under such contracts or portfolios, shall not be taken into account in determining minimum required contributions under section 412, "(B) payments on the interest and principal under the loan, and any benefits owed in excess of those provided under such contracts or portfolios, shall be taken into account as liabilities for purposes of such section, and

"(C) if such a portfolio is projected due to unfavorable investment or actuarial experience to be unable to fully satisfy the liabilities which it covers, the amount of the liabilities projected to be unsatisfied shall be taken into account as liabilities for purposes of such section.".

(b) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 305 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085) is amended by adding at the end the following new subsection:

"(k) SPECIAL RULES FOR PLANS RECEIVING PENSION REHABILITATION LOANS.—

"(1) DETERMINATION OF WITHDRAWAL LIABILITY.—

"(A) IN GENERAL.—If any employer participating in a plan at the time the plan receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act withdraws from the plan before the end of the 30-year period beginning on the date of the loan, the withdrawal liability of such employer shall be determined—

"(i) by applying section 4219(c)(1)(D) as if the plan were terminating by the withdrawal of every employer from the plan, and

"(ii) by determining the value of nonforfeitable benefits under the plan at the time of the deemed termination by using the interest assumptions prescribed for purposes of section 4044, as prescribed in the regulations under section 4281 in the case of such a mass withdrawal.

"(B) ANNUITY CONTRACTS AND INVESTMENT PORTFOLIOS PURCHASED WITH LOAN FUNDS.—Annuity contracts purchased and portfolios implemented under section 4(d)(3) of the Rehabilitation for Multiemployer Pensions Act shall not be taken into account in determining the withdrawal liability of any employer under subparagraph (A), but the amount equal to the greater of—

"(i) the benefits provided under such contracts or portfolios to participants and beneficiaries, or

"(ii) the remaining payments due on the loan under section 4(a) of such Act,

shall be so taken into account.

"(2) COORDINATION WITH FUNDING REQUIREMENTS.—In the case of a plan which receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act—

"(A) annuity contracts purchased and portfolios implemented under section 4(d)(3) of such Act, and the benefits provided to participants and beneficiaries under such contracts or portfolios, shall not be taken into account in determining minimum required contributions under section 302,

"(B) payments on the interest and principal under the loan, and any benefits owed in excess of those provided under such contracts or portfolios, shall be taken into account as liabilities for purposes of such section, and

"(C) if such a portfolio is projected due to unfavorable investment or actuarial experience to be unable to fully satisfy the liabilities which it covers, the amount of the liabilities projected to be unsatisfied shall be taken into account as liabilities for purposes of such section.".

SEC. 6. ISSUANCE OF TREASURY BONDS.

The Secretary of the Treasury shall from time to time transfer from the general fund of the Treasury to the Pension Rehabilitation Trust Fund established under section 9512 of the Internal Revenue Code of 1986 such amounts as are necessary to fund the loan program under section 4 of this Act, including from proceeds from the Secretary's issuance of obligations under chapter 31 of title 31, United States Code.

SEC. 7. REPORTS OF PLANS RECEIVING PENSION REHABILITATION LOANS.

(a) IN GENERAL.—Subpart E of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

"SEC. 6059A. REPORTS OF PLANS RECEIVING PENSION REHABILITATION LOANS.

"(a) IN GENERAL.—In the case of a plan receiving a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019, with respect to the first plan year beginning after the date of the loan and each of the 29 succeeding plan years, not later than the 90th day of each such plan year the plan sponsor shall file with the Secretary a report (including appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary) that contains—

"(1) the funded percentage (as defined in section 432(j)(2)) as of the first day of such plan year, and the underlying actuarial value of assets (determined with regard, and without regard, to annuity contracts purchased and portfolios implemented with proceeds of such loan) and liabilities (including any amounts due with respect to such loan) taken into account in determining such percentage,

"(2) the market value of the assets of the plan (determined as provided in paragraph (1)) as of the last day of the plan year preceding such plan year,

"(3) the total value of all contributions made by employers and employees during the plan year preceding such plan year,

"(4) the total value of all benefits paid during the plan year preceding such plan year,

"(5) cash flow projections for such plan year and the 9 succeeding plan years, and the assumptions used in making such projections,

"(6) funding standard account projections for such plan year and the 9 succeeding plan years, and the assumptions relied upon in making such projections,

"(7) the total value of all investment gains or losses during the plan year preceding such plan year,

"(8) any significant reduction in the number of active participants during the plan year preceding such plan year, and the reason for such reduction,

"(9) a list of employers that withdrew from the plan in the plan year preceding such plan year, and the resulting reduction in contributions,

"(10) a list of employers that paid withdrawal liability to the plan during the plan year preceding such plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to such withdrawal liability,

"(11) any material changes to benefits, accrual rates, or contribution rates during the plan year preceding such plan year, and whether such changes relate to the terms of the loan,

"(12) details regarding any funding improvement plan or rehabilitation plan and updates to such plan,

"(13) the number of participants during the plan year preceding such plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries,

"(14) the amount of any financial assistance received under section 4261 of the Employee Retirement Income Security Act of 1974 to pay benefits during the preceding plan year, and the total amount of such financial assistance received for all preceding years,

"(15) the information contained on the most recent annual funding notice submitted by the plan under section 101(f) of the Employee Retirement Income Security Act of 1974,

"(16) the information contained on the most recent annual return under section 6058 and actuarial report under section 6059 of the plan, and

"(17) copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the plan and contribution obligations under such plans, a breakdown of administrative expenses of the plan, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary, in consultation with the Director of the Pension Rehabilitation Administration, may require.

"(b) ELECTRONIC SUBMISSION.—The report required under subsection (a) shall be submitted electronically.

"(c) INFORMATION SHARING.—The Secretary shall share the information in the report under subsection (a) with the Secretary of Labor and the Director of the Pension Benefit Guaranty Corporation.

"(d) REPORT TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS.—Each plan sponsor required to file a report under subsection (a) shall, before the expiration of the time prescribed for the filing of such report, also provide a summary (written in a manner so as to be understood by the average plan participant) of the information in such report to participants and beneficiaries in the plan and to each employer with an obligation to contribute to the plan.".

(b) PENALTY.—Subsection (e) of section 6652 of the Internal Revenue Code of 1986 is amended—

(1) by inserting ", 6059A (relating to reports of plans receiving pension rehabilitation loans)" after "deferred compensation)";

(2) by inserting "($100 in the case of failures under section 6059A)" after "$25"; and

(3) by adding at the end the following: "In the case of a failure with respect to section 6059A, the amount imposed under this subsection shall not be paid from the assets of the plan.".

(c) CLERICAL AMENDMENT.—The table of sections for subpart E of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Sec. 6059A. Reports of plans receiving pension rehabilitation loans.".

SEC. 8. PBGC FINANCIAL ASSISTANCE.

(a) IN GENERAL.—Section 4261 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431) is amended by adding at the end the following new subsection:

"(d)(1) The plan sponsor of a multiemployer plan—

"(A) which is in critical and declining status (within the meaning of section 305(b)(6)), or

"(B) which is insolvent but has not been terminated and is receiving assistance from the corporation (other than assistance under this subsection),

and which is applying for a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act may also apply to the corporation for financial assistance under this subsection, by jointly submitting such applications in accordance with section 4(d)(2) of such Act. The application for financial assistance under this subsection shall demonstrate, based on projections by the plan actuary, that after the receipt of the anticipated loan amount under section 4(a) of such Act, the plan will still become (or remain) insolvent within the 30-year period beginning on the date of the loan.

"(2) In the case of a plan described in paragraph (1)(A), the financial assistance provided pursuant to such application under this subsection shall be the amount (determined by the plan actuary and submitted on the application) equal to the sum of—

"(A) the percentage of benefits of participants and beneficiaries of the plan in pay status at the time of the application, and

"(B) the percentage of future benefits to which participants who have separated from service but are not yet in pay status are entitled,

which, if such percentage were paid by the corporation in combination with the loan, would allow the plan to avoid the projected insolvency and be projected to have increasing assets over any 5-year period following the repayment of the loan. Such amount shall not exceed the maximum guaranteed benefit with respect to all participants and beneficiaries of the plan under sections 4022A and 4022B. For this purpose, the maximum guaranteed benefit amount shall be determined by disregarding any loan available from the Pension Rehabilitation Administration and shall be determined as if the plan were insolvent on the date of the application. Further, the present value of the maximum guaranteed benefit amount with respect to such participants and beneficiaries may be calculated in the aggregate, rather than by reference to the benefit of each such participant or beneficiary.

"(3) In the case of a plan described in paragraph (1)(B), the financial assistance provided pursuant to such application under this subsection shall be the amount (determined by the plan actuary and submitted on the application) which, if such amount were paid by the corporation in combination with the loan and any other assistance being provided to the plan by the corporation at the time of the application, would enable the plan to emerge from insolvency.

"(4) Subsections (b) and (c) shall apply to financial assistance under this subsection as if it were provided under subsection (a), except that the terms for repayment under subsection (b)(2) shall not require the financial assistance to be repaid before the date on which the loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act is repaid in full.

"(5) The corporation may forgo repayment of the financial assistance provided under this subsection if necessary to avoid any suspension of the accrued benefits of participants.".

(b) APPROPRIATIONS.—There is appropriated to the Director of the Pension Benefit Guaranty Corporation such sums as may be necessary for each fiscal year to provide the financial assistance described in section 4261(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1431(d)) (as added by this section) (including necessary administrative and operating expenses relating to such assistance).

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

The bill, H.R. 397, the "Rehabilitation for Multiemployer Pensions Act" as ordered reported by the Committee on Ways and Means on July 10, 2019, amends the Internal Revenue Code of 1986 to create a loan program for certain multiemployer pension plans, and for other purposes.

B. Background and Need for Legislation

A multiemployer plan is a pension plan created through an agreement between two or more employers and a union, run by a board of trustees, with an equal number of employer and union trustees. Usually the employers are in the same or related industries.[1]

Approximately 3.1% of all defined benefit pension plans are multiemployer plans, covering 28% of all defined benefit pension plan participants.[2] There are about 1,400 multiemployer defined benefit pension plans, covering about 10 million participants.[3] Most multiemployer plans are projected to remain solvent over the next twenty years.[4] About 130 multiemployer pension plans are projected to become insolvent over the next twenty years.[5] These plans are in critical and declining status, as defined under the Pension Protection Act of 2006, meaning they will run out of money in the next 20 years.[6]

The failure of these plans jeopardizes the solvency of the Pension Benefit Guaranty Corporation (PBGC) multiemployer program and the entire multiemployer pension system. As of 2018, the PBGC multiemployer program reported a deficit of about $53.9 billion.[7] PBGC estimates that the cost to provide full plan benefits for multiemployer plans currently insolvent or expected to be insolvent over the next 20 years is about $110 billion. Factoring in the PBGC guarantee level, the cost is estimated to be $60 billion. Thus, the failure of any one of many large troubled ongoing plans could trigger PBGC's insolvency.

The largest troubled plan, the Central States, Southeast and Southwest Areas Pension Plan, is projected to become insolvent in 2025.[8] PBGC's Multiemployer Program is also projected to become

[1] Multiemployer Insurance Program Facts. Pension Benefit Guaranty Corporation (PBGC). Available at https://www.pbgc.gov/about/factsheets/page/multi-facts.

[2] John J. Topoleski, "Multiemployer Defined Benefit (DB) Pension Plans: A Primer," R43305 at 2, Congressional Research Service. September 24, 2018. Available at https://www.crs.gov/reports/pdf/R43305.

[3] Topoleski at 4.

[4] FY 2017 PBGC Projections Report at 1, Pension Benefit Guaranty Corporation, https://www.pbgc.gov/sites/default/files/fy-2017-projections-report.pdf.

[5] *Id.*

[6] Technically, a plan is in critical and declining status if: the plan satisfies the criteria for critical status (under ERISA section 305(b)(2)) or elects to be in critical status (under ERISA section 305(b)(4)); and the plan is projected to become insolvent during the current plan year or any of the 14 succeeding plan years (or 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80 percent; PBGC analysis of 2014 filings indicated that over 90% of critical status plans meet one of these criteria and must test using the 19 year period).

[7] FY 2018 Annual Report of PBGC at 11, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf.

[8] 2017 Annual Funding Notice for Central States, Southeast and Southwest Pension Plan at 2, https://mycentralstatespension.org/-/media/Pension/PDFs/Legal/annual_funding_notice.pdf.

insolvent in 2025.[9] At that point, PBGC will not have enough premium income to cover benefits at the current guarantee level for any plan receiving PBGC financial assistance.[10] Therefore, if a certain large plan or plans become insolvent, and PBGC becomes insolvent, participants and beneficiaries will face severe cuts, beyond the statutorily guaranteed level.

In addition to the negative effects on participants and beneficiaries, employers that contribute to these plans may face increased contribution costs and escalating withdrawal liability.[11] Moreover, the failure of the multiemployer pensions system could have significant economic effects. It is estimated that the 10-year cost to the U.S. government of not solving the multiemployer pension crisis is between $170 billion and $240 billion.[12] These estimates include costs from several sources: federal tax revenue loss from pension and pension-based output; losses from active wages and wage-based output, which vary depending on whether the employment loss will be relatively small or major; and increases in the federal safety net. These costs will continue for decades after the first 10-year budget window and, on a net present value basis, will cost between $332 billion and $479 billion over the 30-year period between 2019–2048.[13]

H.R. 397 would support troubled multiemployer pension plans financially so that they avoid or emerge from insolvency. The bill would create a new agency within the Treasury Department called the Pension Rehabilitation Administration (PRA) that would sell Treasury-issued bonds and obligations in the open market to large investors. The PRA would then lend the money from the sale of the bonds to financially-troubled multiemployer pension plans. Plans would be required to use the loan to purchase annuities or make low-risk investments (or a combination) to pay for the benefits for retirees and terminated vested participants. A plan would have thirty years to improve its solvency and repay the loan. For certain plans that cannot avoid insolvency even with the loan, PBGC would provide financial assistance to make up the difference.

C. Legislative History

Background

H.R. 397, the "Rehabilitation for Multiemployer Pensions Act of 2019," was introduced on January 9, 2019, and was referred to the Committee on Education and Labor and in addition the Committees on Ways and Means and Appropriations.

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[9] FY 2018 Annual Report of PBGC at 4.

[10] "When the program becomes insolvent . . . the only money available to provide financial assistance will be incoming multiemployer premiums and thus PBGC will be only able to pay financial assistance to the extent of PBGC's multiemployer premium income." FY 2018 Annual Report of PBGC at 27.

[11] The Multiemployer Pension Plan Crisis: Businesses and Jobs at Risk at 3–4, U.S. Chamber of Commerce, Employment Policy Division. June 13, 2018. Available at https://www.uschamber.com/sites/default/files/multiemployer_report_businesses_and_jobs_at_risk_final.pdf.

[12] Testimony of Mariah M. Becker, MAAA, EA, ACA at 12, on Behalf of the National Coordinating Committee for Multiemployer Plans to the House Education and Labor Committee Subcommittee on Health, Employment, Labor and Pensions, March 7, 2019, https://edlabor.house.gov/imo/media/doc/BeckerTestimony030719.pdf.

[13] *Id.*

Committee hearings

On February 6, 2019, the Ways and Means Committee held a hearing on “Improving Retirement Security for America’s Workers.” Witnesses included Ms. Nancy Altman, President, Social Security Works; Mr. Andrew Biggs, Resident Scholar, American Enterprise Institute; Mr. Roger J. Crandall, Chairman, President & CEO, MassMutual; Robin Diamonte, Corporate Vice President, Pension Investments, United Technologies; Mr. Luke Huffstutter, Owner, Annastasia Salon and Summit Salon Academy, Portland, OR; Ms. Cindy McDaniel, Co-director, Missouri-Kansas City Committee to Protect Pensions; and Ms. Diane Oakley, Executive Director, National Institute on Retirement Security.

In the 115th Congress, the Joint Select Committee on Solvency of Multiemployer Pension Plans held several hearings on these issues, including hearings on: April 18, 2018, “The History and Structure of the Multiemployer Pension System,” May 17, 2018, “The Structure and Financial Outlook of the Pension Benefit Guaranty Corporation,” June 13, 2018, “Employer Perspectives on Multiemployer Pension Plans,” July 13, 2018, “Understanding What’s at Stake for Current Workers and Retirees,” and July 25, 2018, “How the Multiemployer Pension System Affects Stakeholders.

Committee action

The Committee on Ways and Means marked up H.R. 397 on July 10, 2019, and ordered the bill, as amended, favorably reported (with a quorum being present) by a vote of 25 yeas and 17 nays.

II. EXPLANATION OF THE BILL

A. ESTABLISHMENT OF PENSION REHABILITATION ADMINISTRATION TO PROVIDE LOANS TO CERTAIN MULTIEMPLOYER PLANS (SECS. 2–8 OF THE BILL AND SECS. 432, 6059A, AND 9512 OF THE CODE AND SECS. 305 AND 4261 OF ERISA)

PRESENT LAW

Multiemployer plans

A multiemployer plan is a plan to which more than one unrelated employer contributes, that is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor.[14] Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives, referred to as the plan sponsor. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, and the level of plan benefits is established by the plan sponsor.

Like other private defined benefit plans,[15] multiemployer defined benefit plans are subject to minimum funding requirements under the Code and ERISA.[16] An excise tax may be imposed on the em-

[14] Sec. 414(f) and ERISA section 2(37).

[15] Sec. 414(j).

[16] Secs. 412 and 431, and ERISA secs. 302 and 304. Additional rules apply to multiemployer plans that are insolvent under section 418E and ERISA section 4245. Certain changes were made to the funding requirements for multiemployer plans by the Pension Protection Act of

Continued

ployers maintaining the plan if the funding requirements are not met.[17] However, the excise tax does not apply for a taxable year with respect to a multiemployer plan if, for the plan years ending with or within the taxable year, the plan is in critical status under Code section 432.[18]

General funding requirements for multiemployer plans

Employer contributions to a defined benefit plan are generally subject to minimum funding requirements, the details of which depend on whether the plan is a single-employer plan or a multiemployer plan. Unless a funding waiver is obtained, an employer may be subject to a two-tier excise tax if the funding requirements are not met.

In general, the annual deduction limit on employer contributions to a multiemployer defined benefit plan for a year is the excess of (1) 140 percent of the plan's current liability (the present value of all benefits earned under the plan), over (2) the value of plan assets. However, the deduction limit is never less than the amount of contributions required under the funding rules. If contributions exceed the amount deductible, the employers that contribute to the multiemployer plan are generally subject to an excise tax.

General funding requirements apply to all multiemployer plans. Additional funding requirements apply to plans in endangered[19] or critical status. An employer that withdraws from a multiemployer plan is generally liable to the plan for a portion of the plan's unfunded vested benefits, referred to as withdrawal liability. Various provisions limit the amount of an employer's withdrawal liability.

Under the general funding requirements, a multiemployer defined benefit plan maintains a funding standard account, to which charges (such as for benefit accruals and negative plan experience) and credits (such as for positive plan experience and contributions) are made. The minimum required contribution for a plan year is the amount, if any, needed to balance accumulated credits and accumulated charges to the funding standard account. If required contributions are not made, so the funding standard account has a negative balance, an accumulated funding deficiency results.

A multiemployer plan is required to use an acceptable actuarial cost method (referred to as the plan's funding method) to determine the elements included in its funding standard account for a year, including normal cost and supplemental cost. Normal cost generally represents the cost of future benefits allocated to the year under the plan's funding method. The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. Supplemental costs may be attributable to past service liability or to worse than expected plan experience. Supplemental costs are amor-

2006 ("PPA"), Pub. L. No. 109–280 and by the Multiemployer Pension Reform Act of 2014 ("MPRA"), Pub. L. No. 113–235, Division O.

[17] Sec. 4971.

[18] Sec. 4971(g)(1).

[19] A multiemployer plan is generally in endangered status if the plan is not in critical status and, as of the beginning of the plan year, (1) the plan's funded percentage for the plan year is less than 80 percent, or (2) the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years (taking into account amortization extensions). A plan's funded percentage is the percentage determined by dividing the value of plan assets by the accrued liability of the plan. A plan that meets the requirements of both (1) and (2) is treated as in seriously endangered status.

tized (that is, recognized for funding purposes) over a specified number of years (generally 15 years) by annual charges to the funding standard account over that period. Factors that result in a supplemental loss can alternatively result in a gain that is recognized by annual credits to the funding standard account over a 15-year amortization period (in addition to a credit for contributions made for the plan year).

Actuarial assumptions used under the multiemployer plan funding rules must be reasonable. The interest rate (which represents the expected return on plan assets over time) and mortality assumptions used in funding computations are subject to these general standards; the funding rules do not specify the interest rate or mortality tables that must be used. For funding purposes, the actuarial value of plan assets may be used, rather than fair market value, subject to certain conditions.

Additional requirements relating to plans in endangered or critical status

In general

Additional funding-related requirements apply to a multiemployer defined benefit pension plan that is in endangered or critical status.[20] In connection with the endangered and critical rules, not later than the 90th day of each plan year, the actuary for any multiemployer plan must certify to the Secretary and to the plan sponsor whether or not the plan is in endangered or critical status for the plan year. If a plan is certified as being in endangered or critical status, notice of endangered or critical status must be provided within 30 days after the date of certification to plan participants and beneficiaries, the bargaining parties, the PBGC and the Secretary of Labor. Additional notice requirements apply in the case of a plan certified as being in critical status.

Various requirements apply to a plan in endangered or critical status, including adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In addition, restrictions on certain plan amendments, benefit increases, and reductions in employer contributions apply during certain periods.

A multiemployer plan is in critical status for a plan year if, as of the beginning of the plan year, it meets any of the following definitions:

- The funded percentage of the plan[21] is less than 65 percent and the sum of (1) the market value of plan assets, plus (2) the present value of reasonably anticipated employer and employee contributions for the current plan year and each of the six succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under

[20] Endangered status and critical status are defined in section 432(b)(1) and (2) and ERISA section 305(b)(1) and (2).

[21] A plan's multiemployer funded percentage is the percentage determined by dividing the value of plan assets by the plan's accrued liability (that is, generally, the present value of plan benefits).

the plan during the current plan year and each of the six succeeding plan years (plus administrative expenses),

- (1) The plan has an accumulated funding deficiency for the current plan year, not taking into account any amortization period extensions, or (2) the plan is projected to have an accumulated funding deficiency for any of the three succeeding plan years (four succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any amortization period extensions,
- (1) The plan's normal cost for the current plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the preceding year, exceeds the present value of the reasonably anticipated employer contributions for the current plan year, (2) the present value of vested (that is, nonforfeitable) benefits of inactive participants is greater than the present value of vested benefits of active participants, and (3) the plan has an accumulated funding deficiency for the current plan year, or is projected to have an accumulated funding deficiency for any of the four succeeding plan years (not taking into account amortization period extensions), or
- The sum of (1) the market value of plan assets, plus (2) the present value of the reasonably anticipated employer contributions for the current plan year and each of the four succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the four succeeding plan years (plus administrative expenses).

The first plan year for which the plan is in critical status is referred to as the "initial critical year," which governs the timing of certain requirements and periods.

In making the determinations and projections applicable in determining and certifying endangered or critical status (or neither), the plan actuary must follow certain statutory standards. The actuary's projections generally must be based on reasonable actuarial estimates, assumptions, and methods that offer the actuary's best estimate of anticipated experience under the plan.[22] In addition, the plan actuary must make projections for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of the year. The projected present value of liabilities as of the beginning of the year must be based on the most recent actuarial statement required with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year. Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, must be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

[22] Under section 432(j)(8) and ERISA section 305(j)(8), for purposes of the endangered and critical rules, various actuarial computations are based upon the unit credit funding method, regardless of whether it is the funding method used in applying the general funding requirements to the plan.

In the case of a multiemployer plan in critical status, additional required contributions (referred to as employer surcharges) apply until the adoption of a collective bargaining agreement that is consistent with the rehabilitation plan. In addition, employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules (and the related excise tax), provided that a rehabilitation plan is adopted and followed.[23] Moreover, subject to notice requirements, some benefits that would otherwise be protected from elimination or reduction may be eliminated or reduced in accordance with the rehabilitation plan.[24]

In the case of a failure to meet the requirements applicable to a multiemployer plan in endangered or critical status, the plan actuary, plan sponsor, or employers required to contribute to the plan may be subject to an excise tax under the Code or a civil penalty under ERISA.[25]

Anti-cutback exceptions for multiemployer plans

Under the anti-cutback rules, generally applicable to defined benefit plans, a plan amendment generally may not reduce accrued benefits or reduce or eliminate an optional form of benefit, early retirement benefit, or retirement-type subsidy with respect to accrued benefits. Amendments are generally permitted only to reduce future rates of accrual, eliminate optional forms of benefits, or eliminate or reduce early retirement benefits or retirement-type subsidies only with respect to future accruals; and, in those cases, notice must be provided.

In the case of a multiemployer defined benefit plan that is in critical status[26] or critical and declining status,[27] or is insolvent,[28] subject to notice and other procedural requirements, certain plan benefits that would otherwise be protected under the anti-cutback rules are required or permitted to be reduced or eliminated.

In the case of a multiemployer plan in critical status, payments in excess of a single life annuity (plus any social security supplement, if applicable) may not be made to a participant or beneficiary who begins receiving benefits after notice that the plan is in critical status is provided and payments may not be made for the purchase of an irrevocable commitment from an insurer to pay benefits. In addition, the plan sponsor may reduce certain benefits ("adjustable benefits") that the plan sponsor deems appropriate, but not for a participant or beneficiary who began to receive benefits before receiving notice that the plan is in critical status. Adjustable benefits generally include disability benefits not in pay status, early retirement benefits or retirement-type subsidies, and most benefit payment options, but not the amount of an accrued benefit payable at normal retirement age.

[23] Sec. 4971(g)(1)(A).

[24] The rules for multiemployer plans in critical status include the elimination or reduction of "adjustable benefits," which include some benefits that would otherwise be protected from elimination or reduction under the anti-cutback rules under section 411(d)(6) and ERISA section 204(g).

[25] Sec. 4971(g) and ERISA sec. 502(c)(8). In addition, certain failures are treated as a failure to file an annual report with respect to the multiemployer plan, subject to a civil penalty under ERISA.

[26] Sec. 432(b)(2) and sec. 305(b)(2) of ERISA.

[27] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.

[28] Sec. 418E of ERISA and sec. 4245 of ERISA.

In general, a multiemployer plan is insolvent when its available resources in a plan year are not sufficient to pay the plan benefits for that plan year. In that case, benefits must be reduced to the level that can be covered by the plan's assets, but not below the level of benefits that are eligible for guarantee under the PBGC's multiemployer plan program. If plan assets are insufficient to pay benefits at the guarantee level, the PBGC provides financial assistance to the plan in the form of loans.

Suspension of benefits in multiemployer plans that are in critical and declining status

A multiemployer plan is in critical and declining status[29] if the plan (1) is in critical status and (2) is projected to become insolvent[30] during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if either the ratio of inactive plan participants to active plan participants is more than two to one or the plan's funded percentage is less than 80 percent). In that case, subject to certain conditions, limitations, and procedural requirements, including the appointment of a retiree representative in some cases and approval by the Secretary of Treasury, previously earned benefits may be reduced (referred to as benefit suspensions), including benefits of some participants and beneficiaries in pay status.

Benefit suspensions are permitted only if the plan actuary certifies that, taking the benefit suspensions into account, the plan is projected to avoid insolvency, and the plan sponsor determines that, despite all reasonable measures to avoid insolvency, the plan is projected to become insolvent unless benefits are suspended.

The plan sponsor generally determines the amount of the benefit suspensions and how the suspensions apply to plan participants and beneficiaries. However, benefits cannot be reduced below 110 percent of the monthly PBGC guarantee level; disability benefits cannot be suspended; benefit reductions for a participant or beneficiary between the ages of 75 and 80 are limited; benefit reductions are not permitted for a participant or beneficiary age 80 or over; and benefit suspensions in the aggregate must be at the level reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

Partition

On application by the plan sponsor of an eligible multiemployer plan for a partition of the plan, the PBGC may order a partition of the plan. Not later than 30 days after submitting an application to the PBGC for partition of a plan, the plan sponsor must notify the participants and beneficiaries of the application, in the form and manner prescribed by PBGC regulations.

For purposes of the provision, a multiemployer plan is an eligible multiemployer plan if—

- the plan is in critical and declining status (as described above),
- the PBGC determines, after consultation with the Participant and Plan Sponsor Advocate,[31] that the plan sponsor has

[29] Sec. 432(b)(6) and sec. 305(b)(6) of ERISA.
[30] As defined in section 418E.
[31] Established under section 4004 of ERISA.

taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including maximum benefit suspensions permitted in the case of a critical and declining plan, if applicable,

- the PBGC reasonably expects that a partition of the plan will reduce the PBGC's expected long-term loss with respect to the plan and is necessary for the plan to remain solvent,
- the PBGC certifies to Congress that the PBGC's ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or that are projected to become insolvent within 10 years) will not be impaired by the partition, and
- the cost to the PBGC arising from the proposed partition is paid exclusively from the fund for basic benefits guaranteed for multiemployer plans.[32]

The PBGC must make a determination regarding a partition application not later than 270 days after the application is filed (or, if later, the date the application is completed) in accordance with PBGC regulations. Not later than 14 days after a partition order, the PBGC must provide notice thereof to the House Committees on Education and the Workforce and on Ways and Means and the Senate Committees on Finance and on Health, Education, Labor, and Pensions, as well as to any affected participants or beneficiaries.

The plan sponsor and the plan administrator of the eligible multiemployer plan (the "original" plan) before the partition are the plan sponsor and plan administrator of the plan created by the partition order (the "new" plan). For purposes of determining benefits eligible for guarantee by the PBGC, the new plan is a successor plan with respect to the original plan.

The PBGC's partition order is to provide for a transfer to the new plan the minimum amount of the original plan's liabilities necessary for the original plan to remain solvent. The provision does not provide for the transfer to the new plan of any assets of the original plan.

It is expected that the liabilities transferred to the new plan will be liabilities attributable to benefits of specific participants and beneficiaries (or a specific group or groups of participants and beneficiaries) as requested by the plan sponsor of the original plan and approved by the PBGC, up to the PBGC guarantee level applicable to each participant or beneficiary. Thus, benefits for such participants and beneficiaries up to the guarantee level will be paid by the new plan. For each month after the effective date of the partition that such a participant or beneficiary is in pay status, the original plan will pay a monthly benefit to the participant or beneficiary in the amount by which (1) the monthly benefit that would be paid to the participant or beneficiary under the terms of the original plan if the partition had not occurred (taking into account any benefit suspensions and any plan amendments after the effective date of the partition) exceeds (2) the amount of the participant's or beneficiary's benefit up to the PBGC guarantee level.

[32] Thus, other Federal funds, including funds from the PBGC single-employer plan program, may not be used for this purpose.

During the 10-year period following the effective date of the partition, the original plan must pay the PBGC premiums due for each year with respect to participants whose benefits were transferred to the new plan. The original plan must pay an additional amount to the PBGC if it provides a benefit improvement (as defined under the rules for plans in critical and declining status, described above) that takes effect after the effective date of the partition. Specifically, for each year during the 10-year period following the effective date of the partition, the original plan must pay the PBGC an annual amount equal to the lesser of (1) the total value of the increase in benefit payments for the year that is attributable to the benefit improvement, or (2) the total benefit payments from the new plan for the year. This payment must be made to the PBGC at the time of, and in addition to, any other PBGC premium due from the original plan.

If an employer withdraws from the original plan within 10 years after the date of the partition order, the employer's withdrawal liability will be determined by reference to both the original plan and the new plan. If the withdrawal occurs more than 10 years after the date of the partition order, withdrawal liability will be determined only by reference to the original plan and not with respect to the new plan.

Withdrawal liability

An employer that withdraws from a multiemployer plan in a complete or partial withdrawal is generally liable to the plan in the amount determined to be the employer's withdrawal liability.[33] In general, a "complete withdrawal" means the employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute. A "partial withdrawal" generally occurs if, on the last day of a plan year, there is a 70-percent contribution decline for such plan year or there is a partial cessation of the employer's contribution obligation.

When an employer withdraws from a multiemployer plan, the plan sponsor is required to determine the amount of the employer's withdrawal liability, notify the employer of the amount of the withdrawal liability, and collect the amount of the withdrawal liability from the employer. In order to determine an employer's withdrawal liability, a portion of the plan's unfunded vested benefits is first allocated to the employer, generally in proportion to the employer's share of plan contributions for a previous period.[34] The amount of unfunded vested benefits allocable to the employer is then subject to various reductions and adjustments. An employer's withdrawal liability is generally payable, with interest, in level annual installments. However, the amount of the annual installments is limited, based on the amount of the employer's previous contributions to the plan, and the period over which installments are paid is limited to 20 years. An employer's withdrawal liability is the amount determined after application of these limits. In addition, the plan sponsor and the employer may agree to settle an employer's withdrawal liability obligation for a different amount.

[33] ERISA secs. 4201–4225.

[34] Under 29 C.F.R. sec. 4211.2, for this purpose, unfunded vested benefits is the amount by which the value of vested benefits under the plan exceeds the value of plan assets.

If a multiemployer plan is in critical status, payments in excess of a single life annuity (plus any social security supplement, if applicable) may not be made and reductions in adjustable benefits are permitted. If a plan is in critical and declining status, benefit suspensions are permitted, including with respect to participants and beneficiaries in pay status. The elimination of any prohibited forms of distribution and reductions in adjustable benefits are disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability. In addition, suspensions of benefits made under a multiemployer plan in critical and declining status are disregarded in determining the plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability unless the withdrawal occurs more than 10 years after the effective date of the benefit suspension.

Multiemployer Plan Program of the Pension Benefit Guaranty Corporation

The PBGC, a corporation within DOL, provides an insurance program for benefits under most defined benefit plans maintained by private employers. The PBGC is administered by a director. Its board of directors consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce.

The PBGC is financed through the payment of premiums by covered defined benefit plans, assets from terminated single-employer defined benefit plans trusteed by the PBGC, and investment income on PBGC assets. The PBGC insures pension benefits under separate programs for single-employer and multiemployer defined benefit plans.

In the case of a multiemployer plan, flat-rate premiums apply at a rate of $29 per participant for 2019. The PBGC provides financial assistance to insolvent multiemployer plans in the amount needed to pay benefits at the guarantee limit, which is the sum of 100 percent of the first $11 of monthly benefits plus 75 percent of the next $33 of monthly benefits multiplied by the participant's years of service.

Termination of a multiemployer defined benefit pension plan can occur as a result of (1) the adoption of a plan amendment providing that participants receive no credit under the plan for any purpose for service with any employer after a date specified in the amendment (referred to as "freezing accruals"), (2) the adoption of a plan amendment causing the plan to become a defined contribution plan, or (3) the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute to the plan (referred to as "mass withdrawal").[35]

If a terminated multiemployer plan becomes insolvent and plan assets are not sufficient to pay benefits at the level guaranteed by the PBGC, the PBGC will provide financial assistance as needed to pay benefits at the guarantee level, as described above.[36] If a multiemployer plan that has not terminated becomes insolvent, similar rules apply, including the provision by the PBGC of financial as-

[35] ERISA sec. 4041A. Unlike the termination of a single-employer plan (and except in the case of multiemployer plan terminations occurring before 1981), termination of a multiemployer plan does not of itself result in the end of the operation of the plan or in the PBGC's taking over the plan. Instead, the plan sponsor continues to administer the plan.

[36] ERISA secs. 4261 and 4281.

sistance in an amount needed to provide benefits at the guarantee level.

REASONS FOR CHANGE

Approximately 12 percent of multiemployer plans covering over one million workers, retirees, and beneficiaries are projected to become insolvent within the next 20 years, and many of these plans are predicted to run out of funds in the next 10 years. At the same time, the PBGC multiemployer plan program (which provides financial assistance to insolvent multiemployer plans so that these plans can pay benefits at PBGC guaranteed levels to participants and beneficiaries) is anticipated to become insolvent in 2025 at which point the PBGC will only be able to pay a fraction [37] of the current guarantee to these plans.

Congress believes that implementing a federal loan program in combination with PBGC financial assistance will (1) permit these plans to restore their solvency while also requiring them to repay these loans (avoiding a taxpayer bailout of these plans); (2) protect pension benefits of the participants and beneficiaries in these plans; and (3) lessen the financial impact of these plans upon the PBGC's multiemployer plan program.

EXPLANATION OF PROVISION

Establishment of Pension Rehabilitation Administration to provide loans to certain multiemployer plans

Under the provision, the Pension Rehabilitation Administration ("PRA") is to be established as an agency within the Department of the Treasury. The PRA is authorized to make loans to certain multiemployer defined benefit plans.

Multiemployer plan eligibility for loans from the PRA

A multiemployer defined benefit plan which is eligible to receive such a loan is a plan:

- In critical and declining status as of the date of enactment or for which a suspension of benefits has been approved as of such date; [38]
- In critical status as of the date of enactment, has a modified funded percentage of less than 40 percent,[39] and has a ratio of active to inactive participants which is less than two to five; or
- Insolvent, if it became insolvent after December 16, 2014, and has not been terminated; [40]

[37] The Honorable W. Thomas Reeder (former director of the PBGC), testifying before the Joint Select Committee on Solvency of Multiemployer Pension Plans on May 17, 2018, indicated that participants in failed multiemployer plans would receive "an eighth or less on average—of the current guarantee level, no matter when their plan became insolvent."

[38] Sec. 432(e)(9) and sec. 305(e)(9) of ERISA.

[39] As noted above, for determining critical status for purposes of section 432 and section 305 of ERISA, assets and liabilities are generally both determined at their actuarial value for purposes of calculating the funded percentage, but for purposes of determining which plans are eligible for a loan from the PRA, the modified funded percentage means the percentage equal to a fraction the numerator of which is the current value of plan assets as defined in ERISA section 3(26) (fair market value if available and otherwise the fair value as determined in good faith by a trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D) and section 304(c)(6)(D) of ERISA).

[40] Pursuant to section 4041A of ERISA.

The PRA also establishes appropriate terms for such loans; certain required terms of the loan are discussed further below.

Establishment of the loan program

Under the provision, the loan program is to be established not later than September 30, 2019, with guidance regarding the program to be promulgated by the Director of the PRA (who is appointed by the President for a five-year term of office) ("Director") in consultation with the Director of the PBGC, the Secretary and the Secretary of Labor not later than December 31, 2019.

Before the loan program has been established, or before guidance has been promulgated, a plan may apply for a loan, and the PRA will approve the application and make the loan before establishment of the program if necessary to avoid any suspension of participants' accrued benefits.

The Director [41] consults with the Secretary, the Secretary of Labor, and the Director of the Pension Benefit Guaranty Corporation ("PBGC") before making any such loan to a multiemployer plan, and shares the application and plan information with such individuals.

Pension Rehabilitation Trust Fund

Under the provision, the Pension Rehabilitation Trust Fund (the "Fund") is established in the Treasury Department to fund the loan program. The Fund consists of the following amounts as may be appropriated or credited to the Fund as follows: [42]

- Amounts transferred from the general fund of the Treasury by the Secretary to the Fund as are necessary to fund the loan program, including from proceeds of the Secretary's issuance of Treasury obligations (under 31 U.S.C. chapter 31);
- Any amounts received from a plan as payment of interest (including points and other similar amounts) or principal on a loan (which are deposited into the Fund by the Director); and
- Any unobligated amounts appropriated to the Department of Treasury transferred by the Secretary to the PRA as may be reasonably necessary to pay for administrative and operating expenses as described above (which are deposited into the Fund by the Director).

Amounts credited to, or deposited in the Fund, remain available until expended for:

- Making loans to multiemployer defined benefit plans;
- Payment of principal and interest on Treasury obligations issued by the Secretary; and
- PRA administrative and operating expenses.

[41] The Director may serve after the expiration of a term until a successor is appointed. The Director may appoint Deputy Directors, officers and employees (including attorneys) and may contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement, but only to the extent that appropriations are available for that purpose for any fiscal year) with the General Services Administration (or such other Federal agency that the Director determines to be appropriate) paid in advance, or by reimbursement from PRA funds in amounts agreed to by the Director and the head of the Federal agency providing the services. The Secretary may transfer (for any fiscal year) from unobligated amounts appropriated to the Department of Treasury to the PRA as may be reasonably necessary to pay for its administrative and operating expenses.

[42] Sec. 9512 and sec. 9602(b).

Loan amount and use

A plan sponsor must apply to the PRA in order to receive a loan under the provision. Any sponsor of a plan for which a suspension of benefits has been approved [43] before the date of enactment must apply for such a loan.[44]

The amount of any loan will generally be, as demonstrated by the plan sponsor on the application, the amount needed to purchase annuity contracts or to implement a portfolio (or a combination of the two) sufficient to provide benefits of participants and beneficiaries of the plan in pay status, and terminated vested benefits, at the time the loan is made. The loan amount may differ if the plan is also applying for financial assistance from the PBGC (see below).

Coordination of loan amount where suspension of benefits has been approved

In the case of a plan with respect to which a suspension of benefits has been approved, the suspension of benefits shall not be taken into account in determining the amount of the loan under the provision, but rather, the loan amount shall be the amount sufficient to provide benefits of participants and beneficiaries of the plan in pay status and terminated vested benefits at the time the loan is made, determined without regard to the suspension, including retroactive payment of benefits which would otherwise have been payable during the period of suspension.

Coordination of loan amount with PBGC financial assistance

If a plan that is applying for a loan is also applying for financial assistance with the PBGC,[45] the plan sponsor must submit the loan application and the application for financial assistance jointly to the PRA and to the PBGC with the information necessary to determine the eligibility for and amount of the loan and the financial assistance.

If such financial assistance is granted, then the amount of the loan may not exceed an amount equal to the excess of either (1) or (2) below (depending on which is applicable) over the amount of any PBGC financial assistance:

1. the amount required to purchase annuity contracts or to implement a portfolio (or a combination of the two) sufficient to provide benefits of participants and beneficiaries of the plan in pay status and terminated vested benefits, at the time the loan is made, or
2. the amount required for plans for which a suspension of benefits has been approved which is sufficient to provide benefits of participants and beneficiaries of the plan in pay status and terminated vested benefits at the time the loan is made, determined without regard to the suspension, including retroactive payment of benefits which would have otherwise have been payable during the period of the suspension.

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[43] Under section 432(e)(9) and section 305(e)(9) of ERISA or under section 418E.
[44] But such a plan may use the simplified application.
[45] Under section 4261(d) of ERISA.

Use of loan amounts

Under the provision, the restrictions that apply to purchasing annuity contracts from an insurer to a multiemployer plan effective on the date of the notice of certification of a multiemployer plan's critical status[46] do not apply to a loan from the PRA. Rather, under the provision, a loan from the PRA may only be used to purchase annuity contracts or to implement a portfolio (or a combination of the two) to provide benefits of participants and beneficiaries in pay status, and terminated vested benefits, at the time the loan is made, that satisfy the following requirements:

The annuity contracts purchased must be issued by an insurance company which is licensed to do business under the laws of any State (and which is rated A or better by a nationally recognized statistical rating organization), and the purchase of such contracts must meet all applicable fiduciary standards under ERISA.[47]

The portfolio described must be either a:

- Cash matching or duration matching portfolio consisting of investment grade (as rated by a nationally recognized statistical rating organization) fixed income investments, including United States dollar-denominated public or private debt obligations issued or guaranteed by the United States or a foreign issuer, which are tradeable in United States currency and are issued at fixed or zero coupon rates; or
- Any other portfolio prescribed by the Secretary in regulations which has a similar risk profile to the portfolios described above and is equally protective of the interests of participants and beneficiaries.

Once implemented, the portfolio is maintained until all liabilities to participants and beneficiaries in pay status, and terminated vested participants, at the time of the loan, are satisfied. Any investment manager of a portfolio must acknowledge in writing that such person is a fiduciary under ERISA with respect to the plan. Participants and beneficiaries covered by a portfolio continue to be treated as participants and beneficiaries of the plan, including for purposes of the PBGC plan termination insurance program.[48] Such portfolios are subject to oversight by the PRA, including a mandatory triennial review of the adequacy of the portfolio to provide the benefits described and approval (to be provided within a reasonable period of time) of any decision by the plan sponsor to change the investment manager of the portfolio. If the oversight determines an inadequacy in the portfolio, the plan sponsor must take remedial action to ensure that the inadequacy is cured within two years of such determination.

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[46] Sec. 432(f)(2)(A)(ii) and section 305(f)(2)(A)(ii) of ERISA.

[47] Under Title I of ERISA, including section 404, a fiduciary must discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to such participants and their beneficiaries, and defraying reasonable expenses of administering the plan. Each fiduciary must undertake these responsibilities with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matter would use in the conduct of an enterprise of a like character and with like aims. Fiduciaries must also avoid prohibited transactions, such as self-dealing. The Department of Labor has also established guidelines for the selection of an annuity provider. See 29 C.F.R. 2550.404a–4.

[48] Under Title IV of ERISA. In other words, such participants and beneficiaries continue to maintain their rights under that Title including that these plan benefits will continue to be guaranteed under section 4022A of ERISA.

Such annuity contracts purchased and portfolios implemented must be used solely to provide benefits to these participants and beneficiaries who are either in pay status or are terminated vested participants until all such benefits have been paid and these investments shall be accounted for separately from any other assets of the plan. In addition, the PBGC Participant and Plan Sponsor Advocate[49] shall act as the ombudsperson for participants and beneficiaries on behalf of whom annuity contracts are purchased or who are covered by a portfolio.

LOAN APPLICATION

Under the provision, the Director (in consultation with the Director of PBGC, the Secretary of the Treasury, and the Secretary of Labor) is authorized to issue rules regarding the form, content, and process of applications for loans from the PRA, the actuarial standards and assumptions to be used in making estimates and projections for purposes of such applications, and assumptions regarding interest rates, mortality, and distributions with respect to portfolio investments. The Director must provide for a simplified loan application which may be used by (1) an insolvent plan which has not been terminated and which is already receiving financial assistance from the PBGC at the time of application for the loan and (2) a plan with respect to which a suspension of benefits has been approved before the date of the enactment.

As part of an application for a loan, the plan sponsor will need to:

- Demonstrate that the loan (in combination with any financial assistance to be provided by the PBGC as described below) will (1) enable the plan to avoid insolvency for at least the 30-year period of the loan or, in the case of a plan which is already insolvent, to emerge from insolvency within and avoid insolvency for the remainder of such 30-year period, and (2) provide that the plan is reasonably expected to be able to pay benefits and the interest on the loan during such period and to accumulate sufficient funds to repay the principal when due;
- Provide the plan's most recently filed Form 5500 as of the date of application and any other information necessary to determine the loan amount;
- Stipulate whether the plan is also applying for financial assistance from the PBGC[50] in coordination with the loan to enable the plan to avoid insolvency and to pay benefits or is already receiving such financial assistance as a result of a previous application;
- State how the loan proceeds will be invested (whether to purchase annuities or to provide for the portfolio described below), the person from whom any annuity contracts will be purchased and the investment manager for any such portfolio implemented; and
- Include such other information and certifications as the PRA Director requires.

[49] Established under section 4004 of ERISA.
[50] Under section 4261(d) of ERISA.

Evaluation of the loan application

In evaluating the plan sponsor's application, the Director will accept the determinations and demonstrations in the application unless the Director (in consultation with the Director of the PBGC, the Secretary of the Treasury, and the Secretary of Labor), concludes that any such determinations or demonstrations in the application (or any underlying assumptions) are unreasonable or are inconsistent with any rules issued by the PRA Director.

The Director will approve or deny any application within 90 days after its submission. An application will be deemed to be approved unless, within such 90-day period, the Director notifies the plan sponsor of the denial of the application and the reasons for the denial. Any approval or denial of an application by the Director will be treated as a final agency action.[51]

Once the application has been approved, the PRA will promptly make the loan to the plan.

Terms of the loan

Under the provision, the terms of the loan shall provide that:

- The plan shall make payments of interest only on the loan for a period of 29 years beginning on the date of the loan (or 19 years in the case of a plan making the special election for early repayment described above);
- The final payment of interest and principal will be due in the 30th year after the date of the loan (except as provided by the special election for early repayment described above);
- As a condition of the loan, the plan sponsor stipulates that:
  - The plan will not increase benefits, allow any employer participating in the plan to reduce its contributions, or accept any collective bargaining agreement which provides for reduced contribution rates during the 30-year period of the loan;
  - However, in the case of a plan for which a suspension of benefits has been approved before the loan was made, the plan will reinstate the suspended benefits (or will not carry out any suspension which has been approved, but not yet implemented;
  - The plan sponsor will comply with the reporting requirements set forth below;
  - The plan will continue to pay PBGC premiums;[52] and
  - The plan and plan administrator will meet such other requirements as the Director provides in the loan terms.
- The terms of the loan will not make reference as to whether the plan is receiving financial assistance from the PBGC[53] or to any adjustment in the amount of the loan due to such financial assistance;
- The interest rate on the loan, (as determined by the PRA) will be as low as is feasible and will:

[51] For purposes of section 704 of title 5 of the United States Code.
[52] Sec. 4007 of ERISA.
[53] Sec. 4261(d) of ERISA.

- Not be lower than the rate of interest on 30-year Treasury securities on the first day of the calendar year in which the loan is issued; and
- Will not exceed the greater of (1) a rate 0.2 percent higher than such rate of interest on such date, or (2) the rate necessary to collect revenues sufficient to administer the program.

Incentive for early repayment

At the time of the application, under the provision, the plan sponsor may elect to repay the loan principal, along with remaining interest, at least as rapidly as equal installments over the 10-year period beginning with the 21st year after the date of the loan. In the case of a plan making this election, the interest on the loan is reduced by 0.5 percent. For example, if a loan of $10,000,000 has been approved and the plan sponsor makes this election, then beginning in the 21st year after the date of the loan, the plan sponsor must pay at least $1,000,000 (along with interest) in each year of the 10-year period. The plan sponsor could pay off the entire remaining amount of the loan in the 25th year as long as the plan sponsor had been making installments of at least $1,000,000 (along with interest) in years 21 through 24.

Repayment of loan and loan default

The PRA shall make every effort to collect repayment of the loans under the provision.[54] However, if a plan is unable to make any payment on a loan when due, the PRA shall negotiate revised terms for repayment (including installment payments over a reasonable period or forgiveness of a portion of the loan principal) with the plan sponsor, but only to the extent necessary to avoid insolvency in the subsequent 18 months.

Coordination with other rules

Coordination with withdrawal liability rules

If any employer participating in a plan at the time the plan receives a loan withdraws from the plan before the end of the 30-year period beginning on the date of the loan, under the provision, the withdrawal liability of such employer shall be determined by (1) treating the plan as if it were terminating by the withdrawal of every employer from the plan (i.e., mass withdrawal)[55] and (2) by determining the value of nonforfeitable benefits under the plan at the time of the deemed termination by using the interest assumptions prescribed for the termination of a single-employer plan.[56] In addition, annuity contracts purchased and portfolios implemented shall not be taken into account as plan assets[57] in determining the withdrawal liability of any employer but the amount equal to the greater of (1) the benefits provided under such contracts or port-

[54] In accordance with 31 U.S.C. section 3711, Collection and compromise.

[55] The significance of this treatment is that the amount of withdrawal liability will not be limited to 20 annual payments and the total unfunded vested benefits of the plan shall be fully allocated among all the withdrawing employers, see section 4219(c)(1)(D) of ERISA.

[56] Sec. 4044 of ERISA, as prescribed in the regulations under section 4281 of ERISA in the case of such a mass withdrawal, including section 4281.13.

[57] For purposes of the Code, but for purposes of ERISA, the bill provides, "annuity contracts purchased and portfolios implemented . . . shall not be taken into account in determining the withdrawal liability of any employer . . ."

folios to participants and beneficiaries, or (2) the remaining payments due on the loan, shall be taken into account as unfunded vested benefits in determining such withdrawal liability.

Coordination with funding rules

In the case of a plan which receives a loan from the PRA, the following shall apply with respect to the funding rules under the provision:

- Annuity contracts purchased and portfolios implemented, and the benefits provided to participants and beneficiaries under such contracts or portfolios, shall not be taken into account in determining minimum required contributions;[58]
- Payments on the interest and principal under the loan, and any benefits owed in excess of those provided under such contracts or portfolios, shall be taken into account as liabilities; and
- If such a portfolio is projected due to unfavorable investment or actuarial experience to be unable to fully satisfy the liabilities which it covers, the amount of the liabilities projected to be unsatisfied shall be taken into account as liabilities.

Coordination with taxation of unrelated business income

For purposes of determining unrelated debt-financed income, "acquisition indebtedness" does not include indebtedness with respect to a multiemployer plan under a loan made by the PRA.[59]

Reporting requirements

Under the provision, not later than the 90th day of the first plan year beginning after the date of the loan and each of the 29 succeeding plan years, the plan sponsor of a multiemployer defined benefit plan receiving a PRA loan must file a report with the Secretary (including the appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary) that contains:

1. The funded percentage[60] as of the first day of such plan year, and the underlying actuarial value of assets (determined with regard, and without regard, to annuity contracts purchased and portfolios implemented with proceeds of such loan) and liabilities (including any amounts due with respect to such loan) taken into account in determining such percentage;
2. The market value of the assets of the plan (determined with regard, and without regard, to annuity contracts purchased and portfolios implemented with proceeds of such loan) as of the last day of the plan year preceding such plan year;
3. The total value of all contributions made by employers and employees during the plan year preceding such plan year;
4. The total value of all benefits paid during the plan year preceding such plan year;
5. Cash flow projections for such plan year and the nine succeeding plan years, and the assumptions relied upon in making such projections;

[58] Under section 412 and section 302 of ERISA.
[59] Sec. 514(c)(6).
[60] As defined in section 432(j)(2).

6. Funding standard account projections for such plan year and the nine succeeding plan years, and the assumptions relied upon in making such projections;

7. The total value of all investment gains or losses during the plan year preceding such plan year;

8. Any significant reduction in the number of active participants during the plan year preceding such plan year, and the reason for such reductions;

9. A list of employers that withdrew from the plan in the plan year preceding such plan year, and the resulting reduction in contributions;

10. A list of employers that paid withdrawal liability to the plan during the plan year preceding such plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to such withdrawal liability;

11. Any material changes to benefits, accrual rates, or contribution rates during the plan year preceding such plan year, and whether such changes relate to the terms of the loan;

12. Details regarding any funding improvement plan or rehabilitation plan and updates to such plan;

13. The number of participants during the plan year preceding such plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries;

14. The amount of any financial assistance received from the PBGC [61] to pay benefits during the preceding plan year, and the total amount of such financial assistance received for all preceding plan years;

15. The information contained on the most recent annual funding notice submitted by the plan; [62]

16. The information contained on the most recent annual return and actuarial report; and

17. Copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the plan and contribution obligations under such plans, a breakdown of administrative expenses of the plan, participant census data and distribution of benefits, the most recent actuarial valuation report as of that plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary, in consultation with the Director, may require.

The report is to be submitted electronically. The Secretary shall share the information contained in the report with the Secretary of Labor and the Director of the PBGC.

Each plan sponsor required to file such a report shall, before the expiration of the time prescribed for filing the report, also provide a summary (written in a manner so as to be understood by the average plan participant) of the information in such report to participants and beneficiaries in the plan and to each contributing employer.

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[61] Sec. 4261 of ERISA.
[62] Sec. 101(f) of ERISA.

Penalty for failure to file report

If a plan sponsor fails to file a report required for plans receiving a loan from the PRA, a penalty of $100 will be imposed for each day during which the failure continues, unless it is shown that such failure is due to reasonable cause, but the penalty is not to exceed a total of $15,000 on any person for failure to file such report. Under the provision, the amount imposed is not to be paid from the assets of the plan.

Eligibility for financial assistance from PBGC

Under the provision, a plan sponsor is eligible to apply to the PBGC for financial assistance for a multiemployer defined benefit plan if the plan sponsor is applying for a loan from the PRA and the plan is:

- In critical and declining status; or
- Insolvent, but has not been terminated and is receiving PBGC financial assistance (other than assistance being provided in combination with a PRA loan).

The plan sponsor must apply by jointly submitting such applications to the PRA for the loan and the PBGC for the financial assistance. The application for financial assistance shall demonstrate, based on projections by the plan actuary, that after the receipt of the anticipated loan amount, the plan will still become (or remain) insolvent within the 30-year period beginning on the date of the loan.

Amount of financial assistance

In the case of a plan that is in critical and declining status, the financial assistance provided shall be the amount (determined by the plan actuary and submitted on the application) equal to the sum of (1) the percentage of benefits of participants and beneficiaries of the plan in pay status at the time of the application, and (2) the percentage of future benefits to which participants who have separated from service but are not yet in pay status are entitled, which if such percentage were paid by the PBGC in combination with the loan, would allow the plan to avoid the projected insolvency and be projected to have increasing assets over any five-year period following the repayment of the loan. Such amount shall not exceed the maximum guaranteed benefit with respect to all participants and beneficiaries of the plan.[63] The maximum guaranteed benefit amount is determined by disregarding any loan available from the PRA and shall be determined as if the plan were insolvent on the date of the application. The present value of the maximum guaranteed benefit amount with respect to such participants and beneficiaries may be calculated in the aggregate rather than by reference to the benefit of each such participant or beneficiary. In the case of a plan which is insolvent, the financial assistance provided shall be the amount (determined by the plan actuary and submitted on the application) which, if such amount were paid by the PBGC in combination with the loan and any other assistance being provided to the plan by the PBGC at the time of the application, would enable the plan to emerge from insolvency.

[63] Under sections 4022A and 4022B of ERISA.

Requirements under ERISA relating to conditions and repayment terms of financial assistance, and to financial assistance provided before a final determination of the amount needed by the PBGC,[64] apply to financial assistance under the provision except that the terms for repayment will not require the financial assistance to be repaid before the date on which the loan is repaid in full.

The PBGC may forego repayment of the financial assistance if necessary to avoid any suspension of the accrued benefits of participants.

There is appropriated to the Director of the PBGC such sums as may be necessary for each fiscal year to provide the financial assistance including necessary administrative and operating expenses relating to such assistance.

EFFECTIVE DATE

The provision generally applies to loans made to multiemployer plans after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the House of Representatives, the following statement is made concerning the votes of the Committee on Ways and Means during the markup consideration of H.R. 397, the “Rehabilitation for Multiemployer Pensions Act.”

The vote on the amendment offered by Mr. Arrington to the amendment in the nature of a substitute to H.R. 397, which would require plans receiving loans and financial assistance to purchase financial guarantees to cover such amounts, was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sánchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell				Ms. Walorski	X		
Ms. DelBene		X		Mr. Lahood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X					

[64] Sec. 4261(b) and (c) of ERISA.

The vote on the amendment offered by Mr. Schweikert to the amendment in the nature of a substitute to H.R. 397, which would require the Department of Treasury to conduct independent analysis of a plan's loan application, was defeated by a roll call vote of 17 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
MS. Sánchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. Lahood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X					

The vote on the amendment offered by Mr. Ferguson to the amendment in the nature of a substitute to H.R. 397, which would affect the terms of the loan and financial assistance, was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sánchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. Lahood (IL)	X		
Ms. Chu (CA)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy							
Mr. Gomez		X					
Mr. Horsford		X					

The vote on the amendment offered by Mr. Rice to the amendment in the nature of a substitute to H.R. 397, which would require a plan that receives a loan to use certain methods and assumptions for measuring liabilities, was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	....	X	....	Mr. Brady	X	....	....
Mr. Lewis	....	X	....	Mr. Nunes	X	....	....
Mr. Doggett	....	X	....	Mr. Buchanan	X	....	....
Mr. Thompson	....	X	....	Mr. Smith	X	....	....
Mr. Larson	....	X	....	Mr. Marchant	X	....	....
Mr. Blumenauer	....	X	....	Mr. Reed	X	....	....
Mr. Kind	....	X	....	Mr. Kelly	X	....	....
Mr. Pascrell	....	X	....	Mr. Holding	X	....	....
Mr. Davis	....	X	....	Mr. Smith	X	....	....
Ms. Sánchez	....	X	....	Mr. Rice	X	....	....
Mr. Higgins	....	X	....	Mr. Schweikert	X	....	....
Ms. Sewell	....	X	....	Ms. Walorski	X	....	....
Ms. DelBene	....	X	....	Mr. Lahood (IL)	X	....	....
Ms. Chu (CA)	....	X	....	Mr. Wenstrup	X	....	....
Ms. Moore	....	X	....	Mr. Arrington	X	....	....
Mr. Kildee	....	X	....	Mr. Ferguson	X	....	....
Mr. Boyle	....	X	....	Mr. Estes	X	....	....
Mr. Beyer	....	X	....				
Mr. Evans	....	X	....				
Mr. Schneider	....	X	....				
Mr. Suozzi	....	X	....				
Mr. Panetta	....	X	....				
Ms. Murphy	....	....	....				
Mr. Gomez	....	X	....				
Mr. Horsford	....	X	....				

The vote on the amendment offered by Mr. Buchanan to the amendment in the nature of a substitute to H.R. 397, which would require a plan that receives a loan to remove all plan trustees and require the Secretary of Treasury to appoint new independent trustees for the plan, was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	....	X	....	Mr. Brady	X	....	....
Mr. Lewis	....	X	....	Mr. Nunes	X	....	....
Mr. Doggett	....	X	....	Mr. Buchanan	X	....	....
Mr. Thompson	....	X	....	Mr. Smith	X	....	....
Mr. Larson	....	X	....	Mr. Marchant	X	....	....
Mr. Blumenauer	....	X	....	Mr. Reed	X	....	....
Mr. Kind	....	X	....	Mr. Kelly	X	....	....
Mr. Pascrell	....	X	....	Mr. Holding	X	....	....
Mr. Davis	....	X	....	Mr. Smith	X	....	....
Ms. Sánchez	....	X	....	Mr. Rice	X	....	....
Mr. Higgins	....	X	....	Mr. Schweikert	X	....	....
Ms. Sewell	....	X	....	Ms. Walorski	X	....	....
Ms. DelBene	....	X	....	Mr. Lahood (Il)	X	....	....
Ms. Chu (Ca)	....	X	....	Mr. Wenstrup	X	....	....
Ms. Moore	....	X	....	Mr. Arrington	X	....	....
Mr. Kildee	....	X	....	Mr. Ferguson	X	....	....
Mr. Boyle	....	X	....	Mr. Estes	X	....	....
Mr. Beyer	....	X	....				
Mr. Evans	....	X	....				
Mr. Schneider	....	X	....				
Mr. Suozzi	....	X	....				
Mr. Panetta	....	X	....				
Ms. Murphy	....	....	....				
Mr. Gomez	....	X	....				

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Horsford	....	X	....				

The vote on Mr. Thompson's motion to table Mr. Schweikert's appeal of the ruling of the chair was agreed to by a roll call vote of 24 yeas to 17 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X	....	....	Mr. Brady	....	X	....
Mr. Lewis	X	....	....	Mr. Nunes	....	X	....
Mr. Doggett	X	....	....	Mr. Buchanan	....	X	....
Mr. Thompson	X	....	....	Mr. Smith	....	X	....
Mr. Larson	X	....	....	Mr. Marchant	....	X	....
Mr. Blumenauer	X	....	....	Mr. Reed	....	X	....
Mr. Kind	X	....	....	Mr. Kelly	....	X	....
Mr. Pascrell	X	....	....	Mr. Holding	....	X	....
Mr. Davis	X	....	....	Mr. Smith	....	X	....
Ms. Sánchez	X	....	....	Mr. Rice	....	X	....
Mr. Higgins	X	....	....	Mr. Schweikert	....	X	....
Ms. Sewell	X	....	....	Ms. Walorski	....	X	....
Ms. DelBene	X	....	....	Mr. Lahood (Il)	....	X	....
Ms. Chu (Ca)	X	....	....	Mr. Wenstrup	....	X	....
Ms. Moore	X	....	....	Mr. Arrington	....	X	....
Mr. Kildee	X	....	....	Mr. Ferguson	....	X	....
Mr. Boyle	X	....	....	Mr. Estes	....	X	....
Mr. Beyer	X	....	....				
Mr. Evans	X	....	....				
Mr. Schneider	X	....	....				
Mr. Suozzi	X	....	....				
Mr. Panetta	X	....	....				
Ms. Murphy	....	....	....				
Mr. Gomez	X	....	....				
Mr. Horsford	X	....	....				

The vote on the amendment offered by Mr. Estes to the amendment in the nature of a substitute to H.R. 397, which would provide for variable rate premiums for multiemployer plans, was defeated by a roll call vote of 17 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	....	X	....	Mr. Brady	X	....	....
Mr. Lewis	....	X	....	Mr. Nunes	X	....	....
Mr. Doggett	....	X	....	Mr. Buchanan	X	....	....
Mr. Thompson	....	X	....	Mr. Smith	X	....	....
Mr. Larson	....	X	....	Mr. Marchant	X	....	....
Mr. Blumenauer	....	X	....	Mr. Reed	X	....	....
Mr. Kind	....	X	....	Mr. Kelly	X	....	....
Mr. Pascrell	....	X	....	Mr. Holding	X	....	....
Mr. Davis	....	X	....	Mr. Smith	X	....	....
Ms. Sánchez	....	X	....	Mr. Rice	X	....	....
Mr. Higgins	....	X	....	Mr. Schweikert	X	....	....
Ms. Sewell	....	X	....	Ms. Walorski	X	....	....
Ms. DelBene	....	X	....	Mr. Lahood (Il)	X	....	....
Ms. Chu (Ca)	....	X	....	Mr. Wenstrup	X	....	....
Ms. Moore	....	X	....	Mr. Arrington	X	....	....
Mr. Kildee	....	X	....	Mr. Ferguson	X	....	....
Mr. Boyle	....	X	....	Mr. Estes	X	....	....
Mr. Beyer	....	X	....				
Mr. Evans	....	X	....				
Mr. Schneider	....	X	....				
Mr. Suozzi	....	X	....				
Mr. Panetta	....	X	....				
Ms. Murphy	....	X	....				
Mr. Gomez	....	X	....				

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Horsford		X					

An amendment offered by MR. Marchant to the amendment in the nature of a substitute to H.R. 397, which would require payback of the loan if sponsoring employers have excess compensation, dividends, and redemptions, was withdrawn.

The vote on the amendment offered by MR. Smith of Nebraska to the amendment in the nature of a substitute to H.R. 397, which would require plans receiving loans to allow active participants to withdraw promised benefits to rollover into an IRA, was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sánchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. Lahood (Il)	X		
Ms. Chu (Ca)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer							
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford		X					

The vote on the amendment offered by Mr. LaHood to the amendment in the nature of a substitute to H.R. 397, which would require plans receiving loans to allow active participants to opt out of the plan and into a 401(k), was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal		X		Mr. Brady	X		
Mr. Lewis		X		Mr. Nunes	X		
Mr. Doggett		X		Mr. Buchanan	X		
Mr. Thompson		X		Mr. Smith	X		
Mr. Larson		X		Mr. Marchant	X		
Mr. Blumenauer		X		Mr. Reed	X		
Mr. Kind		X		Mr. Kelly	X		
Mr. Pascrell		X		Mr. Holding	X		
Mr. Davis		X		Mr. Smith	X		
Ms. Sánchez		X		Mr. Rice	X		
Mr. Higgins		X		Mr. Schweikert	X		
Ms. Sewell		X		Ms. Walorski	X		
Ms. DelBene		X		Mr. Lahood (Il)	X		
Ms. Chu (Ca)		X		Mr. Wenstrup	X		
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Boyle	....	X	....	Mr. Estes	X	....	....
Mr. Beyer	....	....	....				
Mr. Evans	....	X	....				
Mr. Schneider	....	X	....				
Mr. Suozzi	....	X	....				
Mr. Panetta	....	X	....				
Ms. Murphy	....	X	....				
Mr. Gomez	....	X	....				
Mr. Horsford	....	X	....				

The vote on the amendment offered by Mr. Rice to the amendment in the nature of a substitute to H.R. 397, which would change the funding and benefit rules for plans getting the loans, was defeated by a roll call vote of 17 yeas to 25 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	....	X	....	Mr. Brady	X	....	....
Mr. Lewis	....	X	....	Mr. Nunes	X	....	....
Mr. Doggett	....	X	....	Mr. Buchanan	X	....	....
Mr. Thompson	....	X	....	Mr. Smith	X	....	....
Mr. Larson	....	X	....	Mr. Marchant	X	....	....
Mr. Blumenauer	....	X	....	Mr. Reed	X	....	....
Mr. Kind	....	X	....	Mr. Kelly	X	....	....
Mr. Pascrell	....	X	....	Mr. Holding	X	....	....
Mr. Davis	....	X	....	Mr. Smith	X	....	....
Ms. Sanchez	....	X	....	Mr. Rice	X	....	....
Mr. Higgins	....	X	....	Mr. Schweikert	X	....	....
Ms. Sewell	....	X	....	Ms. Walorski	X	....	....
Ms. DelBene	....	X	....	Mr. Lahood (Il)	X	....	....
Ms. Chu (Ca)	....	X	....	Mr. Wenstrup	X	....	....
Ms. Moore	....	X	....	Mr. Arrington	X	....	....
Mr. Kildee	....	X	....	Mr. Ferguson	X	....	....
Mr. Boyle	....	X	....	Mr. Estes	X	....	....
Mr. Beyer	....	X	....				
Mr. Evans	....	X	....				
Mr. Schneider	....	X	....				
Mr. Suozzi	....	X	....				
Mr. Panetta	....	X	....				
Ms. Murphy	....	X	....				
Mr. Gomez	....	X	....				
Mr. Horsford	....	X	....				

The vote on the amendment offered by Mr. Estes to the amendment in the nature of a substitute to H.R. 397, which would expand the required disclosure for certain plans, was defeated by a roll call vote of 17 yeas to 24 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	....	X	....	Mr. Brady	X	....	....
Mr. Lewis	....	X	....	Mr. Nunes	X	....	....
Mr. Doggett	....	X	....	Mr. Buchanan	X	....	....
Mr. Thompson	....	X	....	Mr. Smith	X	....	....
Mr. Larson	....	X	....	Mr. Marchant	X	....	....
Mr. Blumenauer	....	X	....	Mr. Reed	X	....	....
Mr. Kind	....	X	....	Mr. Kelly	X	....	....
Mr. Pascrell	....	X	....	Mr. Holding	X	....	....
Mr. Davis	....	X	....	Mr. Smith	X	....	....
Ms. Sánchez	....	X	....	Mr. Rice	X	....	....
Mr. Higgins	....	X	....	Mr. Schweikert	X	....	....
Ms. Sewell	....	X	....	Ms. Walorski	X	....	....
Ms. DelBene	....	X	....	Mr. Lahood (Il)	X	....	....
Ms. Chu (Ca)	....	X	....	Mr. Wenstrup	X	....	....

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Ms. Moore		X		Mr. Arrington	X		
Mr. Kildee		X		Mr. Ferguson	X		
Mr. Boyle		X		Mr. Estes	X		
Mr. Beyer		X					
Mr. Evans		X					
Mr. Schneider		X					
Mr. Suozzi		X					
Mr. Panetta		X					
Ms. Murphy		X					
Mr. Gomez		X					
Mr. Horsford							

The Chairman's amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

H.R. 397 was ordered favorably reported to the House of Representatives as amended by a roll call vote of 25 yeas to 17 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X			Mr. Brady		X	
Mr. Lewis	X			Mr. Nunes		X	
Mr. Doggett	X			Mr. Buchanan		X	
Mr. Thompson	X			Mr. Smith (Ne)		X	
Mr. Larson	X			Mr. Marchant		X	
Mr. Blumenauer	X			Mr. Reed		X	
Mr. Kind	X			Mr. Kelly		X	
Mr. Pascrell	X			Mr. Holding		X	
Mr. Davis	X			Mr. Smith (Mo)		X	
Ms. Sánchez	X			Mr. Rice		X	
Mr. Higgins	X			Mr. Schweikert		X	
Ms. Sewell	X			Ms. Walorski		X	
Ms. DelBene	X			Mr. Lahood		X	
Ms. Chu	X			Mr. Wenstrup		X	
Ms. Moore	X			Mr. Arrington		X	
Mr. Kildee	X			Mr. Ferguson		X	
Mr. Boyle	X			Mr. Estes		X	
Mr. Beyer	X						
Mr. Evans	X						
Mr. Schneider	X						
Mr. Suozzi	X						
Mr. Panetta	X						
Ms. Murphy	X						
Mr. Gomez	X						
Mr. Horsford	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

Clause 3(d)(1) of the Rules of the House of Representatives requires an estimate and a comparison of costs that would be incurred in carrying out H.R. 397. The Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget Act of 1974. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 397, as amended.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the bill involves no new tax expenditure.

C. Cost Estimate Prepared by the Congressional Budget Office

With respects to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee has requested but not received a cost estimate for the bill from the Director of the Congressional Budget Office.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains a measure that authorizes funding, so a statement of general performance goals and objectives is required.

Section 3 of the bill creates and authorizes funding for the Pension Rehabilitation Trust Fund. The Pension Rehabilitation Administration is authorized make loans to eligible multiemployer plans from the Pension Rehabilitation Trust Fund and to collect payments of interest and principal from those plans over time. The objective of these loans is to enable the plans that receive them to avoid, or emerge from, insolvency; to enable the plans to pay benefits to those participants and beneficiaries to whom benefits are owed; to pay interest on the loan during the period of the loan; and to accumulate sufficient funds to repay the loan principal when due.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI, Clause 5(b)

Clause 5(b) of rule XXI of the Rules of the House of Representatives provides, in part, that "It shall not be in order to consider a bill, joint resolution, amendment, or conference report carrying a retroactive Federal income tax rate increase." [The Committee, after careful review, states that the bill does not involve any retroactive Federal income tax rate increase within the meaning of the rule.]

E. Tax Complexity Analysis

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the RRA because the bill contains no provision that amends the Internal Revenue Code of 1986 and has "widespread applicability" to individuals or small businesses within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report to Congress pursuant to section 21 of Pub. L. No. 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

H. Hearings

In compliance with Sec. 103(i) of H. Res. 6 (116th Congress) (1) the following hearing was used to develop or consider H.R. 397:

On February 6, 2019, the Ways and Means Committee held a hearing on "Improving Retirement Security for America's Workers."

VI. CHANGES IN EXISTING LAW MADE BY THE BILL

A. Changes in Existing Law Proposed by the Bill

Pursuant to clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter D—DEFERRED COMPENSATION, ETC.

* * * * * * *

PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS

* * * * * * *

Subpart A—MINIMUM FUNDING STANDARDS FOR PENSION PLANS

* * * * * * *

SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.

(a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period,

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period, and

(3) if the plan is in critical and declining status—

(A) the requirements of paragraph (2) shall apply to the plan; and

(B) the plan sponsor may, by plan amendment, suspend benefits in accordance with the requirements of subsection (e)(9).

(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and is not described in paragraph (5), and, as of the beginning of the plan year, either—

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

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

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

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

(ii) the sum of—

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

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

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

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

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

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

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

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

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

(D) A plan is described in this subparagraph if the sum of—

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

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

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

(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

(A) IN GENERAL.—Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year, or would be in endangered status for such plan year but for paragraph (5), whether or not the plan is or will be in critical status for such plan year or for any of the succeeding 5 plan years, and whether or not the plan is or will be in critical and declining status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Except as provided in clause (iv), in making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

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

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

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) PROJECTED INDUSTRY ACTIVITY.—Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(iv) PROJECTIONS RELATING TO CRITICAL STATUS IN SUCCEEDING PLAN YEARS.—Clauses (i) and (ii) (other than the 2nd sentence of clause (i)) may be disregarded by a plan actuary in the case of any certification of whether a plan will be in critical status in a succeeding plan year, except that a plan sponsor may not elect to be in critical status for a plan year under paragraph (4) in any case in which the certification upon which such election would be based is made without regard to such clauses.

(v) PROJECTIONS OF CRITICAL AND DECLINING STATUS.—In determining whether a plan is in critical and declining status as described in subsection (e)(9), clauses (i), (ii), and (iii) shall apply, except that—

(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e), and

(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.

(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1) of such Act.

(D) NOTICE.—

(i) IN GENERAL.—In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a plan year or in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor. In any case in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall notify the Secretary of such election not later than 30 days after the date of such certification or such other time as the Secretary may prescribe by regulations or other guidance.

(ii) PLANS IN CRITICAL STATUS.—If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) In the case of a multiemployer plan that would be in endangered status but for paragraph (5), the plan sponsor shall provide notice to the bargaining parties and the Pension Benefit Guaranty Corporation that the plan would be in endangered status but for such paragraph.

(iv) MODEL NOTICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clauses (ii) and (iii).

(v) NOTICE OF PROJECTION TO BE IN CRITICAL STATUS IN A FUTURE PLAN YEAR.—In any case in which it is certified under subparagraph (A)(i) that a multiemployer plan will be in critical status for any of 5 succeeding plan years (but not for the current plan year) and the plan sponsor of such plan has not made an election to be in critical status for the plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the projected critical status to the Pension Benefit Guaranty Corporation.

(4) ELECTION TO BE IN CRITICAL STATUS.—Notwithstanding paragraph (2) and subject to paragraph (3)(B)(iv)—

(A) the plan sponsor of a multiemployer plan that is not in critical status for a plan year but that is projected by the plan actuary, pursuant to the determination under paragraph (3), to be in critical status in any of the succeeding 5 plan years may, not later than 30 days after the date of the certification under paragraph (3)(A), elect to be in critical status effective for the current plan year,

(B) the plan year in which the plan sponsor elects to be in critical status under subparagraph (A) shall be treated for purposes of this section as the first year in which the plan is in critical status, regardless of the date on which the plan first satisfies the criteria for critical status under paragraph (2), and

(C) a plan that is in critical status under this paragraph shall not emerge from critical status except in accordance with subsection (e)(4)(B).

(5) SPECIAL RULE.—A plan is described in this paragraph if—

(A) as part of the actuarial certification of endangered status under paragraph (3)(A) for the plan year, the plan actuary certifies that the plan is projected to no longer be described in either paragraph (1)(A) or paragraph (1)(B) as of the end of the tenth plan year ending after the plan year to which the certification relates, and

(B) the plan was not in critical or endangered status for the immediately preceding plan year.

(6) CRITICAL AND DECLINING STATUS.—For purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the plan is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent).

(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including—

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

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

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term “applicable benchmarks” means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) INCREASE IN PLAN’S FUNDING PERCENTAGE.—The plan’s funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of—

(I) such percentage as of the beginning of the first plan year for which the plan is certified to be in endangered status pursuant to paragraph (b)(3), plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for the last plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

(B) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting “20 percent” for “33 percent”.

(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

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

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting “15-year period” for “10-year period”.

(C) COORDINATION WITH CHANGES IN STATUS.—

(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan’s actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) PLANS IN CRITICAL STATUS.—If the plan’s actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) PLANS IN ENDANGERED STATUS AT END OF PERIOD.—If the plan’s actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) SPECIAL RULES FOR SERIOUSLY ENDANGERED PLANS MORE THAN 70 PERCENT FUNDED.—

(A) IN GENERAL.—If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year—

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) SPECIAL RULE AFTER EXPIRATION OF AGREEMENTS.—Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) UPDATES TO FUNDING IMPROVEMENT PLANS AND SCHEDULES.—

(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(B) SCHEDULES.—The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) IMPOSITION OF SCHEDULE WHERE FAILURE TO ADOPT FUNDING IMPROVEMENT PLAN.—

(A) INITIAL CONTRIBUTION SCHEDULE.—If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (C).

(B) SUBSEQUENT CONTRIBUTION SCHEDULE.—If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan in accordance with a schedule provided by the plan sponsor pursuant to a funding improvement plan (or imposed under subparagraph (A)) expires while the plan is still in endangered status, and

(ii) after receiving one or more updated schedules from the plan sponsor under paragraph (6)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated funding improvement plan and a schedule from the plan sponsor,

then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in subparagraph (C).

(C) DATE OF IMPLEMENTATION.—The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) or (B) expires.

(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term "funding plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS.—

(1) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the funding improvement plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to meet the applicable benchmark on the schedule contemplated in the funding improvement plan.

(2) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the date of the adoption of a funding improvement plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

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

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless 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.

(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year

shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) REHABILITATION PLAN.—For purposes of this section—

(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(ii) SCHEDULES.—The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) IMPOSITION OF SCHEDULE WHERE FAILURE TO ADOPT REHABILITATION PLAN.—

(i) INITIAL CONTRIBUTION SCHEDULE.—If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (iii).

(ii) SUBSEQUENT CONTRIBUTION SCHEDULE.—If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan in accordance with a schedule provided by the plan sponsor pursuant to a rehabilitation plan (or imposed under subparagraph (C)(i)) expires while the plan is still in critical status, and

(II) after receiving one or more updated schedules from the plan sponsor under subparagraph (B)(ii), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated rehabilitation plan and a schedule from the plan sponsor,

then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in clause (iii).

(iii) DATE OF IMPLEMENTATION.—The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in clause (ii) or (iii) expires.

(4) REHABILITATION PERIOD.—For purposes of this section—

(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

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

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) EMERGENCE.—

(i) IN GENERAL.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that—

(I) the plan is not described in one or more of the subparagraphs in subsection (b)(2) as of the beginning of the plan year,

(II) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d)(2) or section 412(e) (as in effect prior to the enactment of the Pension Protection Act of 2006), and

(III) the plan is not projected to become insolvent within the meaning of section 418E for any of the 30 succeeding plan years.

(ii) PLANS WITH CERTAIN AMORTIZATION EXTENSIONS.—

(I) SPECIAL EMERGENCE RULE.—Notwithstanding clause (i), a plan in critical status that has an automatic extension of amortization periods under section 431(d)(1) shall no longer be in critical status if the plan actuary certifies for a plan year, in accordance with subsection (b)(3)(A), that—

(aa) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d)(1), and

(bb) the plan is not projected to become insolvent within the meaning of section 418E for any of the 30 succeeding plan years,

regardless of whether the plan is described in one or more of the subparagraphs in subsection (b)(2) as of the beginning of the plan year.

(II) REENTRY INTO CRITICAL STATUS.—A plan that emerges from critical status under subclause (I) shall not reenter critical status for any subsequent plan year unless—

(aa) the plan is projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d), or

(bb) the plan is projected to become insolvent within the meaning of section 418E for any of the 30 succeeding plan years.

(5) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term "rehabilitation plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under the

default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below—

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) AUTOMATIC EMPLOYER SURCHARGE.—

(A) IMPOSITION OF SURCHARGE.—Each employer otherwise obligated to make a contribution for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contribution otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contribution otherwise so required.

(B) ENFORCEMENT OF SURCHARGE.—The surcharges under subparagraph (A) shall be due and payable on the same schedule as the contributions on which the surcharges are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 of the Employee Retirement Income Security Act of 1974 and shall be enforceable as such.

(C) SURCHARGE TO TERMINATE UPON COLLECTIVE BARGAINING AGREEMENT RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

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

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

(8) BENEFIT ADJUSTMENTS.—

(A) ADJUSTABLE BENEFITS.—

(i) IN GENERAL.—Notwithstanding section 411(d)(6), the plan sponsor shall, subject to the notice requirement under subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) EXCEPTION FOR RETIREES.—Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

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

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

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) NORMAL RETIREMENT BENEFITS PROTECTED.—Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) NOTICE REQUIREMENTS.—

(i) IN GENERAL.—No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to—

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

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

(ii) CONTENT OF NOTICE.—The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) FORM AND MANNER.—Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in regulations of the Secretary, in consultation with the Secretary of Labor,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

The Secretary shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(9) BENEFIT SUSPENSIONS FOR MULTIEMPLOYER PLANS IN CRITICAL AND DECLINING STATUS.—

(A) IN GENERAL.—Notwithstanding section 411(d)(6) and subject to subparagraphs (B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits which the sponsor deems appropriate.

(B) SUSPENSION OF BENEFITS.—

(i) SUSPENSION OF BENEFITS DEFINED.—For purposes of this subsection, the term "suspension of benefits" means the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.

(ii) LENGTH OF SUSPENSIONS.—Any suspension of benefits made under subparagraph (A) shall remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with subparagraph (E) or the suspension of benefits expires by its own terms.

(iii) NO LIABILITY.—The plan shall not be liable for any benefit payments not made as a result of a suspension of benefits under this paragraph.

(iv) APPLICABILITY.—For purposes of this paragraph, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants shall also apply with respect to benefits of beneficiaries or alternative payees of participants.

(v) RETIREE REPRESENTATIVE.—

(I) IN GENERAL.—In the case of a plan with 10,000 or more participants, not later than 60 days prior to the plan sponsor submitting an application to suspend benefits, the plan sponsor shall select a participant of the plan in pay status to act as a retiree representative. The retiree representative shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

(II) REASONABLE EXPENSES FROM PLAN.—The plan shall provide for reasonable expenses by the retiree representative, including reasonable legal and actuarial support, commensurate with the plan's size and funded status.

(III) SPECIAL RULE RELATING TO FIDUCIARY STATUS.—Duties performed pursuant to subclause (I) shall not be subject to section 4975. The preceding sentence shall not apply to those duties associated with an application to suspend benefits pursuant to subparagraph (G) that are performed by the retiree representative who is also a plan trustee.

(C) CONDITIONS FOR SUSPENSIONS.—The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the following conditions are met:

(i) Taking into account the proposed suspensions of benefits (and, if applicable, a proposed partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974), the plan actuary certifies that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or if no such expiration date is set, indefinitely.

(ii) The plan sponsor determines, in a written record to be maintained throughout the period of the benefit suspension, that the plan is still projected to become insolvent unless benefits are suspended under this paragraph, although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension). In its determination, the plan sponsor may take into account factors including the following:

(I) Current and past contribution levels.

(II) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals).

(III) Prior reductions (if any) of adjustable benefits.

(IV) Prior suspensions (if any) of benefits under this subsection.

(V) The impact on plan solvency of the subsidies and ancillary benefits available to active participants.

(VI) Compensation levels of active participants relative to employees in the participants' industry generally.

(VII) Competitive and other economic factors facing contributing employers.

(VIII) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan.

(IX) The impact of past and anticipated contribution increases under the plan on employer attrition and retention levels.

(X) Measures undertaken by the plan sponsor to retain or attract contributing employers.

(D) LIMITATIONS ON SUSPENSIONS.—Any suspensions of benefits made by a plan sponsor pursuant to this paragraph shall be subject to the following limitations:

(i) The monthly benefit of any participant or beneficiary may not be reduced below 110 percent of the monthly benefit which is guaranteed by the Pension Benefit Guaranty Corporation under section 4022A of the Employee Retirement Income Security Act of 1974 on the date of the suspension.

(ii)(I) In the case of a participant or beneficiary who has attained 75 years of age as of the effective date of the suspension, not more than the applicable percentage of the maximum suspendable benefits of such participant or beneficiary may be suspended under this paragraph.

(II) For purposes of subclause (I), the maximum suspendable benefits of a participant or beneficiary is the portion of the benefits of such participant or beneficiary that would be suspended pursuant to this paragraph without regard to this clause;

(III) For purposes of subclause (I), the applicable percentage is a percentage equal to the quotient obtained by dividing—

(aa) the number of months during the period beginning with the month after the month in which occurs the effective date of the suspension and ending with the month during which the participant or beneficiary attains the age of 80, by

(bb) 60 months.

(iii) No benefits based on disability (as defined under the plan) may be suspended under this paragraph.

(iv) Any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

(v) In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974, the suspension of benefits may not take effect prior to the effective date of such partition.

(vi) Any suspensions of benefits shall be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the following:

(I) Age and life expectancy.

(II) Length of time in pay status.

(III) Amount of benefit.

(IV) Type of benefit: survivor, normal retirement, early retirement.

(V) Extent to which participant or beneficiary is receiving a subsidized benefit.

(VI) Extent to which participant or beneficiary has received post-retirement benefit increases.

(VII) History of benefit increases and reductions.

(VIII) Years to retirement for active employees.

(IX) Any discrepancies between active and retiree benefits.

(X) Extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status.

(XI) Extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability.

(vii) In the case of a plan that includes the benefits described in clause (III), benefits suspended under this paragraph shall—

(I) first, be applied to the maximum extent permissible to benefits attributable to a participant's service for an employer which withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of the Employee Retirement Income Security Act of 1974 or an agreement with the plan,

(II) second, except as provided by subclause (III), be applied to all other benefits that may be suspended under this paragraph, and

(III) third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer which has, prior to the date of enactment of the Multiemployer Pension Reform Act of 2014—

(aa) withdrawn from the plan in a complete withdrawal under section 4203 of the Employee Retirement Income Security Act of 1974 and has paid the full amount of the employer's withdrawal liability under section 4201(b)(1) of such Act or an agreement with the plan, and

(bb) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(E) BENEFIT IMPROVEMENTS.—

(i) IN GENERAL.—The plan sponsor may, in its sole discretion, provide benefit improvements while any suspension of benefits under the plan remains in effect, except that the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless—

(I) such action is accompanied by equitable benefit improvements in accordance with clause (ii) for all participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement for such participant or beneficiary not in pay status took effect; and

(II) the plan actuary certifies that after taking into account such benefits improvements the plan is projected to avoid insolvency indefinitely under section 418E.

(ii) EQUITABLE DISTRIBUTION OF BENEFIT IMPROVEMENTS.—

(I) LIMITATION.—The projected value of the total liabilities for benefit improvements for participants and beneficiaries not in pay status by the date of the first day of the plan year in which the benefit improvements are proposed to take effect, as determined as of such date, may not exceed the projected value of the liabilities arising from benefit improvements for participants and beneficiaries with benefit commencement dates prior to the first day of such plan year, as so determined.

(II) EQUITABLE DISTRIBUTION OF BENEFITS.—The plan sponsor shall equitably distribute any increase in total liabilities for benefit improvements in clause (i) to some or all of the participants and beneficiaries whose benefit commencement date is before the date of the first day of the plan year in which the benefit improvements are proposed to take effect, taking into account the relevant factors described in subparagraph (D)(vi) and the extent to which the benefits of the participants and beneficiaries were suspended.

(iii) SPECIAL RULE FOR RESUMPTIONS OF BENEFITS ONLY FOR PARTICIPANTS IN PAY STATUS.—The plan sponsor may increase liabilities of the plan through a resumption of benefits for participants and beneficiaries in pay status only if the plan sponsor equitably distributes the value of resumed benefits to some or all of the participants and beneficiaries in pay status, taking into account the relevant factors described in subparagraph (D)(vi).

(iv) SPECIAL RULE FOR CERTAIN BENEFIT INCREASES.—This subparagraph shall not apply to a resumption of suspended benefits or plan amendment which increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvements took effect which—

(I) the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan, or

(II) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A or to comply with other applicable law, as determined by the Secretary of the Treasury.

(v) ADDITIONAL LIMITATIONS.—Except for resumptions of suspended benefits described in clause (iii), the limitations on benefit improvements while a suspension of benefits is in effect under this paragraph shall be in addition to any other applicable limitations on increases in benefits imposed on a plan.

(vi) DEFINITION OF BENEFIT IMPROVEMENT.—For purposes of this subparagraph, the term “benefit improvement” means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan.

(F) NOTICE REQUIREMENTS.—

(i) IN GENERAL.—No suspension of benefits may be made pursuant to this paragraph unless notice of such proposed suspension has been given by the plan sponsor concurrently with an application for approval of such suspension submitted under subparagraph (G) to the Secretary of the Treasury to—

(I) such plan participants and beneficiaries who may be contacted by reasonable efforts,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

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

(ii) CONTENT OF NOTICE.—The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any suspensions of benefits, including an individualized estimate (on an annual or monthly basis) of such effect on each participant or beneficiary,

(II) a description of the factors considered by the plan sponsor in designing the benefit suspensions,

(III) a statement that the application for approval of any suspension of benefits shall be available on the website of the Department of the Treasury and that comments on such application will be accepted,

(IV) information as to the rights and remedies of plan participants and beneficiaries,

(V) if applicable, a statement describing the appointment of a retiree representative, the date of appointment of such representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact such representative, and

(VI) information on how to contact the Department of the Treasury for further information and assistance where appropriate.

(iii) FORM AND MANNER.—Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in guidance by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, notwithstanding any other provision of law,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

(iv) OTHER NOTICE REQUIREMENT.—Any notice provided under clause (i) shall fulfill the requirement for notice of a significant reduction in benefits described in section 4980F.

(v) MODEL NOTICE.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty

Corporation and the Secretary of Labor, shall in the guidance prescribed under clause (iii)(I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(G) APPROVAL PROCESS BY THE SECRETARY OF THE TREASURY IN CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION AND THE SECRETARY OF LABOR.—

(i) IN GENERAL.—The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application to the Secretary of the Treasury for approval of the suspensions of benefits. If the plan sponsor submits an application for approval of the suspensions, the Secretary of the Treasury shall approve, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, the application upon finding that the plan is eligible for the suspensions and has satisfied the criteria of subparagraphs (C), (D), (E), and (F).

(ii) SOLICITATION OF COMMENTS.—Not later than 30 days after receipt of the application under clause (i), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish a notice in the Federal Register soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made and other interested parties. The application for approval of the suspension of benefits shall be published on the website of the Department of the Treasury.

(iii) REQUIRED ACTION; DEEMED APPROVAL.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve or deny any application for suspensions of benefits under this paragraph within 225 days after the submission of such application. An application for suspension of benefits shall be deemed approved unless, within such 225 days, the Secretary of the Treasury notifies the plan sponsor that it has failed to satisfy one or more of the criteria described in this paragraph. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, rejects a plan sponsor's application, the Secretary of the Treasury shall provide notice to the plan sponsor detailing the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of an application shall be treated as final agency action for purposes of section 704 of title 5, United States Code.

(iv) AGENCY REVIEW.—In evaluating whether the plan sponsor has met the criteria specified in clause (ii) of subparagraph (C), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall review the plan sponsor's consideration of factors under such clause.

(v) STANDARD FOR ACCEPTING PLAN SPONSOR DETERMINATIONS.—In evaluating the plan sponsor's application, the Secretary of the Treasury shall accept the plan sponsor's determinations unless it concludes, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan sponsor's determinations were clearly erroneous.

(H) PARTICIPANT RATIFICATION PROCESS.—

(i) IN GENERAL.—No suspension of benefits may take effect pursuant to this paragraph prior to a vote of the participants of the plan with respect to the suspension.

(ii) ADMINISTRATION OF VOTE.—Not later than 30 days after approval of the suspension by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (G), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall administer a vote of participants and beneficiaries of the plan. Except as provided in clause (v), the suspension shall go into effect following the vote unless a majority of all participants and beneficiaries of the plan vote to reject the suspension. The plan sponsor may submit a new suspension application to the Secretary of the Treasury for approval in any case in which a suspension is prohibited from taking effect pursuant to a vote under this subparagraph.

(iii) BALLOTS.—The plan sponsor shall provide a ballot for the vote (subject to approval by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor) that includes the following:

(I) A statement from the plan sponsor in support of the suspension.

(II) A statement in opposition to the suspension compiled from comments received pursuant to subparagraph (G)(ii).

(III) A statement that the suspension has been approved by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor.

(IV) A statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect.

(V) A statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension.

(VI) A statement that insolvency of the Pension Benefit Guaranty Corporation would result in benefits lower than benefits paid in the case of plan insolvency.

(iv) COMMUNICATION BY PLAN SPONSOR.—It is the sense of Congress that, depending on the size and resources of the plan and geographic distribution of the plan's participants, the plan sponsor should take such steps as may be necessary to inform participants about proposed benefit suspensions through in-person meetings, telephone or internet-based communications, mailed information, or by other means.

(v) SYSTEMICALLY IMPORTANT PLANS.—

(I) IN GENERAL.—Not later than 14 days after a vote under this subparagraph rejecting a suspension, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall determine whether the plan is a systemically important plan. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines that the plan is a systemically important plan, not later than the end of the 90-day period beginning on the date the results of the vote are certified, the Secretary of the Treasury shall, notwithstanding such adverse vote—

(aa) permit the implementation of the suspension proposed by the plan sponsor; or

(bb) permit the implementation of a modification by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of such suspension (so long as the plan is projected to avoid insolvency within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974 under such modification).

(II) RECOMMENDATIONS.—Not later than 30 days after a determination by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan is systemically important, the Participant and Plan Sponsor Advocate selected under section 4004 of the Employee Retirement Income Security Act of 1974 may submit recommendations to the Secretary of the Treasury with respect to the suspension or any revisions to the suspension.

(III) SYSTEMICALLY IMPORTANT PLAN DEFINED.—

(aa) IN GENERAL.—For purposes of this subparagraph, a systemically important plan is a plan with respect to which the Pension Benefit Guaranty Corporation projects the present value of projected financial assistance payments exceeds $1,000,000,000 if suspensions are not implemented.

(bb) INDEXING.—For calendar years beginning after 2015, there shall be substituted for the dollar amount specified in item (aa) an amount equal to the product of such dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is such contribution and benefit base for calendar year 2014. If the amount otherwise determined under this item is not a multiple of $1,000,000, such amount shall be rounded to the next lowest multiple of $1,000,000.

(vi) FINAL AUTHORIZATION TO SUSPEND.—In any case in which a suspension goes into effect following a vote pursuant to clause (ii) (or following a determination under clause (v) that the plan is a systemically important plan), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall issue a final authorization to suspend with respect to the suspension not later than 7 days after such vote (or, in the case of a suspension that goes into effect under clause (v), at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period described in clause (v)(I)).

(I) JUDICIAL REVIEW.—

(i) DENIAL OF APPLICATION.—An action by the plan sponsor challenging the denial of an application for suspension of benefits by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, may only be brought following such denial.

(ii) APPROVAL OF SUSPENSION OF BENEFITS.—

(I) TIMING OF ACTION.—An action challenging a suspension of benefits under this paragraph may only be brought following a final authorization to suspend by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (H)(vi).

(II) STANDARDS OF REVIEW.—

(aa) IN GENERAL.—A court shall review an action challenging a suspension of benefits under this paragraph in accordance with section 706 of title 5, United States Code.

(bb) TEMPORARY INJUNCTION.—A court reviewing an action challenging a suspension of benefits under this paragraph may not grant a temporary injunction with respect to such suspension unless the court finds a clear and convincing likelihood that the plaintiff will prevail on the merits of the case.

(iii) RESTRICTED CAUSE OF ACTION.—A participant or beneficiary affected by a benefit suspension under this paragraph shall not have a cause of action under this title.

(iv) LIMITATION ON ACTION TO SUSPEND BENEFITS.—No action challenging a suspension of benefits following the final authorization to suspend or the denial of an application for suspension of benefits pursuant to this paragraph may be brought after one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(J) SPECIAL RULE FOR EMERGENCE FROM CRITICAL STATUS.—A plan certified to be in critical and declining status pursuant to projections made under subsection (b)(3) for which a suspension of benefits has been made by the plan sponsor pursuant to this paragraph shall not emerge from critical status under paragraph (4)(B), until such time as—

(i) the plan is no longer certified to be in critical or endangered status under paragraphs (1) and (2) of subsection (b), and

(ii) the plan is projected to avoid insolvency under section 418E.

(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

(1) COMPLIANCE WITH REHABILITATION PLAN.—

(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the date of the adoption of a rehabilitation plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

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

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless 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.

(g) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

(1) BENEFIT REDUCTION.—Any benefit reductions under subsection (e)(8) or (f), or benefit reductions or suspensions while in critical and declining status under subsection (e)(9), unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status, shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

(2) SURCHARGES.—Any surcharges under subsection (e)(7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 of the Employee Retirement Income Security Act of 1974 and in determining the highest contribution rate under section 4219(c) of such Act, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) of such Act or a comparable method approved under section 4211(c)(5) of such Act.

(3) CONTRIBUTION INCREASES REQUIRED BY FUNDING IMPROVEMENT OR REHABILITATION PLAN.—

(A) IN GENERAL.—Any increase in the contribution rate (or other increase in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) that is required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 of such Act and in determining the highest contribution rate under section 4219(c) of such Act, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) of such Act or a comparable method approved under section 4211(c)(5) of such Act.

(B) SPECIAL RULES.—For purposes of this paragraph, any increase in the contribution rate (or other increase in contribution requirements) shall be deemed to be required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan except for increases in contribution requirements due to increased levels of work, employment, or periods for which compensation is provided or additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by subsection (d)(1)(B) or (f)(1)(B).

(4) EMERGENCE FROM ENDANGERED OR CRITICAL STATUS.—In the case of increases in the contribution rate (or other increases in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) disregarded pursuant to paragraph (3), this subsection shall cease to apply as of the expiration date of the collective bargaining agreement in effect when the plan emerges from endangered or critical status. Notwithstanding the preceding sentence, once the plan emerges from critical or endangered status, increases in the contribution rate disregarded pursuant to paragraph (3) shall continue to be disregarded in determining the highest contribution rate under section 4219(c) of such Act for plan years during which the plan was in endangered or critical status.

(5) SIMPLIFIED CALCULATIONS.—The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this subsection in determining withdrawal liability and payment amounts under section 4219(c) of such Act.

(h) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(i) NONBARGAINED PARTICIPATION.—

(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the non-

bargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(j) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

(1) BARGAINING PARTY.—The term "bargaining party" means—

(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) FUNDED PERCENTAGE.—The term "funded percentage" means the percentage equal to a fraction—

(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

(3) ACCUMULATED FUNDING DEFICIENCY.—The term "accumulated funding deficiency" has the meaning given such term in section 431(a).

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

(5) INACTIVE PARTICIPANT.—The term "inactive participant" means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

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

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

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

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

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

(7) OBLIGATION TO CONTRIBUTE.—The term "obligation to contribute" has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) PLAN SPONSOR.—For purposes of this section, section 431, and section 4971(g):

(A) IN GENERAL.—The term "plan sponsor" means, with respect to any multiemployer plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(B) SPECIAL RULE FOR SECTION 404(C) PLANS.—In the case of a plan described in section 404(c) (or a continuation of such plan), such term means the bargaining parties described in paragraph (1).

(10) BENEFIT COMMENCEMENT DATE.—The term "benefit commencement date" means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(k) SPECIAL RULES FOR PLANS RECEIVING PENSION REHABILITATION LOANS.—

(1) DETERMINATION OF WITHDRAWAL LIABILITY.—

(A) IN GENERAL.—If any employer participating in a plan at the time the plan receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 withdraws from the plan before the end of the 30-year period beginning on the date of the loan, the withdrawal liability of such employer shall be determined under the Employee Retirement Income Security Act of 1974—

(i) by applying section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 as if the plan were terminating by the withdrawal of every employer from the plan, and

(ii) by determining the value of nonforfeitable benefits under the plan at the time of the deemed termination by using the interest assumptions prescribed for purposes of section 4044 of the Employee Retirement Income Security Act of 1974, as prescribed in the regulations under section 4281 of the Employee Retirement Income Security Act of 1974 in the case of such a mass withdrawal.

(B) ANNUITY CONTRACTS AND INVESTMENT PORTFOLIOS PURCHASED WITH LOAN FUNDS.—Annuity contracts purchased and portfolios implemented under section 4(d)(3) of the Rehabilitation for Multiemployer Pensions Act of 2019 shall not be taken into account as plan assets in deter-

mining the withdrawal liability of any employer under subparagraph (A), but the amount equal to the greater of—

(i) the benefits provided under such contracts or portfolios to participants and beneficiaries, or

(ii) the remaining payments due on the loan under section 4(a) of such Act,

shall be taken into account as unfunded vested benefits in determining such withdrawal liability.

(2) COORDINATION WITH FUNDING REQUIREMENTS.—In the case of a plan which receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019—

(A) annuity contracts purchased and portfolios implemented under section 4(d)(3) of such Act, and the benefits provided to participants and beneficiaries under such contracts or portfolios, shall not be taken into account in determining minimum required contributions under section 412,

(B) payments on the interest and principal under the loan, and any benefits owed in excess of those provided under such contracts or portfolios, shall be taken into account as liabilities for purposes of such section, and

(C) if such a portfolio is projected due to unfavorable investment or actuarial experience to be unable to fully satisfy the liabilities which it covers, the amount of the liabilities projected to be unsatisfied shall be taken into account as liabilities for purposes of such section.

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Subchapter F—EXEMPT ORGANIZATIONS

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PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

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SEC. 514. UNRELATED DEBT-FINANCED INCOME.

(a) UNRELATED DEBT-FINANCED INCOME AND DEDUCTIONS.—In computing under section 512 the unrelated business taxable income for any taxable year—

(1) PERCENTAGE OF INCOME TAKEN INTO ACCOUNT.—There shall be included with respect to each debt-financed property as an item of gross income derived from an unrelated trade or business an amount which is the same percentage (but not in excess of 100 percent) of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness (as defined in subsection (c)(7)) for the taxable year with respect to the property is of (B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of such property during the period it is held by the organization during such taxable year.

(2) PERCENTAGE OF DEDUCTIONS TAKEN INTO ACCOUNT.—There shall be allowed as a deduction with respect to each debt-financed property an amount determined by applying (except as provided in the last sentence of this paragraph) the

percentage derived under paragraph (1) to the sum determined under paragraph (3). The percentage derived under this paragraph shall not be applied with respect to the deduction of any capital loss resulting from the carryback or carryover of net capital losses under section 1212.

(3) DEDUCTIONS ALLOWABLE.—The sum referred to in paragraph (2) is the sum of the deductions under this chapter which are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is of a character which is subject to the allowance for depreciation provided in section 167, the allowance shall be computed only by use of the straight-line method.

(b) DEFINITION OF DEBT-FINANCED PROPERTY.—

(1) IN GENERAL.—For purposes of this section, the term "debt-financed property" means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year (or, if the property was disposed of during the taxable year, with respect to which there was an acquisition indebtedness at any time during the 12-month period ending with the date of such disposition), except that such term does not include—

(A)(i) any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function designated in section 501(c)(3)), or (ii) any property to which clause (i) does not apply, to the extent that its use is so substantially related;

(B) except in the case of income excluded under section 512(b)(5), any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business;

(C) any property to the extent that the income from such property is excluded by reason of the provisions of paragraph (7), (8), or (9) of section 512(b) in computing the gross income of any unrelated trade or business;

(D) any property to the extent that it is used in any trade or business described in paragraph (1), (2), or (3) of section 513(a); or

(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(19) in computing the gross income of any unrelated trade or business.

For purposes of subparagraph (A), substantially all the use of a property shall be considered to be substantially related to the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 if such property is real property subject to a lease to a medical clinic entered into primarily for purposes which are substantially related (aside from the need of such organization for income or funds or the use it makes of the rents derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

(2) SPECIAL RULE FOR RELATED USES.—For purposes of applying paragraphs (1) (A), (C), and (D), the use of any property by an exempt organization which is related to an organization shall be treated as use by such organization.

(3) SPECIAL RULES WHEN LAND IS ACQUIRED FOR EXEMPT USE WITHIN 10 YEARS.—

(A) NEIGHBORHOOD LAND.—If an organization acquires real property for the principal purpose of using the land (commencing within 10 years of the time of acquisition) in the manner described in paragraph (1)(A) and at the time of acquisition the property is in the neighborhood of other property owned by the organization which is used in such manner, the real property acquired for such future use shall not be treated as debt-financed property so long as the organization does not abandon its intent to so use the land within the 10-year period. The preceding sentence shall not apply for any period after the expiration of the 10-year period, and shall apply after the first 5 years of the 10-year period only if the organization establishes to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the described manner before the expiration of the 10-year period.

(B) OTHER CASES.—If the first sentence of subparagraph (A) is inapplicable only because—

(i) the acquired land is not in the neighborhood referred to in subparagraph (A), or

(ii) the organization (for the period after the first 5 years of the 10-year period) is unable to establish to the satisfaction of the Secretary that it is reasonably certain that the land will be used in the manner described in paragraph (1)(A) before the expiration of the 10-year period,

but the land is converted to such use by the organization within the 10-year period, the real property (subject to the provisions of subparagraph (D)) shall not be treated as debt-financed property for any period before such conversion. For purposes of this subparagraph, land shall not be treated as used in the manner described in paragraph (1)(A) by reason of the use made of any structure which was on the land when acquired by the organization.

(C) LIMITATIONS.—Subparagraphs (A) and (B)—

(i) shall apply with respect to any structure on the land when acquired by the organization, or to the land occupied by the structure, only if (and so long as) the intended future use of the land in the manner described in paragraph (1)(A) requires that the structure be demolished or removed in order to use the land in such manner;

(ii) shall not apply to structures erected on the land after the acquisition of the land; and

(iii) shall not apply to property subject to a lease which is a business lease (as defined in this section immediately before the enactment of the Tax Reform Act of 1976).

(D) REFUND OF TAXES WHEN SUBPARAGRAPH (B) APPLIES.—If an organization for any taxable year has not used land in the manner to satisfy the actual use condition of subparagraph (B) before the time prescribed by law (including extensions thereof) for filing the return for such taxable year, the tax for such year shall be computed without regard to the application of subparagraph (B), but if and when such use condition is satisfied, the provisions of subparagraph (B) shall then be applied to such taxable year. If the actual use condition of subparagraph (B) is satisfied for any taxable year after such time for filing the return, and if credit or refund of any overpayment for the taxable year resulting from the satisfaction of such use condition is prevented at the close of the taxable year in which the use condition is satisfied, by the operation of any law or rule of law (other than chapter 74, relating to closing agreements and compromises), credit or refund of such overpayment may nevertheless be allowed or made if claim therefor is filed before the expiration of 1 year after the close of the taxable year in which the use condition is satisfied.

(E) SPECIAL RULE FOR CHURCHES.—In applying this paragraph to a church or convention or association of churches, in lieu of the 10-year period referred to in subparagraphs (A) and (B) a 15-year period shall be applied, and subparagraphs (A) and (B)(ii) shall apply whether or not the acquired land meets the neighborhood test.

(c) ACQUISITION INDEBTEDNESS.—

(1) GENERAL RULE.—For purposes of this section, the term "acquisition indebtedness" means, with respect to any debt-financed property, the unpaid amount of—

(A) the indebtedness incurred by the organization in acquiring or improving such property;

(B) the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(C) the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

(2) PROPERTY ACQUIRED SUBJECT TO MORTGAGE, ETC..—For purposes of this subsection—

(A) GENERAL RULE.—Where property (no matter how acquired) is acquired subject to a mortgage or other similar lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the organization incurred in acquiring such property even though the organization did not assume or agree to pay such indebtedness.

(B) EXCEPTIONS.—Where property subject to a mortgage is acquired by an organization by bequest or devise, the indebtedness secured by the mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of the acquisition. If an organization acquires property by gift subject to a mortgage which was placed on the property more than 5 years before the gift, which property was held by the donor more than 5 years before the gift, the indebtedness secured by such mortgage shall not be treated as acquisition indebtedness during a period of 10 years following the date of such gift. This subparagraph shall not apply if the organization, in order to acquire the equity in the property by bequest, devise, or gift, assumes and agrees to pay the indebtedness secured by the mortgage, or if the organization makes any payment for the equity in the property owned by the decedent or the donor.

(C) LIENS FOR TAXES OR ASSESSMENTS.—Where State law provides that—

(i) a lien for taxes, or

(ii) a lien for assessments,

made by a State or a political subdivision thereof attaches to property prior to the time when such taxes or assessments become due and payable, then such lien shall be treated as similar to a mortgage (within the meaning of subparagraph (A)) but only after such taxes or assessments become due and payable and the organization has had an opportunity to pay such taxes or assessments in accordance with State law.

(3) EXTENSION OF OBLIGATIONS.—For purposes of this section, an extension, renewal, or refinancing of an obligation evidencing a pre-existing indebtedness shall not be treated as the creation of a new indebtedness.

(4) INDEBTEDNESS INCURRED IN PERFORMING EXEMPT PURPOSE.—For purposes of this section, the term "acquisition indebtedness" does not include indebtedness the incurrence of which is inherent in the performance or exercise of the purpose or function constituting the basis of the organization's exemption, such as the indebtedness incurred by a credit union described in section 501(c)(14) in accepting deposits from its members.

(5) ANNUITIES.—For purposes of this section, the term "acquisition indebtedness" does not include an obligation to pay an annuity which—

(A) is the sole consideration (other than a mortgage to which paragraph (2)(B) applies) issued in exchange for property if, at the time of the exchange, the value of the annuity is less than 90 percent of the value of the property received in the exchange,

(B) is payable over the life of one individual in being at the time the annuity is issued, or over the lives of two individuals in being at such time, and

(C) is payable under a contract which—

(i) does not guarantee a minimum amount of payments or specify a maximum amount of payments, and

(ii) does not provide for any adjustment of the amount of the annuity payments by reference to the income received from the transferred property or any other property.

(6) CERTAIN FEDERAL FINANCING.—

(A) IN GENERAL.—For purposes of this section, the term "acquisition indebtedness" does not include—

(i) an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, **[**or**]**

(ii) indebtedness incurred by a small business investment company licensed after the date of the enactment of the American Jobs Creation Act of 2004 under the Small Business Investment Act of 1958 if such indebtedness is evidenced by a debenture—

(I) issued by such company under section 303(a) of such Act, and

(II) held or guaranteed by the Small Business Administration**[**.**]***, or*

(iii) indebtedness with respect to a multiemployer plan under a loan made by the Pension Rehabilitation Administration pursuant to section 4 of the Rehabilitation for Multiemployer Pensions Act of 2019.

(B) LIMITATION.—Subparagraph (A)(ii) shall not apply with respect to any small business investment company during any period that—

(i) any organization which is exempt from tax under this title (other than a governmental unit) owns more than 25 percent of the capital or profits interest in such company, or

(ii) organizations which are exempt from tax under this title (including governmental units other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.

(7) AVERAGE ACQUISITION INDEBTEDNESS.—For purposes of this section, the term "average acquisition indebtedness" for any taxable year with respect to a debt-financed property means the average amount, determined under regulations prescribed by the Secretary of the acquisition indebtedness during the period the property is held by the organization during the taxable year, except that for the purpose of computing the percentage of any gain or loss to be taken into account on a sale or other disposition of debt-financed property, such term means the highest amount of the acquisition indebtedness with respect to such property during the 12-month period ending with the date of the sale or other disposition.

(8) SECURITIES SUBJECT TO LOANS.—For purposes of this section—

(A) payments with respect to securities loans (as defined in section 512(a)(5)) shall be deemed to be derived from the securities loaned and not from collateral security or the investment of collateral security from such loans,

(B) any deductions which are directly connected with collateral security for such loan, or with the investment of collateral security, shall be deemed to be deductions which are directly connected with the securities loaned, and

(C) an obligation to return collateral security shall not be treated as acquisition indebtedness (as defined in paragraph (1)).

(9) REAL PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "acquisition indebtedness" does not, for purposes of this section, include indebtedness incurred by a qualified organization in acquiring or improving any real property. For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.

(B) EXCEPTIONS.—The provisions of subparagraph (A) shall not apply in any case in which—

(i) the price for the acquisition or improvement is not a fixed amount determined as of the date of the acquisition or the completion of the improvement;

(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

(iii) the real property is at any time after the acquisition leased by the qualified organization to the person selling such property to such organization or to any person who bears a relationship described in section 267(b) or 707(b) to such person;

(iv) the real property is acquired by a qualified trust from, or is at any time after the acquisition leased by such trust to, any person who—

(I) bears a relationship which is described in subparagraph (C), (E), or (G) of section 4975(e)(2) to any plan with respect to which such trust was formed, or

(II) bears a relationship which is described in subparagraph (F) or (H) of section 4975(e)(2) to any person described in subclause (I);

(v) any person described in clause (iii) or (iv) provides the qualified organization with financing in connection with the acquisition or improvement; or

(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

(I) all of the partners of the partnership are qualified organizations,

(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(h)(6)), or

(III) such partnership meets the requirements of subparagraph (E).

For purposes of subclause (I) of clause (vi), an organization shall not be treated as a qualified organization if any income of such organization is unrelated business taxable income.

(C) QUALIFIED ORGANIZATION.—For purposes of this paragraph, the term "qualified organization" means—

(i) an organization described in section 170(b)(1)(A)(ii) and its affiliated support organizations described in section 509(a)(3);

(ii) any trust which constitutes a qualified trust under section 401;

(iii) an organization described in section 501(c)(25); or

(iv) a retirement income account described in section 403(b)(9).

(D) OTHER PASS-THRU ENTITIES; TIERED ENTITIES.—Rules similar to the rules of subparagraph (B)(vi) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(E) CERTAIN ALLOCATIONS PERMITTED.—

(i) IN GENERAL.—A partnership meets the requirements of this subparagraph if—

(I) the allocation of items to any partner which is a qualified organization cannot result in such partner having a share of the overall partnership income for any taxable year greater than such partner's share of the overall partnership loss for the taxable year for which such partner's loss share will be the smallest, and

(II) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this clause, items allocated under section 704(c) shall not be taken into account.

(ii) SPECIAL RULES.—

(I) CHARGEBACKS.—Except as provided in regulations, a partnership may without violating the requirements of this subparagraph provide for chargebacks with respect to disproportionate losses previously allocated to qualified organizations and disproportionate income previously allocated to other partners. Any chargeback referred to in the preceding sentence shall not be at a ratio in excess of the ratio under which the loss or income (as the case may be) was allocated.

(II) PREFERRED RATES OF RETURN, ETC..—To the extent provided in regulations, a partnership may without violating the requirements of this subparagraph provide for reasonable preferred returns or reasonable guaranteed payments.

(iii) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations which may provide for exclusion or segregation of items.

(F) SPECIAL RULES FOR ORGANIZATIONS DESCRIBED IN SECTION 501(C)(25).—

(i) IN GENERAL.—In computing under section 512 the unrelated business taxable income of a disqualified holder of an interest in an organization described in section 501(c)(25), there shall be taken into account—

(I) as gross income derived from an unrelated trade or business, such holder's pro rata share of the items of income described in clause (ii)(I) of such organization, and

(II) as deductions allowable in computing unrelated business taxable income, such holder's pro rata share of the items of deduction described in clause (ii)(II) of such organization.

Such amounts shall be taken into account for the taxable year of the holder in which (or with which) the taxable year of such organization ends.

(ii) DESCRIPTION OF AMOUNTS.—For purposes of clause (i)—

(I) gross income is described in this clause to the extent such income would (but for this paragraph) be treated under subsection (a) as derived from an unrelated trade or business, and

(II) any deduction is described in this clause to the extent it would (but for this paragraph) be allowable under subsection (a)(2) in computing unrelated business taxable income.

(iii) DISQUALIFIED HOLDER.—For purposes of this subparagraph, the term "disqualified holder" means any shareholder (or beneficiary) which is not described in clause (i) or (ii) of subparagraph (C).

(G) SPECIAL RULES FOR PURPOSES OF THE EXCEPTIONS.—Except as otherwise provided by regulations—

(i) SMALL LEASES DISREGARDED.—For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building (or complex of buildings) is covered by the lease and if the lease is on commercially reasonable terms.

(ii) COMMERCIALLY REASONABLE FINANCING.—Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

(H) QUALIFYING SALES BY FINANCIAL INSTITUTIONS.—

(i) IN GENERAL.—In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

(ii) QUALIFYING SALE.—For purposes of this clause, there is a qualifying sale by a financial institution if—

(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

(III) the present value (determined as of the time of the sale and by using the applicable Federal rate determined under section 1274(d)) of the maximum amount payable pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property cannot exceed 30 percent of the total purchase price of the property (including the contingent payments).

(iii) PROPERTY TO WHICH SUBPARAGRAPH APPLIES.—Property is described in this clause if such property is foreclosure property, or is real property which—

(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

(II) was held by the financial institution at the time it entered into conservatorship or receivership.

(iv) FINANCIAL INSTITUTION.—For purposes of this subparagraph, the term "financial institution" means—

(I) any financial institution described in section 581 or 591(a),

(II) any other corporation which is a direct or indirect subsidiary of an institution referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

(v) FORECLOSURE PROPERTY.—For purposes of this subparagraph, the term "foreclosure property" means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured.

(d) BASIS OF DEBT-FINANCED PROPERTY ACQUIRED IN CORPORATE LIQUIDATION.—For purposes of this subtitle, if the property was acquired in a complete or partial liquidation of a corporation in exchange for its stock, the basis of the property shall be the same as it would be in the hands of the transferor corporation, increased by the amount of gain recognized to the transferor corporation upon such distribution and by the amount of any gain to the organization which was included, on account of such distribution, in unrelated business taxable income under subsection (a).

(e) ALLOCATION RULES.—Where debt-financed property is held for purposes described in subsection (b)(1)(A), (B), (C), or (D) as well as for other purposes, proper allocation shall be made with respect to basis, indebtedness, and income and deductions. The allocations required by this section shall be made in accordance with regulations prescribed by the Secretary to the extent proper to carry out the purposes of this section.

(f) PERSONAL PROPERTY LEASED WITH REAL PROPERTY.—For purposes of this section, the term "real property" includes personal property of the lessor leased by it to a lessee of its real estate if the lease of such personal property is made under, or in connection with, the lease of such real estate.

(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the circumvention of any provision of this section through the use of segregated asset accounts.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—RETURNS AND RECORDS

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PART III—INFORMATION RETURNS

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Subpart E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

Sec. 6057. Annual registration, etc.

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Sec. 6059A. Reports of plans receiving pension rehabilitation loans.

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SEC. 6059A. REPORTS OF PLANS RECEIVING PENSION REHABILITATION LOANS.

(a) IN GENERAL.—In the case of a plan receiving a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019, with respect to the first plan year beginning after the date of the loan and each of the 29 succeeding plan years, not later than the 90th day of each such plan year the plan sponsor shall file with the Secretary a report (including appropriate documentation and actuarial certifications from the plan actuary, as required by the Secretary) that contains—

(1) the funded percentage (as defined in section 432(j)(2)) as of the first day of such plan year, and the underlying actuarial value of assets (determined with regard, and without regard, to annuity contracts purchased and portfolios implemented with proceeds of such loan) and liabilities (including any amounts due with respect to such loan) taken into account in determining such percentage,

(2) the market value of the assets of the plan (determined as provided in paragraph (1)) as of the last day of the plan year preceding such plan year,

(3) the total value of all contributions made by employers and employees during the plan year preceding such plan year,

(4) the total value of all benefits paid during the plan year preceding such plan year,

(5) cash flow projections for such plan year and the 9 succeeding plan years, and the assumptions used in making such projections,

(6) funding standard account projections for such plan year and the 9 succeeding plan years, and the assumptions relied upon in making such projections,

(7) the total value of all investment gains or losses during the plan year preceding such plan year,

(8) any significant reduction in the number of active participants during the plan year preceding such plan year, and the reason for such reduction,

(9) a list of employers that withdrew from the plan in the plan year preceding such plan year, and the resulting reduction in contributions,

(10) a list of employers that paid withdrawal liability to the plan during the plan year preceding such plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to such withdrawal liability,

(11) any material changes to benefits, accrual rates, or contribution rates during the plan year preceding such plan year, and whether such changes relate to the terms of the loan,

(12) details regarding any funding improvement plan or rehabilitation plan and updates to such plan,

(13) the number of participants during the plan year preceding such plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries,

(14) the amount of any financial assistance received under section 4261 of the Employee Retirement Income Security Act of

1974 to pay benefits during the preceding plan year, and the total amount of such financial assistance received for all preceding years,

(15) the information contained on the most recent annual funding notice submitted by the plan under section 101(f) of the Employee Retirement Income Security Act of 1974,

(16) the information contained on the most recent annual return under section 6058 and actuarial report under section 6059 of the plan, and

(17) copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the plan and contribution obligations under such plans, a breakdown of administrative expenses of the plan, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary, in consultation with the Director of the Pension Rehabilitation Administration, may require.

(b) ELECTRONIC SUBMISSION.—The report required under subsection (a) shall be submitted electronically.

(c) INFORMATION SHARING.—The Secretary shall share the information in the report under subsection (a) with the Secretary of Labor and the Director of the Pension Benefit Guaranty Corporation.

(d) REPORT TO PARTICIPANTS, BENEFICIARIES, AND EMPLOYERS.—Each plan sponsor required to file a report under subsection (a) shall, before the expiration of the time prescribed for the filing of such report, also provide a summary (written in a manner so as to be understood by the average plan participant) of the information in such report to participants and beneficiaries in the plan and to each employer with an obligation to contribute to the plan.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

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PART I—GENERAL PROVISIONS

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SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.

(a) RETURNS WITH RESPECT TO CERTAIN PAYMENTS AGGREGATING LESS THAN $10.—In the case of each failure to file a statement of a payment to another person required under the authority of—

(1) section 6042(a)(2) (relating to payments of dividends aggregating less than $10), or

(2) section 6044(a)(2) (relating to payments of patronage dividends aggregating less than $10),

on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to so file the statement, $1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed $1,000.

(b) FAILURE TO REPORT TIPS.—In the case of failure by an employee to report to his employer on the date and in the manner prescribed therefor any amount of tips required to be so reported by section 6053(a) which are wages (as defined in section 3121(a)) or which are compensation (as defined in section 3231(e)), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be paid by the employee, in addition to the tax imposed by section 3101 or section 3201 (as the case may be) with respect to the amount of tips which he so failed to report, an amount equal to 50 percent of such tax.

(c) RETURNS BY EXEMPT ORGANIZATIONS AND BY CERTAIN TRUSTS.—

(1) ANNUAL RETURNS UNDER SECTION 6033(A)(1) OR 6012(A)(6).—

(A) PENALTY ON ORGANIZATION.—In the case of—

(i) a failure to file a return required under section 6033(a)(1) (relating to returns by exempt organizations) or section 6012(a)(6) (relating to returns by political organizations) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), or

(ii) a failure to include any of the information required to be shown on a return filed under section 6033(a)(1) or section 6012(a)(6) or to show the correct information,

there shall be paid by the exempt organization $20 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 return shall not exceed the lesser of $10,000 or 5 percent of the gross receipts of the organization for the year. In the case of an organization having gross receipts exceeding $1,000,000 for any year, with respect to the return required under section 6033(a)(1) or section 6012(a)(6) for such year, in applying the first sentence of this subparagraph, the amount of the penalty for each day during which a failure continues shall be $100 in lieu of the amount otherwise specified, and, in lieu of applying the second sentence of this subparagraph, the maximum penalty under this subparagraph shall not exceed $50,000.

(B) MANAGERS.—

(i) IN GENERAL.—The Secretary may make a written demand on any organization subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the return shall be filed (or the information furnished) for purposes of this subparagraph.

(ii) FAILURE TO COMPLY WITH DEMAND.—If any person fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by the person failing to so comply $10 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return shall not exceed $5,000.

(C) PUBLIC INSPECTION OF ANNUAL RETURNS AND REPORTS.—In the case of a failure to comply with the requirements of section 6104(d) with respect to any annual return on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing) or report required under section 527(j), there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all persons for failures with respect to any 1 return or report shall not exceed $10,000.

(D) PUBLIC INSPECTION OF APPLICATIONS FOR EXEMPTION AND NOTICE OF STATUS.—In the case of a failure to comply with the requirements of section 6104(d) with respect to any exempt status application materials (as defined in such section) or notice materials (as defined in such section) on the date and in the manner prescribed therefor, there shall be paid by the person failing to meet such requirements $20 for each day during which such failure continues.

(E) NO PENALTY FOR CERTAIN ANNUAL NOTICES.—This paragraph shall not apply with respect to any notice required under section 6033(i).

(2) RETURNS UNDER SECTION 6034 OR 6043(B).—

(A) PENALTY ON ORGANIZATION OR TRUST.—In the case of a failure to file a return required under section 6034 (relating to returns by certain trusts) or section 6043(b) (relating to terminations, etc., of exempt organizations), on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the exempt organization or trust failing so to file $10 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization or trust for failure to file any 1 return shall not exceed $5,000.

(B) MANAGERS.—The Secretary may make written demand on an organization or trust failing to file under subparagraph (A) specifying therein a reasonable future date by which such filing shall be made for purposes of this subparagraph. If such filing is not made on or before such date, there shall be paid by the person failing so to file $10 for each day after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to file any 1 return shall not exceed $5,000.

(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

(ii) in the case of any trust with gross income in excess of $250,000, in applying the first sentence of paragraph (1)(A), the amount of the penalty for each day during which a failure continues shall be $100 in lieu of the amount otherwise specified, and in lieu of applying the second sentence of paragraph (1)(A), the maximum penalty under paragraph (1)(A) shall not exceed $50,000, and

(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.

(3) DISCLOSURE UNDER SECTION 6033(A)(2).—

(A) PENALTY ON ENTITIES.—In the case of a failure to file a disclosure required under section 6033(a)(2), there shall be paid by the tax-exempt entity (the entity manager in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4965(c)) $100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed $50,000.

(B) WRITTEN DEMAND.—

(i) IN GENERAL.—The Secretary may make a written demand on any entity or manager subject to penalty under subparagraph (A) specifying therein a reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.

(ii) FAILURE TO COMPLY WITH DEMAND.—If any entity or manager fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such entity or manager failing to so comply $100 for each day after the expiration of the time specified in such demand during which such failure continues. The maximum penalty imposed under this subparagraph on all entities and managers for failures with respect to any 1 disclosure shall not exceed $10,000.

(C) DEFINITIONS.—Any term used in this section which is also used in section 4965 shall have the meaning given such term under section 4965.

(4) NOTICES UNDER SECTION 506.—

(A) PENALTY ON ORGANIZATION.—In the case of a failure to submit a notice required under section 506(a) (relating to organizations required to notify Secretary of intent to operate as 501(c)(4)) on the date and in the manner prescribed therefor, there shall be paid by the organization failing to so submit $20 for each day during which such failure continues, but the total amount imposed under this subparagraph on any organization for failure to submit any one notice shall not exceed $5,000.

(B) MANAGERS.—The Secretary may make written demand on an organization subject to penalty under subparagraph (A) specifying in such demand a reasonable future date by which the notice shall be submitted for purposes of this subparagraph. If such notice is not submitted on or before such date, there shall be paid by the person failing to so submit $20 for each day after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed under this subparagraph on all persons for failure to submit any one notice shall not exceed $5,000.

(5) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this subsection with respect to any failure if it is shown that such failure is due to reasonable cause.

(6) OTHER SPECIAL RULES.—

(A) TREATMENT AS TAX.—Any penalty imposed under this subsection shall be paid on notice and demand of the Secretary and in the same manner as tax.

(B) JOINT AND SEVERAL LIABILITY.—If more than 1 person is liable under this subsection for any penalty with respect to any failure, all such persons shall be jointly and severally liable with respect to such failure.

(C) PERSON.—For purposes of this subsection, the term "person" means any officer, director, trustee, employee, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(7) ADJUSTMENT FOR INFLATION.—

(A) IN GENERAL.—In the case of any failure relating to a return required to be filed in a calendar year beginning after 2014, each of the dollar amounts under paragraphs (1), (2), and (3) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year determined by substituting "calendar year 2013" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(B) ROUNDING.—If any amount adjusted under subparagraph (A)—

(i) is not less than $5,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

(ii) is not described in clause (i) and is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.

(d) ANNUAL REGISTRATION AND OTHER NOTIFICATION BY PENSION PLAN.—

(1) REGISTRATION.—In the case of any failure to file a registration statement required under section 6057(a) (relating to annual registration of certain plans) which includes all partici-

pants required to be included in such statement, on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, an amount equal to $1 for each participant with respect to whom there is a failure to file, multiplied by the number of days during which such failure continues, but the total amount imposed under this paragraph on any person for any failure to file with respect to any plan year shall not exceed $5,000.

(2) NOTIFICATION OF CHANGE OF STATUS.—In the case of failure to file a notification required under section 6057(b) (relating to notification of change of status) on the date prescribed therefor (determined without regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, $1 for each day during which such failure continues, but the total amounts imposed under this paragraph on any person for failure to file any notification shall not exceed $1,000.

(e) INFORMATION REQUIRED IN CONNECTION WITH CERTAIN PLANS OF DEFERRED COMPENSATION, ETC..—In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation)*, 6059A (relating to reports of plans receiving pension rehabilitation loans)*, 6047 (relating to information relating to certain trusts and annuity and bond purchase plans), or 6039D (relating to returns and records with respect to certain fringe benefit plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, $25 *($100 in the case of failures under section 6059A)* for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $15,000. This subsection shall not apply to any return or statement which is an information return described in section 6724(d)(1)(C)(ii) or a payee statement described in section 6724(d)(2)(AA). *In the case of a failure with respect to section 6059A, the amount imposed under this subsection shall not be paid from the assets of the plan.*

(f) RETURNS REQUIRED UNDER SECTION 6039C.—

(1) IN GENERAL.—In the case of each failure to make a return required by section 6039C which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the amount determined under paragraph (2) shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to make such return.

(2) AMOUNT OF PENALTY.—For purposes of paragraph (1), the amount determined under this paragraph with respect to any

failure shall be $25 for each day during which such failure continues.

(3) LIMITATION.—The amount determined under paragraph (2) with respect to any person for failing to meet the requirements of section 6039C for any calendar year shall not exceed the lesser of—

(A) $25,000, or

(B) 5 percent of the aggregate of the fair market value of the United States real property interests owned by such person at any time during such year.

For purposes of the preceding sentence, fair market value shall be determined as of the end of the calendar year (or, in the case of any property disposed of during the calendar year, as of the date of such disposition).

(h) FAILURE TO GIVE NOTICE TO RECIPIENTS OF CERTAIN PENSION, ETC., DISTRIBUTIONS.—In the case of each failure to provide notice as required by section 3405(e)(10)(B), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $10 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $5,000.

(i) FAILURE TO GIVE WRITTEN EXPLANATION TO RECIPIENTS OF CERTAIN QUALIFYING ROLLOVER DISTRIBUTIONS.—In the case of each failure to provide a written explanation as required by section 402(f), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such written explanation, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.

(j) FAILURE TO FILE CERTIFICATION WITH RESPECT TO CERTAIN RESIDENTIAL RENTAL PROJECTS.—In the case of each failure to provide a certification as required by section 142(d)(7) at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such certification, an amount equal to $100 for each such failure.

(k) FAILURE TO MAKE REPORTS REQUIRED UNDER SECTION 1202.—In the case of a failure to make a report required under section 1202(d)(1)(C) which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to make such report, an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard, the preceding sentence shall be applied by substituting "$100" for "$50". In the case of a report covering periods in 2 or more years, the penalty determined under preceding provisions of this subsection shall be multiplied by the number of such years. No penalty shall be imposed under this subsection on any failure which is shown to be due to reasonable cause and not willful neglect.

(l) FAILURE TO FILE RETURN WITH RESPECT TO CERTAIN CORPORATE TRANSACTIONS.—In the case of any failure to make a return required under section 6043(c) containing the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to file such return, an amount equal to $500 for each day during which such failure continues, but the total amount imposed under this subsection with respect to any return shall not exceed $100,000.

(m) ALCOHOL AND TOBACCO TAXES.—For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

(n) FAILURE TO MAKE REPORTS REQUIRED UNDER SECTIONS 3511, 6053(C)(8), AND 7705.—In the case of a failure to make a report required under section 3511, 6053(c)(8), or 7705 which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to make such report, an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard the preceding sentence shall be applied by substituting “$100” for “$50”.

(o) FAILURE TO PROVIDE NOTICES WITH RESPECT TO QUALIFIED SMALL EMPLOYER HEALTH REIMBURSEMENT ARRANGEMENTS.—In the case of each failure to provide a written notice as required by section 9831(d)(4), unless it is shown that such failure is due to reasonable cause and not willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such written notice, an amount equal to $50 per employee per incident of failure to provide such notice, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $2,500.

(p) FAILURE TO PROVIDE NOTICE UNDER SECTION 83(I).—In the case of each failure to provide a notice as required by section 83(i)(6), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—ESTABLISHMENT OF TRUST FUNDS

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SEC. 9512. PENSION REHABILITATION TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Pension Rehabilitation Trust Fund" (hereafter in this section referred to as the "Fund"), consisting of such amounts as may be appropriated or credited to the Fund as provided in this section and section 9602(b).

(b) TRANSFERS TO FUND.—

(1) AMOUNTS ATTRIBUTABLE TO TREASURY BONDS.—There shall be credited to the Fund the amounts transferred under section 6 of the Rehabilitation for Multiemployer Pensions Act of 2019.

(2) LOAN INTEREST AND PRINCIPAL.—

(A) IN GENERAL.—The Director of the Pension Rehabilitation Administration established under section 2 of the Rehabilitation for Multiemployer Pensions Act of 2019 shall deposit in the Fund any amounts received from a plan as payment of interest or principal on a loan under section 4 of such Act.

(B) INTEREST.—For purposes of subparagraph (A), the term "interest" includes points and other similar amounts.

(3) TRANSFERS FROM SECRETARY.—The Director of the Pension Rehabilitation Administration shall deposit in the Fund any amounts received from the Secretary under section 2(c) of such Act.

(4) AVAILABILITY OF FUNDS.—Amounts credited to or deposited in the Fund shall remain available until expended.

(c) EXPENDITURES FROM FUND.—Amounts in the Fund are available without further appropriation to the Pension Rehabilitation Administration—

(1) for the purpose of making the loans described in section 4 of the Rehabilitation for Multiemployer Pensions Act of 2019,

(2) for the payment of principal and interest on obligations issued under section 6 of such Act, and

(3) for administrative and operating expenses of such Administration.

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EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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SUBTITLE B—REGULATORY PROVISIONS

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PART 3—FUNDING

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SEC. 305. (a) GENERAL RULE.—For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period,

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period, and

(3) if the plan is in critical and declining status—

(A) the requirements of paragraph (2) shall apply to the plan; and

(B) the plan sponsor may, by plan amendment, suspend benefits in accordance with the requirements of subsection (e)(9).

(b) DETERMINATION OF ENDANGERED AND CRITICAL STATUS.—For purposes of this section—

(1) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and is not described in paragraph (5), and, as of the beginning of the plan year, either—

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

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

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

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

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

(ii) the sum of—

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

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

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

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 304(d), or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 304(d).

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

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

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

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

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

(D) A plan is described in this subparagraph if the sum of—

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

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

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

(3) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

(A) IN GENERAL.—Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year, whether or not the plan is or will be in critical status for such plan yearor for any of the succeeding 5 plan years, and whether or not the plan is or will be in critical and declining status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Except as provided in clause (iv), in making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 103(d) with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

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

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

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) PROJECTED INDUSTRY ACTIVITY.—Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(iv) PROJECTIONS RELATING TO CRITICAL STATUS IN SUCCEEDING PLAN YEARS.—Clauses (i) and (ii) (other than the 2nd sentence of clause (i)) may be disregarded by a plan actuary in the case of any certification of whether a plan will be in critical status in a succeeding plan year, except that a plan sponsor may not elect to be in critical status for a plan year under paragraph (4) in any case in which the certification upon which such election would be based is made without regard to such clauses.

(iv) PROJECTIONS OF CRITICAL AND DECLINING STATUS.—In determining whether a plan is in critical and declining status as described in subsection (e)(9), clauses (i), (ii), and (iii) shall apply, except that—

(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e), and

(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.

(C) PENALTY FOR FAILURE TO SECURE TIMELY ACTUARIAL CERTIFICATION.—Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1).

(D) NOTICE.—

(i) IN GENERAL.—In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a plan year or in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary. In any case in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall notify the Secretary of the Treasury of such election not later than 30 days after the date of such certification or such other time as the Secretary of the Treasury may prescribe by regulations or other guidance.

(ii) PLANS IN CRITICAL STATUS.—If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) In the case of a multiemployer plan that would be in endangered status but for paragraph (5), the plan sponsor shall provide notice to the bargaining parties and the Pension Benefit Guaranty Corporation that the plan would be in endangered status but for such paragraph.

(iv) MODEL NOTICE.—The Secretary of the Treasury, in consultation with the Secretary shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clauses (ii) and (iii).

(v) NOTICE OF PROJECTION TO BE IN CRITICAL STATUS IN A FUTURE PLAN YEAR.—In any case in which it is certified under subparagraph (A)(i) that a multiemployer plan will be in critical status for any of 5 succeeding plan years (but not for the current plan year) and the plan sponsor of such plan has not made an election to be in critical status for the plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the projected critical status to the Pension Benefit Guaranty Corporation.

(4) ELECTION TO BE IN CRITICAL STATUS.—Notwithstanding paragraph (2) and subject to paragraph (3)(B)(iv)—

(A) the plan sponsor of a multiemployer plan that is not in critical status for a plan year but that is projected by the plan actuary, pursuant to the determination under paragraph (3), to be in critical status in any of the succeeding 5 plan years may, not later than 30 days after the date of the certification under paragraph (3)(A), elect to be in critical status effective for the current plan year,

(B) the plan year in which the plan sponsor elects to be in critical status under subparagraph (A) shall be treated for purposes of this section as the first year in which the plan is in critical status, regardless of the date on which the plan first satisfies the criteria for critical status under paragraph (2), and

(C) a plan that is in critical status under this paragraph shall not emerge from critical status except in accordance with subsection (e)(4)(B).

(5) SPECIAL RULE.—A plan is described in this paragraph if—

(A) as part of the actuarial certification of endangered status under paragraph (3)(A) for the plan year, the plan actuary certifies that the plan is projected to no longer be described in either paragraph (1)(A) or paragraph (1)(B) as of the end of the tenth plan year ending after the plan year to which the certification relates, and

(B) the plan was not in critical or endangered status for the immediately preceding plan year.

(6) CRITICAL AND DECLINING STATUS.—For purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the plan is projected to become insolvent within the meaning of section 4245 during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent).

(c) FUNDING IMPROVEMENT PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including—

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

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

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term "applicable benchmarks" means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) FUNDING IMPROVEMENT PLAN.—For purposes of this section—

(A) IN GENERAL.—A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) INCREASE IN PLAN'S FUNDING PERCENTAGE.—The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of—

(I) such percentage as of the beginning of the first plan year for which the plan is certified to be in endangered status pursuant to paragraph (b)(3), plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

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

(B) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting "20 percent" for "33 percent".

(4) FUNDING IMPROVEMENT PERIOD.—For purposes of this section—

(A) IN GENERAL.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

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

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) SERIOUSLY ENDANGERED PLANS.—In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting "15-year period" for "10-year period".

(C) COORDINATION WITH CHANGES IN STATUS.—

(i) PLANS NO LONGER IN ENDANGERED STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) PLANS IN CRITICAL STATUS.—If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) PLANS IN ENDANGERED STATUS AT END OF PERIOD.—If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) SPECIAL RULES FOR SERIOUSLY ENDANGERED PLANS MORE THAN 70 PERCENT FUNDED.—

(A) IN GENERAL.—If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year—

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) SPECIAL RULE AFTER EXPIRATION OF AGREEMENTS.—Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104.

(B) SCHEDULES.—The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) IMPOSITION OF SCHEDULE WHERE FAILURE TO ADOPT FUNDING IMPROVEMENT PLAN.—

(A) INITIAL CONTRIBUTION SCHEDULE.—If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (C).

(B) SUBSEQUENT CONTRIBUTION SCHEDULE.—If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan in accordance with a schedule provided by the plan sponsor pursuant to a funding improvement plan (or imposed under subparagraph (A)) expires while the plan is still in endangered status, and

(ii) after receiving one or more updated schedules from the plan sponsor under paragraph (6)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated funding improvement plan and a schedule from the plan sponsor,

then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in subparagraph (C).

(C) DATE OF IMPLEMENTATION.—The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) or (B) expires.

(D) FAILURE TO MAKE SCHEDULED CONTRIBUTIONS.—Any failure to make a contribution under a schedule of contribution rates provided under this paragraph shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.

(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term "funding plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS.—

(1) COMPLIANCE WITH FUNDING IMPROVEMENT PLAN.—

(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the funding improvement plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to meet the applicable benchmark on the schedule contemplated in the funding improvement plan.

(2) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the date of the adoption of a funding improvement plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

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

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless 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.

(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 204(g)) have been reduced to the maximum extent permitted by law.

(2) EXCEPTION FOR YEARS AFTER PROCESS BEGINS.—Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) REHABILITATION PLAN.—For purposes of this section—

(A) IN GENERAL.—A rehabilitation plan is a plan which consists of—

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) UPDATES TO REHABILITATION PLAN AND SCHEDULES.—

(i) REHABILITATION PLAN.—The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104.

(ii) SCHEDULES.—The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) DURATION OF SCHEDULE.—A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) IMPOSITION OF SCHEDULE WHERE FAILURE TO ADOPT REHABILITATION PLAN.—

(i) INITIAL CONTRIBUTION SCHEDULE.—If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (iii).

(ii) SUBSEQUENT CONTRIBUTION SCHEDULE.—If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan in accordance with a schedule provided by the plan sponsor pursuant to a rehabilitation plan (or imposed under subparagraph (C)(i)) expires while the plan is still in critical status, and

(II) after receiving one or more updated schedules from the plan sponsor under subparagraph (B)(ii), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated rehabilitation plan and a schedule from the plan sponsor, then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in clause (iii).

(iii) DATE OF IMPLEMENTATION.—The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) or (ii) expires.

(iv) FAILURE TO MAKE SCHEDULED CONTRIBUTIONS.—Any failure to make a contribution under a schedule of contribution rates provided under this subsection shall be treated as a delinquent contribution under section 515 and shall be enforceable as such.

(4) REHABILITATION PERIOD.—For purposes of this section—

(A) IN GENERAL.—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

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

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) EMERGENCE.—

(i) IN GENERAL.—A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that—

(I) the plan is not described in one or more of the subparagraphs in subsection (b)(2) as of the beginning of the plan year;

(II) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 304(d)(2) or section 304 (as in effect prior to the enactment of the Pension Protection Act of 2006); and

(III) the plan is not projected to become insolvent within the meaning of section 4245 for any of the 30 succeeding plan years.

(ii) PLANS WITH CERTAIN AMORTIZATION EXTENSIONS.—

(I) SPECIAL EMERGENCE RULE.—Notwithstanding clause (i), a plan in critical status that has an automatic extension of amortization periods under section 304(d)(1) shall no longer be in critical status if the plan actuary certifies for a plan year, in accordance with subsection (b)(3)(A), that—

(aa) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 304(d)(1); and

(bb) the plan is not projected to become insolvent within the meaning of section 4245 for any of the 30 succeeding plan years,

regardless of whether the plan is described in one or more of the subparagraphs in subsection (b)(2) as of the beginning of the plan year.

(II) REENTRY INTO CRITICAL STATUS.—A plan that emerges from critical status under subclause (I) shall not reenter critical status for any subsequent plan year unless—

(aa) the plan is projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 304(d); or

(bb) the plan is projected to become insolvent within the meaning of section 4245 for any of the 30 succeeding plan years.

(5) REHABILITATION PLAN ADOPTION PERIOD.—For purposes of this section, the term "rehabilitation plan adoption period" means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any reduction in the rate of future accruals under the default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below—

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) AUTOMATIC EMPLOYER SURCHARGE.—

(A) IMPOSITION OF SURCHARGE.—Each employer otherwise obligated to make contributions for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contributions otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contributions otherwise so required.

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

(C) SURCHARGE TO TERMINATE UPON COLLECTIVE BARGAINING AGREEMENT RENEGOTIATION.—The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

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

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

(8) BENEFIT ADJUSTMENTS.—

(A) ADJUSTABLE BENEFITS.—

(i) IN GENERAL.—Notwithstanding section 204(g), the plan sponsor shall, subject to the notice requirements in subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) EXCEPTION FOR RETIREES.—Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

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

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

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 204(g)(2)(A)) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 4022A on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) NORMAL RETIREMENT BENEFITS PROTECTED.—Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) NOTICE REQUIREMENTS.—

(i) IN GENERAL.—No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to—

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a)) under the plan, and

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

(ii) CONTENT OF NOTICE.—The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) FORM AND MANNER.—Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in regulations of the Secretary of the Treasury, in consultation with the Secretary,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

The Secretary of the Treasury shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(9) BENEFIT SUSPENSIONS FOR MULTIEMPLOYER PLANS IN CRITICAL AND DECLINING STATUS.—

(A) IN GENERAL.—Notwithstanding section 204(g) and subject to subparagraphs (B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits which the sponsor deems appropriate.

(B) SUSPENSION OF BENEFITS.—

(i) SUSPENSION OF BENEFITS DEFINED.—For purposes of this subsection, the term "suspension of benefits" means the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.

(ii) LENGTH OF SUSPENSIONS.—Any suspension of benefits made under subparagraph (A) shall remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with subparagraph (E) or the suspension of benefits expires by its own terms.

(iii) NO LIABILITY.—The plan shall not be liable for any benefit payments not made as a result of a suspension of benefits under this paragraph.

(iv) APPLICABILITY.—For purposes of this paragraph, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants shall also apply with respect to benefits of beneficiaries or alternative payees of participants.

(v) RETIREE REPRESENTATIVE.—

(I) IN GENERAL.—In the case of a plan with 10,000 or more participants, not later than 60 days prior to the plan sponsor submitting an application to suspend benefits, the plan sponsor shall select a participant of the plan in pay status to act as a retiree representative. The retiree representative shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

(II) REASONABLE EXPENSES FROM PLAN.—The plan shall provide for reasonable expenses by the retiree representative, including reasonable legal and actuarial support, commensurate with the plan's size and funded status.

(III) SPECIAL RULE RELATING TO FIDUCIARY STATUS.—Duties performed pursuant to subclause (I) shall not be subject to section 404(a). The preceding sentence shall not apply to those duties associated with an application to suspend benefits pursuant to subparagraph (G) that are performed by the retiree representative who is also a plan trustee.

(C) CONDITIONS FOR SUSPENSIONS.—The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the following conditions are met:

(i) Taking into account the proposed suspensions of benefits (and, if applicable, a proposed partition of the plan under section 4233), the plan actuary certifies that the plan is projected to avoid insolvency within the meaning of section 4245, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or if no such expiration date is set, indefinitely.

(ii) The plan sponsor determines, in a written record to be maintained throughout the period of the benefit suspension, that the plan is still projected to become insolvent unless benefits are suspended under this paragraph, although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension). In its determination, the plan sponsor may take into account factors including the following:

(I) Current and past contribution levels.

(II) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals).

(III) Prior reductions (if any) of adjustable benefits.

(IV) Prior suspensions (if any) of benefits under this subsection.

(V) The impact on plan solvency of the subsidies and ancillary benefits available to active participants.

(VI) Compensation levels of active participants relative to employees in the participants' industry generally.

(VII) Competitive and other economic factors facing contributing employers.

(VIII) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan.

(IX) The impact of past and anticipated contribution increases under the plan on employer attrition and retention levels.

(X) Measures undertaken by the plan sponsor to retain or attract contributing employers.

(D) LIMITATIONS ON SUSPENSIONS.—Any suspensions of benefits made by a plan sponsor pursuant to this paragraph shall be subject to the following limitations:

(i) The monthly benefit of any participant or beneficiary may not be reduced below 110 percent of the monthly benefit which is guaranteed by the Pension Benefit Guaranty Corporation under section 4022A on the date of the suspension.

(ii)(I) In the case of a participant or beneficiary who has attained 75 years of age as of the effective date of the suspension, not more than the applicable percentage of the maximum suspendable benefits of such participant or beneficiary may be suspended under this paragraph.

(II) For purposes of subclause (I), the maximum suspendable benefits of a participant or beneficiary is the portion of the benefits of such participant or beneficiary that would be suspended pursuant to this paragraph without regard to this clause;

(III) For purposes of subclause (I), the applicable percentage is a percentage equal to the quotient obtained by dividing—

(aa) the number of months during the period beginning with the month after the month in which occurs the effective date of the suspension and ending with the month during which the participant or beneficiary attains the age of 80, by

(bb) 60 months.

(iii) No benefits based on disability (as defined under the plan) may be suspended under this paragraph.

(iv) Any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

(v) In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233, the suspension of benefits may not take effect prior to the effective date of such partition.

(vi) Any suspensions of benefits shall be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the following:

(I) Age and life expectancy.

(II) Length of time in pay status.

(III) Amount of benefit.

(IV) Type of benefit: survivor, normal retirement, early retirement.

(V) Extent to which participant or beneficiary is receiving a subsidized benefit.

(VI) Extent to which participant or beneficiary has received post-retirement benefit increases.

(VII) History of benefit increases and reductions.

(VIII) Years to retirement for active employees.

(IX) Any discrepancies between active and retiree benefits.

(X) Extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status.

(XI) Extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability.

(vii) In the case of a plan that includes the benefits described in clause (III), benefits suspended under this paragraph shall—

(I) first, be applied to the maximum extent permissible to benefits attributable to a participant's service for an employer which withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) or an agreement with the plan,

(II) second, except as provided by subclause (III), be applied to all other benefits that may be suspended under this paragraph, and

(III) third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer which has, prior to the date of enactment of the Multiemployer Pension Reform Act of 2014—

(aa) withdrawn from the plan in a complete withdrawal under section 4203 and has paid the full amount of the employer's withdrawal liability under section 4201(b)(1) or an agreement with the plan, and

(bb) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(E) BENEFIT IMPROVEMENTS.—

(i) IN GENERAL.—The plan sponsor may, in its sole discretion, provide benefit improvements while any suspension of benefits under the plan remains in effect, except that the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless—

(I) such action is accompanied by equitable benefit improvements in accordance with clause (ii) for all participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement for such participant or beneficiary not in pay status took effect; and

(II) the plan actuary certifies that after taking into account such benefits improvements the plan is projected to avoid insolvency indefinitely under section 4245.

(ii) EQUITABLE DISTRIBUTION OF BENEFIT IMPROVEMENTS.—

(I) LIMITATION.—The projected value of the total liabilities for benefit improvements for participants and beneficiaries not in pay status by the date of the first day of the plan year in which the benefit improvements are proposed to take effect, as determined as of such date, may not exceed the projected value of the liabilities arising from benefit improvements for participants and beneficiaries with benefit commencement dates prior to the first day of such plan year, as so determined.

(II) EQUITABLE DISTRIBUTION OF BENEFITS.—The plan sponsor shall equitably distribute any increase in total liabilities for benefit improvements in clause (i) to some or all of the participants and beneficiaries whose benefit commencement date is before the date of the first day of the plan year in which the benefit improvements are proposed to take effect, taking into account the relevant factors described in subparagraph (D)(vi) and the extent to which the benefits of the participants and beneficiaries were suspended.

(iii) SPECIAL RULE FOR RESUMPTIONS OF BENEFITS ONLY FOR PARTICIPANTS IN PAY STATUS.—The plan sponsor may increase liabilities of the plan through a resumption of benefits for participants and beneficiaries in pay status only if the plan sponsor equitably distributes the value of resumed benefits to some or all of the participants and beneficiaries in pay status, taking into account the relevant factors described in subparagraph (D)(vi).

(iv) SPECIAL RULE FOR CERTAIN BENEFIT INCREASES.—This subparagraph shall not apply to a resumption of suspended benefits or plan amendment which increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvements took effect which—

(I) the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan, or

(II) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986 or to comply with other applicable law, as determined by the Secretary of the Treasury.

(v) ADDITIONAL LIMITATIONS.—Except for resumptions of suspended benefits described in clause (iii), the limitations on benefit improvements while a suspension of benefits is in effect under this paragraph shall be in addition to any other applicable limitations on increases in benefits imposed on a plan.

(vi) DEFINITION OF BENEFIT IMPROVEMENT.—For purposes of this subparagraph, the term "benefit improvement" means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan.

(F) NOTICE REQUIREMENTS.—

(i) IN GENERAL.—No suspension of benefits may be made pursuant to this paragraph unless notice of such proposed suspension has been given by the plan sponsor concurrently with an application for approval of such suspension submitted under subparagraph (G) to the Secretary of the Treasury to—

(I) such plan participants and beneficiaries who may be contacted by reasonable efforts,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a)) under the plan, and

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

(ii) CONTENT OF NOTICE.—The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any suspensions of benefits, including an individualized estimate (on an annual or monthly basis) of such effect on each participant or beneficiary,

(II) a description of the factors considered by the plan sponsor in designing the benefit suspensions,

(III) a statement that the application for approval of any suspension of benefits shall be available on the website of the Department of the Treasury and that comments on such application will be accepted,

(IV) information as to the rights and remedies of plan participants and beneficiaries,

(V) if applicable, a statement describing the appointment of a retiree representative, the date of appointment of such representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact such representative, and

(VI) information on how to contact the Department of the Treasury for further information and assistance where appropriate.

(iii) FORM AND MANNER.—Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in guidance by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, notwithstanding any other provision of law,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

(iv) OTHER NOTICE REQUIREMENT.—Any notice provided under clause (i) shall fulfill the requirement for notice of a significant reduction in benefits described in section 204(h).

(v) MODEL NOTICE.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall in the guidance prescribed under clause (iii)(I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(G) APPROVAL PROCESS BY THE SECRETARY OF THE TREASURY IN CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION AND THE SECRETARY OF LABOR.—

(i) IN GENERAL.—The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application to the Secretary of the Treasury for approval of the suspensions of benefits. If the plan sponsor submits an application for approval of the suspensions, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve the application upon finding that the plan is eligible for the suspensions and has satisfied the criteria of subparagraphs (C), (D), (E), and (F).

(ii) SOLICITATION OF COMMENTS.—Not later than 30 days after receipt of the application under clause (i), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish a notice in the Federal Register soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made and other interested parties. The application for approval of the suspension of benefits shall be published on the website of the Secretary of the Treasury.

(iii) REQUIRED ACTION; DEEMED APPROVAL.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve or deny any application for suspensions of benefits under this paragraph within 225 days after the submission of such application. An application for suspension of benefits shall be deemed approved unless, within such 225 days, the Secretary of the Treasury notifies the plan sponsor that it has failed to satisfy one or more of the criteria described in this paragraph. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, rejects a plan sponsor's application, the Secretary of the Treasury shall provide notice to the plan sponsor detailing the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial by the Secretary of the Treasury of an application shall be treated as a final agency action for purposes of section 704 of title 5, United States Code.

(iv) AGENCY REVIEW.—In evaluating whether the plan sponsor has met the criteria specified in clause (ii) of subparagraph (C), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall review the plan sponsor's consideration of factors under such clause.

(v) STANDARD FOR ACCEPTING PLAN SPONSOR DETERMINATIONS.—In evaluating the plan sponsor's application, the Secretary of the Treasury shall accept the plan sponsor's determinations unless it concludes, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan sponsor's determinations were clearly erroneous.

(H) PARTICIPANT RATIFICATION PROCESS.—

(i) IN GENERAL.—No suspension of benefits may take effect pursuant to this paragraph prior to a vote of the participants of the plan with respect to the suspension.

(ii) ADMINISTRATION OF VOTE.—Not later than 30 days after approval of the suspension by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (G), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall administer a vote of participants and beneficiaries of the plan. Except as provided in clause (v), the suspension shall go into effect following the vote unless a majority of all participants and beneficiaries of the plan vote to reject the suspension. The plan sponsor may submit a new suspension application to the Secretary of the Treasury for approval in any case in which a suspension is prohibited from taking effect pursuant to a vote under this subparagraph.

(iii) BALLOTS.—The plan sponsor shall provide a ballot for the vote (subject to approval by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor) that includes the following:

(I) A statement from the plan sponsor in support of the suspension.

(II) A statement in opposition to the suspension compiled from comments received pursuant to subparagraph (G)(ii).

(III) A statement that the suspension has been approved by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor.

(IV) A statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect.

(V) A statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension.

(VI) A statement that insolvency of the Pension Benefit Guaranty Corporation would result in benefits lower than benefits paid in the case of plan insolvency.

(iv) COMMUNICATION BY PLAN SPONSOR.—It is the sense of Congress that, depending on the size and resources of the plan and geographic distribution of the plan's participants, the plan sponsor should take such steps as may be necessary to inform participants about proposed benefit suspensions through in-person meetings, telephone or internet-based communications, mailed information, or by other means.

(v) SYSTEMICALLY IMPORTANT PLANS.—

(I) IN GENERAL.—Not later than 14 days after a vote under this subparagraph rejecting a suspension, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall determine whether the plan is a systemically important plan. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines that the plan is a systemically important plan, not later than the end of the 90-day period beginning on the date the results of the vote are certified, the Secretary of the Treasury shall, notwithstanding such adverse vote—

(aa) permit the implementation of the suspension proposed by the plan sponsor; or

(bb) permit the implementation of a modification by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of such suspension (so long as the plan is projected to avoid insolvency within the meaning of section 4245 under such modification).

(II) RECOMMENDATIONS.—Not later than 30 days after a determination by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan is systemically important, the Participant and Plan Sponsor Advocate selected under section 4004 may submit recommendations to the Secretary of the Treasury with respect to the suspension or any revisions to the suspension.

(III) SYSTEMICALLY IMPORTANT PLAN DEFINED.—

(aa) IN GENERAL.—For purposes of this subparagraph, a systemically important plan is a plan with respect to which the Pension Benefit Guaranty Corporation projects the present value of projected financial assistance payments exceeds $1,000,000,000 if suspensions are not implemented.

(bb) INDEXING.—For calendar years beginning after 2015, there shall be substituted for the dollar amount specified in item (aa) an amount equal to the product of such dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is such contribution and benefit base for calendar year 2014. If the amount otherwise determined under this item is not a multiple of $1,000,000, such amount shall be rounded to the next lowest multiple of $1,000,000.

(vi) FINAL AUTHORIZATION TO SUSPEND.—In any case in which a suspension goes into effect following a vote pursuant to clause (ii) (or following a determination under clause (v) that the plan is a systemically important plan), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall issue a final authorization to suspend with respect to the suspension not later than 7 days after such vote (or, in the case of a suspension that goes into effect under clause (v), at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period described in clause (v)(I)).

(I) JUDICIAL REVIEW.—

(i) DENIAL OF APPLICATION.—An action by the plan sponsor challenging the denial of an application for suspension of benefits by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, may only be brought following such denial.

(ii) APPROVAL OF SUSPENSION OF BENEFITS.—

(I) TIMING OF ACTION.—An action challenging a suspension of benefits under this paragraph may only be brought following a final authorization to suspend by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (H)(vi).

(II) STANDARDS OF REVIEW.—

(aa) IN GENERAL.—A court shall review an action challenging a suspension of benefits under this paragraph in accordance with section 706 of title 5, United States Code.

(bb) TEMPORARY INJUNCTION.—A court reviewing an action challenging a suspension of benefits under this paragraph may not grant a temporary injunction with respect to such suspension unless the court finds a clear and convincing likelihood that the plaintiff will prevail on the merits of the case.

(iii) RESTRICTED CAUSE OF ACTION.—A participant or beneficiary affected by a benefit suspension under this paragraph shall not have a cause of action under this title.

(iv) LIMITATION ON ACTION TO SUSPEND BENEFITS.—No action challenging a suspension of benefits following the final authorization to suspend or the denial of an application for suspension of benefits pursuant to this paragraph may be brought after one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(J) SPECIAL RULE FOR EMERGENCE FROM CRITICAL STATUS.—A plan certified to be in critical and declining status pursuant to projections made under subsection (b)(3) for which a suspension of benefits has been made by the plan sponsor pursuant to this paragraph shall not emerge from critical status under paragraph (4)(B), until such time as—

(i) the plan is no longer certified to be in critical or endangered status under paragraphs (1) and (2) of subsection (b), and

(ii) the plan is projected to avoid insolvency under section 4245.

(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

(1) COMPLIANCE WITH REHABILITATION PLAN.—

(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) RESTRICTION ON LUMP SUMS AND SIMILAR BENEFITS.—

(A) IN GENERAL.—Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 204(g), the plan shall not pay—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)), to a participant or beneficiary whose annuity starting date (as defined in section 205(h)(2)) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary of the Treasury by regulations.

(B) EXCEPTION.—Subparagraph (A) shall not apply to a benefit which under section 203(e) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the date of the adoption of a rehabilitation plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

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

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless 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.

(g) ADJUSTMENTS DISREGARDED IN WITHDRAWAL LIABILITY DETERMINATION.—

(1) BENEFIT REDUCTION.—Any benefit reductions under subsection (e)(8) or (f) or benefit reductions or suspensions while in critical and declining status under subsection (e)(9)), unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status, shall be disregarded in determining a plan's unfunded

vested benefits for purposes of determining an employer's withdrawal liability under section 4201.

(2) SURCHARGES.—Any surcharges under subsection (e)(7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 and in determining the highest contribution rate under section 4219(c), except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) or a comparable method approved under section 4211(c)(5).

(3) CONTRIBUTION INCREASES REQUIRED BY FUNDING IMPROVEMENT OR REHABILITATION PLAN.—

(A) IN GENERAL.—Any increase in the contribution rate (or other increase in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) that is required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 and in determining the highest contribution rate under section 4219(c), except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) or a comparable method approved under section 4211(c)(5).

(B) SPECIAL RULES.—For purposes of this paragraph, any increase in the contribution rate (or other increase in contribution requirements) shall be deemed to be required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan except for increases in contribution requirements due to increased levels of work, employment, or periods for which compensation is provided or additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by subsection (d)(1)(B) or (f)(1)(B).

(4) EMERGENCE FROM ENDANGERED OR CRITICAL STATUS.—In the case of increases in the contribution rate (or other increases in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) disregarded pursuant to paragraph (3), this subsection shall cease to apply as of the expiration date of the collective bargaining agreement in effect when the plan emerges from endangered or critical status. Notwithstanding the preceding sentence, once the plan emerges from critical or endangered status, increases in the contribution rate disregarded pursuant to paragraph (3) shall continue to be disregarded in determining the highest contribution rate under section 4219(c) for plan years during which the plan was in endangered or critical status.

(5) SIMPLIFIED CALCULATIONS.—The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this subsection in determining withdrawal liability and payment amounts under section 4219(c).

(h) EXPEDITED RESOLUTION OF PLAN SPONSOR DECISIONS.—If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(i) NONBARGAINED PARTICIPATION.—

(1) BOTH BARGAINED AND NONBARGAINED EMPLOYEE-PARTICIPANTS.—In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) NONBARGAINED EMPLOYEES ONLY.—In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(j) DEFINITIONS; ACTUARIAL METHOD.—For purposes of this section—

(1) BARGAINING PARTY.—The term "bargaining party" means—

(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) FUNDED PERCENTAGE.—The term "funded percentage" means the percentage equal to a fraction—

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

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 304(c)(3).

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

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

(5) INACTIVE PARTICIPANT.—The term "inactive participant" means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

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

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

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

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

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

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

(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) PLAN SPONSOR.—In the case of a plan described under section 404(c) of the Internal Revenue Code of 1986, or a continuation of such a plan, the term "plan sponsor" means the bargaining parties described under paragraph (1).

(10) BENEFIT COMMENCEMENT DATE.—The term "benefit commencement date" means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(k) SPECIAL RULES FOR PLANS RECEIVING PENSION REHABILITATION LOANS.—

(1) DETERMINATION OF WITHDRAWAL LIABILITY.—

(A) IN GENERAL.—If any employer participating in a plan at the time the plan receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act withdraws from the plan before the end of the 30-year period beginning on the date of the loan, the withdrawal liability of such employer shall be determined—

(i) by applying section 4219(c)(1)(D) as if the plan were terminating by the withdrawal of every employer from the plan, and

(ii) by determining the value of nonforfeitable benefits under the plan at the time of the deemed termination by using the interest assumptions prescribed for purposes of section 4044, as prescribed in the regulations under section 4281 in the case of such a mass withdrawal.

(B) ANNUITY CONTRACTS AND INVESTMENT PORTFOLIOS PURCHASED WITH LOAN FUNDS.—Annuity contracts purchased and portfolios implemented under section 4(d)(3) of the Rehabilitation for Multiemployer Pensions Act shall not be taken into account in determining the withdrawal liability of any employer under subparagraph (A), but the amount equal to the greater of—

(i) the benefits provided under such contracts or portfolios to participants and beneficiaries, or

(ii) the remaining payments due on the loan under section 4(a) of such Act,

shall be so taken into account.

(2) COORDINATION WITH FUNDING REQUIREMENTS.—In the case of a plan which receives a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act—

(A) annuity contracts purchased and portfolios implemented under section 4(d)(3) of such Act, and the benefits provided to participants and beneficiaries under such contracts or portfolios, shall not be taken into account in determining minimum required contributions under section 302,

(B) payments on the interest and principal under the loan, and any benefits owed in excess of those provided under such contracts or portfolios, shall be taken into account as liabilities for purposes of such section, and

(C) if such a portfolio is projected due to unfavorable investment or actuarial experience to be unable to fully satisfy the liabilities which it covers, the amount of the liabilities projected to be unsatisfied shall be taken into account as liabilities for purposes of such section.

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TITLE IV—PLAN TERMINATION INSURANCE

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SUBTITLE E—SPECIAL PROVISIONS FOR MULTIEMPLOYER PLANS

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PART 4—FINANCIAL ASSISTANCE

FINANCIAL ASSISTANCE

SEC. 4261. (a) If, upon receipt of an application for financial assistance under section 4245(f) or section 4281(d), the corporation verifies that the plan is or will be insolvent and unable to pay basic benefits when due, the corporation shall provide the plan financial assistance in an amount sufficient to enable the plan to pay basic benefits under the plan.

(b)(1) Financial assistance shall be provided under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

(2) A plan which has received financial assistance shall repay the amount of such assistance to the corporation on reasonable terms consistent with regulations prescribed by the corporation.

(c) Pending determination of the amount described in subsection (a), the corporation may provide financial assistance in such amounts as it considers appropriate in order to avoid undue hardship to plan participants and beneficiaries.

(d)(1) The plan sponsor of a multiemployer plan—

(A) which is in critical and declining status (within the meaning of section 305(b)(6)), or

(B) which is insolvent but has not been terminated and is receiving assistance from the corporation (other than assistance under this subsection),

and which is applying for a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act may also apply to the corporation for financial assistance under this subsection, by jointly submitting such applications in accordance with section 4(d)(2) of such Act. The application for financial assistance under this subsection shall demonstrate, based on projections by the plan actuary, that after the receipt of the anticipated loan amount under section 4(a) of such Act, the plan will still become (or remain) insolvent within the 30-year period beginning on the date of the loan.

(2) In the case of a plan described in paragraph (1)(A), the financial assistance provided pursuant to such application under this subsection shall be the amount (determined by the plan actuary and submitted on the application) equal to the sum of—

(A) the percentage of benefits of participants and beneficiaries of the plan in pay status at the time of the application, and

(B) the percentage of future benefits to which participants who have separated from service but are not yet in pay status are entitled,

which, if such percentage were paid by the corporation in combination with the loan, would allow the plan to avoid the projected insolvency and be projected to have increasing assets over any 5-year period following the repayment of the loan. Such amount shall not exceed the maximum guaranteed benefit with respect to all participants and beneficiaries of the plan under sections 4022A and 4022B. For this purpose, the maximum guaranteed benefit amount shall be determined by disregarding any loan available from the Pension Rehabilitation Administration and shall be determined as if the plan were insolvent on the date of the application. Further, the present value of the maximum guaranteed benefit amount with respect to such participants and beneficiaries may be calculated in the aggregate, rather than by reference to the benefit of each such participant or beneficiary.

(3) In the case of a plan described in paragraph (1)(B), the financial assistance provided pursuant to such application under this subsection shall be the amount (determined by the plan actuary and submitted on the application) which, if such amount were paid by the corporation in combination with the loan and any other assistance being provided to the plan by the corporation at the time of the application, would enable the plan to emerge from insolvency.

(4) Subsections (b) and (c) shall apply to financial assistance under this subsection as if it were provided under subsection (a), except that the terms for repayment under subsection (b)(2) shall not

require the financial assistance to be repaid before the date on which the loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act is repaid in full.

(5) The corporation may forgo repayment of the financial assistance provided under this subsection if necessary to avoid any suspension of the accrued benefits of participants.

* * * * * * *

Multiemployer pension plans, like insurance companies, promise annuities to workers in retirement. As plan trustees annually make new pension promises each year, they should collect contributions sufficient to provide those benefits in retirement. Had the trustees done so, the workers and retirees would not be facing the possibility of losing their promised benefits. Some have argued that the inability of plan trustees to provide the pensions they have promised is not the trustees' fault and is due to circumstances they could not have anticipated, namely, stock market crashes and the bankruptcies of participating employers.[3] But this argument presumes that instead of annually collecting contributions sufficient to provide promised pensions, trustees can make promises in excess of contributions in the hope of getting high investment returns, and failing that, collect contributions from future workers to provide the promises previously made. Unfortunately, as Mr. Groom's testimony indicates, plan trustees have operated on this premise for decades. Promising more than they can provide may have helped these plans attract employers and workers, but at the cost of exploiting these union members who are now at risk of losing their hard-earned pensions.

I. Overview

The multiemployer defined benefit pension system, set up to provide secure pensions to the 10 million participants[4] in plans sponsored by thousands of employers and unions, is in crisis. Currently, 130 plans in "critical and declining"[5] status, covering about ten percent of the total number of participants in the system, have determined that they will become insolvent in the next two decades. This will leave more than 1.3 million participants without the benefits they have been promised.[6] Another 2 million participants[7] are in "critical status"[8] plans, which are not projected to run out of assets in the next two decades, but face "severe funding or liquidity

[3] Testimony of Mariah Becker, Director of Research and Education, National Coordinating Committee on Multiemployer Plans (NCCMP), at Hearing on The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis, Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions, March 7, 2019. https://edlabor.house.gov/imo/media/doc/BeckerTestimony030719.pdf; Testimony of Aliya Wong, Executive Director of Retirement Policy, U.S. Chamber of Commerce, at Hearing on Employer Perspectives on Multiemployer Pension Plans, Joint Select Committee on Solvency of Multiemployer Pension Plans, June 13, 2018.
https://www.pensions.senate.gov/sites/default/files/U.S.%20Chamber%20of%20Commerce.pdf; Testimony of Chris Langan, Vice President of Finance, United Parcel Service, Joint Select Committee, June 13, 2018.
https://www.pensions.senate.gov/sites/default/files/UPS%20-%20Final%20Written%20Statement%20for%20JSC%20Hearing%20%28002%29.pdf; Testimony of Mary Moorkamp, Chief Legal and External Affairs Officer, Schnuck Markets, Joint Select Committee, June 13, 2018.
https://www.pensions.senate.gov/content/employer-perspectives-multiemployer-pension-plans; Testimony of Ted Goldman, Senior Pension Fellow, American Academy of Actuaries, Joint Select Committee, April 18, 2018.
https://www.pensions.senate.gov/sites/default/files/Academy_Testimony_to_Joint_Select_Committee_04182018.pdf; Testimony of Scott Henderson, Vice President of Pension Investment and Strategy, The Kroger Company, at Hearing on Private Employer Defined Benefit Pension Plans, Committee on Ways and Means Subcommittee on Select Revenue Measures, September 17, 2004. https://www.govinfo.gov/content/pkg/CHRG-113hhrg94394/html/CHRG-113hhrg94394.htm.
[4] Participants consist of (i) active workers, (ii) terminated vested individuals who have earned benefits in the plan but are neither working nor in pay status, and (iii) retirees.
[5] Sometimes known as the deep red zone. IRC section 432(b)(6); 29 U.S.C. section 1085(b)(2).
[6] FY 2017 PBGC Projections Report, p.1 https://www.pbgc.gov/sites/default/files/fy-2017-projections-report.pdf.
[7] FY 2017 PBGC Projections Report.
[8] Sometimes known as the red zone. IRC section 432(b)(1); 29 U.S.C. section 1085(b)(1).

DISSENTING VIEWS

July 18, 2019

DISSENTING VIEWS ON H.R. 397, REHABILIATION FOR MULTIEMPLOYER PENSIONS ACT OF 2019

Preface

"If judged by normal business concepts of solvency, every multiemployer plan—including the healthiest—would be insolvent."

— Theodore R. Groom testifying on behalf of the Western Conference of Teamsters multiemployer pension plan before the Subcommittee on Oversight, Committee on Ways & Means, July 25, 1979.[1]

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***Rep. Bobby Scott (D, VA-03)**: I'm going to ask from an actuarial point of view – following up with this question – if these plans are solvent, they should not have to rely on ongoing contributions to pay out the benefits? Isn't that right?*

***Ted Goldman (Senior Pension Fellow, American Academy of Actuaries, witness)**: Ongoing contributions from bargaining?*

***Scott**: Yeah, we have workers today paying into the plan.*

***Goldman**: Solvent means that assuming the contributions continue to come in.*

***Scott**: No, no, no. Well, if it's solvent, it should be able to pay the benefits even if people stop paying.*

***Goldman**: No, that's not necessarily true. Solvency means that the plan is not expected to run short and will be able make good on its future obligations.*

***Scott**: Aren't you into a Ponzi scheme if you're relying on ongoing revenues?*

***Goldman**: No, because you only have to pay benefits that are earned.*

***Scott**: And so if you stop – if everybody stops paying in – would we have enough assets to pay what you promised?*

***Goldman**: It's the last man standing problem, yes.*

***Scott**: No, it's not the last man standing problem, you ought to have enough assets to pay what you promised.*[2]

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[1] Hearing on Multiemployer Pension Plan Termination Insurance Program, Committee on Ways and Means Subcommittee on Oversight, July 25, 1979; https://babel.hathitrust.org/cgi/pt?id=pur1.32754077527640&view=1up&seq=79, (page 75).

[2] Hearing on The History and Structure of the Multiemployer Pension System, Joint Select Committee on Solvency of Multiemployer Pension Plans, April 18, 2018. https://www.pensions.senate.gov/content/history-and-structure-multiemployer-pension-system.

issues."[9] Another 1.1 million participants are in "endangered status"[10] or "seriously endangered status"[11] plans.[12]

Although some have argued that "green zone" plans[13] are "healthy,"[14] this is unfortunately generally not the case. The threat to the promised benefits of workers and retirees is not limited to plans in one of the special designated statuses, but permeates almost the entire system of plans. A careful review of the testimony provided by representatives of multiemployer plans, sponsoring unions and employers, participants and independent financial and actuarial experts at numerous Congressional hearings leads to the conclusion that the most likely explanation is that this crisis was caused by the mismanagement of the plan trustees who made pension promises to hardworking Americans that they knew, or should have known, they could not keep. Congress should act on a bipartisan basis to protect these workers and retirees. H.R. 397 would instead exacerbate the crisis, do nothing to fix these plans, and cost taxpayers tens of billions of dollars in the short-term, and likely hundreds of billions, or even trillions of dollars, over the long-term.

This year, we mark the 45th anniversary of the enactment of the bipartisan Employee Retirement Income Security Act (ERISA),[15] including the important portions of that Act written into the Internal Revenue Code. If nothing else, the Act was meant to protect the pension benefits of workers by requiring employers to accurately measure and fund the pension promises they make and prohibit employers from cutting benefits already earned. These rules have always given more discretion to multiemployer plan trustees than to single-employer plan trustees. This was premised on the argument by multiemployer plans that Congress should allow multiemployer plans to have much more lenient rules than single-employer plans because multiemployer plans are inherently safer for participants. The plans and their sponsors argued that this was so because, in contrast to single-employer plans: (1) unions, which have an equal status in running multiemployer plans, would protect the interests of workers and make sure that plans are funded; and (2) all employers are jointly and severally liable for all pension promises.[16] But this has not turned out to be the case. A series of important reforms are needed to prevent multiemployer plan trustees from continuing to make promises that they cannot keep so that the rules fulfill ERISA's crucial mission of protecting workers and retirees. Even more rigorous reforms made in the last several years to single-employer plans have improved the funding of single-employer

[9] Testimony of PBGC Director Tom Reeder at Hearing on The Structure and Financial Outlook of the Pension Benefit Guaranty Corporation, Joint Select Committee on Solvency of Multiemployer Pension Plans, May 17, 2018. https://www.pensions.senate.gov/sites/default/files/PBGC_Testimony-Joint_Select_Committee_on_Solvency_of_Multiemployer_Plans-5.17.2018.pdf

[10] Sometimes known as the yellow zone. IRC section 432(b)(1); 29 U.S.C. section 1085(b)(1).

[11] Sometimes known as the orange zone. IRC section 432(b)(1); 29 U.S.C. section 1085(b)(1).

[12] FY 2017 PBGC Projections Report.

[13] Plans not in one of the statuses listed immediately above are usually referred to as "green zone" plans

[14] National Coordinating Committee for Multiemployer Plans, Response to follow-up questions from the March 7, 2019 Hearing on, "The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis," Education and Labor Committee Subcommittee on Health, Employment, Labor and Pensions, March 29, 2019. https://nccmp.org/wp-content/uploads/2019/03/NCCMP-Response-to-Followup-Questions-from-March-7-Hearing.pdf

[15] Public Law 93-406.

[16] Statement by the AFL-CIO, House Committee on Ways and Means, Written Statements Submitted by Interested Organizations and Individuals on H.R. 10470, Retirement Income Security for Employees Act, 93d Cong., 1st sess., 1973, 364; James Wooten, The Employee Retirement Security Act of 1974: A Political History.

plans as well as brought the position of the single-employer insurance program of the government-run Pension Benefit Guaranty Corporation ("PBGC") from deficit into a surplus. Similar reforms are needed for multiemployer plans. Additionally, Congress must restore the long-term viability of the safety net provided by PBGC to retirees when their plan trustees have failed them and cannot provide promised benefits.

A. Plan Structure

A multiemployer pension plan is a collectively bargained plan maintained by more than one contributing employer and a union, which provides pensions to participants in the plans as part of an overall compensation package. Each plan is run by an equal number of employer and union trustees who determine the level of pensions promised to participants and are responsible for ensuring that the plans are sufficiently funded to provide participants with those promised pensions. Taxpayers have no role in making or funding these pension promises.

B. PBGC

PBGC is a government agency that operates separate insurance programs for private-sector single-employer and multiemployer defined benefit plans, and is exclusively funded through premiums paid by the plans it insures and sometimes assets from terminated single-employer plans.[17] PBGC is not backed by taxpayers. PBGC protects multiemployer plan participants by providing plans a statutory maximum benefit guarantee with which to pay retirees when a plan runs out of money.

II. Protecting Participants – Identifying the Causes of the Crisis

In order to develop solutions to appropriately protect workers and retirees affected by this crisis, the most important question is whether the severe underfunding in multiemployer plans is a result of bad luck or mismanagement by the plans.[18] A fundamental task of plan trustees is to collect sufficient contributions from participating employers. Together with investment earnings, these contributions must securely provide to plan participants the benefits promised them by the trustees, employers, and unions. Contributions to multiemployer plans during each year, combined with investment earnings on those contributions, should be sufficient to provide participants with the benefits, generally payable many years later, promised during the year as part of workers' overall compensation package. But many plans are severely underfunded. Defenders of the plan trustees have argued that the underfunding in many plans is a result of

[17] Testimony of PBGC Director Tom Reeder at Hearing on The Structure and Financial Outlook of the Pension Benefit Guaranty Corporation, Joint Select Committee on Solvency of Multiemployer Pension Plans, May 17, 2018. https://www.pensions.senate.gov/sites/default/files/PBGC_Testimony-Joint_Select_Committee_on_Solvency_of_Multiemployer_Plans-5.17.2018.pdf.

[18] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, at Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://www.pensions.senate.gov/sites/default/files/25JUL2018NaughtonSTMNT.pdf.

factors that the trustees cannot have been expected to predict such as a changing economy, industry changes, deregulation, recessions, and severe stock market downturns.[19]

A. Measuring pension liabilities

Defined benefit pensions are based on the premise that participants should be able to rely on pension promises in retirement; in other words that such promises bear little or no risk to participants. To ensure that these promises are secure, proper measurement of pension liabilities is necessary. Dr. Joshua Rauh testified before the Joint Select Committee that for workers to count on getting the pension promised them, the appropriate measurement of such a secure promise must be based on the discount rate on Treasury bonds matching the duration of the promise.[20]

Current law does not provide a specific numerical discount rate that multiemployer plans must use to discount liabilities, but does require plans to use "reasonable" assumptions.[21] Currently, most multiemployer plans use a discount rate to measure liabilities that reflects expectations on the rate of return on plan assets, typically around 7 percent.[22] However, it is hard to see how this can be a reasonable assumption for the measurement of liabilities, as the cost of one's liabilities does not depend on investment returns on assets.[23] As Dr. Jeremy Gold testified before the Committee on Ways and Means: "Investing, as important as it is, does not alter the cost of benefits. Investing entails risks, the outcome of which directly impacts future [contributions] and may, both directly and indirectly, affect future benefits. The assertion that investment does not impact costs is often disputed but can be illustrated by a simple analogy. If an automobile costs $30,000, it costs $30,000. If I invest my assets successfully, I may be better able to afford the automobile. But the automobile still costs $30,000."[24]

Financial regulators require companies to value liabilities based on market bond yields, not on expected rates of return on assets that might be put aside to meet those liabilities.[25] Economists

[19] See footnote 3.

[20] Testimony of Dr. Joshua Rauh, Senior Fellow and Director of Research, Hoover Institution, Ormond Family Professor of Finance, Stanford University, at Hearing on How the Multiemployer pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://burypensions.files.wordpress.com/2018/07/rauh-written.pdf.

[21] IRC section 431(c)(3); 29 U.S.C. section 1084(c)(3).

[22] Form 5500 Schedule MB data filed by multiemployer plans.

[23] Also plans use the expected returns on assets to measure liabilities regardless of whether the plans actually have sufficient assets on which such expected return would meet liabilities. Thus, multiemployer plans are using a hypothetical rate of return on hypothetical assets to measure the cost of liabilities. In comparison, the Government Accounting Standards Board allows the expected rate of return on assets to be used to measure the cost of liabilities only to the extent the plan actually has such assets – a standard that would seem to allow plans to increase the expected rate of return until their assets combined with the expected returns are sufficient to meet liabilities. https://www.mercatus.org/publications/gasb-67-68-public-pension-reporting. See below for a discussion of how H.R. 397 might impact public pension plans.

[24] Testimony of Dr. Jeremy Gold, Jeremy Gold Pensions, at Hearing on The Transparency and Funding of State and Local Pension Plans, Committee on Ways and Means Subcommittee on Oversight, May 5, 2011. https://gop-waysandmeans.house.gov/UploadedFiles/Jeremy_Gold_Testimony.pdf

[25] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, at Hearing on How the Multiemployer Pension System Affects

"almost universally" believe that this is the appropriate method for valuing pension liabilities.[26] As James Naughton testified to the Joint Select Committee, Statement of Financial Accounting Standards (SFAS) No. 87, Employers' Accounting for Pensions, has for decades required financial reporting for pension liabilities to be measured "using a discount rate that reflects the rate at which the obligation to pay the pension benefits can be settled rather than the expected investment return on the pension assets."[27] In seeking these rates, SFAS87 requires that employers look to "rates of return on high-quality fixed-income investments currently available and expected to be available during the period to maturity of the pension benefits."[28] Similarly, the "PBGC rate" used by PBGC to discount pension liabilities consists of the discount rates used by life insurance companies to measure such liabilities.[29] And the Congressional Budget Office stated that "The fair-value approach aims to measure the market value of an asset or liability. … For pension liabilities, the fair value can be thought of as what a private insurance company operating in a competitive market would charge to assume responsibility for those obligations."[30]

Under current law, multiemployer plans report the value of their liabilities both using the actuarial measurements the plans use for funding purposes and under another measurement called "current liability," a single interest rate (as opposed to a yield curve) that is between 90% and 105% of a weighted four-year average of the rate on 30-year Treasury bonds.[31]

For 2015, plans measured new promises at $9.55 billion while under the PBGC rate the value for those promises as measured by insurance companies was $25.6 billion.[32] For 2017 (the latest year for which plans have filed 5500 reports), some plans are valuing new promises at less than one-third of their cost using the current liability measurement.[33] Even plans using a 7% discount rate are valuing new promises at about half their cost under current liability.[34] If plans are so deeply underestimating the cost of promises they are making each year, it should be no surprise that plans are severely underfunded.[35]

Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://www.pensions.senate.gov/sites/default/files/25JUL2018NaughtonSTMNT.pdf.

[26] Testimony of Dr. Andrew Biggs, Resident Scholar, American Enterprise Institute, at Hearing on The Multiemployer Pension Plan System: Recent Reforms and Current Challenges; Committee on Finance, March 1, 2016.https://www.finance.senate.gov/imo/media/doc/03012016%20Biggs%20SFC%20testimony%20on%20multiemployer%20pensions.pdf.

[27] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, at Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://www.pensions.senate.gov/sites/default/files/25JUL2018NaughtonSTMNT.pdf.

[28] SFAS 87.

[29] PBGC 2018 Annual Report, note 6. More specifically, the PBGC rate reflects the weighted blend of rates that insurance companies would use taking into account the duration of PBGC's liabilities.

[30] https://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/120xx/doc12084/05-04-pensions.pdf.

[31] IRC section 431(c)(6); 29 U.S.C. section 1084(c)(6). Multiemployer plans typically choose to use the highest allowable current liability interest rate, that is 105% of the weighted four-year average.

[32] Data from PBGC supplied pursuant to a request for technical assistance. 2015 is the most recent year for which the PBGC rate is available.

[33] Staff analysis of Form 5500 Schedule MB data filed by multiemployer plans.

[34] Staff analysis of Form 5500 Schedule MB data filed by multiemployer plans.

[35] Testimony of Burke Blackman, President, Egger Steel Company, Hearing on Employer Perspectives on Multiemployer Pension Plans, Joint Select Committee on Solvency of Multiemployer Pension Plans, June 13, 2018. https://www.pensions.senate.gov/sites/default/files/Burke%20Blackman%20Written%20Testimony.pdf.

B. Recognizing and addressing plan losses

Workers and retirees must know the likelihood of receiving their full promised pension, and who is accountable for funding the pension benefits promised by unions, employers, and plan trustees. Accordingly, plan funding levels and the rules under which any underfunding is to be paid down should be clear and transparent to the plan, employers, and participants. Plans have gains and losses for a wide variety of reasons, such as changes in mortality and fluctuations in the values of assets and liabilities. When a plan does not invest in high quality bonds matching the duration of its liabilities, the plan may experience large investment gains and losses. Current law generally requires plans to amortize underfunding over fifteen years,[36] but plans can generally receive automatic approval to use twenty years.[37] However, various mechanisms allow plans to avoid recognizing the actual amount of the underfunding or making appropriate adjustments to plan accruals and contributions to address the underfunding.

Plans may generally "smooth" the value of assets by measuring assets at a value that differs significantly from the fair market value of the asset. Plans may measure assets at up to 20% more or less than the actual value of assets, taking into account the difference between expected performance and actual performance over five years.[38] Thus, a plan with an 8% expected rate of return and $100 of assets whose assets' value dropped to $90 could measure those assets as being worth $104.40 even though the assets were only and indisputably worth $90.[39] As the Congressional Budget Office noted: "For assets, the fair [market] value is what an investor would be willing to pay for them—that is, the current market value (or an estimate when market values are unavailable); it is not the averaged, or smoothed, market values that are reported under GASB guidelines" or by multiemployer pension plans.[40] Some have argued that asset smoothing is appropriate because it allows plans to mitigate volatility in funding levels and therefore required contributions resulting from significant volatility in investment returns. However, volatility in required contributions is already addressed through relatively long amortization periods, rather than having to immediately pay down all underfunding. Plans that need additional protections against volatility due to investment return fluctuations should not be in investments with such high levels of volatility. Allowing plans to "smooth" assets instead of measuring assets at fair market value inappropriately encourages aggressive investment strategies.

Plans with contributions in excess of the minimum required for that year will have lower required contributions in future years by virtue of having higher asset levels than they otherwise would. However, the "credit balance" rules allow plans to effectively double count those contributions, by allowing plans to reduce required contributions in future years, even though those contributions have already been taken fully into account in measuring assets. This allows

[36] IRC section 431(b)(2), (3); 29 U.S.C. section 1084(b)(2), (3).
[37] IRC section 431(d); 29 U.S.C. section 1084(b)(2), (3).
[38] Pursuant to 2010 legislation, this difference was 30% and could be considered over ten years for certain investment losses. Public Law 111-192, section 211.
[39] In this example, the plan expects its assets to be worth $108, so the actual value of the assets is $18 less than the expected value. The plan takes into account 20% of this difference, $3.60, from what the expected value was for each of the next five years.
[40] https://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/120xx/doc12084/05-04-pensions.pdf.

plans to further avoid making the contributions needed to fund plan promises, in addition to the flawed asset and liability measurement rules generally used by the plans. Thus, in 2015, even green zone plans collected contributions that were $2.3 billion short of the $18.4 billion required under the existing funding rules using their own actuarial assumptions.[41]

Both asset smoothing and credit balances make it much easier for plans to meet required contributions by lessening the burden on contributing employers without the need to decrease the level of pension promises, but do so in a manner that makes plan underfunding opaque and allows plans to avoid taking the steps necessary to address that underfunding. This puts participants' pension benefits at risk. In theory, plans can eventually become fully funded without the need for unwanted contribution increases and reduced benefit accruals with the help of the extra time provided by asset smoothing and credit balances. But a failure to quickly recognize and address underfunding can also result in plans becoming more and more underfunded. Postponing corrective measures allows plan finances to deteriorate further and makes future corrective measures even more painful. The fact that plans are not accurately measuring liabilities, as noted above, compounds the problems caused by asset smoothing and credit balances.

C. Multiemployer plans, but no employer is on the hook for promises made to workers

Because of the interpretation by plan trustees of the multiemployer plan funding rules, employers sponsoring multiemployer plans receive a competitive advantage over employers sponsoring single-employer plans in that employers in multiemployer plans make much smaller contributions for the same pension promise. For example, Dr. Naughton testified that in his experience employers in multiemployer plans had contributions only one-third of employers making similar promises in single-employer plans.[42] Given that employers enjoy the upside of making relatively low contributions compared to the value of the pensions they are promising, they must also be responsible for the downside risk if the plan has low investment returns. In addition, as described above,[43] this advantage is premised on testimony before the Congress by the plans that benefits in these plans were much safer than benefits in single-employer plans because in multiemployer plans, employers are jointly and severally liable for the pension promises made by other employers.

Although employers remaining in a plan are at least nominally responsible for all plan liabilities, the withdrawal liability rules often allow employers to withdraw without paying their share of the plan's unfunded liabilities. More specifically, a withdrawing employer must make annual contributions equal to the employer's highest contribution rate in the prior ten years multiplied by the employer's average contribution base in the three consecutive years in the prior ten years

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[41] Analysis of Form 5500 data by PBGC, provided pursuant to a request for technical assistance.
[42] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Hearing on The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis, Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions, March 7, 2019. https://edlabor.house.gov/imo/media/doc/NaughtonTestimony030719.pdf.
[43] See footnote 16 and accompanying text.

with the highest contribution bases.[44] Those annual payments, which do not carry interest cost, end after twenty years regardless of whether they cover the employer's proportional share of the underfunding,[45] except in cases of mass withdrawal. In a mass withdrawal, those annual payments are for an indefinite time period,[46] but still do not cover liability in many cases because they are without interest and the total underfunding may dwarf the annual payment.

The failure of plans to accurately measure liabilities or recognize and quickly pay down underfunding exacerbates those limitations. The liability also bears no relationship to the difference between the value of the pensions promised to participants of the withdrawing employer and the contributions made by that employer. Withdrawal liability may be insufficient to cover the difference between the value of the promises made by the employer and the contributions made by the employer, or may be far more than that. But because employers can withdraw without paying their share of the underfunding in the plan, withdrawals often lead to more underfunding.[47] The withdrawal liability rules are complex and opaque. Employers, especially small employers, have little if any insight into plan underfunding or the risks that plans will become underfunded in the future, or the degree to which that underfunding translates into withdrawal liability.[48]

A systemic problem for multiemployer plans is that withdrawal liability is linked to past contribution rates. This makes it much harder for underfunded plans to address underfunding by raising contribution rates as employers can leave and effectively lock in the lower older rates.[49] Because plans face these constraints on the ability to recover from underfunding, it is even more vital to the protection of participant benefits that plan trustees run the plans in a way to avoid becoming underfunded in the first place.

In addition, aside from the issue of employer withdrawals, when plans become underfunded some plan trustees effectively decide to leave underfunding largely unaddressed, collecting contributions that are insufficient to even cover new promises, let alone interest on existing underfunding. As described below, plans claiming they cannot meet required contributions, even on the basis of undervalued liabilities and overvalued and double-counted assets, are exempt from collecting required contributions. If a plan runs out of money to pay retirees, there

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[44] 29 U.S.C. section 1399(c)(1)(C).
[45] 29 U.S.C. section 1399(c)(1)(B).
[46] 29 U.S.C. section 1399(c)(1)(D).
[47] An additional problem is that even if a withdrawing employer pays its full economic share of the underfunding, those liabilities remain in the plan and the employer is not responsible for any future experience gains and losses. Thus, if the plan suffers significant investment losses, those losses must be absorbed by the plan, instead of the employer that made the promises.
[48] Testimony of Burke Blackman, President, Egger Steel Company, Hearing on Employer Perspectives on Multiemployer Pension Plans, Joint Select Committee on Solvency of Multiemployer Pension Plans, June 13, 2018. https://www.pensions.senate.gov/sites/default/files/Burke%20Blackman%20Written%20Testimony.pdf.
[49] When deciding to remain in a multiemployer plan, an employer will likely consider any potential increases in withdrawal liability and will be more likely to choose to exit if it believes withdrawal liability will increase.

is no requirement, at least as interpreted by plan trustees,[50] that employers increase contributions to the plan to eliminate, or at least reduce, the benefit cuts.

D. Rules for severely underfunded plans

Employers sponsoring single-employer plans are required to make minimum contributions to the plan required by law or pay an excise tax equal to the amount of the underfunding.[51] Workers and retirees are treated similarly to other creditors in that the employer is responsible for making good on its pension promises even if that results in bankruptcy.[52] An employer sponsoring a single-employer plan can only voluntarily terminate a plan by fully covering all plan liabilities.[53] Prior to the Pension Protection Act of 2006 (PPA),[54] employers sponsoring multiemployer plans were also required to make minimum contributions enforceable by a similar excise tax.[55] This excise tax applied regardless of whether employers were meeting the level of required contributions in their collective bargaining agreements (CBAs). Indeed, the premise of any set of rules requiring pensions to be funded is that sufficient contributions must be collected to adequately fund the plan, regardless of whether a collective bargaining agreement provides for such sufficient contributions.

Under PPA,[56] multiemployer plans that claim they are unable to meet required contributions or are otherwise in the red zone receive a waiver from required contributions.[57] There are no objective criteria used to determine whether a plan can afford required contributions.[58] Such plans are under a requirement to take "reasonable measures" to improve funding levels, or if that is not reasonable, to forestall insolvency.[59] There is good reason to believe that many plans are taking advantage of this waiver to avoid doing what they can to reduce underfunding. A

[50] Staff discussions with PBGC and various multiemployer plans and their service providers, including as part of the many staff briefings provided to the Joint Select Committee in 2018. For example, contributions from ongoing employers to the Teamsters Local 707 plan, which ran out of money in 2017, and is receiving financial assistance from PBGC to pay retires at the PBGC guarantee level have stayed roughly the same over the past several years.
[51] IRC section 4971(a)(1), (b)(1).
[52] 29 U.S.C. section 1341(c). In certain limited circumstances, PBGC can relieve the employer sponsoring a single-employer plan of its pension liabilities by terminating the plan without forcing the employer to fund the plan.
[53] 29 U.S.C. section 1341(b).
[54] Public Law 109-280.
[55] IRC section 4971(a)(2), (b)(2).
[56] PPA established the critical, endangered and serious endangered statuses noted above.
[57] IRC section 4971(g).
[58] Pension rules that rely on objective data are the most reliable and provide the best protections to participants. Measuring liabilities necessarily requires projections about future mortality, but mortality projections are based on actual historical mortality data. Discounting liabilities based on the yield curve on high quality bonds is an objective measurement. In contrast, discounting liabilities based on projected rates of return on assets is inherently speculative. Many of the criteria used to determine whether plans are in a special PPA status are based on projections about future events that are extremely speculative, and leave tremendous discretion in the hands of plan actuaries and trustees. For example, Burke Blackman, the president of a small business that contributes to the Boilermaker-Blacksmith National Pension testified that he does "not believe the pension's accounting reflects its true liability" because the plan is using a discount rate that is too high to measure its liabilities and because the plan "assumes that hours worked will continue at current levels," thereby ignoring the plan's "historical trend of declining numbers of active participants and declining numbers of employers who are contributing to the plan." Testimony of Burke Blackman, Joint Select Committee, June 13, 2018.
[59] IRC section 432(e)(3).

statutorily required report by the Obama Administration concluded that red zone plans collected contributions per active worker that were less than contributions per active worker collected by other plans.[60] As a consequence, such plans generally fail to reduce, or even pay interest on, underfunding. For example, in 2016, even using actuarial assumptions, only about 55% of critical plans and 10% of critical and declining plans collected contributions sufficient to cover normal cost (that is, new promises and administrative expenses) and interest on underfunding.[61] On a fair market value basis, less than 20% of green zone plans did so.[62] For 2015, minimum required contributions for all plans under current law using the plans' actuarial assumptions were $38.5 billion, but actual contributions were only $26.9 billion.[63]

Even worse, severely underfunded plans collect contributions covering less than the fair market value of their administrative expenses and new pension promises, without at all addressing underfunding. For example, in 2015, the 75 largest critical and declining plans had total contributions from ongoing employers of only $1.1 billion, while the value of new promises on a PBGC rate basis and administrative expenses was $1.3 billion.[64]

Given that plan trustees allow employers to make contributions that barely meet new costs, if even that, then employers, so long as they do not withdraw from the plan, are not actually responsible for making good on plan promises. Thus, although employers are nominally jointly and severally liable for all plan promises, it appears that as a practical matter no employer is actually responsible for any plan promises, including promises made by that employer.

In addition to waving required contributions, PPA also allowed plan trustees to cut certain vested benefits earned by participants. This contrasts sharply with the single-employer rules under which employers may not reduce benefits already earned by participants.[65] Trustees have, under this legislation, cut vested benefits of participants by over $9 billion.[66] The Multiemployer Pension Reform Act of 2014 (MPRA),[67] signed into law by President Obama, created the critical and declining status, and allows plans in this status meeting a variety of further tests to cut specified vested benefits. In contrast, there generally is no required increase in employer contributions, even at the point the plan actually runs out of money to pay retirees.

[60] Multiemployer Pension Plans, Report to Congress Required by the Pension Protection Act of 2006, page 35. https://www.pbgc.gov/documents/pbgc-report-multiemployer-pension-plans.pdf.
[61] Dr. Joshua Rauh, Director of Research and Senior Fellow, Hoover Institution, Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://burypensions.files.wordpress.com/2018/07/rauh-written.pdf.
[62] Dr. Joshua Rauh, Director of Research and Senior Fellow, Hoover Institution, Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://burypensions.files.wordpress.com/2018/07/rauh-written.pdf.
[63] PBGC analysis pursuant to a request for technical assistance.
[64] Staff analysis of Form 5500 data filed by plans, along with data provided by PBGC, pursuant to a request for technical assistance. 2015 is the most recent year for which the PBGC rate is available.
[65] IRC section 411(d)(6).
[66] Form 5500 data supplied by PBGC pursuant to a request for technical assistance.
[67] Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235.

Single-employer plans are not permitted to cut benefits[68] and generally are terminated if they cannot meet required contributions or project that they will be unable to pay benefits when due.[69] Such plans may not make new pension promises.[70] In addition, single-employer plans less than 60% funded may not make new promises.[71] Multiemployer plans, in contrast, may, and generally do, continue to make promises even when they cannot meet minimum required contributions.[72] Multiemployer plans continue to make promises even when they are less than 60% funded or project that they will soon run out of money to pay promised pensions. Even multiemployer plans that have already run out of money and are receiving PBGC assistance to pay retirees may continue to make new promises that they will have no ability to pay. This creates false expectations for plan participants, and interferes with workers' ability to plan for retirement.

Workers in underfunded plans are not told the cost of their pension accruals as measured by the plans, or the portion of their contribution that exceeds the costs of their own benefit accruals. For underfunded plans, even the portion of the contribution equal to their pension accrual as measured by the plan is unlikely to be received by current workers because all pension assets are co-mingled and those assets will be used to pay those already in retirement as the plan runs out of money.

Letting underfunded plans continue to make new promises and dig themselves into ever deeper holes also carries significant risk to the entire system. It is true that absent the enactment of PPA, many multiemployer plans would have terminated. However, allowing plans that claim they cannot meet required contributions a waiver from required contributions has made the crisis much deeper. At the beginning of 2007, multiemployer plans were $193 billion underfunded; in 2015 multiemployer plans were $638 billion underfunded.[73] PBGC, the federal insurer of these plans, went from a deficit of $739 *million* in 2006, to a deficit of $53.9 *billion* in 2018.[74]

E. Plan trustees must meet their fiduciary obligations

The structural and operational flaws in the multiemployer plans compound each other, leaving workers and retirees exposed to myriad risks. Plans significantly undervalue liabilities so that plan trustees are not in a position to pay out promised benefits even when a plan reports being fully funded; plans delay recognizing losses through asset smoothing; plans avoid taking steps to address the underfunding that they do recognize through credit balances; and plans can avoid required contributions sufficient to pay normal cost, let alone interest on, or amortization of, underfunding, by claiming that they cannot afford the required contributions. And although contributing employers to multiemployer plans are theoretically jointly and severally liable, in

[68] IRC section 411(d)(6).
[69] 29 U.S.C. section 1342(a).
[70] 29 U.S.C. section 1341.
[71] IRC section 436(e).
[72] This is only the case since PPA, as prior to PPA, such plans were effectively forced to terminate.
[73] PBGC Data Tables, Table M9.
[74] PBGC Data Tables, Table M-1, PBGC 2018 Annual Report.

practice the liabilities of multiemployer plans are generally not actually the responsibility of any employer.

In contrast to single-employer plans in which one employer is fully responsible for managing each plan and making up any underfunding, the structure of multiemployer plans makes these plans less able to recover from significant underfunding. As Dr. Naughton testified: "Multiemployer plans are essentially an organization that manages the contributions of its members to provide retirement income, which is similar to an insurance company. They do not have the ability to respond to large fluctuations in the value of the assets in the pension trust, both because contributions are typically set over multiple years and because contributing employers vary over time, either because of bankruptcy or because of selective exit through withdrawal."[75]

Multiemployer pension benefits are generally in the form of annuities, just like those provided by insurance companies, payable upon retirement. Like insurance companies, multiemployer plan trustees should have used reasonable assumptions to measure the cost of liabilities, and invested in high-quality bonds matching the duration of those liabilities. Alternatively, trustees may finance the annuities promised to workers by purchasing them from insurance companies. Had plan trustees acted prudently and followed either course of action, the plans and PBGC would not be in crisis.[76] Instead, many multiemployer plan trustees have attempted to provide annuities at a much lower price than those charged by insurance companies by investing in assets they hope will provide higher returns than low-risk investments, and by counting on future contributions from new workers to fund previously promised benefits if the plan does not achieve high returns.

Plan trustees taking this approach expose the plan's participants to the severe downside risk that the plan's investments will not be sufficient to pay pensions as they come due.[77] As the Congressional Budget office has noted, riskier investments may sometimes attain higher returns and may even average higher returns, but that risk generally carries a high price. Investing in risky assets does not reduce the cost of liabilities. It is necessarily the case that the expected return on any asset available in the market, after taking risk into account, is the same on a fair market value basis, as assets with higher expected rates of return would otherwise be costlier.[78] This is true not just in the short-term, but also over the long-term.[79]

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[75] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Hearing on The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis, Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions, March 7, 2019. https://edlabor.house.gov/imo/media/doc/NaughtonTestimony030719.pdf.

[76] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Hearing on The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis, Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions, March 7, 2019. https://edlabor.house.gov/imo/media/doc/NaughtonTestimony030719.pdf.

[77] No financial institution would fund a pension or annuity promise with risky investments, because the risk of not having sufficient assets to cover these promises would be too high.

[78] Congressional Budget Office, The Underfunding of State and Local Pension Plans, May 2011, https://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/120xx/doc12084/05-04-pensions.pdf.

[79] Zvi Bodie, On the Risk of Stocks in the Long Run. Working Paper No. 95-013 (Cambridge, Mass.: Harvard Business School, December 1994), available at the Social Science Research Network, http://ssrn.com/abstract=5771.

While multiemployer trustees may be employed by a sponsoring union or employer, when acting as a plan trustee, trustees are required to set aside their disparate interests and act solely in the interest of plan participants and beneficiaries. Because plan trustees exercise discretionary authority over the plan's management, assets, and administration, they are plan fiduciaries under ERISA, owing the "highest [duties] known to law" to plan participants.[80] A fiduciary must act "solely in the interest of the participants and beneficiaries" for the "exclusive purpose" of providing benefits and defraying expenses.[81] A fiduciary must also act "with the skill, prudence, and diligence" of a prudent person.[82]

While trustees cannot be expected to predict when a recession will occur, trustees should anticipate that over the life of long-term pension promises, they will occur. It is true that the first decade of this century had two periods of economic downturn, including negative growth and severe stock market downturns. But both the economy and the stock market have more than fully recovered. It is also true that multiemployer plans have faced a long decline in the percentage of active workers. Knowing that outside factors influence a plan, and knowing the general universe of those factors, trustees should manage a plan in a way so as to ensure it can weather the ups and downs of the economy and demographic fluctuations. Single-employer plans faced the same economic downturns as multiemployer plans. Furthermore, the percentage of active, terminated vested, and retired participants in single-employer and multiemployer plans is almost identical.[83] And yet, single-employer plans are far better funded than multiemployer plans.[84]

This is because multiemployer trustees chose to pursue risky investments while not collecting sufficient contributions, behavior in no way required by the rules.[85] While trustees enjoy a certain amount of discretion in managing multiemployer plans, they are still required to make reasonable and prudent plan decisions and manage the plan solely in the interest of participants and beneficiaries. As Dr. Rauh testified before the Joint Select Committee, the "statute requires the plan trustees to use reasonable assumptions, and the trustees who budgeted to pay pensions using excessively high discount rates violated that statute by using unreasonable assumptions. Trustees have fiduciary obligations to plan participants, which many have broken by making unrealistic pension promises on which the plans had little chance of making good."[86]

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[80] *Donovan v. Bierwirth*, 680 F.2d 263, 272, n. 8 (2nd Cir. 1982); ERISA § 3(21)(A); 29 U.S.C. § 1002(21)(A).

[81] ERISA § 404(a)(1)(A); 29 U.S.C. § 1104(a)(1)(A).

[82] ERISA § 404(a)(1)(B); 29 U.S.C. § 1104(a)(1)(B).

[83] PBGC Data Tables, Tables S-32 and M-7.

[84] Single-employer plans were collectively 79% funded in 2015, using the PBGC rate. PBGC Data Tables, Table S-44. Although much better than multiemployer plans, this still leaves room for improvement.

[85] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of the Multiemployer Pension Plan, July 25, 2018. https://www.pensions.senate.gov/sites/default/files/25JUL2018NaughtonSTMNT.pdf.

[86] Testimony of Dr. Joshua Rauh, Director of Research and Senior Fellow, Hoover Institution, Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://burypensions.files.wordpress.com/2018/07/rauh-written.pdf.

F. PBGC

As of September 30, 2018, PBGC's multiemployer program had a $53.9 billion deficit – $56.23 billion in liabilities, compared to $2.3 billion in assets.[87] By 2025, assets in the multiemployer insurance fund will likely be exhausted.[88] At that point, PBGC annual financial assistance to plans to pay benefits at the PBGC guarantee level will be reduced to PBGC's annual premium receipts. On a cash flow basis, annual financial assistance payments from PBGC's multiemployer program are projected to rise rapidly as plans continue to become insolvent—from $140 million in 2017, to $1 billion by 2023, $2 billion by 2025, $3 billion by 2027, upwards of $4 billion per year by 2033, and $4.5 billion by 2038.[89]

G. The problem may be worse than it appears and will only deteriorate if corrective action is not taken

The scale of the problem is immense. It is not just those plans that are about to run out of money that are severely underfunded, but the vast majority of plans. In the aggregate, multiemployer plans are 43% funded, with $638 billion in underfunding for 2015, using the PBGC rate.[90] 95% of participants are in plans that are less than 60% funded. Almost 75% of participants are in plans that are less than 50% funded.[91] For 2016, the total underfunding using the Treasury yield curve was $722 billion.[92] About $538 billion of the total $638 billion of underfunding is in plans not in danger of running out of money in the next fifteen years.[93] Even green zone plans are less than 50% funded on a current liability basis.[94]

And the trustees are digging a much deeper hole each year ("negative amortization"). Plans are supposed to collect contributions each year sufficient to cover new costs, interest on any underfunding, and an additional amount to steadily pay down (or "amortize") the underfunding over a period of years. To avoid negative amortization, the plan must collect contributions, in addition to those needed to fund new benefits, equal to interest on the underfunding.[95] For 2016, multiemployer plans had negative amortization of over $17 billion.[96] Indeed, many plans collect contributions less than the fair market value of new promises, never mind paying down, or even interest on, underfunding. And most of the annual deterioration in the funding of the plans is in

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[87] PBGC 2018 Annual Report, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2017.pdf.

[88] https://www.cbo.gov/system/files/2019-05/51305-2019-05-pbgc.pdf.

[89] FY 2017 PBGC Projections Report, Figure 3. https://www.pbgc.gov/sites/default/files/fy-2017-projections-report.pdf.

[90] PBGC Data Tables, Table M-9. 2015 is the latest year for which such data is currently available.

[91] PBGC Data Tables, Table M-9.

[92] Measuring liabilities on a Treasury yield curve. Testimony of Dr. Joshua Rauh, Director of Research and Senior Fellow, Hoover Institution, Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://burypensions.files.wordpress.com/2018/07/rauh-written.pdf.

[93] Testimony of PBGC Director Tom Reeder, at Hearing on The Structure and Financial Outlook of the Pension Benefit Guaranty Corporation, Joint Select Committee on Solvency of Multiemployer Pension Plans, May 17, 2018. https://www.pensions.senate.gov/sites/default/files/PBGC_Testimony-Joint_Select_Committee_on_Solvency_of_Multiemployer_Plans-5.17.2018.pdf.

[94] Staff analysis of Form 5500 data.

[95] Testimony of Dr. Jeremy Gold, Jeremy Gold Pensions, at Hearing on Private Employer Define Benefit Pension Plans, Committee on Ways & Means Subcommittee on Select Revenue Measures, September 17, 2014. https://gop-waysandmeans.house.gov/UploadedFiles/Gold_Testimony_091714.pdf.

[96] On a current liability basis. Staff analysis of Form 5500 data.

green zone plans. In 2015, green zone plans had contributions of just $16.3 billion to cover $17.7 billion in new promises on a PBGC rate basis.[97] Even using plan actuarial assumptions, green zone plans collected contributions $2.3 billion short of those required under current law in 2015, enabled by credit balance rules allowing plans to avoid making otherwise required contributions.[98] More than $11 billion of the system-wide negative amortization in 2016 of $17 billion was in green zone plans.[99]

Measuring PBGC's finances, even for the single-employer program, is very difficult.[100] The multiemployer program is even harder to estimate than the single-employer program because of the much more complex and uncertain rules regarding required contributions.[101] PBGC's financial statements do not adequately take into account significant market risks. A 2016 CBO study found that the fair value of PBGC's multiemployer deficit was almost twice as large as reported by PBGC at the time.[102] A more recent CBO study concluded that taking into account liabilities associated with plans needing financial assistance by 2038, PBGC has a deficit of $109 billion.[103] PBGC's 2008 annual report found PBGC's reasonably possible exposure to be $30 million.[104] The reasonably possible exposure is PBGC's projection of its projected financial position ten years into the future.[105] However, by 2018, PBGC had booked about $55 billion in additional liabilities.

For 2018, PBGC projected an additional $9.4 billion in reasonably possible multiemployer program exposure from plans that may start requiring financial assistance in the ten years beginning in 2028.[106] This estimate of PBGC's exposure does not take into account liabilities associated with plans that may start needing financial assistance more than twenty years from now. The liabilities booked by PBGC in its current financial position (taking into account plans already receiving financial assistance or expected to start receiving financial assistance in the next ten years) and its projected financial position (taking into account plans projected to start needing financial assistance in the ten years after that) only includes 60% of critical and declining plans, 6% of critical plans, 1.5% of endangered plans, and 0.5% of green zone plans.[107] Any policy solutions must include long-term reforms that take into account the risks posed by

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[97] Data from PBGC pursuant to a request for technical assistance.
[98] Data from PBGC pursuant to a request for technical assistance.
[99] Staff analysis of Form 5500 data.
[100] Over a dozen studies commissioned by Congress in MAP-21, P.L. 112-141, and conducted by the Brookings Institution and the Pension Research Council concluded that PBGC generally underestimates the degree of PBGC's downside risk. https://www.pbgc.gov/documents/PIMS/WP2013-07-OSM.pdf, https://www.brookings.edu/wp-content/uploads/2016/06/PBGC-Review-Brown-Elliott-Gordon-Hammond-FINAL-09112013.pdf. A 2005 CBO study concluded that PBGC's single-employer program was about twice as underfunded on a market basis, as measured by PBGC at the time. https://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/66xx/doc6646/09-15-pbgc.pdf.
[101] This is exacerbated by reporting by plans that leaves out crucial information such as the identity of, and contributions by, each contributing employer, and the projected benefit payment schedule of the plans on a year-by - ear basis. The information is also outdated when reported. For example, calendar year plans will not report data that is current as of January 1, 2018, until October 15, 2019.
[102] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51536-pbgc.pdf.
[103] https://www.cbo.gov/system/files?file=2018-12/53921-AccountingforInsurancePrograms_0.pdf.
[104] https://www.pbgc.gov/documents/2008_annual_report.pdf.
[105] PBGC 2018 Annual Report, note 9.
[106] PBGC 2018 Annual Report, page 29.
[107] Data from PBGC provided pursuant to a request for technical assistance.

plans not expected to need financial assistance in the next twenty years. These plans, most of which are severely underfunded on a market basis, contain the vast majority, over $500 billion, of multiemployer plans' unfunded liabilities of $638 billion.[108]

III. Solutions

The crisis facing multiemployer plans is a serious problem that needs to be resolved on a bipartisan basis. Congress must make two sets of decisions: "The *first decision* relates to past underfunding, and entails figuring who will cover the shortfall that has arisen because of the difference between what the unions promised their members and what the unions collected from employers to cover these promises... The *second decision* entails figuring out how to ensure that the current level of underfunding does not deteriorate further and how to put the system on a sustainable path going forward."[109] As Dr. Naughton testified the second decision is more urgent as it "offers the hope of limiting any further deterioration of the multiemployer system."[110] The initial step forward must be to accurately measure existing assets and liabilities, no matter if the result in extremely unpleasant and difficult to deal with. As Dr. Jeremy Gold testified before the Committee on Ways & Means, "the hole will get bigger unless two necessary steps are taken: first, get the right price for all future benefit accruals and make sure at an absolute minimum that these are paid, and second, accurately measure the deficit and decide when, how and who pays to fill the hole."[111]

A. Protecting workers by fixing the current system

The pension promises made to union members must be secure. The primary goal of multiemployer plan defined benefit plans is to provide secure promises to their workers. Thus, employers and unions must stand behind the promises they make. ERISA imposed funding rules on private sector defined benefit pension plans in order to protect the pension promises these plans make to workers. Unlike defined contributions plans, such as 401(k) plans, defined benefit pension plan participants have little, if any, control over the funding of their retirement plans, so they should be assured that plan trustees will be able to provide their promised benefits in retirement.

There are extremely important lessons for multiemployer plans from the single-employer system. Participants in single-employer plans are much more likely to receive the promises made to them as single-employer participants are in plans that are much better funded. The company sponsoring each single-employer plan is fully responsible for all promises made by the plan, and

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[108] Data from PBGC provided pursuant to a request for technical assistance.
[109] Emphasis added. Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Hearing on The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis, Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions, March 7, 2019. https://edlabor.house.gov/imo/media/doc/NaughtonTestimony030719.pdf.
[110] Testimony of Dr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Hearing on The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis, Committee on Education and Labor Subcommittee on Health, Employment, Labor, and Pensions, March 7, 2019. https://edlabor.house.gov/imo/media/doc/NaughtonTestimony030719.pdf.
[111] Testimony of Dr. Jeremy Gold, Jeremy Gold Pensions, at Hearing on Private Employer Define Benefit Pension Plans, Committee on Ways & Means Subcommittee on Select Revenue Measures, September 17, 2014. https://gop-waysandmeans.house.gov/UploadedFiles/Gold_Testimony_091714.pdf.

so has a very strong incentive to make sure the plan is funded – in stark contrast to multiemployer plans where no employer is ultimately on the hook. Perhaps as importantly, single-employer plans must use investment grade bonds to measure the cost of liabilities – in contrast to multiemployer plans who measure similar promises at a fraction of the cost by using expected rates of return on assets to measure the cost of liabilities.[112] In addition, single-employer plans have only seven years to amortize shortfalls instead of fifteen like multiemployer plans.[113] To protect workers, severely underfunded single-employer plans may not promise new benefits – in contrast to multiemployer plan trustees that promise benefits even when the trustees know that they cannot provide those benefits.

Single-employer plans may not cut the benefits already promised to their workers. In contrast, multiemployer plans are permitted to cut certain benefits from workers under PPA, and potentially may make even deeper benefit cuts under MPRA. Given that workers and retirees ought to be able to count on those promises and have no control over plan funding levels, with respect to new benefit promises, at least, plans should be prohibited from cutting benefits earned by union members in multiemployer plans just like single-employer plans may not do so.

If a multiemployer plan is mismanaged, in practice it is only the workers and retirees who bear the consequences. And yet the workers and retirees have no control over the funding of the plan. In contrast, the trustees and the service providers who do control the plan bear no responsibility.

Trustees must manage the plans in the interest of participants, not the unions and employers that appointed them. Congress should consider whether trustees should be completely independent from the unions and employers. This would prohibit trustees of any plan from simultaneously working for the union or employers in the plan.[114] Additionally, the plans should be required to disclose much more information so that employers and participants, as well as the government regulators, have more insight into plan operations and financing.[115]

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[112] PPA required single-employer plans to discount liabilities using a yield curve on investment grade corporate bonds over a 24-month period. More technically, plans use three different interest rates depending on the percentage of their liabilities that fall into different segments of the yield curve, but the result is similar in effect to using a yield curve. Allowing plans to use the interest rates on investment grade corporate bonds to measure liabilities for purposes of determining required contributions somewhat lowers the measurement of those liabilities while introducing more risk to the promises. Allowing plans to use an average of discount rates over a several year period, as opposed to the market discount rates on a specific date, such as the valuation date, reduces the accuracy but also the volatility of such measurement. Beginning in 2012, Congress provided funding relief, which largely starts to phase out beginning in 2021, to single-employer plans by allowing the plans to take into account interest rates over the prior twenty-five years. However, this was balanced out by a steadily increasing variable rate premium that for 2019 is 4.3% of underfunding, calculated without taking into account this funding relief. Participants in single-employer plans also are protected by a much higher PBGC guarantee if their employer goes bankrupt and the plan is underfunded.

[113] IRC section 430(c)(2); 29 U.S.C. § 1083(c)(2).

[114] The trustees should also not have previously worked for the union or employers, and should be prohibited from doing so after completing service as a trustee.

[115] Committee Democrats rejected an amendment offered by Committee Republicans offered at the July 10, 2019, mark-up to require plans taking loans under H.R. 397 to disclose much more information about a wide variety of matters including qualifications for becoming a trustee, conflict of interest rules and disclosures, plan investment policies, identity of employers, and the composition of assets and liabilities. These disclosure requirements should also be required for all multiemployer plans with at least $1 billion in assets. Because Committee Democrats ruled

The current system holds itself out as providing security to workers and retirees because all employers are fully responsible for all promises made by the plan. The rules must be reformed to actually accomplish this. The withdrawal liability rules do not work and should be eliminated with regard to new promises.

Promises made by multiemployer plans to union members should be as secure as those made by insurance companies. Thus, multiemployer plans should measure the cost of those promises in a manner similar to insurance companies. Multiemployer plans should not be allowed to use various gimmicks to avoid recognizing their real level of underfunding. Pension promises and contributions should be separately attributed to each employer and that employer should be responsible for funding those promises. If an employer cannot meet its required contributions, that employer should no longer make new promises. Just like the single-employer system, each employer should be fully liable for underfunding as measured by the cost of purchasing annuities to cover all promises made by the employer. To implement the actual protections of joint liability as the plans promise, the other employers must contribute to the PBGC a sufficient amount to cover any unfunded liabilities.[116]

Allowing the portion of contributions needed to fund new benefit accruals to be used to fund promises already made is a major cause of the current crisis. The portion of contributions needed to fund new promises should be separated and used only to fund such promises. It is fundamentally unfair to current workers to give them the illusion that their pensions are being funded with their contributions if those contributions are going to pay retirees. Plans should be transparent with workers and inform of them of the cost of their new benefit accruals. If a portion of employer contributions are needed to make up past underfunding, the plan trustees should be honest with workers about this.

In order to revitalize multiemployer plans and attract new employers and workers, it is crucially important to start anew with rules that protect workers and retirees. Employers and workers will not join multiemployer plans if they are held responsible for making up very large levels of pre-existing underfunding.[117]

B. Addressing existing underfunding

Addressing the existing underfunding is urgent, and requires serious bipartisan solutions. Congress should start by fixing the safety net provided by PBGC to retirees, which provides benefits when their plan trustees have failed them. It is crucial to note that it is the trustees who

that any reforms to multiemployer plans not related to H.R. 397's assistance programs were not germane, the amendment was restricted to the plans receiving assistance under H.R. 397.

[116] Alternatively, employers and unions should be allowed to set up plans in which workers may accrue pension benefits in a plan by virtue of working for any employer in the plan (which would not be the case in separate single-employer plans), but the promises made by each employer to its workers would be the responsibility only of the employer making the promises, as in single-employer plans. However, such plans would have to be very transparent that only one employer is responsible for each portion of plan promises and that the plan does not provide the protections of joint and several employer liability for all promises made by the plan.

[117] Testimony of Scott Henderson, Vice President of Pension Investment and Strategy, The Kroger Company, at Hearing on Private Employer Defined Benefit Pension Plans, Committee on Ways and Means Subcommittee on Select Revenue Measures, September 17, 2004. https://www.govinfo.gov/content/pkg/CHRG-113hhrg94394/html/CHRG-113hhrg94394.htm.

made the promises to union members that trustees now cannot keep. Taxpayers had no role in making those promises.

Throughout its history, PBGC obligations have never been backed by federal taxpayers. The statute creating the PBGC explicitly provides that "The United States is not liable for any obligation or liability incurred by the corporation."[118] And Congress revoked PBGC's limited authority to borrow from the Treasury Department in 2012 legislation, MAP-21,[119] signed into law by President Obama. Congress should make every effort to keep PBGC solvent. PBGC's guarantee and premium levels are set by Congress, rather than by the insurance agency itself as would be the case in the private sector.

The multiemployer program's liabilities, as recognized by PBGC, have increased dramatically in recent years. Premiums paid by multiemployer plans have historically been extremely low relative to contributions to the plans, and the risks posed by the plans to PBGC. Although the premiums are paid by the plans themselves, the burden of the premiums is ultimately borne by employers and participants. Thus, those who have participated in the system for many decades have effectively been subsidized by a premium level that has been, and continues to be, far too low. The premium was between 50 cents and $2.60 per participant prior to 2007. The premium remained at $8-9 per participant through 2012, and $12 for 2013 and 2014. The premium was only raised to $26 per participant for 2015 and is currently at $29.

After years in deficit, PBGC marked a major milestone in FY 2018, when its single-employer program finally reached a surplus.[120] The PBGC single-employer program is much healthier than the PBGC multiemployer program despite the much higher guarantee level provided by the single-employer program for a variety of reasons, and thus provides some important lessons for fixing the multiemployer program.

Single-employer plans are subject to premiums that are 20 times higher than those for multiemployer plans. Single-employer premium collections have been far higher than multiemployer premium collections for decades. For 2019, the single-employer program has a fixed premium of $80 per participant in addition to a variable rate premium equal to 4.3% of underfunding, capped at $541 per participant. Combined, this amounts to a premium of up to $621 per participant. There is also a termination premium of $1,250 per participant for three years. Congress has raised the single-employer variable rate premiums significantly in recent years to encourage plans to become fully funded and charge more to plans that pose more risk.

As noted above, single-employer plans are better funded to begin with (thus posing less risk to PBGC) because of better funding rules, a prohibition on severely underfunded making new promises, and because companies are fully liable for pension promises. In addition, PBGC acts much quicker when a single-employer plan starts to become troubled to limit overall

[118] 29 U.S.C. section 1302.
[119] P.L. 112-141.
[120] PBGC 2018 Annual Report.

deterioration in the finances of that plan and of the PBGC, whereas the opposite approach is used for multiemployer plans.[121]

Congress should consider enacting the bipartisan proposals by Presidents Obama and Trump to create a multiemployer variable rate premium, combined with an exit premium on employers withdrawing from plans, sufficiently high to keep PBGC's safety net for retirees in the multiemployer system intact for at least twenty years.[122] Like the single-employer variable rate premium, the premium would be a percentage of a plan's underfunding. The proposal would allow PBGC to waive all or a portion of these premiums for certain plans to the extent PBGC believes it would be unaffordable for those plans.[123] Some have argued that higher multiemployer premiums are not affordable. But as Chairman Scott pointed out at a congressional hearing earlier this year, the multiemployer premium level is very low compared to employer contributions to multiemployer plans and the affordability of premium increases should be examined in the context of contributions to the plans.[124] Multiemployer premiums

[121] PBGC terminates single-employer programs if employers cannot meet required contributions or if the plan poses an unreasonable threat to PBGC's finances. PBGC uses this authority to protect workers and retirees by requiring financially shaky employers to increase contributions even beyond those otherwise statutorily mandated or take other steps to protect participants such as post collateral. For example, PBGC's negotiations with Sears. https://www.pbgc.gov/news/press/releases/pr16-03. PBGC has not exercised its similar statutory authority (29 U.S.C. section 1342) to terminate multiemployer plans. Benefits in the single-employer program are cut (the "insurable event") to the PBGC level at termination, a point at which plans generally have significant assets that are used by PBGC to provide promised benefits so that PBGC can conserve its own assets and provide a relatively high guarantee to retirees. Participants in the single-employer program do not like getting accelerated benefit cuts, but at least the benefit cuts are generally much more graduated. In contrast, benefits in multiemployer plans are not cut to the PBGC level until the plan completely runs out of assets, thus requiring the entire PBGC guarantee amount to come from PBGC assets. This postpones the time at which multiemployer benefits are cut, but it also requires much steeper cuts. It is also noteworthy that PBGC does not provide funds to the trustees of failed single-employer plans, allow those plans to keep making new pension promises, or even allow those trustees to remain in place. Instead, PBGC terminates the plans, taking over all plan assets. In contrast, PBGC does not take over failed multiemployer plans, allows trustees to remain in place, and even allows such plans to keep making new promises the plans seemingly cannot keep. Before the 1980 Multiemployer Pension Plan Amendments Act (MPPAA), similar rules applied to both single-employer and multiemployer plans: PBGC took over multiemployer plans and absorbed plan assets, instead of leaving the plans in place with the same trustees, and such takeover was the insurable event. MPAA found that "it is desirable to replace the termination insurance program for multiemployer pension plans with an insolvency-based benefit protection program" on the premise that this would "enhance the financial soundness of such plans, place primary emphasis on plan continuation, and contain program costs within reasonable limits." 29 U.S.C. 1001a. Unfortunately, the MPAA changes seem to have had the opposite result decreasing the financial position of multiemployer plans and exponentially increasing the PBGC multiemployer program's costs. It is very difficult to understand why one would think that allowing plans that have been terminated by the bargaining parties to continue as ongoing entities, albeit without making new pension promises, is more sound from a financial perspective and better for the long-term interests of plan participants than having such plans be dissolved by the PBGC.

[122] Raising the variable rate premium so that it collects about $3 billion per year should bring PBGC to solvency over the long-term, according to an estimate by the Congressional Budget Office in September 2018. Although that would be a very significant increase, contributions to multiemployer plans were ten times that amount in 2016.

[123] https://www.dol.gov/sites/dolgov/files/legacy-files/documents/general/budget/CBJ-2017-V2-02.pdf https://www.dol.gov/sites/dolgov/files/general/budget/2020/CBJ-2020-V2-02.pdf.

[124] The Costs of Inaction: Why Congress Must Address the Multiemployer Pension Crisis, March 7, 2019, Subcommittee on Health, Employment, Labor and Pensions, Committee on Education and Labor, questioning by Mr. Scott, starting at 2:18:00 into the hearing, https://www.youtube.com/watch?v=hhokvHliafQ.

peaked at 1% of the amount of contributions to multiemployer plans for 2016.[125] In contrast, single-employer premiums were equal to 7% percent of contributions to single-employer plans.[126]

Congress must also explore bipartisan solutions that provide a stronger safety net then the current PBGC guarantee level to retirees whose plan trustees have failed them. Increasing the PBGC guarantee should be considered, but only if that could be paid for with premiums over the long-term. Unfortunately, Congress cannot hold harmless every retirement saver that was promised annual returns of 7 percent, whether by multiemployer pension trustees or investment advisers. The moral hazard, as well as cost to taxpayers, that would be created by such a guarantee, even if the guarantee was at a much lower rate, would be infinite. As noted above, the first step should be to protect all new pension promises so that the problem does not keep getting bigger and bigger.

The more lenient funding rules for multiemployer plans were partially premised on employers being jointly responsible for all promises. Bipartisanship solutions are necessary to determine the degree to which employers should be responsible to reduce the underfunding in the plans.

As of 2015, the plans were $638 billion underfunded. The decisions that must be made to address that underfunding will be difficult, but that is the responsibility of Congress. It is true that absent significant changes to the system, high investment returns by the plans or decreasing liabilities (mostly though raising interest rates) can reduce the extent of the problem. But making such bets are much more likely to continue to increase underfunding. Congress effectively tried making this gamble in PPA, by waiving required contributions for plans claiming that they could not meet the required contributions, instead of leaving the bargaining parties to choose between adequately funding or terminating each plan. As noted above, the financial positions of both the plan and PBGC deteriorated dramatically as a result.[127] Any form of taxpayer assistance to the plans, whether by lending or giving plans money or by absorbing a portion of plan liabilities, without significant reforms to the system for new promises made on a going forward basis as described above, would create the likelihood of even more underfunding (and more taxpayer assistance) going forward. Any solution must be based on sound financial principles if it is to have a chance of working. Allowing the portion of future contributions that are supposed to be going to fund new benefits to be available to cover existing shortfalls would certainly allow for artificially more attractive solutions than the alternative. But only because this avoids addressing the problem in the long-term by providing retirees with assets that were promised to younger workers. This is the type of Ponzi scheme-type methods plans are currently using and got them in the hole they now face. The history of these plans reinforces the fundamental importance of requiring that the portion of contributions needed to fund new promises be walled off and not be available to pay down promises previously made.

[125] Private Pension Plan Bulletin Historical Tables and Graphs, 1975-2016, Table E13, Employee Benefits Security Administration, Department of Labor, December 2018; PBGC Data Tables, Table S-2.
[126] Private Pension Plan Bulletin Historical Tables and Graphs, 1975-2016, Table E13, Employee Benefits Security Administration, Department of Labor, December 2018; PBGC Data Tables, Table M-2.
[127] See footnotes 73 and 74 and accompanying text.

IV. H.R. 397 is a fundamentally flawed proposal that is neither serious nor bipartisan

Workers and retirees in these insolvent union-managed multiemployer pension plans deserve a real solution. Unfortunately, H.R. 397 does not make these failing plans more stable, or end underfunding, or include reforms to make them solvent over time.

Forcing plans to accept balloon payment loans they can never hope to repay while putting off necessary reforms to make them solvent hurts workers, hurts businesses, and hurts innocent taxpayers who did nothing to create these failed plans.

H.R. 397 contains no reforms whatsoever to any multiemployer plan, regardless of whether the plan is eligible for the loans and financial assistance provided in the bill. The bill does not require multiemployer plans to accurately measure the costs of pension promises or plan assets or prevent the plans from double counting assets. The bill does nothing to make employers and unions at least partially responsible for the benefits they have promised union members and now cannot provide. The bill does not fix the glaring hole in the multiemployer system resulting from waiving required contributions for plans that claim they cannot meet them. Even plans getting the loans and financial assistance face no increased requirement to collect required contributions. Such plans would have no requirement to even maintain their current level of contributions. Such plans would have no limits on increases in administrative expenses. Such plans would even be allowed to increase the costs of the benefits they are promising with no requirement to pay for such benefits.

The most recent data for the plans eligible for the loans and financial assistance shows that these plans are generally collecting annual contributions from ongoing employers that do not cover the plan's normal costs (i.e., the sum of the administrative expenses and the value of the plan's new promises) for the year.[128] The bill would do nothing to change that. It is not clear how, without reforms, these plans are supposed to pay back the loan with interest. Are the plan's current assets sufficient to pay back the loans? It would seem not, as the plans can only be eligible for the loans under the bill in the first place because their assets are insufficient to pay the plan's pension liabilities.

Thus, it appears that the bill is supposed to somehow work by assuming plans can arbitrage high investment returns (which have inherently more risk) off the low-interest loans and use the new contributions needed to pay new promises to pay off the loan (with interest) and other promises previously made by the plans. Under the bill, a plan projecting that it will be able to pay interest and benefits that are due over the next thirty years will be eligible for a loan if it can project that it will be able to pay off the loan principal in thirty years – even, it seems, if the plan projects that after paying back the loan, the plan will be left without even a nickel in assets to pay back remaining liabilities, which could amount to tens of billions of dollars.

Committee Democrats argued that H.R. 397 is simply a loan program under which loans will be paid back. But the bill contains an entire section providing financial assistance to plans that cannot certify that they can pay back the loans. This "financial assistance" provided to plans will not be paid back and carries no interest. Committee Democrats refused Republican suggestions

[128] Data for 2015 (the latest available using the PBGC rate) from PBGC supplied pursuant to a request for technical assistance, along with staff analysis of Form 5500 filings.

to simply delete that section of the bill. And Committee Democrats also rejected a Republican amendment to have an independent analysis of whether plans taking the loans would actually be able to pay back the loans.[129]

The bill attempts to reverse bipartisan 2014 MPRA legislation signed by President Obama allowing certain plans to cut benefits in order to regain solvency. Committee Democrats did not design H.R. 397 to really make retirees whole by also paying them interest on the MPRA benefits that were cut. Furthermore, why didn't Committee Democrats also reverse the more than $9 billion of benefit cuts many multiemployer pension participants got under PPA?[130] And what about hard-working Americans in the single-employer system who have received painful benefit cuts?

H.R. 397, as enacted, would allow any multiemployer plan that meets the bill's criteria to receive loans and financial assistance. Committee Democrats amended the bill so that only plans meeting certain criteria on the date of enactment of the bill would be eligible. Committee Democrats may have done so to limit the bill's score. But having established the precedent in this bill, can there be any doubt that plans meeting the bill's criteria in the future would also be made eligible? The amendment by the Committee Democrats also substantially expands the amount of loans and financial assistance for which eligible plans could qualify, by also covering the benefits of participants who are terminated vested. Committee Democrats offered no explanation or justification for this major change. Can it be that Committee Democrats believe the plans are even more underfunded than the plans were when the bill was introduced several months ago?[131]

The complete absence of reforms in H.R. 397 would lead to even more risk-taking by unions and multiemployer plan trustees in the future. The $638 billion of underfunding in multiemployer plans is only like to escalate with taxpayers fully on the hook under the precedent that would be

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[129] Committee Democrats cited past government loan programs, such as the response to the 2008 financial crisis, as a justification for these loans. But those loans were provided to operating entities that generated income from business activities. In contrast, multiemployer pension plans do not generate income. They simply manage funds and pay pensions. The underlying logic of providing loans is that these funds can generate excess investment returns, with these excess returns going to pay unfunded pension benefits. But the belief that these funds can generate excess investment returns is one of the main reasons there is a crisis in the first place. The funds collected insufficient contributions because they believed that could do better than insurance companies, and generate better returns through riskier investments. As history has shown us, that was not the case. Moreover, providing loans that will be invested in risky assets introduces more risk into the system. The plans will have a fixed obligation (the loan) that is financed by risky investments (equity), the very definition of leverage. It is hard to belief that increasing risk will solve the crisis.

[130] Data from Form 5500 filings provided by PBGC pursuant to a request for technical assistance.

[131] It is odd for the Committee to mark-up a bill without a score, but to instead provide a score of a different version of the bill intended for action on the House floor. Committee Democrats should have brought for the Committee's consideration the bill they actually intend to bring to the floor. The publicly released draft of the bill intended for the House floor makes major changes to the bill's section on financial assistance—ironic given the claim by Committee Democrats that the bill only contains loans—which appears to be intended to push some of such financial assistance out of the budget window. https://docs.house.gov/meetings/WM/WM00/CPRT-116-WM00-D001.pdf. However, this other draft contains a special carveout allowing more accelerated financial assistance for any plan in critical and declining status beginning in 2015 with more than 300,000 participants. There are only three plans reporting more than 300,000 participants of which only one is in critical and declining status. Committee Democrats offered no explanation for these changes to the bill or the very targeted carveout.

established by this bill. The 2006 legislative changes helped to more than triple multiemployer plan underfunding. This bill could easily do the same or much worse.

Furthermore, Congress must also be mindful of what precedent H.R. 397 might set for public pension plans. According to testimony before the Joint Select Committee, public pension plans are approximately $1.74 trillion underfunded for 2016 using their own reporting standards. However, as measured on a Treasury yield curve, those plans are underfunded by $4.01 trillion. And many of those plans are in similar positions as the multiemployer plans, that is, they are digging themselves into deeper and deeper holes each year. Using plan discount rates, public pension plans had negative amortization of $8.4 billion for 2016. But on a Treasury yield curve basis, these plans had $130.7 billion of negative amortization for 2016.[132] H.R. 397 would set a precedence of a full taxpayer bailout, which may lead to public pension plans accelerating the pace at which they are digging.

Committee Democrats are moving a partisan bill they know has no chance in the Senate. They moved this bill through Committee before Senate Democrats would even introduce a companion bill. Committee Democrats should put this bill aside, and work on serious bipartisan solutions.

In short, H.R. 397 will hurt retirees, workers and taxpayers and keys off the worst aspects of how plan trustees recklessly brought these plans to their current severely underfunded state.

V. Proposals to help workers and retirees

Committee Democrats have complained that Republicans have no solutions to deal with multiemployer pensions. And yet, Committee Democrats voted down the proposal by the Obama Administration to deal with this issue by fixing the PBGC safety net. Committee Democrats complained that Republicans did not fix this problem last Congress, but Republicans chose to create a bipartisan bicameral select committee to address these issues instead of trying to ram through a partisan solution. Perhaps even more ironic is that solutions that would actually address the underlying issues were generally ruled by Committee Democrats to be "non-germane because it does not speak to the matter that is in front of us" during the mark-up of H.R. 397. Therefore, we propose that any solution to the multiemployer pension plan crisis should include the following:

- Plans must measure liabilities using the yield curve on high quality bonds in a manner similar to insurance companies.
- Plans must measure assets at fair market value and not double-count assets.
- Employers must stand behind the pension promises they make to their employees.
- Employers that can no longer meet required contributions may not make new promises, and the other employers in the plan must step in to protect retirees and prevent benefit cuts.

[132] Dr. Joshua Rauh, Director of Research and Senior Fellow, Hoover Institution, Hearing on How the Multiemployer Pension System Affects Stakeholders, Joint Select Committee on Solvency of Multiemployer Pension Plans, July 25, 2018. https://burypensions.files.wordpress.com/2018/07/rauh-written.pdf.

- The portion of future contributions made to fund new promises must be walled off and cannot be used to fund promises previously made.
- Plans may not make any cuts to the new benefits they promise workers, either under the 2006 law or the 2014 law.
- There is no withdrawal liability with respect to the new benefits.
- PBGC premiums must be raised pursuant to the proposal made by Presidents Obama and Trump, and Congress should seriously consider raising premiums to the level needed to ensure PBGC's long-term solvency.
- Plans must address underfunding with regard to promises previously made under current law, with some transition rules to provide safeguards.
- Plans must be more transparent and provide expanded disclosure.

Republicans remain eager to find bipartisan solutions taking into account fairness to retirees, workers, taxpayers, unions and employers, to improve the protections for promises already made including changes to required contributions, withdrawal liability, the cuts allowed by the 2006 and 2014 laws, and the PBGC guarantee and financing rules. Any policy solutions to address the crises must accurately measure the value of plan liabilities, especially for new pension promises, or those solutions will almost certainly fail.[133]

KEVIN BRADY,
Republican Leader,
Committee on Ways and Means.

[133]Testimony of Dr. Jeremy Gold, Jeremy Gold Pensions, at Hearing on Private Employer Define Benefit Pension Plans, Committee on Ways & Means Subcommittee on Select Revenue Measures, September 17, 2014. https://gop-waysandmeans.house.gov/UploadedFiles/Gold_Testimony_091714.pdf