116TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 116–159
Part 2

REHABILITATION FOR MULTIEMPLOYER PENSIONS ACT OF 2019

JULY 19, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 397]

The Committee on Education and Labor, 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 such Act) as of the date of the enactment of this Act, 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 funded percentage of less than 40 percent (as determined for purposes of section 432 of such Code and section 305 of such Act), and have a ratio of active to inactive participants which is less than 2 to 3; 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.

(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 Pension Benefit Guaranty Corporation and the Department 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 and the Secretary of Labor, concludes that the determinations and demonstrations in the application 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 de-

nial. 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, 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 subparagraphs (B) and (C) 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) LIMITATION BASED ON ABILITY TO REPAY.—If at the time of the application under subsection (c) the plan sponsor determines that, based on a repayment schedule that would provide for repayment of the full amount determined under subparagraph (A) or (C)(ii) within the 30 year period described in subsection (b)(1), making payments would cause the plan to be within 18 months of becoming insolvent at any point during such period, the loan amount shall be such lesser amount as the plan sponsor determines the plan will be able to repay without becoming within 18 months of insolvency.

(C) PLANS WITH SUSPENDED BENEFITS.—In the case of a plan with respect to which a suspended 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) except as provided in subparagraph (B), 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)(C)(ii) (whichever is applicable), without regard to paragraph (1)(B); 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 finan-

cial 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.—The loan received under subsection (a) shall 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 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 triennial review under subclause (I) determines an inadequacy, the plan sponsor shall take remedial action to ensure that the inadequacy will be cured within 5 years of the review.

(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 Pension Benefit Guaranty Corporation and the Department 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 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 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 Multiem-

ployer 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—

"(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 of 2019 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 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 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 (in consultation with the Director of the Pension Rehabilitation Administration established under section 2) 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(i)(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 and beneficiaries 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)) as of the date of the enactment of this subsection, or with respect to which a suspension of benefits has been approved under section 305(e)(9) as of such date;

"(B) which, as of such date of enactment, is in critical status (within the meaning of section 305(b)(2)), has a funded percentage of less than 40 percent (as determined for purposes of section 305), and has a ratio of active to inactive participants which is less than 2 to 3; or

"(C) which is insolvent for purposes of section 418E of the Internal Revenue Code of 1986 as of such date of enactment, if the plan became insolvent after December 16, 2014, and has not been terminated;

and which is applying for a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 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 reviewing an application under paragraph (1), the corporation shall review the demonstrations and assumptions submitted with the loan application under section 4(c) of the Rehabilitation for Multiemployer Pensions Act of 2019 and provide guidance regarding such assumptions prior to approving any application for financial assistance under this subsection. The corporation may deny any application if the assumptions and determinations are unreasonable, or inconsistent with rules issued by the corporation, and the plan and the corporation are unable to reach agreement on such assumptions and determinations.

"(3) In the case of a plan described in paragraph (1)(A) or (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) 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 projected insolvency. 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.

"(4) In the case of a plan described in paragraph (1)(C), 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 the projected insolvency.

"(5)(A) Except as provided in subparagraph (B), the corporation shall provide the financial assistance under this subsection only in such amounts as the corporation determines, at the time of approval and at the beginning of each plan year beginning thereafter during the period of assistance, are necessary for the plan to avoid insolvency during the 5 plan year period beginning with the current plan year.

"(B) In the case of a plan described in paragraph (1)(C), the financial assistance under this subsection shall be provided in a lump sum if deemed necessary by the corporation, and in no case later than December 31, 2020.

"(6) 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 of 2019 is repaid in full.

"(7) 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).

PURPOSE AND SUMMARY

The purpose of H.R. 397, the *Rehabilitation for Multiemployer Pensions Act*, is to address the immediate multiemployer pension crisis and fully protect retirees' pensions.

A multiemployer pension plan is a collectively bargained plan involving multiple employers—often within the same or related industries—and a labor union. Multiemployer pension plans are managed by a board of trustees consisting of an equal number of members appointed by the union and the employers. Multiemployer pension plans are found in industries such as construction, trucking, roofing, food service, industrial baking, manufacturing, sheet metal working, and coal mining, among others. There are approximately 1,400 multiemployer pension plans in the United States covering over 10 million participants and including approximately 200,000 contributing employers.

Due to several factors, including deregulation, decline in union density, financial crises, mature plans with a large ratio of retirees to active workers, and lack of new employers with active workers making contributions, approximately 130 multiemployer pension plans are in severe financial distress. These plans cover over 1 million participants. A few large and financially distressed plans, such as the United Mine Workers of America (UMWA) Pension Plan of 1974 and the Teamsters Central States Pension Fund (Central States), are projected to be insolvent in the next few years. Other plans are projected to run out of money over the next 20 years.

Making matters worse, the Pension Benefit Guaranty Corporation's (PBGC) multiemployer program, which insures these pension plans, is on the brink of collapse. In fact, according to the PBGC's 2018 Annual Report, its multiemployer program has approximately $2.3 billion in assets to meet $56 billion in liabilities.[1] The PBGC estimates that its multiemployer program's "risk of insolvency rises rapidly and is likely to occur by the end of the Fiscal Year 2025."[2]

If multiemployer pension plans go insolvent and the PBGC's multiemployer program collapses, there will be catastrophic consequences for retirees, workers, and businesses. There also will be enormous costs to taxpayers, as the federal government will lose tax revenue from lost pension income and face increased spending on social safety net programs.

Congress passed legislation entitled the *Multiemployer Pension Reform Act of 2014 (MPRA)* (Division O of Pub. L. 113–235) with the intent to address the crisis. However, it is now clear that MPRA—and other existing laws—will not save the plans most in need of help nor prevent the collapse of the PBGC's multiemployer program. It is necessary for Congress to act again and soon. H.R. 397 is the only bipartisan legislative solution introduced in Congress that addresses the immediate multiemployer pension crisis without requiring cuts to retirees' pensions.

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[1] PBGC, Annual Report (2018), https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf.

[2] *Id.*

COMMITTEE ACTION

115TH CONGRESS

On November 16, 2017, Congressman Richard Neal (D–MA–1) introduced H.R. 4444, the *Rehabilitation for Multiemployer Pensions Act*. H.R. 4444 was referred to the House Committees on Education and the Workforce, Ways and Means, and Appropriations. No further action was taken on the bill.

On November 29, 2017, the Health, Employment, Labor, and Pensions (HELP) Subcommittee of the House Education and Workforce Committee held a hearing entitled "Financial Challenges Facing the Pension Benefit Guaranty Corporation: Implications for Pension Plans, Workers, and Retirees." The Honorable W. Thomas Reeder, Director, Pension Benefit Guaranty Corporation, was the only witness. During the hearing, Director Reeder testified in support of the Administration's budget proposal to prevent the insolvency of the PBGC's multiemployer program. However, Director Reeder acknowledged that such budget proposal was "not the answer for making good on the promise" that Central States and other plans have made to its participants.[3]

On February 9, 2018, Congress passed, and President Trump signed into law, the *Bipartisan Budget Act of 2018* (BBA) (Public Law 115–123). It established the Joint Select Committee on the Solvency of Multiemployer Pension Plans (JSC). The JSC was comprised of eight members of the House and eight members of the Senate with equal representation from Democrats and Republicans. From the House Committee on Education and the Workforce, Representatives Robert C. "Bobby" Scott (D–VA–3), Virginia Foxx (R–NC–5), Donald Norcross (D–NJ–1), and Phil Roe (R–TN–1) were appointed to serve on the JSC. The JSC was charged with providing "recommendations and legislative language that will significantly improve the solvency of multiemployer pension plans and the Pension Benefit Guaranty Corporation."[4]

The JSC conducted five hearings during 2018.

- On April 18, 2018, the JSC convened its first public hearing entitled "*The History and Structure of the Multiemployer Pension System.*" The witnesses were: Mr. Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation, Washington, DC; and Mr. Ted Goldman, Senior Pension Fellow, American Academy of Actuaries, Washington, DC. The hearing provided JSC Members with an overview of the multiemployer pension system and the crisis confronting it.
- On May 17, 2018, the JSC convened its second public hearing entitled "*The Structure and Financial Outlook of the Pension Benefit Guaranty Corporation.*" The witness was: The Honorable W. Thomas Reeder, Director, Pension Benefit Guaranty Corporation, Washington, DC. The hearing provided JSC Members with an understanding of the PBGC and its financial outlook.

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[3] *Financial Challenges Facing the Pension Benefit Guaranty Corporation: Implications for Pension Plans, Workers, and Retirees Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Workforce,* 115th Cong. (2017) (statement of the Honorable W. Thomas Reeder, Director, Pension Benefit Guaranty Corporation).

[4] Bipartisan Budget Act of 2018, Pub. L. No. 115–123, § 30422, 132 Stat. 64 (2018), https://www.congress.gov/115/plaws/publ123/PLAW-115publ123.pdf.

- On June 13, 2018, the JSC convened its third public hearing entitled "*Employer Perspectives on Multiemployer Pension Plans*." The witnesses were: Mr. Chris Langan, Vice President, UPS, Atlanta, GA; Ms. Aliya Wong, Executive Director of Retirement Policy, U.S. Chamber of Commerce, Washington, DC; Ms. Mary Moorcamp, Chief Legal and External Affairs Officer, Schnuck Markets, St. Louis, MO; and Mr. Burke Blackman, President, Egger Steel Company, Sioux Falls, SD. The hearing provided JSC Members insight into how businesses of all sizes have been placed at risk by the multiemployer pension crisis.
- On July 13, 2018, the JSC convened its fourth public hearing entitled "*Understanding What's at Stake for Current Workers and Retirees*." The hearing took place in Columbus, Ohio. The witnesses were: Mr. Bill Martin, President, Spangler Candy Company, Bryan, OH; Ms. Roberta Dell, Chief Union Steward, Spangler Candy Company, Bryan, OH; Mr. David Gardner, Chief Executive Officer, Alfred Nickles Bakery, Inc., Navarre, OH; Mr. Larry Ward, Retired Coal Miner and Former President of the United Mine Workers of America, District 6, Hopedale, OH; Mr. Brian Slone, Apprentice Instructor, Millwright Local 1090, Dayton, OH; and Mr. Mike Walden, President, National United Committee to Protect Pensions, Cuyahoga Falls, OH. The hearing provided Ohio-based workers, employers, and retirees the opportunity to discuss how the multiemployer pension crisis impacts them.
- On July 25, 2018, the JSC convened its fifth public hearing entitled "*How the Multiemployer Pension System Affects Stakeholders*." The witnesses were: Mr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Evanston, IL; Mr. Joshua Rauh, Director of Research and Senior Fellow, Hoover Institution, Stanford University, Stanford, CA; Mr. Kenneth Stribling, Retired Teamster, Milwaukee, WI; and Mr. Timothy Lynch, Senior Director Government Relations Practice, Morgan, Lewis, and Bockius LLP, Annapolis, MD. The hearing provided stakeholders the opportunity to discuss challenges with the multiemployer pension system and suggest policy options to address the crisis for the JSC's consideration.

The JSC was unable to reach a bipartisan agreement before its statutory authorization terminated on December 31, 2018.

116TH CONGRESS

On January 9, 2019, Congressman Richard Neal (D–MA–1) introduced H.R. 397, the *Rehabilitation for Multiemployer Pensions Act*. H.R. 397 establishes a Pension Rehabilitation Administration (PRA) within the U.S. Department of the Treasury (Treasury). The PRA finances loans for eligible failing multiemployer pension plans, plans that have suspended benefits, and some insolvent plans currently receiving financial assistance from the PBGC. Those pension plans that cannot remain solvent or become solvent with only a loan can apply to the PBGC for additional financial assistance in conjunction with a PRA loan. H.R. 397 was referred to the House Committees on Education and Labor, Ways and Means, and Appropriations.

On March 7, 2019, the House Committee on Education and Labor held a legislative hearing entitled "*The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis*" (March 7th Hearing). The witnesses were: Mr. Josh Shapiro, Vice President, Pensions, American Academy of Actuaries, Washington, DC; Ms. Mary Moorcamp, Chief Legal and External Affairs Officer, Schnuck Markets, St. Louis, MO; Mr. James Morgan, Bakery Pension Fund Retiree, Blue Island, IL; Mr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Evanston, IL; Mr. Glenn Spencer, Senior Vice President, Employment Policy Division, U.S. Chamber of Commerce, Washington, DC; Mr. Charles Blahous, J. Fish and Lillian F. Smith Chair and Senior Research Strategist, Mercatus Center at George Mason University, Arlington, VA; and Ms. Mariah Becker, Director of Research and Education, National Coordinating Committee for Multiemployer Plans, Washington, DC. During the hearing, Members and witnesses discussed H.R. 397 and explored the costs and consequences to retirees, active workers, participating employers, and the federal government if Congress does not resolve the multiemployer pension crisis.

On June 11, 2019, the House Committee on Education and Labor met for a full committee markup of H.R. 397. The Committee adopted an amendment in the nature of a substitute (ANS) offered by Congressman Robert C. "Bobby" Scott (D–VA–3), Chairman, and reported the bill favorably, as amended, to the House of Representatives by a vote of 26–18. The ANS incorporated the core provisions of H.R. 397, with several modifications, including the following:

- It clarifies that the loan program's eligibility is intended for those plans that are in the most urgent need of help. The ANS limits the loan program to those plans that, as of the date of enactment, are in critical and declining status and any critical status plan that is below 40% funded with an active to inactive ratio of below 40 percent (i.e., less than 2 active employees for every 3 retirees). Those plans that went through the MPRA process to cut retirees' benefits and some currently insolvent plans also remain eligible for the loan program.
- It updates the dates by which the loan program must be established and by which the guidance regarding the loan program must be promulgated.
- It includes an alternative, accelerated repayment schedule for loans. During the loan application process, a plan may elect to pay interest-only on the loan for the first 20 years and then repay the principal in 10 equal installments between year 20 and year 30. For those plans that elect the alternative repayment schedule, the loan interest rate is reduced by 50 basis points. If plans do not elect this option, the payment schedule remains interest-only for 29 years with the final interest and principal repayment due in year 30.
- It provides additional detail on the interest rates for loans, setting a floor and a ceiling. Specifically, the ANS says the rate shall not be lower than the interest rate on 30-year U.S. Treasury securities on the first day of the calendar year in which the loan was issued. For 2019, it would be 2.97%. But the rate shall not be higher than the 30-year interest rate plus 20 basis

points or the amount that is sufficient to administer the program (whichever is greater).

- It amends the standard by which the loan application can be rejected. In the introduced version of H.R. 397, the Director of the PRA had to conclude the application's determinations and demonstrations were "clearly erroneous." In the ANS, the Director of the PRA must conclude that the application's determinations and demonstrations are "unreasonable" or "inconsistent" with any rules issued to implement the program.
- It includes a new determination in the loan application process related to a plan's ability to repay its loan. Specifically, if at the time of the application, a plan determines that making full payments on a 30-year repayment schedule would cause the plan to be at risk of becoming insolvent within any 18-month period, then the loan amount shall be reduced to an amount that the plan determines it can repay. This determination is intended to assist with the calculation of PBGC assistance. The ANS also makes clear that any PBGC assistance is calculated at the time of the PRA loan application.
- It includes language specifying that the PRA shall make every effort to collect repayment of loans.
- It specifies that the PBGC assistance is provided to the plans when cash flow needs require it (within 5 years of insolvency).

A diverse coalition supports H.R. 397, including: AARP, AFL–CIO, Bakery and Confectionary Union and Industry International Pension Fund, BlackRock, BNY Mellon, International Association of Machinists and Aerospace Workers (IAM), International Brotherhood of Boilermakers, International Brotherhood of Electrical Workers (IBEW), International Brotherhood of Teamsters (IBT), John Hancock, National Retirees Legislative Network (NLRN), Pension Rights Center, PNC Financial Services Group, United Food and Commercial Workers (UFCW), United Steelworkers (USW), and Western Conference of Teamsters Pension Trust.

COMMITTEE VIEWS

The House Committee on Education and Labor is committed to protecting retirees' multiemployer pensions and preventing the collapse of the multiemployer pension system and the PBGC's multiemployer program. Unless Congress acts, that collapse will inevitably occur and trigger a catastrophe for retirees, active workers, employers, and taxpayers.

MULTIEMPLOYER PENSION CRISIS: HARM TO RETIREES

Through no fault of their own, retirees are at risk of losing nearly everything for which they worked and sacrificed over their careers. One non-partisan witness testified at the March 7th Hearing that—if Congress doesn't act—pension cuts could be 90 percent or more.[5] During one of the JSC's hearings in 2018, one witness, Larry Ward, a retired mineworker, said that his pension was below

[5] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Josh Shapiro at 3).

the UMWA's average of $582 per month.[6] Mr. Ward estimated that, if the UMWA's plan fails and the PBGC goes insolvent, then the average UMWA pensioner "would see a cut of about 90%" that would "devastate" him and other mineworkers.[7]

MULTIEMPLOYER PENSION CRISIS: LOSS OF JOBS

It is not only retirees who would suffer if large and financially distressed plans fail. Those currently employed—the active workers—would be harmed as well. A conservative economist conducted a macroeconomic analysis of what would happen if Central State collapsed in 2025 (as is currently projected). The analysis found that there would be a loss of more than 55,000 jobs across the United States in one year.[8] Michigan and Missouri "would be hardest hit, each facing job losses of more than 4,000."[9] Twelve other states would lose more than 1,000 jobs: Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Minnesota, North Carolina, Tennessee, Texas, Virginia, and Wisconsin.[10] This study projects that state and local tax revenue would decline by approximately $450 million and federal revenue by $1.2 billion in the year the plan is projected to become insolvent.[11] The impact of Central States' potential insolvency is likely to stretch beyond one year. To that point, the analysis acknowledges that the case study "could represent a lower-bound of the aggregate macroeconomic impact of the pending insolvency of Central States."[12]

However, the negative impact to active workers is not limited to potential unemployment. Many active workers in failing plans are in unfair situations right now. For instance, active workers in failing plans are accruing little or no benefit for the contributions made by their employers. As the U.S. Chamber of Commerce has noted, "[t]here are some employers paying $15.00 or more per hour to plans for every hour an employee works . . . employees understand that they are never going to receive a benefit that is commensurate with the contribution rate the employer is paying."[13] Bill Martin of Spangler Candy testified to this reality at one of the JSC hearings, noting that "our Teamster employees will only receive a fraction of their promised retirement benefits because the Central States Pension Plan is going to FAIL."[14]

MULTIEMPLOYER PENSION CRISIS: THREAT TO EMPLOYERS

In addition to the challenges with retaining employees, employers face challenges to their continued viability due to the multiemployer pension crisis. This is primarily due to what's referred to as

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[6] *Understanding What's at Stake for Current Workers and Retirees Before the Joint Select Committee on the Solvency of Multiemployer Pension Plans*, 115th Cong. (2018) (written testimony of Larry Ward at 1).

[7] *Id.* at 3.

[8] Alex Brill, The Crisis Facing Multiemployer Pension Plans 1 (2018), https://edlabor.house.gov/imo/media/doc/The%20Crisis%20Facing%20Multiemployer%20Pension%20Plans%20August%202018[3][1].pdf.

[9] *Id.* at 1.

[10] *Id.* at 1.

[11] *Id.* at 1.

[12] *Id.* at 7.

[13] United States Chamber of Commerce, The Multiemployer Pension Plan Crisis: Business and Jobs at Risk 4 (2018), https://www.uschamber.com/sites/default/files/multiemployer_report_businesses_and_jobs_at_risk_final.pdf.

[14] *Understanding What's at Stake for Current Workers and Retirees Before the Joint Select Committee on the Solvency of Multiemployer Pension Plans*, 115th Cong. (2018) (written testimony of Bill Martin at 1).

"withdrawal liability." The *Multiemployer Pension Plan Amendments Act of 1980* (MPPA) was intended to prevent employers from exiting a financially troubled multiemployer plan without paying a proportional share of the plan's underfunding.[15] MPPA requires a withdrawal liability assessment from employers and a schedule of payments.

However, in the instances when an employer withdraws because of bankruptcy, then it may not be possible to recover an employer's withdrawal liability. Two of Central States' major contributing employers exited the plan in 2001 and 2003 and left $290 million and $403 million, respectively, in withdrawal liability unpaid after they went bankrupt.[16] When this happens, the responsibilities of the unfunded liabilities shift to the remaining employers. This is referred to as the "last-man standing" rule. In practice, this means remaining employers must make pension contributions for those employees who may have never worked for them or may have worked for one of their competitors or a company outside their region or industry. At the March 7th Hearing, Ms. Moorcamp affirmed this same point. Ms. Moorcamp testified that most of Schnuck Markets' contribution dollars to Central States for their Teamster employees pay the benefits of participants who never worked for Schnuck Markets.[17]

The last man standing rule also has implications for the remaining employers' estimated withdrawal liability, as they are saddled with the unfunded pension liability resulting from those employers who exited the plan. Schnuck Markets reported that its share of Central States underfunding was estimated to be over $200 million.[18] To put this in context, Schnuck Markets' entire Teamster payroll is $16.8 million.[19] Similarly, the Spangler Candy Company, a family owned, Ohio-based confectionary manufacturer that makes Dum Dum lollipops, among other candies, has seen its estimated Central States withdrawal liability skyrocket. According to Spangler, its "withdrawal liability is in the tens of millions of dollars, going up 12–15% per year, and it seems to have little correlation to our active workers or retirees."[20]

While actual payment of withdrawal liability is not "booked" until an employer withdraws or a plan terminates, the Financial Accounting Standards Board (FASB) requires contributing employers to disclose certain information on their financial statements about the multiemployer pension plan in which they participate.[21] As the U.S. Chamber of Commerce has noted, "[a]s the depth of the multiemployer pension crisis is increasing, employers are finding that ordinary business activities are being affected by the fear of the potential for withdrawal liability. Even though the employers

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[15] 29 U.S.C. §§ 1382 and 1391.

[16] United States Government Accountability Office, Central States Pension Fund 28 (2018), https://www.gao.gov/assets/700/692265.pdf.

[17] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis Before the Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Mary Moorcamp at 3).

[18] *Id.* at 4.

[19] *Id.*

[20] *Understanding What's at Stake for Current Workers and Retirees Before the Joint Select Committee on the Solvency of Multiemployer Pension Plans*, 115th Cong. (2018) (written testimony of Bill Martin at 2).

[21] Financial Accounting Standards Board, Compensation-Retirement Benefits-Multiemployer Plans (2011), https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176158943384&acceptedDisclaimer=true.

have not been assessed a withdrawal liability, some banks and lenders are questioning these employers' creditworthiness, leading to less optimal lending rates or even denial of credit."[22] For instance, during one of the JSC hearings, one witness reported that, "[t]hree years ago, our two banks called our loans. Their reason was "Your exorbitant unfunded pension liability is too much of a liability and a risk for your business and for us!"[23]

MULTIEMPLOYER PENSION CRISIS: COSTS TO TAXPAYERS

If certain plans become insolvent and the PBGC's multiemployer program collapses, there would be enormous costs to taxpayers. Retirees, whose pensions would be cut to essentially zero, may be forced to turn to government assistance programs to make ends meet. There also would be a significant loss of tax revenue from lost pension income. In fact, according to one expert, the total costs—in terms of lost tax revenue and increased social safety net spending—is estimated between $170 billion and $240 billion over the 10-year budget window and between $332 billion and $479 billion over 30 years.[24]

Even Douglas Holtz-Eakin of the American Action Form (AAF), a conservative public policy institute, has acknowledged that taxpayers will be financially responsible if Congress does not act to address the multiemployer pension crisis. In December 2018, Mr. Holtz-Eakin wrote, "[i]t is not simply a choice of committing federal funds or not. For Congress it is one of those 'pay me now or pay me later' moments and the goal should be to minimize the necessary infusion."[25]

PRESENT LAW IS NOT SUFFICIENT TO ADDRESS THE MULTIEMPLOYER PENSION CRISIS: NEW LEGISLATIVE ACTION IS NECESSARY

In December 2014, Congress passed and President Obama signed the MPRA into law. The MPRA increased the premiums that multiemployer pension plans pay to the PBGC and provided plans new tools to address projected insolvency. One of those tools permitted eligible multiemployer pension plans to apply to the Treasury to reduce participants' benefits to avoid insolvency. Central States was the first plan to apply to Treasury to reduce benefits for an estimated two-thirds of the plan's participants. In May 2016, Treasury rejected Central States' application finding that it failed to satisfy certain MPRA requirements. Another important and financially distressed plan that is projected to be insolvent in the next few years, the UMWA Pension Plan of 1974, is not a candidate for benefit reductions under MPRA.

In April 2018, following the first JSC hearing, Congressman Scott submitted a question for the record (QFR) to one of the hearing's witnesses, Mr. Ted Goldman of the American Academy of Ac-

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[22] United States Chamber of Commerce, The Multiemployer Pension Plan Crisis: Business and Jobs at Risk 4 (2018), https://www.uschamber.com/sites/default/files/multiemployer_report_businesses_and_jobs_at_risk_final.pdf.

[23] *Understanding What's at Stake for Current Workers and Retirees Before the Joint Select Committee on the Solvency of Multiemployer Pension Plans*, 115th Cong. (2018) (written testimony of David Gardner at 2).

[24] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis Before the H. Subcomm. on Health, Employment, Labor, and Pensions of the H. Comm. on Educ. and Labor*, 116th Cong. (2019) (written testimony of Mariah Becker at 12).

[25] Douglas Holtz-Eakin, A Cautionary Pension Lesson (2018), https://www.americanactionforum.org/daily-dish/a-cautionary-pension-lesson/.

tuaries. In his QFR, Congressman Scott asked if present law was sufficient to address the looming failure of several large and financially distressed multiemployer pension plans and the insolvency of the PBGC's multiemployer program or if additional legislative action is necessary. Mr. Goldman responded to the QFR by saying that the provisions under the *Pension Protection Act of 2006* and MPRA are "not sufficient to avoid the looming insolvency for roughly 100 to 120 multiemployer plans."[26] The U.S. Chamber of Commerce made a similar point, noting that "there is nothing that exists under current law that will save the multiemployer system's most underfunded plans."[27] Specifically, there are no mechanisms or authorities within present law to save the largest and most financially distressed plans and there are insufficient resources in the PBGC's multiemployer program to prevent its collapse. As the U.S. Chamber of Commerce also noted, "[i]t has become "increasingly clear that additional legislative solutions are necessary if the largest and most underfunded plans are to be saved. If these plans become insolvent, the negative repercussions will be felt throughout the U.S. economy."[28]

H.R. 397 IS A RESPONSIBLE, BIPARTISAN SOLUTION TO THE MULTIEMPLOYER PENSION CRISIS THAT SAFEGUARDS TAXPAYERS' MONEY AND SPARES RETIREES HARM

The multiemployer pension crisis has been debated and discussed extensively for years. The House Committee on Education and Labor has held four hearings on the multiemployer pension crisis since Congress last acted on the issue in December 2014, when it passed the MPRA. Congress also created a bipartisan, bicameral joint select committee on the multiemployer pension crisis in the BBA in 2018. That joint select committee convened five hearings. Those hearings established what is likely to happen if Congress does act. As the United States Chamber of Commerce put it:

> Retirees will see their standard of living reduced. At a minimum, they will have less income to spend in local economies. The reduced spending will be felt by businesses, especially in small communities. Less money spent by retirees also means less paid to local government in sales and other taxes. When tax revenue decreases, the demand for social programs will increase, because many retirees will likely lose their homes and/or have difficulty paying for medical expenses. This will cause many to become reliant on social programs that have to be funded by taxpayers at a time when tax revenue will be declining. Simply put, pension plan insolvencies and a PBGC collapse will have a cumulative negative effect on entire com-

[26] *The History and Structure of the Multiemployer Pension System Before the Joint Select Committee on the Solvency of Multiemployer Pension Plans*, 115th Cong. (2018) (Response to a Question for the Record by Ted Goldman at 38–39).

[27] United States Chamber of Commerce, The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next (2017), *https://www.uschamber.com/sites/default/files/multiemployer*_report_-_chamber_-final.pdf.

[28] *Id.* at 2.

munities. Individuals, government, and businesses will all suffer unless a solution is found.[29]

To date, there has been one bipartisan bill—H.R. 397—introduced in Congress that addresses the immediate crisis, protects retirees' hard-earned pensions, avoids a lot of misery, and likely saves the taxpayers money compared with doing nothing.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The section specifies that the bill may be cited as the *Rehabilitation for Multiemployer Pensions Act*.

Section 2. Pension Rehabilitation Administration; establishment; powers

This section establishes the Pension Rehabilitation Administration (PRA), a new agency within the U.S. Department of the Treasury. The PRA is headed by a Director, who is appointed by the President. The term of office of the Director is 5 years. The Director may appoint deputy directors, officers and employees. The Director may contract for financial and actuarial services. The Treasury Secretary may transfer funding within Treasury's appropriated budget that is reasonably necessary to fund the PRA's administrative and operating expenses.

Section 3. Pension Rehabilitation Trust Fund

This section amends the relevant portion of the Internal Revenue Code (IRC) and adds a new section creating a Pension Rehabilitation Trust Fund (Fund). The Fund is comprised of the following amounts: proceeds from the sale of bonds/obligations detailed in Section 6, interest and principal payments on the loans to pension plans detailed in Section 4, and transfers of funding from the Treasury Secretary detailed in Section 2. Amounts in the Fund are available to the PRA without further appropriation for the purposes of implementing the loan program under Section 4, payment of principal and interest on bonds/obligations under Section 6, and administrative and operating expenses of the PRA.

Section 4. Loan program for multiemployer defined benefit plans

This section amends the relevant portions of the IRC and the *Employee Retirement Income Security Act of 1974* (ERISA) to authorize the PRA to make loans to certain multiemployer plans. The section details the loan application process, interest rate, and repayment schedules. The section outlines certain requirements and conditions for receipt of a loan. The section also details how the loan can be invested and the way the loan investment portfolio is overseen.

To be eligible for a loan, plans must fall into one of the following categories as of the date of enactment of the bill:

- Plans that are in "critical and declining" status (projected to be insolvent within the next 15 years (or within 20 years in some situations));

[29] United States Chamber of Commerce, The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next 28 (2017), https://www.uschamber.com/sites/default/files/multiemployer_report_-_chamber_-final.pdf.

- Plans which had a suspension of benefits application approved under the MPRA;
- "Critical" status plans that are less than 40% funded and have an active to inactive participant ratio of less than 2 to 3; or
- Currently insolvent plans that are receiving assistance from the PBGC, if the insolvency occurred after December 16, 2014.

The Director of the PRA must consult and share loan application materials with the Secretaries of Treasury and Labor as well as the Director of the PBGC before making any loan.

The loan program must be established no later than September 30, 2019. Guidance regarding the program must be promulgated by the Director of the PRA, in consultation with the PBGC and U.S. Department of Labor, no later than December 31, 2019. However, the bill permits a plan to apply before either date and requires the PRA to approve the application and make the loan if it is necessary to avoid any suspension of pension benefits.

The loan terms require the plan to make interest-only payments for 29 years with final interest and principal repayment due in year 30. However, the bill includes an alternative repayment schedule to incentivize early repayment of the loan. During the application process, a plan may elect to pay interest-only on the loan for the first 20 years and then repay the principal in 10 equal installments between year 20 and year 30. For those plans that elect the alternative repayment schedule, the loan interest rate is reduced by 50 basis points (0.5%).

As a condition of receiving the loan, the plan must stipulate that it will not do any of the following during the loan period:

- Increase participants' benefits (excluding the reinstating of those pensions benefits that were previously cut under MPRA);
- Allow any employer to reduce contributions; or
- Accept any collective bargaining agreement that reduces contribution rates.

The plan must also stipulate that it will do the following:

- In the case of a plan for which an application for suspension of benefits under MPRA was previously approved, reinstate benefits or not carry out benefit cuts;
- Provide the statutorily required periodic actuarial reports to the Internal Revenue Service;
- Continue to pay all premiums due to the PBGC; and
- Meet other such requirements as the Director of the PRA provides in the loan terms.

Loans must have as low an interest rate as is feasible. Such rate must be determined by the PRA and must not be lower than the interest rate on 30-year Treasury securities on the first day of the calendar year in which the loan is issued (for 2019, that is 2.97%). In addition, the rate must not exceed the above-mentioned interest rate plus 20 basis points (0.2%) or the amount that is sufficient to administer the program (whichever is greater).

In applying to the PRA for a loan, the plan must demonstrate that:

- The loan will enable the plan to avoid insolvency during the loan term, or for those plans that are already insolvent, the loan will enable the plan to emerge from insolvency within the

remainder of the 30-year period or avoid reentering insolvency within the remainder of the 30-year period.

- The plan is reasonably expected to pay benefits and the interest on the loan as well as accumulate sufficient funds to repay the principal when due.

As part of the application process, the plan also must do the following:

- Provide its most recently filed Form 5500 and any other necessary information to enable the PRA to determine the loan amount;
- Stipulate whether it is also applying for PBGC financial assistance in combination with the loan to enable the plan to avoid insolvency and protect pensions;
- State how the loan proceeds will be conservatively invested (further details below) and who will be the investment manager; and
- Include such other information required by the Director of the PRA.

In evaluating the plan's application, the Director of the PRA must accept the determinations and demonstrations in the application unless the Director, in consultation with the Director of the PBGC and Secretary of Labor, concludes that such determinations and demonstrations are unreasonable or inconsistent with the rules issued by the Director (detailed below).

The Director of the PRA is required to approve or deny the plan's application within 90 days after its submission. An application shall be deemed approved unless, within such 90 days, the Director notifies the plan of its denial and the reasons for such denial. Any approval or denial of a plan's application by the Director of the PRA shall be treated as a final agency action.

Any plan to which a suspension of benefits under MPRA has been approved is required to apply for a loan. For any such plan, the Director of the PRA shall provide for a simplified application process. The Director of the PRA is also required to provide for a simplified loan application process for insolvent plans already receiving PBGC financial assistance.

The amount of the loan is the amount specified in the application to fund the plan's obligations for the benefits of participants, beneficiaries in pay status, and participants who separated from service but are not yet in pay status ("terminated vested" participants) at the time the loan is made. However, if at the time of application, the plan determines that making full payments on a 30-year repayment schedule would cause the plan to be within 18 months of becoming insolvent at any point during the 30-year period, then the loan amount shall be reduced to an amount that the plan determines it can repay without becoming insolvent.

For those plans that have suspended benefits, the requested loan amount must be sufficient to provide benefits, including the retroactive payment of benefits that would have been payable during the period of suspension.

In the case of a plan that is also applying for financial assistance from the PBGC, the plan must jointly submit a loan application to the PRA and a financial assistance application to the PBGC with information necessary to determine eligibility for and amount of the loan and financial assistance. In such cases, if the financial as-

sistance is granted, the amount of the assistance from the PBGC would be the amount necessary for the plan to become or remain solvent over the 30-year loan term (factoring in the amount of the loan from the PRA).

Plans that receive a loan must invest it in one or a combination of the following low-risk options:

- Annuity contracts issued by an insurance company with a credit rating of A or better by a nationally recognized statistical credit rating organization. The annuity contract purchase must meet fiduciary standards under ERISA.
- Cash matching or duration matching portfolios consisting of fixed income investments that are investment grade (as rated by a nationally recognized statistical credit rating organization)[30]
- Any other portfolios prescribed by the Treasury Secretary in regulations that have a similar low risk profile as cash matching or duration matching and is equally protective of participants' and beneficiaries' interests.

Current law (the fiduciary provisions of Title I of ERISA) will govern the plan sponsor and the investment managers, who must acknowledge that they are plan fiduciaries under ERISA.

Annuity contracts and portfolios shall be used solely to provide benefits to participants and beneficiaries until all benefits have been paid. These contracts and portfolios shall remain in the plan asset pool but shall be segregated from all other plan assets in terms of accounting and investment performance measures.

Except in the case of annuity purchase, the PRA maintains oversight over all loan proceeds used to fund retiree liabilities. Such oversight shall include a mandatory triennial review of the adequacy of the portfolio to fund retiree benefits. If such review determines that there is an inadequacy, the plan must take remedial actions to cure such deficiency within five years. Such oversight will also include approval of any decision by the plan to change the investment manager overseeing the portfolio. The Participant and Plan Sponsor Advocate, a position that was established under ERISA in 2012 by the *Moving Ahead for Progress in the 21st Century Act* (MAP–21), will act as the ombudsman for participants and beneficiaries who had annuity contracts purchased for them and/or are covered by portfolios.

If a plan is unable to make payments on a loan when due, the PRA must negotiate revised terms for repayment with the plan, but only to the extent necessary to avoid insolvency in the following 18 months. Such revised terms include installment payments over a reasonable period or forgiveness of a portion of the loan principal.

The Director of the PRA, in consultation with the PBGC and the U.S. Department of Labor, is authorized to issue rules regarding the form, content, and process of loan applications, the actuarial standards and assumptions to be used in making estimates and projections in the applications, and the assumptions regarding in-

[30] Cash matching is a strategy where the investor invests in certain securities with an expected return so that the investor will be able to pay for future liabilities. Duration matching is a strategy of assembling a bond portfolio so that the duration of the portfolio equals the duration of the investor's liability stream.

terest rates, mortality, and distributions with respect to the portfolios.

The relevant portion of the IRC is amended to ensure that the PRA loan is not treated as unrelated business income.

Section 5. Coordination with withdrawal liability and funding rules

This section amends the relevant portions of ERISA and the IRC to address how a plan's receipt of a PRA loan impacts the withdrawal liability of any employer that exits the plan before the end of the 30-year loan repayment period.[31] The section also amends the relevant portions of ERISA and the IRC to address how a plan's receipt of a PRA loan impacts its minimum funding requirements.[32]

If an employer withdraws from a multiemployer plan before the end of the 30-year loan repayment period, the employer's withdrawal liability shall be calculated as if the plan was experiencing what is referred to as a "mass withdrawal" (which occurs when all or substantially all the employers in a multiemployer plan leave the plan). In practice, this means that the employer's liability would be calculated under the normal rules except there would not be a 20-year cap on the number of withdrawal liability payments. Further, the PBGC's single-employer plan termination actuarial assumptions are required to be used to value benefits.

The annuity contracts and investment portfolios created by the loan proceeds would not be considered when determining any exiting employer's withdrawal liability, but either the benefits provided under such contracts and portfolios or the remaining payments due on the loan (whichever is greater) would be considered.

The annuity contracts and fixed income portfolios purchased with the loan proceeds and the benefits covered by the annuity contracts or portfolios would not be considered in determining a plan's minimum funding requirements set forth by ERISA and the IRC. But the remaining payments due on the loan (interest and principal) as well as benefits not covered by the annuity contracts or portfolios would be considered.

Section 6. Issuance of treasury bonds

The section describes how Treasury funds the loan program. Specifically, the Treasury Secretary shall transfer from the general fund to the Fund amounts necessary to fund the loan program, including proceeds from the Treasury Secretary's issuance of bonds/obligations.

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[31] The Multiemployer Pension Plan Amendments Act of 1980 (MPPA), Pub. L. No. 96–364, 94 Stat. 1208, introduced withdrawal liability to prevent employers from exiting a financially troubled multiemployer plan without paying a proportional share of the plan's underfunding. In essence, withdrawal liability is the amount of money an employer owes when it leaves a plan based on the employer's share of the plan's unfunded vested benefits. MPPA required a withdrawal liability assessment from employers and a schedule of payments.

[32] ERISA imposed minimum funding requirements on private sector pension plans. The minimum requirements are determined annually based on a notional "funding standard account." Under the funding standard account calculations, employer contributions must cover plan costs, which include the normal cost and amortizations of changes in the unfunded liability over a fixed period.

Section 7. Reports of plans receiving pension rehabilitation loans

The section amends the relevant portions of the IRC to include a new reporting requirement for plans that receive a PRA loan and a monetary penalty for those plans that fail to comply.

For a plan receiving a PRA loan, it must file an annual report with the Treasury Secretary that includes the following information: its funded percentage, market value of plan assets, total value of contributions made by employers and employees, total value of benefits, cash flow projections (going back nine plan years), funding standard account projections (going back nine plan years) and the assumptions relied upon in making such projections, total value of investment gains or losses, and the number of participants and beneficiaries (including whether there has been any significant reduction in active participants and the reason for any such reduction).

The annual report must also include a list of any employers that withdrew from the plan and paid withdrawal liability. The list must include any exiting employer's annual withdrawal liability payment amount and the number of years remaining on the payment schedule.

The annual report must include information on any material changes to the benefits, accrual rates, and contribution rates, the amount of financial assistance received in that year and preceding ones, and the information contained on the most recent annual funding notice.

The annual report must also include copies of the plan document and amendments, a breakdown of administrative expenses of the plan, participant census data and distribution of benefits, the most recent actuarial valuation report, copies of collective bargaining agreements and financial reports, and such other information as the Treasury Secretary, in consultation with the Director of the PRA, may require.

The required report must be submitted electronically and be shared with the Secretary of Labor and the Director of the PBGC. Each plan submitting the required report must also provide a summary of it to each participant and beneficiary as well as to each contributing employer.

In the case of a failure to provide the required report, the plan must pay $100 for each day during which such failure continues, and such amount must not be paid from the plan's assets.

Section 8. PBGC financial assistance

The section amends the relevant portion of ERISA to detail the process by which eligible plans would apply for PBGC assistance, how the PBGC would review plan applications, and how PBGC assistance would be calculated and provided.

Those plans eligible for a loan may apply jointly for a loan and financial assistance. The application for financial assistance to the PBGC must demonstrate, based on the plan's actuary, that after receipt of the anticipated loan amount, the plan will still be or remain insolvent within the 30-year period.

In reviewing the plan's application for financial assistance, the PBGC shall review the demonstrations and assumptions submitted with the loan application and provide guidance regarding such assumptions prior to approving any application. The PBGC may deny

any application if the assumptions and determinations are unreasonable or inconsistent with any rules it issues. The PBGC also may deny an application if the plan and the PBGC are unable to reach agreement on assumptions and determinations.

The financial assistance provided to any plan shall be an amount equal to the sum of the percentage of future benefits payable to participants and beneficiaries in pay status and the percentage of benefits to which terminated vested participants are entitled, which if combined with the loan, would allow the plan to avoid projected insolvency. There is a limit on the amount of PBGC assistance a plan can receive. It cannot exceed the PBGC maximum guarantee benefit with respect to all participants and beneficiaries of the plan, and it must be determined as if the plan were insolvent at the date of the application.

An insolvent plan currently receiving PBGC assistance under current law can apply for PBGC assistance under the terms of this bill. In such case, any additional PBGC financial assistance that is provided to an insolvent plan shall be in an amount that factors in the loan and the current PBGC assistance to enable the plan to emerge from insolvency.

The PBGC shall provide the financial assistance in such amounts that it determines are necessary for the plan to avoid insolvency during the 5-plan year period beginning with the current plan year. However, in the case of insolvent plans, the PBGC financial assistance shall be provided in a lump sum, if necessary, no later than December 31, 2020.

Current law provisions regarding the repayment of PBGC assistance shall apply to PBGC assistance under the terms of this bill, except that repayment of any assistance to the PBGC shall not be required to be repaid before the date on which the loan is repaid in full. The PBGC also may forgo repayment of the financial assistance if necessary to avoid the suspension of participants' accrued benefits. The section appropriates such sums as may be necessary for each fiscal year to enable the Director of the PBGC to provide this financial assistance, including necessary administrative and operating expenses relating to such assistance.

EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute is explained in the descriptive portions of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

H.R. 397 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), H.R. 397 contains no unfunded mandates. 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. 1500, as amended.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 397 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 397:

Date: 6/11/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 1 Bill: H.R. 397 Amendment Number: Quorum Call

Disposition: Quorum established; 41 Members Present

Sponsor/Amendment: Foxx/Quorum Call

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)	X		
Mrs. DAVIS (CA)			X	Mr. ROE (TN)	X		
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)	X		
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)	X		
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)	X		
Mr. SABLAN (MP)			X	Mr. BYRNE (AL)			X
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)	X		
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)			X
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)			X
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)			X
Mr. MORELLE (NY)	X			Mr. COMER (KY)	X		
Ms. WILD (PA)	X			Mr. CLINE (VA)			X
Mr. HARDER (CA)	X			Mr. FULCHER (ID)			X
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)	X		
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)	X		
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)			X
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)	X		
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)	X		
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)	X		
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 41 Nos: Not Voting: 9

Total: 50 / Quorum: / Report:

(28 D - 22 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 6/11/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 2 Bill: H.R. 397 Amendment Number: Motion

Disposition: Adopted by a vote of 25-19

Sponsor/Amendment: Morelle/to move the previous question

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)			X	Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)			X	Mr. BYRNE (AL)			X*
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)		X	
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)		X	
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)			X
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)		X	
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)		X	
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)			X
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)		X	
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)			X^				
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 25 Nos: 19 Not Voting: 6

Total: 50 / Quorum: / Report:

(28 D - 22 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 6/11/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 3 Bill: H.R. 397 Amendment Number: 1

Disposition: Adopted by a vote of 26-20

Sponsor/Amendment: Scott/Amendment in the Nature of a Subtitute

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)			X	Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)		X	
Mr. SABLAN (MP)			X	Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)		X	
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)		X	
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)			X
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)		X	
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)		X	
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)			X
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)		X	
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 26 Nos: 20 Not Voting: 4

Total: 50 / Quorum: / Report:

(28 D - 22 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

Date: 6/11/2019

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 4 Bill: H.R. 397 Amendment Number: Motion

Disposition: Adopted by a vote of 26-18

Sponsor/Amendment: Bonamici/ to report to the House with amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mrs. DAVIS (CA)			X	Mr. ROE (TN)		X	
Mr. GRIJALVA (AZ)	X			Mr. THOMPSON (PA)		X	
Mr. COURNTEY (CT)	X			Mr. WALBERG (MI)		X	
Ms. FUDGE (OH)	X			Mr. GUTHRIE (KY)			X
Mr. SABLAN (MP)			X	Mr. BYRNE (AL)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. ROONEY (FL)			X
Mr. DESAULNIER (CA)	X			Mr. SMUCKER (PA)		X	
Mr. NORCROSS (NJ)	X			Mr. BANKS (IN)		X	
Ms. JAYAPAL (WA)	X			Mr. WALKER (NC)			X
Mr. MORELLE (NY)	X			Mr. COMER (KY)		X	
Ms. WILD (PA)	X			Mr. CLINE (VA)		X	
Mr. HARDER (CA)	X			Mr. FULCHER (ID)		X	
Mrs. MCBATH (GA)	X			Mr. TAYLOR (TX)		X	
Ms. SCHRIER (WA)	X			Mr. WATKINS (KS)		X	
Ms. UNDERWOOD (IL)	X			Mr. WRIGHT (TX)			X
Mrs. HAYES (CT)	X			Mr. MEUSER (PA)		X	
Ms. SHALALA (FL)	X			Mr. TIMMONS (SC)		X	
Mr. LEVIN (MI)	X			Mr. JOHNSON (SD)		X	
Ms. OMAR (MN)	X						
Mr. TRONE (MD)	X						
Ms. STEVENS (MI)	X						
Mrs. LEE (NV)	X						
Mrs. TRAHAN (MA)	X						
Mr. CASTRO (TX)	X						

TOTALS: Ayes: 26 Nos: 18 Not Voting: 6

Total: 50 / Quorum: / Report:

(28 D - 22 R)

^Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 397 are to protect and preserve Americans' hard-earned pensions.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 397 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

HEARINGS

Pursuant to section 103(i) of H. Res. 6 for the 116th Congress, the Committee held a legislative hearing entitled *"The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis,"* which was used to consider H.R. 397. The Committee heard testimony and was presented with data on the costs and consequences to retirees, active workers, participating employers, and taxpayers if Congress does not resolve the multiemployer pension crisis. The Committee heard testimony from: Mr. Josh Shapiro, Vice President, Pensions, American Academy of Actuaries, Washington, DC; Ms. Mary Moorcamp, Chief Legal and External Affairs Officer, Schnuck Markets, St. Louis, MO; Mr. James Morgan, Bakery Pension Fund Retiree, Blue Island, IL; Mr. James Naughton, Assistant Professor and Donald P. Jacobs Scholar, Kellogg School of Management, Northwestern University, Evanston, IL; Mr. Glenn Spencer, Senior Vice President, Employment Policy Division, U.S. Chamber of Commerce, Washington, DC; Mr. Charles Blahous, J. Fish and Lillian F. Smith Chair and Senior Research Strategist, Mercatus Center at George Mason University, Arlington, VA; and Ms. Mariah Becker, Director of Research and Education, National Coordinating Committee for Multiemployer Plans, Washington, DC.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974,* the Committee has requested but not received a cost estimate for the bill from the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the 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 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.

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, H.R. 397, as reported, are shown as follows:

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

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter D—DEFERRED COMPENSATION, ETC.

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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 in-

formation 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 sub-

title 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 Guar-

anty 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 bene-

fits, 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 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), 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 li-

ability 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 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 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 de-

scribed 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

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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(i)(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 and beneficiaries 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 participants 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 (deter-

mined 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 noti-

fication 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 ac-

cordance 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 ben-

efits 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 bene-

ficiaries 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 fol-

lowing 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 start-

ing 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 em-

ployer 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 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—

(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 of 2019 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 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 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 liabil-

ities 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)) as of the date of the enactment of this subsection, or with respect to which a suspension of benefits has been approved under section 305(e)(9) as of such date;

(B) which, as of such date of enactment, is in critical status (within the meaning of section 305(b)(2)), has a funded percentage of less than 40 percent (as determined for purposes of section 305), and has a ratio of active to inactive participants which is less than 2 to 3; or

(C) which is insolvent for purposes of section 418E of the Internal Revenue Code of 1986 as of such date of enactment, if the plan became insolvent after December 16, 2014, and has not been terminated;

and which is applying for a loan under section 4(a) of the Rehabilitation for Multiemployer Pensions Act of 2019 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 reviewing an application under paragraph (1), the corporation shall review the demonstrations and assumptions submitted with the loan application under section 4(c) of the Rehabilitation for Multiemployer Pensions Act of 2019 and provide guidance regarding such assumptions prior to approving any application for financial assistance under this subsection. The corporation may deny any application if the assumptions and determinations are unreasonable, or inconsistent with rules issued by the corporation, and the plan and the corporation are unable to reach agreement on such assumptions and determinations.

(3) In the case of a plan described in paragraph (1)(A) or (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) 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 projected insolvency. 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.

(4) In the case of a plan described in paragraph (1)(C), 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 the projected insolvency.

(5)(A) Except as provided in subparagraph (B), the corporation shall provide the financial assistance under this subsection only in such amounts as the corporation determines, at the time of approval and at the beginning of each plan year beginning thereafter during the period of assistance, are necessary for the plan to avoid insolvency during the 5 plan year period beginning with the current plan year.

(B) In the case of a plan described in paragraph (1)(C), the financial assistance under this subsection shall be provided in a lump sum if deemed necessary by the corporation, and in no case later than December 31, 2020.

(6) 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 of 2019 is repaid in full.

(7) 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.

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MINORITY VIEWS

INTRODUCTION

American workers and retirees who participate in multiemployer defined benefit pension plans have good reason to be deeply concerned about the current state of the multiemployer pension plan system. Seventy-five percent of multiemployer pension plan participants are in plans that are less than 50 percent funded.[1] Ninety-five percent of multiemployer pension plan participants are in plans that are less than 60 percent funded.[2] Approximately 130 multiemployer plans that have promised benefits to over 1 million workers and retirees are projected to fail in the next 10 years, but the vast majority of plans are already insolvent by general business standards.

The Pension Benefit Guaranty Corporation's (PBGC) multiemployer insurance program is currently facing a $54 billion deficit.[3] In six years, the program will be completely out of money.[4] The Committee on Education and Labor (the Committee) has a long history of bipartisan, solution-oriented work on multiemployer pension oversight and reform. Historically, the Committee has led Congress toward fiscally responsible solutions that give certainty and peace of mind to workers, retirees, and taxpayers alike. Therefore, it is extremely unfortunate and highly unusual that Committee Democrats unilaterally drafted and approved a sweeping, expensive, and deeply flawed bill that purports to address the underfunding crisis in multiemployer plans by creating perverse incentives to underfund these plans further.

The partisan approach taken by the Committee majority started with the lack of a legislative hearing to examine the bill. The approach ended with a Committee markup in which Democrats amended the bill while Republicans were prevented from doing so. As such, Committee Republicans were denied any opportunity for meaningful input in the legislative process, an affront that runs counter to the norms of Congressional and Committee procedure and has resulted in an exceptionally flawed and extremely partisan bill.

H.R. 397, the *Rehabilitation for Multiemployer Pensions Act*, establishes a new government agency within the Department of the Treasury (Treasury) to issue long-term low-interest loans directly to failing multiemployer defined benefit pension plans that may be forgiven if they are unable to be repaid. At markup, the Committee

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[1] 2016 PBGC Data Tables, Table M-13, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

[2] *Id.*

[3] PBGC, 2018 Annual Report, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf.

[4] CBO, Options to Improve the Financial Condition of the Pension Benefit Guaranty Corporation's Multiemployer Program (Aug. 2, 2016).

majority passed this bill without the benefit of a score from the nonpartisan Congressional Budget Office (CBO). A 2018 CBO estimate projected that similar legislation to bail out multiemployer pension plans could cost American taxpayers more than $100 billion.[5] The Committee's failure to analyze the reported legislation thoroughly has denied Members of the Committee and the public a proper understanding of the implications of putting American taxpayers on the hook for failed promises in private multiemployer defined benefit pension plans. Furthermore, it is unconscionable that the reported bill walks back bipartisan reforms to the multiemployer pension plan system led by a previous Republican Chairman and Democrat Ranking Member of this Committee.

Finally, H.R. 397 fails to address the very heart of the problem—the structural flaws in multiemployer defined benefit pension plans that have put American workers and retirees at such egregious and unsustainable risk. Unfortunately, the Committee's majority chose to push forward a dangerously irresponsible "quick-fix" that will do severe damage rather than work to achieve bipartisan, fiscally responsible, and forward-looking solutions to protect workers and retirees and to prevent mass plan insolvencies from ever happening again.

BACKGROUND ON H.R. 397

The Committee does not consider H.R. 397 in a vacuum.[6] This legislation must be viewed in context with the history—both practical and legislative—of multiemployer defined benefit pension plans.

Multiemployer plans were first regulated by the *Labor Management Relations Act of 1947* (Taft-Hartley). Taft-Hartley requires plan assets to be placed in a trust for the "sole and exclusive benefit" of employees[7] and requires that the joint board of trustees manage the plan's assets.[8] Partly in response to several high-profile failures of defined benefit pension plans, Congress later enacted the *Employee Retirement Income Security Act of 1974* (ERISA), which governs employee benefit plans, including multiemployer pension plans. ERISA sets minimum standards for employee pension plans by way of a "comprehensive and reticulated" regulatory scheme.[9] For example, ERISA regulates the way benefits are credited to workers and when those benefits vest, as well as standards for participant eligibility and plan funding requirements. ERISA also contains participant disclosure requirements regarding plan details, and it established PBGC, the federal backstop for defined benefit plans. At the time of PBGC's creation, multiemployer insur-

[5] CBO, Preliminary Analysis of S. 2147, The Butch-Lewis Act of 2017, as Introduced (July 16, 2018).

[6] The issues facing multiemployer defined benefit pension plans are too vast and complex to rely on the very limited record from a single subcommittee hearing titled "The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis," which was held on March 7, 2019. Because no Committee hearing was held on H.R. 397, the minority views rely on past Congressional testimony and Committee action. Due to the lack of any legislative vetting in the 116th Congress, the minority views also draw from testimony before the Joint Select Committee on the Solvency of Multiemployer Pension Plans formed in the 115th Congress, testimony before this Committee in years past, and other outside sources.

[7] Taft-Hartley § 302(c)(5), 29 U.S.C. § 186(c)(5).

[8] Taft-Hartley § 302(c)(5)(B), 29 U.S.C. § 186(c)(5)(B).

[9] *See* Nachman Corp. v. Pension Benefit Guar. Corp., 446 U.S. 359, 361 (1980).

ance premiums were set at a flat-rate of $0.50 per participant per year.

In 1980, in response to threats to the financial stability of PBGC's multiemployer insurance program, which at the time faced an $8.5 million deficit that threatened millions of participants with loss of their benefits,[10] and to prevent plan insolvencies, Congress passed the *Multiemployer Pension Plan Amendments Act of 1980* (MPPAA). MPPAA introduced the withdrawal liability requirement and the "last-man standing" rule. Withdrawal liability is assessed when a contributing employer exits the plan to ensure the funding of benefits for these workers; withdrawal liability is intended to cover the exiting employer's share of the plan's underfunding, if any. MPPAA also included modest increases to multiemployer plans' flat-rate PBGC premium—gradually increasing the flat rate to $2.60 per participant per year by 1988, to cover a maximum annual guarantee of $5,850 to a participant with 30 years of service.[11]

Over time, weaknesses in the withdrawal liability rules as established under MPPAA became evident.[12] For example, 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 value. Withdrawal liability payments are made in annual contributions based on past contribution rates. Those annual payments end after 20 years regardless of whether they cover the employer's proportional share of the underfunding, except in cases of mass withdrawal. When an employer leaves a plan without paying its full share of withdrawal liability, it leaves behind "orphan" liabilities for which remaining employers must take responsibility. These weaknesses can negatively impact plans' funding levels or lead to the exit of more employers seeking to avoid the resulting increase in required plan contributions.[13] In turn, deterioration in plan funding levels have severe negative impacts on PBGC.

In 2000, PBGC's multiemployer insurance program had a net positive position of $267 million. That year, the flat-rate insurance premiums multiemployer plans owed to PBGC remained at only $2.60 per participant per year, to cover a maximum annual guarantee that was increased from $5,850 to $12,870 for a participant with 30 years of service. By 2003, PBGC's multiemployer insurance program had a net deficit—from which it has yet to emerge—of $261 million.[14] By 2006, this deficit had almost tripled to $739 million.[15]

In 2006, Congress adopted the *Pension Protection Act of 2006* (PPA) on a bipartisan basis. The legislation passed the House by

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[10] U.S. Gov't Accountability Off., HRD–86–4, 1980 Multiemployer Pension Amendments: Overview of Effects and Issues 3 (1986), https://www.gao.gov/assets/150/144036.pdf.

[11] MPPAA change to ERISA § 4022A, 29 U.S.C.§ 1322a.

[12] U.S. Gov't Accountability Off., HRD–85–16, Effects of Liabilities Assessed Employers Withdrawing From Multiemployer Pension Plans (1985); U.S. Gov't Accountability Off., HRD–86–4, 1980 Multiemployer Pension Amendments: Overview of Effects and Issues 10–15 (1986).

[13] PBGC, Multiemployer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006 15–23 (Jan. 23, 2013).

[14] 2016 PBGC Data Tables, Tables M–1, M–15, and M–16, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

[15] *Id.*

a vote of 279–131 and the Senate by a vote of 93–5.[16] PPA made significant changes to multiemployer plan funding rules, including "zone rules" designed to address plan underfunding.[17] A plan's zone status is based on its funded ratio at the beginning of the plan year and the plan's projections of its ability to meet minimum funding requirements and to remain solvent in the future. Generally, trustees of an "endangered status" or "critical status" plan must adopt a "funding improvement plan" or "rehabilitation plan," respectively, to improve the plan's financial health. If the bargaining parties agree, a critical-status underfunded plan could reduce or eliminate early retirement subsidies and other "adjustable" benefits (e.g., disability payments or early retirement subsidies) for those not yet retired. But perhaps most importantly, PPA waived required contributions for plans claiming they could not afford such contributions.

By 2014, PBGC's net deficit had more than quintupled from the previous year's $8.3 billion—to $42.4 billion.[18] That year, the Committee led Congress in developing and passing the bipartisan *Multiemployer Pension Reform Act* (MPRA), which made several important changes to the rules governing multiemployer plans. MPRA eliminated the increased withdrawal liability that employers face as a result of increased contributions required by PPA,[19] increased flat rate per capita PBGC premiums from $12 per participant per year in 2014 to $26 in 2015 (and indexed for inflation thereafter), and added a new "critical and declining" zone status for plans that meet the requirements for critical status and, in addition, are projected to become insolvent within the next 20 years.

Under MPRA, plans in critical and declining status, subject to certain constraints, may apply to Treasury to suspend the benefit promises they have made down to the level that is expected to be payable from the plan's current and future resources. A benefit suspension may temporarily or permanently reduce current or future payment obligations of the plan to a participant or beneficiary under the plan, regardless of whether the benefits are in pay status. Plans with more than 10,000 participants that intend to cut vested benefits are required to appoint a "retiree representative" to advocate on behalf of retirees. Trustees also are required to abide by certain participant protections. For example, benefits cannot be reduced below 110 percent of the PBGC guarantee; participants who are 80 or older at the time of the suspension will see no cut; participants between 75 and 80 see a relatively smaller cut; disability pensions are exempt; and plans must only cut to the extent necessary to avoid insolvency.

In general, plans may only suspend benefits to the MPRA-protected benefit level if such action is sufficient to enable the plan to

[16] Pension Protection Act of 2006, Pub. L. No. 109–280.

[17] These rules are found in PPA § 202 and ERISA § 305. For purposes of these rules, plans are categorized based on the plan's funded status (known as "zone" status) and required to meet certain benchmarks to address underfunding.

[18] 2016 PBGC Data Tables, Table M–1 https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

[19] To help underfunded plans improve, employers often are required to pay increased contributions as a result of the plan's red-zone "rehabilitation plan." In turn, this increases the employer's withdrawal liability. MPRA changed the way that withdrawal liability is calculated to eliminate this penalty on a prospective basis on increased contributions that result from a rehabilitation plan.

remain solvent. Once the trustees agree to a plan for suspensions, they are required to submit an application to the Treasury. If Treasury approves the trustees' proposal, the participants are given the ability to veto the plan. Fifty percent of all the plan's participants must vote to reject the judgment of the trustees and Treasury. Notwithstanding the vote, if PBGC's expected loss with respect to the plan exceeds $1 billion or more in benefit payments, the suspensions will go into effect, subject to Treasury's modification. However, in large part due to a determination by the Obama administration, these tools cannot prevent insolvency for two of the largest plans expected to fail: the United Mine Workers of America 1974 Pension Plan and the Central States' Teamsters Plan.[20]

As this political failure left plans without recourse and as the multiemployer system showed its most staggering numbers to date—$638 billion system-wide underfunding and a $65 billion net deficit in PBGC's multiemployer program—in February 2018, the *Bipartisan Budget Act of 2018* established a Joint Select Committee on Solvency of Multiemployer Pension Plans (Joint Select Committee) which was tasked with providing recommendations and legislative language to improve the solvency of multiemployer pension plans and the PBGC by a statutory deadline. The Joint Select Committee, made up of four Republican and four Democrat House Members and four Republican and four Democrat Senators, held public hearings and private briefings to examine the issue closely. The Joint Select Committee provided an important forum to highlight the myriad reasons why multiemployer pensions are in such dire straits and reviewed substantive proposals to address and ameliorate the pending insolvency of the PBGC and the multiemployer pension plan system. However, the Joint Select Committee was not able to agree on a legislative solution to address the vast underfunding and looming insolvency of many multiemployer plans and the PBGC's multiemployer insurance program by the December 2018 statutory deadline.

Today, multiemployer plans pay a flat-rate PBGC insurance premium of $29 per participant per year to cover a maximum annual guarantee of $12,870 for a participant with 30 years of service. Unfortunately, PBGC's deficit continues to grow due to the continued decay of funding levels in the plans it insures. Although the plans have attributed the funding decline in large part to investment losses, declining industry, and demographic shifts in these plans, the dire financial position of the plans must also include a recognition of mismanagement by the trustees, who could have, and were required by the law to, avoided subjecting the plan to the risk of such occurrences.[21] Study of the continued deterioration of multiemployer defined benefit plans has revealed several key areas of

[20] Editorial, *Treasury's Teamsters Bailout Ploy,* Wall St. J. (May 15, 2016). Because the United Mine Workers' plan already features more modest benefits (in many cases already below the PBGC guarantee level), without better PBGC funding, MPRA by itself will likely not provide the tools necessary to save the plan. The Senate Finance Committee reported legislation in 2016 to shore up the plan using funds from the Abandoned Mine Reclamation Fund and taxpayers, but it did not pass the Senate. In May 2016, Treasury rejected the first application under MPRA by Central States for benefits suspension, and the plan subsequently decided not to refile.

[21] Alicia H. Munnell et al., Ctr. For Retirement Res. at Boston C., Multiemployer Pension Plans: Current Status and Future Trends (2017), https://crr.bc.edu/wpcontent/uploads/2017/12/multiemployer_specialreport_1_4_2018.pdf.

plan weaknesses and a need for significant structural and operational changes to these plans.

As noted by a witness before the Joint Select Committee, "the inevitable consequence of inadequate contributions, risky investment choices, and the withdrawal liability provisions is a funding crisis."[22] Time has shown that without appropriate intervention the problem will worsen, leaving the workers and retirees that participate in multiemployer defined benefit plans with even fewer benefits fully funded by those who promised them. It is against this backdrop that the Committee considered H.R. 397.

NEGATIVE CONSEQUENCES OF H.R. 397

H.R. 397 is an appalling departure from the bipartisan reforms to the multiemployer defined benefit plan system which in the past have been enacted with protections for plan participants and beneficiaries. In stark contrast, this sweeping legislation is drafted to avoid any necessary and responsible changes on the part of plan trustees and their approach to managing these vast pension funds. Committee Democrats confirmed this notion by refusing to consider any Republican amendments to improve safeguards for plan participants and beneficiaries under the legislation. Committee Republicans are justifiably concerned about the severely negative consequences of the bill for active workers, retirees, taxpayers, and the future of defined benefit plan management, including the following:

H.R. 397 INCLUDES NO STRUCTURAL OR OPERATIONAL REFORMS TO PROTECT WORKERS AND RETIREES

To develop solutions that appropriately protect workers and retirees affected by the current situation and to prevent its recurrence, we need to know what allowed the severe underfunding in multiemployer plans to accumulate. The underfunding crisis facing multiemployer plans is as simple as it is complex: the plans cannot afford to pay the benefits they promised because they have not collected sufficient contributions to fund those promises.

(1) Measuring pension liabilities

A fundamental task of plan trustees is to collect sufficient contributions from participating employers. Together with investment earnings, these contributions must safely provide the benefits that trustees, employers, and unions promise plan participants. To accomplish this, plan trustees should collect contributions equal to the present value of the benefits they are promising, rather than counting on above-market investment returns or contributions from future workers.

Simply put, the minimum required contribution for multiemployer plans is supposed to be an amount expected to pay for benefits attributable to the current year's service ("normal cost") and to amortize the plan's unfunded liability. Under ERISA and the Tax Code, multiemployer plan actuaries are required to set reasonable

[22] *How the Multiemployer Pension System Affects Stakeholders: Hearing Before the J. Select Comm. on Solvency of Multiemployer Pension Plans.*, 115th Cong. (July 25, 2018) (written statement of James P. Naughton, Assistant Professor, Kellogg Sch. of Mgmt., Nw. Univ., at 5) [hereinafter Naughton JSC Statement].

assumptions and funding methods[23] to measure actuarial liabilities and to determine funding costs. More specifically, the actuary must determine that the assumptions used are "reasonable" and offer the actuary's "best estimate of anticipated experience under the plan."[24] Historically most multiemployer actuaries have generally selected a funding interest rate assumption to discount future liabilities based on the expected investment rate of return on the plan's assets and the underlying asset allocation. Economists generally believe that the rate of return on assets is not connected to the measurement of liabilities.[25]

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 these promises are secure, proper measurement of pension liabilities is necessary. In testimony before the Subcommittee on Health, Employment, Labor, and Pensions (HELP) on March 7, 2019, Dr. James Naughton explained that multiemployer plans essentially provide annuity promises to participants but attempt to fund those promises at a fraction of the market cost. Plan trustees collect "a fraction of the value of [the] annuity benefit, hoping that it can recoup the difference from future generations of union members or through exemplary investment performance."[26] For example, the Joint Select Committee heard from a contributing employer whose plan assumes an average rate of return 1.5 points higher than its average returns in the latest bull market, and additionally ignores the plan's historical trend to assume that hours worked by active participants will not decline.[27] Joshua Rauh additionally testified before the Joint Select Committee that for workers to fully count on getting the pension promised them, the appropriate measurement of such a secure promise must be based on the

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[23] The plan's actuary may select among reasonable liability funding methods that assign costs among the different periods of service worked by the plan's participants. Once chosen, the plan must get approval from the IRS to change the method. The IRS periodically issues guidance allowing or requiring certain types of changes.

[24] 29 U.S.C. § 1084(c)(3).

[25] Financial regulators require companies to value liabilities based on market bond yields, not on expected rates of return. Economists "almost universally" believe that this is the appropriate method for valuing pension liabilities. *The Multiemployer Pension Plan System: Recent Reforms and Current Challenges: Hearing Before the Sen. Comm. on Finance,* 114th Cong. (Mar. 1, 2016) (written statement of Andrew G. Biggs, Resident Scholar, American Enterprise Institute). James Naughton testified to the Joint Select Committee that Statement of Financial Accounting Standards No. 87 (SFAS87), Employers' Accounting for Pensions, has 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." Naughton JSC Statement, *supra* note 22, at 2 n.3. 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." Statement of Fin. Acct. Standards No. 87, Fin. Acct. Standards Board 17 (Dec. 1985), https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1218220127991&acceptedDisclaimer=true. The "PBGC rate" used by PBGC to discount its liabilities consists of the discount rates used by life insurance companies to measure such liabilities. PBGC, 2018 Annual Report, note 6, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf. 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.

[26] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis: Hearing Before the Subcomm. on Health, Emp't, Labor, & Pensions of the H. Comm. on Educ. & Labor,* 116th Cong. (Mar. 7, 2019) (written statement of James P. Naughton, Assistant Professor, Kellogg Sch. of Mgmt., Nw. Univ., at 3) [hereinafter Naughton HELP Statement].

[27] *Employer Perspectives on Multiemployer Pension Plans: J. Select Comm. on Solvency of Multiemployer Pension Plans,* 115th Cong. (June 13, 2018) (written statement of Burke Blackman, President, Egger Steel Co., at 2).

discount rate on Treasury bonds matching the duration of the promise.[28]

A multiemployer plan's funding assumptions are also used to determine the plan's funded percentage and certify its funded "zone" status (explained *infra*). Two plans with the same market value of assets and future benefit payment streams can have markedly different funded percentages or funded statuses, depending on the interest rates they use since the ability to adopt more risky asset allocations, along with associated higher expected rates of return, allows the plans to disclose different funded ratios. Some argue that using a more conservative interest rate to discount liabilities to achieve a more accurate measurement of those liabilities would result in higher required plan contributions and drive plans currently considered to be healthy into one of the unhealthy zone statuses. However, as noted by Dr. Charles Blahous in his testimony before the HELP Subcommittee, "a pension plan's liabilities are what they are; this reality is not changed by a policy desire to have a less onerous funding requirement."[29] Dr. Naughton agreed, stating that "the costs will be higher because the reported costs in the past were far lower than the economic value of the promised pension benefits."[30] An inaccurate measurement of plan liabilities additionally does not facilitate an accurate comparison of the funded statuses of plans for government and other interested parties that monitor the condition of multiemployer plans.

Instead of using conservative estimates of the price of pension promises to ensure the promised benefits will be funded, most multiemployer plans attempt to provide these benefits at a much lower price by investing in assets they hope will provide higher returns than low-risk investments. Although plans may actually earn high investment returns, by taking this risky approach, plan trustees also expose the plan's participants to the downside risk that the plan's investments will not be sufficient to pay pensions as they come due. If plans are willing and able to respond to pensions becoming underfunded by taking whatever corrective measures are necessary, then plans could provide promised annuities even if their funding strategy does not work as intended. However, in practice, while many plans have attempted to address underfunding by requiring the bargaining parties to negotiate higher plan contributions and by decreasing future accruals, many plans have not sufficiently addressed the underfunding and instead have become increasingly underfunded.[31]

(2) Responsibility for plan losses

Employers sponsoring multiemployer plans receive a competitive advantage over employers sponsoring single-employer plans in that employers in multiemployer plans make much smaller contribu-

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[28] *How the Multiemployer Pension System Affects Stakeholders: Hearing Before the J. Select Comm. on Solvency of Multiemployer Pension Plans.,* 115th Cong. (July 25, 2018) (written statement of Joshua D. Rauh, Senior Fellow & Dir. of Research, Hoover Inst., Stanford Univ., at 6).

[29] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis: Hearing Before the Subcomm. on Health, Emp't, Labor, & Pensions of the H. Comm. on Educ. & Labor,* 116th Cong. (Mar. 7, 2019) (written statement of Charles P. Blahous, J. Fish & Lillian F. Smith Chair, Senior Research Strategist, Mercatus Ctr., George Mason Univ., at 9) [hereinafter Blahous Statement].

[30] Naughton HELP Statement, *supra* note 26, at 5.

[31] Naughton JSC Statement, *supra* note 22, at 2–4.

tions for the same pension promise.[32] This advantage is premised on testimony before Congress by the multiemployer 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.[33]

Although contributing employers to a multiemployer 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. A withdrawing employer must make annual contributions equal to the employer's highest contribution rate in the prior 10 years multiplied by the employer's average contribution base in the three consecutive years in the prior 10 with the highest bases. Those annual payments end after 20 years regardless of whether they cover the employer's proportional share of the underfunding except in cases of mass withdrawal. In mass withdrawal, those annual payments last indefinitely until the employer's proportional share of the underfunding is met, but they still do not cover liability in many cases because they are without interest. The failure of multiemployer plans to accurately measure liabilities or recognize and quickly pay down underfunding exacerbates those limitations. The withdrawal liability amount 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 the employer. This leads to unpredictable withdrawal liability amounts that may be either insufficient to cover the difference between the value of the promises and contributions made by the employer or amounts that may be far greater than that. But because employers can withdraw from a plan without paying their share of the underfunding in the plan, withdrawals often lead to more underfunding.

As illustrated above, the existing 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. Dr. Rauh explained in his testimony before the Joint Select Committee that "the size of withdrawal liability for remaining employers is in part so large because of the terms under which prior employer participants were allowed to withdraw from the plans."[34]

Another systemic problem for multiemployer plans is that withdrawal liability is linked to past contribution rates, and as such it is difficult for underfunded plans to address underfunding by raising contribution rates as employers can choose to leave plans and effectively lock in the lower older rates. 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 manage the plans in a way to avoid becoming underfunded in the first place.

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[32] Naughton HELP Statement, *supra* note 26, at 3.

[33] James A. Wooten, The Employee Retirement Income Security Act of 1974: A Political History 140–44.

[34] Rauh Statement, *supra* note 22, at 9.

(3) Rules for severely underfunded plans

Another significant problem with the multiemployer system is that when plans become underfunded, even if employers do not withdraw, some plan trustees effectively decide to leave underfunding largely unaddressed and continue to collect contributions that are insufficient to cover interest on the underfunding. As described below, plans claiming they cannot meet required contributions, even on the basis of undervalued liabilities, are exempt from collecting required contributions and instead merely have to take "reasonable measures" to improve a plan's financing. The premise of any set of rules requiring pension promises to be funded is that sufficient contributions must be collected, regardless of whether a collective bargaining agreement provides for such sufficient contributions.

Under the PPA, multiemployer plans that claim they are unable to meet required contributions or are otherwise in critical status can receive a waiver from those contributions. There are no objective criteria used to determine whether a plan can afford required contributions. Such plans are under a requirement to take "reasonable measures" to improve funding levels, or if that is not reasonable, to delay insolvency. But many such plans fail to reduce, or even pay interest on, underfunding.

In testimony before the Joint Select Committee, Dr. Joshua Rauh explained two separate standards for determining whether a plan is collecting sufficient contributions: he described plans as "treading water" when annual contributions at least cover the cost of new benefits and interest on the plan's unfunded liability; in contrast, a "more stringent standard" would require that contributions cover the cost of new benefits and some "progress towards paying down the unfunded liability."[35] By adjusting the assumptions used to measure liabilities, plans that are merely "treading water" can seem like they are meeting the "more stringent standard."[36]

In 2015, critical and declining plans had non-withdrawal liability contributions of only $1.286 billion, while the value of new promises on a Treasury yield curve basis was $1.491 billion.[37] If plan trustees allow the bargaining parties merely to make contributions sufficient to meet new costs, then plans are not operating in a way that requires employers, so long as they do not withdraw from the plan, to make good on plan promises. Thus, although employers are nominally jointly and severally liable for all plan promises, as a practical matter plans are not holding employers responsible for plan promises, including promises specifically made by that employer.

If multiemployer plans were subject to stricter funding rules from the outset, they would be much less likely to become so underfunded that they claim required contributions are unaffordable. In fact, some "green zone" plans[38] collect contributions less than the fair market value of new promises, which inevitably leads to

[35] *Id.* at 1.

[36] Dr. Rauh estimated that on a fair market value basis, only 17 percent of plans are treading water, and less than 2 percent of plans are meeting the more stringent standard.

[37] PBGC analysis of 5500 data, pursuant to a request for technical assistance.

[38] Plans that do not fall into the endangered, critical, or critical and declining status are sometimes referred to as "green zone" plans.

chronic underfunding over time.[39] Green zone plans collected contributions $2.3 billion short of those required under current law in 2015.

As described previously, required contributions are determined based on the cost of new promises made in the current plan year and an amortized portion of unfunded liabilities. Despite the ability to control the cost of contributions, multiemployer plans generally continue to make promises even when they cannot meet minimum required contributions—that is, promises in excess of what they can afford.[40] Trustees of some plans less than 60 percent funded, or projected to be insolvent, allow the plan to continue promising benefits to active workers above the PBGC guarantee level. They do this even though PBGC's multiemployer program is also projected to become insolvent and therefore unable to meet its guarantee, by 2025.[41] Under current rules, 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 accurately.

There are several fundamental flaws in the structure of multiemployer plans that have allowed underfunding to accumulate, leading to the current crisis: 1) The vast majority of multiemployer plans significantly underestimate the cost of the pension promises they are making; 2) There is a high level of uncertainty as to which employers, if any, are responsible for making good on pension promises should plans become underfunded which is why clear and transparent rules as to who bears responsibility for funding pension promises are needed to ensure that those promises will be appropriately funded and kept; and, 3) The rules applicable to severely underfunded plans give plan trustees greater discretion over plan funding instead of less and have allowed underfunding in these plans to continue to grow.

H.R. 397 does nothing to reform the multiemployer pension plan system to stop these risky and unsustainable plan practices. Instead, the legislation maintains the current-law funding rules that have allowed these severely underfunded plans to continue to make pension promises in excess of what they can afford, even if it is extremely unlikely that the plan trustees can make good on promises previously made, let alone make good on new promises. H.R. 397 does a great disservice to the retirees and workers who were promised benefits as plan underfunding will become even more severe and widespread if these flaws are not corrected.

H.R. 397 FAILS TO ENSURE THE CONTINUATION OF A SELF-SUFFICIENT PBGC INSURANCE PROGRAM

As of September 30, 2018, PBGC's multiemployer program had a $53.9 billion deficit—$56.23 billion in liabilities, compared to $2.3

[39] In 2015, green zone plans had contributions of just $16.3 billion to cover $17.9 billion in new promises on a Treasury yield curve basis.

[40] In contrast, single-employer plans that cannot meet required contributions must terminate. Such plans may not make new pension promises. In addition, single-employer plans less than 60% funded may not make new promises.

[41] PBGC, 2018 Annual Report, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf.

billion in assets. This only measures account liabilities from plans that have already run out of assets to pay promised benefits and plans that are likely to do so in the next decade. This deficit does not include liabilities from plans that may run out of assets to pay promised benefits after the next decade, no matter their level of unfunded liabilities.

PBGC's multiemployer insurance program is funded entirely by annual premiums paid by each multiemployer pension plan, and its guarantees are not backed by taxpayer dollars. Premium levels are set by Congress. For 2019, the PBGC premium is a flat-rate $29 per participant. In 2018, PBGC received $303 million in premium revenue and paid $153 million in financial assistance to 81 multiemployer plans.[42] PBGC's annual financial assistance payments are projected to rise more rapidly than premium revenue, reaching an estimated $2.5 billion by 2025 while premium revenue stays below $500 million. By 2025, however, assets in the multiemployer insurance fund will likely be exhausted. For several years, PBGC has reported that premiums are insufficient to cover the multiemployer program guarantees.[43]

Throughout PBGC's history, its obligations have not been backed by federal funding,[44] and Congress revoked PBGC's limited authority to borrow from the Treasury in a 2012 bill signed into law by President Obama. 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. When multiemployer plans are insolvent and unable to pay benefits, the PBGC steps in to provide financial assistance in the form of loans that are rarely paid back.[45]

Measuring PBGC's finances, even for the single-employer program, is very difficult. Over a dozen studies commissioned by Congress in the *Moving Ahead for Progress in the 21st Century Act* (MAP–21) and conducted by the Brookings Institution and the Pension Research Council concluded that PBGC generally underestimates the degree of the agency's downside risk.[46] A 2005 CBO study concluded that PBGC's single-employer program was about twice as underfunded as measured by PBGC at the time.[47]

But the multiemployer program is even harder to estimate because of the much more complex and uncertain rules regarding required contributions and the participation of many employers—and that would be the case even if plans were reporting required information. Current reporting by plans leaves out crucial information

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[42] PBGC, 2018 Annual Report 12, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf.

[43] PBGC, FY 2015 Projections Report 8, https://www.pbgc.gov/sites/default/files/legacy/docs/Projections-Report-2015.pdf; PBGC FY 2016 Projections Report 11–12, https://www.pbgc.gov/sites/default/files/fy-2016-projections-report-final-signed.pdf; PBGC, FY 2017 Projections Report 10–11, https://www.pbgc.gov/sites/default/files/fy-2017-projections-report.pdf.

[44] ERISA 4002 § 1302(g)(2); 29 U.S.C. § 1302(g)(2).

[45] While PBGC guarantees single-employer benefits up to $67,295 for a 65-year old, multiemployer benefits are only insured up to $12,870 annually for a retiree of normal retirement age with 30 years of service.

[46] Jeffrey R. Brown et al., Brookings Inst., A Review of the Pension Benefit Guaranty Corporation Pension Insurance Modeling System (2013), https://www.brookings.edu/wp-content/uploads/2016/06/PBGC-Review-Brown-Elliott-Gordon-Hammond-FINAL-09112013.pdf; Olivia S. Mitchell, Wharton Sch., Univ. of PA., Technical Review Panel for the PIMS Model: Final Report (Sept. 2013), https://www.pbgc.gov/documents/PIMS/WP2013-07-OSM.pdf.

[47] CBO, The Risk Exposure of the Pension Benefit Guaranty Corporation (2005), https://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/66xx/doc6646/09-15-pbgc.pdf.

such as the identity of, and contributions by, each contributing employer, as well as the projected benefit payment schedule of the plans on a year-by-year basis. A 2016 CBO study found that the fair value of PBGC's deficit was almost twice as large as reported by PBGC at the time. PBGC's reports have severely underestimated PBGC's future exposure. PBGC's 2008 annual report found PBGC's reasonably possible exposure to be $30 million.[48] The reasonably possible exposure is PBGC's projection of its financial position 10 years into the future.[49] By 2018, PBGC had booked about $55 billion in additional liabilities. PBGC's 2009 annual report projected a mean multiemployer program deficit of $4 billion in 2019 and that in 95 percent of scenarios a 2019 deficit no worse than $14.5 billion.[50] But, as of PBGC's 2018 annual report, the multiemployer program faces a $54 billion deficit.[51]

For 2018, PBGC projected there was an additional $9.4 billion in reasonably possible exposure from plans that may start requiring financial assistance in the 10 years beginning in 2028.[52] This estimate of PBGC's exposure does not include liabilities associated with plans that may start needing financial assistance more than 20 years from now. Thus, 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 10 years) and its projected financial position (taking into account plans projected to start needing financial assistance in the 10 years after that) only includes 60 percent of critical and declining plans, 6 percent of critical plans, 1.5 percent of endangered plans, and 0.5 percent of other plans. These plans, most of which are severely underfunded on a market basis, contain the vast majority (about $538 billion) of multiemployer plans' unfunded liabilities of $638 billion.[53] Any legislative solution considered by Congress should include long-term reforms that consider the risk posed by plans not expected to need financial assistance in the next 20 years. H.R. 397 fails in this regard.

Bipartisan proposals to improve the PBGC multiemployer program's finances and to put PBGC on a self-sustainable path forward have been recommended by both the current and previous administrations. H.R. 397 abandons these recommendations and takes a radical and risky approach far removed from the responsible premium increases that have proved successful to stabilize PBGC's single-employer program. Instead, the bill inappropriately expands PBGC's role in providing financial assistance while for the first time requiring federal taxpayers to support financial assistance provided only through its multiemployer insurance program.

H.R. 397 CREATES NEW INCENTIVES TO CONTINUE RISKY PLAN PRACTICES THAT ALLOW UNDERFUNDING TO GROW

A concern for underfunded multiemployer plans is the risk of "negative amortization"—that is, digging into a deeper financial

[48] PBGC, 2008 Annual Report, https://www.pbgc.gov/documents/2008_annual_report.pdf.
[49] *Id.* note 9.
[50] PBGC, 2009 Annual Report, https://www.pbgc.gov/documents/2009_annual_report.pdf.
[51] PBGC, 2018 Annual Report 27, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf.
[52] *Id.* at 29.
[53] Data from PBGC provided pursuant to a request for technical assistance.

hole. To avoid this, the plan must collect contributions, in addition to those needed to fund new benefits, equal to interest on the underfunding.[54] Contributions should be made to avoid negative amortization but should also be sufficient to pay down the plan's underfunding gradually so that future benefits that the plan has promised are protected. Because multiemployer plan contributions are negotiated through collective bargaining, it is difficult for plans to quickly respond to such situations that may demand increased contributions.

Since PBGC's multiemployer insurance program entered a deficit in 2003, that deficit has continued to grow, spurred on by the drastically increasing amount of underfunding in the multiemployer plans it insures. According to the most recent PBGC data, based on the 2015 plan year, system-wide multiemployer plans are only 43 percent funded when measured using the PBGC rate.[55] H.R. 397, by propping up this clearly unsustainable system without enacting reforms to set plans on the right track going forward, encourages risky plan behaviors that resulted in these underfunding extremes.

By adopting H.R. 397, Committee Democrats chose a dangerous route that Dr. Blahous warned in his testimony would "cause multiemployer pension underfunding to soar, as a clear incentive would have been established for plan sponsors to forego adequate pension funding."[56] This creates a perilous reality for participants in multiemployer plans other than the 134 plans carved out for special assistance under H.R. 397, and for active workers in loan-recipient plans.

H.R. 397 WILL COST AMERICAN TAXPAYERS BILLIONS OF DOLLARS

H.R. 397 establishes a new government agency within the Treasury, the Pension Rehabilitation Administration (PRA), to issue long-term low-interest loans to failing multiemployer defined benefit plans. The new loan program also establishes a dodgy, biased, and fiscally irresponsible loan structure and equally flawed payment terms for certain pension plans. Under the bill, unless plans elect an alternate repayment option, interest-only payments would be due for the first 29 years of the loan, with a lump-sum payment of the full principal owed in year 30. Remarkably, the loans would be forgiven if they are unable to be repaid. Over the loan period, a recipient plan may continue to promise new benefits, allowing its liabilities to grow. A loan recipient that has previously been approved for benefit suspensions that would put the plan on a sustainable track back to solvency under current law must reinstate all benefits to levels the plan cannot afford and submit retroactive payments for benefit suspensions that already went into effect.

There are essentially no limits on the loan amounts available to plans as loans are authorized to cover all liabilities for participants

[54] *Hearing on Private Employer Defined Benefit Pension Plans: Hearing Before the Subcomm. on Select Revenue Measures of the H. Comm. on Ways & Means*, 113th Cong. (2014) (statement of Jeremy Gold,). For 2016, multiemployer plans had negative amortization of $14.8 billion, $10 billion of that in green zone plans. 5500 filings by multiemployer plans for 2016, as measured on a "current liability" basis.

[55] 2016 PBGC Data Tables, Table M–9, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

[56] Blahous Statement, *supra* note 29, at 10.

and beneficiaries in pay status as well as all liabilities for terminated vested benefits at the time the loan is made, without regard to any benefit suspensions. Contrary to responsible legislating and regular order, CBO did not release a score of H.R. 397 before the Committee markup. However, CBO's preliminary analysis in July 2018 of a nearly identical bill estimated that the legislation could increase the federal budget deficit by more than $100 billion over 10 years alone. H.R. 397 provides extreme deference to the brand-new federal agency known as the PRA in setting loan terms, evaluating loan applications, and renegotiating loan terms upon default. It is highly inappropriate that Committee Democrats would advance complex and unreviewed legislation that will have tremendous impact on businesses, workers, retirees, and taxpayers, without knowing the cost.

COMMITTEE PROCEDURAL FAILURE

Prior to the Committee markup of H.R. 397 the majority failed to examine H.R. 397 and avoided a thorough vetting of the myriad complex issues raised by the bill. After failing to hold any hearings on H.R. 397, Chairman Scott submitted his amended bill to the minority only 48 hours prior to the markup and then proceeded to block Republican Members from debating H.R. 397 and from offering any amendments to the bill during the markup.[57] This outrageous effort to muzzle the minority party is particularly ironic as the only amendment allowed to the bill was the one offered by the Chairman himself.

The majority's actions in this instance demonstrate a complete lack of willingness or preparedness to give serious consideration to this pressing issue and the underlying bill. The majority controls what issues are brought up and how much time they are granted by this Committee. The majority made a deliberate decision not to allow the Committee minority to review and comment on the bill. Instead of engaging in a thorough examination of H.R. 397 and allowing substantive debate on the merits of the legislation, Committee Democrats showed a lack of seriousness by deciding to block Committee Republicans from debate and deprive the full Committee from consideration of substantive improvements to the legislation in the form of 11 amendments which were shared by Committee Republicans in advance of consideration of H.R. 397.

To report a bill out of Committee, to adopt an amendment, or to approve a procedural motion, all that is required is a simple majority vote. As such, the majority party is always in a position to ensure it will prevail on all matters. The minority party's opportunity to participate in the legislative process is therefore limited to its right to be heard, to raise important policy issues and concerns, and to offer substantive alternatives—all of which were stifled during consideration of H.R. 397 by the partisan whims of the majority. In these ways, the majority's approach is highly inappropriate and objectionable, especially considering the importance of the un-

[57] A committee chairman can end debate on an amendment by ordering the previous question on the amendment, a motion decided by simple majority vote. By ordering the previous question on the amendment in the nature of the substitute, before other amendments were offered, the Chairman ended consideration and debate of other amendments.

derlying issue to thousands of workers and retirees who by no fault of their own are suffering as a result of the current situation.

REPUBLICAN AMENDMENTS

H.R. 397 leaves a plethora of systemic issues facing multiemployer defined benefit pension plans unresolved—including perennial underfunding, inflexible and unpredictable contributions, discrepancies in liability measurements, uncertainty surrounding orphan liabilities and withdrawal liability, outdated and inaccurate plan data, and an untenable multiemployer insurance program. These problems manifest themselves in concerns over funding of benefit promises to active workers, uncertainty in the amount of benefits that will be available to terminated vested participants and those in pay status, impediments to business transactions, and negative impacts on employers' ability to compete.

Aside from these systemic issues that H.R. 397 fails to address, the bill puts taxpayers on the hook to bail out failing pension plans, creates significant risk of moral hazard, and neglects to make necessary structural changes to put the multiemployer pension plan system on the right track. Committee Republicans submitted amendments to the majority prior to consideration of the bill intended to protect plan participants, plan integrity, and the American taxpayer. During the Committee markup of H.R. 397, Committee Republicans were blocked not only from debating the bill, but also from offering any amendments to the legislation.

Obama-Trump Premiums

The Committee's Republican Leader, Representative Virginia Foxx (R–NC), intended to offer an amendment that serves as an example of meaningful, bipartisan reforms starting with basic principles on which both sides can agree. In his Fiscal Year 2017 Budget, President Obama offered a legislative proposal to shore up the PBGC that was later adopted by President Trump and included in his Fiscal Years 2018, 2019, and 2020 Budget submissions. Under the Obama-Trump proposal, additional premiums would be established to support PBGC's multiemployer insurance program, similar to those already applicable to PBGC's single-employer insurance program.[58] While the multiemployer insurance program requires payment only of a modest flat-rate premium,[59] PBGC's single-employer insurance program requires payment of a flat-rate premium and a variable-rate premium (VRP), assessed on a plan's

[58] The *Single Employer Pension Plan Amendments Act of 1986* raised the per-participant premium from $2.60 to $8.50. The Omnibus Budget Reconciliation Act of 1987 raised the basic per-participant premiums to $16 and added a variable-rate premium (VRP) tied to plan underfunding—capped at $53. The *Retirement Protection Act of 1994* phased out the $53 per-participant cap on the VRP over three years. The *Deficits Reduction Act of 2005* increased premiums to $30 and indexed them to the annual rate of growth in the national average wage. The *Pension Protection Act of 2006* removed VRP exemptions and made permanent the $1,250 per-participant surcharge premium for certain distress terminations. The *Moving Ahead for Progress in the 21st Century Act* (enacted July 6, 2012) raised premiums to $42 in 2013 and $49 in 2014, and capped the VRP at $400 per participant. The *Continuing Appropriations Resolution*, 2014 increased premiums to $57 and $64 in 2015 and 2016, respectively. The flat-rate per participant premium is $80 for the 2019 plan year.

[59] For 2019, multiemployer plans pay only $29 per participant per year for a maximum guarantee to retirees of about $13,000 annually. In 2012, plans were paying only $9 per year. In contrast, the single-employer program in 2019 requires a plan sponsor to pay an annual flat-rate premium of $80 per participant in addition to a VRP capped for 2019 at $541 per participant.

level of underfunding. In addition to raising additional revenue, this serves as a strong disincentive to maintaining significantly underfunded plans.

Multiemployer pension plans are collectively underfunded by $638 billion as of the 2016 plan year.[60] Chairman Scott pointed out at the March 7, 2019, HELP Subcommittee hearing titled "The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis," that premium costs pale in comparison to required plan contributions.[61] In the 2016 plan year, the most recent for which we have complete data, employer contributions to multiemployer plans totaled over $18 billion, while plans paid only $282 million in PBGC multiemployer insurance premiums.[62] This is not sustainable.

The premium increases included in the Foxx amendment are modest—especially when compared to the severity of the issue facing pensioners in these plans, and the unprecedented possibility that the federally-chartered insurance corporation set up to protect workers and retirees in these plans might fail. Most plans can withstand this modest premium increase—still, the amendment anticipates the hardship that premium increases could impose on certain plans and allows a waiver of premium increases for plans in the worst conditions if payment would accelerate plan insolvency.

PBGC estimates that a VRP assessed on a plan's amount of underfunding and an employer withdrawal premium to compensate PBGC for the extra risk posed when an employer exits a multiemployer plan, set at modest levels, could extend PBGC's solvency to 2033. This proposal sets aside partisan differences to make difficult—but necessary—decisions that are right for all parties involved.

The modest changes included in the Foxx amendment do not offer a perfect solution, but they offer relief—by allowing PBGC's multiemployer insurance program to remain solvent into the year 2033—and time to craft responsible, bipartisan, and fiscally responsible solutions that do not use taxpayer dollars to bail out insolvent plans. These solutions involve complex issues that deserve serious consideration, and not the rigged process pursued by Committee Democrats at the markup of H.R. 397.

Independent Trustees in Loan-Recipient Plans

The HELP Subcommittee Republican Leader, Representative Tim Walberg (R–MI), would have offered an amendment to improve protections for active workers and ensure improved operation of strained plans under H.R. 397 by requiring removal of all current trustees before a plan receives a PRA loan and the appointment instead of an independent trustee to serve over the loan period.

A multiemployer plan's board of trustees—made up of half union and half employer representatives—is entrusted with the solemn

[60] 2016 PBGC Data Tables, Table M–13, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

[61] *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis: Hearing Before the Subcomm. on Health, Emp't, Labor, & Pensions of the H. Comm. on Educ. & Labor*, 116th Cong. (Mar. 7, 2019) (oral statement of Chairman Bobby Scott, starting at 2:15:39), https://www.youtube.com/watch?v=hhokvHliafQ.

[62] Form 5500 data, https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/foia/form-5500-datasets; 2016 PBGC Data Tables, Table M–2, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

responsibility of safeguarding participant benefits. These trustees are obligated to ensure that plans are managed responsibly so that benefits promised to workers will be there when they retire. When Congress passed ERISA, it imposed upon plan trustees the highest duties known to law.[63] Under ERISA, a fiduciary must act "solely in the interest of the participants and beneficiaries" for the "exclusive purpose" of providing benefits and defraying expenses.[64]

While trustees cannot be expected to predict exactly how and when outside factors might affect their plan, trustees should be familiar with the general universe of outside factors that may influence a plan. It is safe to say that it is not in the interest of plan participants and beneficiaries to be in a severely underfunded plan. It is also not in the interest of plan participants and beneficiaries to be promised benefits in excess of what the plan can afford. Yet, these are exactly the circumstances a plan must prove to qualify to receive a taxpayer-subsidized loan under H.R. 397. Given the long-term nature of pension promises, trustees should manage a plan to ensure it can weather the ups and downs of the economy and demographic fluctuations.

Trustees who have failed to safeguard participant benefits must not be entrusted with continued management of these workers' hard-earned pensions, and they should not continue to receive a paycheck subsidized by the American taxpayer. Pension benefits are sacred to the retirees who worked hard and long to earn them. By failing to allow consideration of the Walberg amendment, Committee Democrats stood against the principle that pensioners in failed plans deserve better than what they have received from current plan trustees. The majority's refusal to allow a debate and vote on this amendment sets up active workers to face the same concerns regarding funded benefit promises that plague terminated vested participants and current retirees.

Taxpayer Protection

Committee Democrats marked up this legislation without producing an official cost estimate of the bill under consideration. It is outrageous that the Committee voted to adopt H.R. 397, a complex and technical bill which impacts millions of Americans as well as employers and labor unions without an official CBO score. In July 2018, the CBO released its preliminary analysis of an earlier iteration of this legislation.[65] That CBO analysis predicted this bill could increase deficits by $100 billion or more in the first 10 years alone. CBO could not give a more specific answer because, in CBO's words, "the bill as introduced does not resolve uncertainties around several key elements with large budgetary effects." One of those key elements is that upon a default, H.R. 397 allows the PRA to renegotiate the loan and forgive the loan principal, but the bill fails to specify conditions strictly surrounding adjusted repayment requirements.

Representative Phil Roe (R–TN) would have offered an amendment to strike the section of the bill which authorizes the PRA to forgive the loan principal upon a recipient plan's default. If the

[63] Donovan v. Bierwirth, 680 F.2d 263, 272 n. 8 (2d Cir. 1982).
[64] ERISA § 3(21)(A); 29 U.S.C. § 1002(21)(A).
[65] CBO, Preliminary Analysis of S. 2147, the Butch-Lewis Act of 2017, as introduced (2018).

true intent of H.R. 397 is to establish a loan program—a basic principal of which is that money lent out will be repaid—then this is a crucial improvement to the bill. Committee Democrats instead refused to consider this amendment and demonstrated that their true intent in passing H.R. 397 is to provide an open-ended federal taxpayer bailout of private-sector plans.

Adjusted Guarantee to Cover Participants in the 1974 UMWA Plan

Representative Walberg would have offered an amendment to modify the PBGC guarantee so that no participant in the United Mine Workers of America 1974 Pension Plan (UMWA 1974 Plan)—expected to become insolvent in 2023—would see a single cent in benefit reductions, and to extend PBGC's solvency through 2030.

When the UMWA 1974 Plan becomes insolvent, 90 percent of the participants in this plan will see a reduction in benefits under the PBGC guarantee. Under the current formula, those with few years of service receive a relatively low PBGC maximum guarantee, which creates a unique problem in the UMWA 1974 Plan. Mining is a dangerous job, and in recognition of those dangers, the UMWA 1974 plan offers a flat monthly benefit for life to workers who are unable to return to work after being injured on the job. Because these workers have few years of service under the plan, the PBGC guarantee structure exposes these workers to particularly steep cuts when their plan fails. Such cuts will pale in comparison to the benefit cuts these workers and retirees could face in 2025 when the PBGC's multiemployer insurance program becomes insolvent.

The Walberg amendment, which combines the bipartisan Obama-Trump premium proposal with an adjustment to the PBGC guarantee, allows for an expedited solution that guarantees full benefits for participants in that plan and allows PBGC to remain solvent, covering full benefits through 2030. Instead of considering a bipartisan solution that recognizes the urgency of the situation, providing important and expedited support for PBGC and America's miners participating in the UMWA 1974 Plan, Committee Democrats chose to prevent Rep. Walberg from offering this amendment.

Bargaining Oversight in Loan-Recipient Plans

Rep. Roe intended to offer an amendment requiring any collective bargaining agreement that affects loan-recipient plans to receive approval from the Secretary of the Treasury and the Secretary of Labor before going into effect.

Responsible Promises

Representative Glenn Grothman (R–WI) would have offered an amendment to ensure that severely underfunded multiemployer plans stop making promises they know they cannot afford to keep. In 1979, testimony at a Congressional hearing on multiemployer pension plans said that "if judged by normal business concepts of insolvency, every multiemployer plan—including the healthiest—would be considered insolvent."[66] Unfortunately, some things do

[66] *Multiemployer Pension Plan Termination Insurance Program: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways & Means,* 96th Cong. (1979) (statement of Theodore R. Groom).

not change. Under the normal business definition, a plan is insolvent when its liabilities exceed its assets. H.R. 397 requires that to qualify for a federal loan, a multiemployer plan must not only prove its insolvency, but it also must prove it will soon be unable to meet obligations as they become due. That is, a plan must prove it is running out of money to obtain approval to receive taxpayer-subsidized money.

As a condition of the taxpayer-funded loans authorized by H.R. 397, a loan-recipient plan may not increase benefit accruals during the period of the loan. This does not require that they stop making promises; it only requires that new promises are not higher than promises made in the past. Thus, under the bill, a plan approved for a taxpayer loan—that is to say, a plan that is running out of money—is allowed to continue making new promises to active workers, even as it cannot pay for the promises it has already made to retirees.

For everyone's benefit—but especially for the benefit of current workers who are being promised benefits decades into the future by a plan that has no money today—this cannot be permitted. Rep. Grothman's amendment would have required that any plan approved for a loan—and again, this means a plan that has already demonstrated it is running out of money—cannot make any new benefit promises until the loan has been repaid in full. This amendment affirms the principle that pension promises made need to be pension promises kept. Committee Democrats took a clear stand against retirement security for both workers and retirees by refusing consideration of this amendment.

Pensioners First

H.R. 397 provides taxpayer-subsidized loans to failing pension funds, while allowing the same trustees who guided the plans to failure to maintain control. These unique circumstances require that extra consideration be given to the investment policies and actions permitted in these plans. Representative Francis Rooney (R–FL) would have offered an amendment to clarify that economically targeted investments are prohibited in loan-recipient plans and to ensure that all investment decisions in such plans be made solely for the economic benefit of plan participants.

Committee Republicans believe that investment decisions in pension plans must be focused and made with one goal—the retirement security of pensioners in these plans. Plan participants, who rely on investment performance to ensure their retirement security, relinquish control over plan investment decisions trusting that the plans will be managed by experts with only the workers' retirement security in mind. As such, workers and retirees place their faith in plan trustees to manage plan assets in a way that ensures promised benefits will be available upon retirement.

To allow multiemployer pension funds, and the trillions of dollars of assets they manage on behalf of pensioners, to be used to advance political agendas or to promote the social policy whims of plan trustees would be unconscionable. By passing H.R. 397, Committee Democrats are green-lighting, for the first time ever, a massive infusion of taxpayer dollars into these enormous pension funds. Notwithstanding the controversy surrounding this risky

scheme, this makes it even more important that investment decisions are made based on what will ensure financial security for plan participants, without regard to collateral social policy issues—as plan trustees cannot purport to speak for the American taxpayer.

Rep. Rooney's amendment would have required that plan trustees put pensioners first—ensuring that when investment decisions are made in participants' pension funds, their retirement security must be the only consideration. Instead, by denying consideration of this important amendment, Committee Democrats demonstrated their true priority is to guarantee union trustees the power to use the financial influence of pensioners' assets to drive a political agenda.

Union Collateral

Multiemployer pension plans are maintained as part of a collective bargaining agreement between employers and labor unions—and these plans' boards of trustees are equally comprised of union and employer representatives. Rep. Roe would have offered an amendment to ensure that equal representation bears equal responsibility.

Unions enticed employees with the promise of lifelong income in retirement but failed to manage or bargain for adequate funding to keep these promises. Under Rep. Roe's amendment, the PRA is authorized to place a lien on union assets as collateral for any PRA loan. If, along with Committee Democrats, multiemployer plans and their union representatives are confident that plan administration is not to blame for current underfunding, taxpayer-funded loans are the only solution for said underfunding, and no further additional reforms are needed to protect retirees and workers from future underfunding, then labor unions should be more than willing to provide union assets as collateral. By refusing to allow consideration of this amendment, Committee Democrats demonstrated that they are more interested in protecting union assets than providing for the retirement security of retirees and workers.

Single-Employer Parity

H.R. 397 requires that a multiemployer pension plan receiving a PRA loan must reinstate any approved MPRA benefit suspensions to original benefit levels, whereas single-employer pensioners who have experienced benefit cuts would receive no such assistance. Rep. Roe would have offered an amendment to guarantee parity for these single-employer plan participants by expanding the loan program to include failed single-employer plans whose participants' benefits were reduced to the PBGC guarantee. By preventing Committee Republicans from offering any amendments to the bill, Committee Democrats refused to consider how their bill creates separate standards for multiemployer and single-employer plan benefits.

Actuarial Integrity

Workers deserve certainty that their pension benefits will be funded, and taxpayers deserve certainty that their hard-earned money will be used responsibly. To achieve this objective, Repub-

lican Leader Foxx would have offered an amendment to ensure that the loans issued under H.R. 397 are indeed repaid by requiring that a plan's actuary and each plan trustee serve as guarantors of the loan. In contrast, under H.R. 397, a plan's loan application must demonstrate that the plan is reasonably expected to be able to repay the loan. The Chairman's amendment in the nature of a substitute requires that assumptions and representations in a plan's loan application must not be unreasonable.

This "reasonable" standard is not new. In fact, it is the standard to which current funding assumptions—those that have allowed 134 plans covering 1.3 million participants to reach the brink of insolvency—are held. Given the history of these plans and the importance of these projections, assumptions must be determined with the utmost level of care and required to reflect the most likely course of events. The Foxx amendment holds plan trustees and actuaries accountable for the decisions they make in these plans and for representations they make on a loan application.

For workers and retirees, their retirement security is on the line. The Foxx amendment ensures that those with actual control over the plan have a stake in the outcome as well. Despite a risky and dangerous provision in the bill that allows forgiveness of loan principal, Democrats claim that loans issued under H.R. 397 will be fully repaid. Committee Democrats refused to debate this concern, and by failing to allow this amendment, Committee Democrats demonstrated their expectations that American taxpayers should take on significant risk to bail out troubled private pension plans without requiring that plan actuaries and trustees be prepared to stand behind their representations.

CONCLUSION

The flawed, costly, and alarming policy contained in H.R. 397 puts taxpayers on the hook for likely loan defaults, creates incentives for plans to continue to underfund and eventually fail, and endangers the retirement security of millions of pensioners. The majority's political choice to consider this flawed bill—which has no chance of moving forward in the Senate—will result in delays and not solutions for workers and retirees who are so rightfully concerned about the state of their pensions. H.R. 397 permits systemic flaws and encourages irresponsible plan practices to continue, to the detriment of active workers, retirees, and taxpayers. Shockingly, Republicans were blocked from offering their solutions to improve the bill to address these concerns. For these reasons, and those outlined above, Committee Republicans strongly oppose enactment of H.R. 397 as reported by the Committee on Education and Labor.

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