

109TH CONGRESS
1ST SESSION

S. 991

To amend title I of the Employee Retirement Income Security Act of 1974 to limit the availability of benefits under an employer's nonqualified deferred compensation plans in the event that any of the employer's defined benefit pension plans are subjected to a distress or PBGC termination in connection with bankruptcy reorganization or a conversion to a cash balance plan, to provide appropriate funding restrictions in connection with the maintenance of nonqualified deferred compensation plans, and to provide for appropriate disclosure with respect to nonqualified deferred compensation plans.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2005

Mr. KENNEDY (for himself, Mr. DURBIN, Mr. HARKIN, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to limit the availability of benefits under an employer's nonqualified deferred compensation plans in the event that any of the employer's defined benefit pension plans are subjected to a distress or PBGC termination in connection with bankruptcy reorganization or a conversion to a cash balance plan, to provide appropriate funding restrictions in connection with the maintenance of nonqualified deferred compensation plans, and to provide for appropriate disclosure with respect to nonqualified deferred compensation plans.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Pension Fairness and Full Disclosure Act of 2005”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
 7 as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purpose.

TITLE I—FAIRNESS IN PLAN TERMINATIONS AND CONVERSIONS

Sec. 101. Termination fairness standard for nonqualified deferred compensation plans in connection with pension plan terminations based on bankruptcy reorganization or in connection with conversions to cash balance plans.

Sec. 102. Penalty on funding nonqualified deferred compensation plans in the event of a pension plan termination based on bankruptcy reorganization or a conversion of a pension plan to a cash balance plan.

TITLE II—FAIRNESS IN FUNDING

Sec. 201. Treatment under ERISA of employers that fund nonqualified deferred compensation plans while maintaining underfunded defined benefit plans.

Sec. 202. Penalty on funding nonqualified deferred compensation plans while maintaining underfunded defined benefit plans.

TITLE III—FAIRNESS IN DISCLOSURE

Sec. 301. Disclosure with respect to benefits under nonqualified deferred compensation plans.

8 **SEC. 2. FINDINGS AND PURPOSE.**

9 (a) **FINDINGS.**—The Congress finds as follows:

10 (1) The pension system sponsored by private
 11 employers is in a weakened state due to industry-
 12 wide crises, changing market forces, and the pres-
 13 sures of globalization.

1 (2) Employers increasingly are terminating or
2 reducing the benefits provided under traditional de-
3 fined benefit pension plans.

4 (3) More than 44,000,000 workers, retirees,
5 and their families depend on defined benefit pension
6 plans as a critical component of their retirement se-
7 curity in addition to Social Security.

8 (4) Many defined benefit pension plans are un-
9 derfunded and the Pension Benefit Guaranty Cor-
10 poration, the agency that insures traditional pen-
11 sions, has also gone into deficit.

12 (5) Congress in enacting the Employee Retire-
13 ment Income Security Act of 1974 intended employ-
14 ers to adequately fund their pension plans and did
15 not intend for the Pension Benefit Guaranty Cor-
16 poration to be used as a means for restructuring
17 companies to escape their unfunded pension liabil-
18 ities, or circumvent collective bargaining obligations.

19 (6) Cash balance pension plans often reduce
20 traditional defined benefit pension obligations and
21 adequate standards do not exist to adequately pro-
22 tect the pensions of pension plan participants, par-
23 ticularly older participants.

24 (7) Corporate executives often preserve or en-
25 hance executive pension and other benefits at the

1 same time the benefits of non-highly paid employees
2 are reduced.

3 (b) PURPOSE.—It is the purpose of this Act to better
4 protect the retirement benefits afforded to workers and
5 retirees by protecting the solvency of the Pension Benefit
6 Guaranty Corporation and ensuring equitable treatment
7 of corporate executives as compared to treatment provided
8 to other employees when restructuring employers shift un-
9 funded pension liabilities onto the Pension Benefit Guar-
10 anty Corporation or convert to cash balance pension plans
11 without adequately protecting the retirement security of
12 older workers.

13 **TITLE I—FAIRNESS IN PLAN** 14 **TERMINATIONS AND CONVER-** 15 **SIONS**

16 **SEC. 101. TERMINATION FAIRNESS STANDARD FOR NON-** 17 **QUALIFIED DEFERRED COMPENSATION** 18 **PLANS IN CONNECTION WITH PENSION PLAN** 19 **TERMINATIONS BASED ON BANKRUPTCY RE-** 20 **ORGANIZATION OR IN CONNECTION WITH** 21 **CONVERSIONS TO CASH BALANCE PLANS.**

22 (a) IN GENERAL.—Section 206 of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C. 1056)
24 is amended by adding at the end the following new sub-
25 section:

1 “(g) TERMINATION FAIRNESS STANDARD FOR NON-
2 QUALIFIED DEFERRED COMPENSATION PLANS IN CON-
3 NECTION WITH PENSION PLAN TERMINATIONS BASED
4 ON BANKRUPTCY REORGANIZATION OR IN CONNECTION
5 WITH CONVERSIONS TO CASH BALANCE PLANS.—

6 “(1) IN GENERAL.—In any case in which a cor-
7 poration is a plan sponsor of a defined benefit plan
8 with respect to which a plan amendment is adopted
9 that has the effect of—

10 “(A) implementing a distress termination
11 of the plan under section 4041(c) based on
12 bankruptcy reorganization or a termination of
13 the plan initiated by the Pension Benefit Guar-
14 anty Corporation under section 4042 based on
15 bankruptcy reorganization, in any case in which
16 the plan is not sufficient for guaranteed bene-
17 fits (within the meaning of section 4041(d)(2))
18 as of the proposed termination date; or

19 “(B) converting such plan to a cash bal-
20 ance plan, in any case in which the amend-
21 ment—

22 “(i) results in a significant reduction
23 in the rate of future benefit accruals (with-
24 in the meaning of section 204(h)(1)) of

participants with at least 10 years of service under the plan; or

“(ii) does not provide for an election by affected participants with at least 10 years of service under the plan (and their beneficiaries) to retain coverage under the terms of the plan as in effect immediately prior to the amendment,

any covered deferred compensation plan established or maintained by such plan sponsor after the date of the adoption of such plan amendment shall meet the termination fairness standard of this subsection with respect to such plan amendment.

“(2) TERMINATION FAIRNESS STANDARD.—A covered deferred compensation plan established or maintained by a plan sponsor described in paragraph (1) meets the termination fairness standard of this subsection with respect to a plan amendment described in paragraph (1) if, during the 5-year period beginning on the date of the adoption of such plan amendment—

“(A) no amount of deferred compensation accrues to a disqualified individual under the terms of such covered deferred compensation plan (irrespective of whether the accrual in de-

ferred compensation is expressed in the form of a promise, a guarantee, or any other representation); and

“(B) in the case of a covered deferred compensation plan established during or after the 1-year period preceding the notice date (or any amendment to a covered deferred compensation plan if such amendment is adopted during or after such 1-year period), no distribution of accrued deferred compensation is made under such plan (or such amendment) to a disqualified individual.

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

“(A) CASH BALANCE PLAN.—

“(i) IN GENERAL.—The term ‘cash balance plan’ means a defined benefit plan under which the accrued benefit is expressed to participants and beneficiaries as an amount other than an annual benefit commencing at normal retirement age.

“(ii) REGULATIONS TO INCLUDE SIMILAR OR OTHER HYBRID PLANS.—The Secretary shall issue regulations which provide that a defined benefit plan (or any portion

of such a plan) which has an effect similar to a plan described in clause (i) shall be treated as a cash balance plan. Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding sentence, such plan shall be treated as a cash balance plan.

“(B) NOTICE DATE.—The term ‘notice date’ means, with respect to an amendment described in paragraph (1)—

“(i) in the case of a distress termination under section 4041(c), the date of the advance notice of intent to terminate provided pursuant to section 4041(a)(2);

“(ii) in the case of a termination initiated by the Pension Benefit Guaranty Corporation under section 4042, the date of the application to the court under section 4042(c); and

“(iii) in the case of a conversion to a cash balance plan, the date of the adoption of the amendment.

1 “(C) COVERED DEFERRED COMPENSATION
2 PLAN.—

3 “(i) IN GENERAL.—The term ‘covered
4 deferred compensation plan’ means any
5 plan providing for the deferral of com-
6 pensation of a disqualified individual,
7 whether or not—

8 “(I) compensation of the dis-
9 qualified individual which is deferred
10 under such plan is subject to substan-
11 tial risk of forfeiture;

12 “(II) the disqualified individual’s
13 rights to the compensation deferred
14 under the plan are no greater than
15 the rights of a general creditor of the
16 plan sponsor;

17 “(III) all amounts set aside (di-
18 rectly or indirectly) for purposes of
19 paying the deferred compensation (in-
20 cluding income), and all income at-
21 tributable to such amounts, remain
22 (until made available to the disquali-
23 fied individual or other beneficiary)
24 solely the property of the plan sponsor

1 (without being restricted to the provi-
2 sion of benefits under the plan);

3 “(IV) the amounts referred to in
4 subclause (III) are available to satisfy
5 the claims of the plan sponsor’s gen-
6 eral creditors at all times (not merely
7 after bankruptcy or insolvency); and

8 “(V) some or all of the com-
9 pensation of the disqualified individual
10 which is deferred under such plan is
11 guaranteed by an insurance company,
12 insurance service, or other similar or-
13 ganization.

14 “(ii) EXCEPTION FOR QUALIFIED
15 PLANS.—Such term shall not include a
16 plan that is—

17 “(I) described in section
18 219(g)(5)(A) of the Internal Revenue
19 Code of 1986; or

20 “(II) an eligible deferred com-
21 pensation plan (as defined in section
22 457(b) of such Code) of an eligible
23 employer described in section
24 457(e)(1)(A) of such Code.

1 “(iii) PLAN INCLUDES ARRANGE-
 2 MENTS, ETC.—For purposes of this sub-
 3 paragraph, the term ‘plan’ includes any
 4 agreement or arrangement.

5 “(D) DISQUALIFIED INDIVIDUAL.—The
 6 term ‘disqualified individual’ means a director
 7 or executive officer of the plan sponsor.

8 “(E) TERMINATION BASED ON BANK-
 9 RUPTCY REORGANIZATION.—A termination of a
 10 plan which is a distress termination under sec-
 11 tion 4041(c) or a termination instituted by the
 12 Pension Benefit Guaranty Corporation under
 13 section 4042 shall be treated as based on bank-
 14 ruptcy reorganization if such termination is
 15 based in whole or in part on the filing, by or
 16 against any person who is a contributing spon-
 17 sor of such plan or a member of such sponsor’s
 18 controlled group, of a petition seeking reorga-
 19 nization in a case under title 11, United States
 20 Code, or under any similar law of a State or po-
 21 litical subdivision of a State (or such a case in
 22 which liquidation is sought has been converted
 23 to a case in which reorganization is sought).

24 “(F) TITLE IV TERMINOLOGY.—Any term
 25 used in this subsection which is defined in sec-

1 tion 4001(a) shall have the meaning provided
2 such term in section 4001(a).

3 “(4) SPECIAL RULES.—

4 “(A) COORDINATED BENEFITS.—If the
5 benefits of 2 or more defined benefit plans es-
6 tablished or maintained by an employer are co-
7 ordinated in such a manner as to have the ef-
8 fect of the adoption of an amendment described
9 in paragraph (1), the sponsor of the defined
10 benefit plan or plans providing for such coordi-
11 nation shall be treated as having adopted such
12 a plan amendment as of the date such coordina-
13 tion begins.

14 “(B) MULTIPLE AMENDMENTS.—The Sec-
15 retary shall issue regulations to prevent the
16 avoidance of the purposes of this subsection
17 through the use of 2 or more plan amendments
18 rather than a single amendment.

19 “(C) CONTROLLED GROUPS, ETC.—For
20 purposes of this subsection, all persons treated
21 as a single employer under subsection (b), (c),
22 (m), or (o) of section 414 of the Internal Rev-
23 enue Code of 1986 shall be treated as 1 em-
24 ployer.

1 “(D) TREATMENT OF EARNINGS.—Ref-
 2 erences to deferred compensation shall be treat-
 3 ed as including references to income attrib-
 4 utable to such compensation or such income.

5 “(5) WAIVER.—

6 “(A) IN GENERAL.—In the case of any
 7 plan amendment having the effect of a termi-
 8 nation described in paragraph (1)(A), the Sec-
 9 retary may waive the application of any require-
 10 ment of the termination fairness standard of
 11 section paragraph (2) with respect to any dis-
 12 qualified individual who first commences service
 13 for the plan sponsor after the notice date with
 14 respect to such plan amendment. The Secretary
 15 may grant any such waiver in the case of any
 16 such plan amendment with respect to any such
 17 disqualified individual only after consultation
 18 with the Pension Benefit Guaranty Corporation.

19 “(B) REQUIREMENTS FOR WAIVER.—A
 20 waiver may be granted under subparagraph (A)
 21 only—

22 “(i) upon the filing with the Secretary
 23 by the plan sponsor of an application for
 24 such waiver, in such form and manner as

1 shall be prescribed in regulations of the
2 Secretary;

3 “(ii) upon a showing, to the satisfac-
4 tion of the Secretary, that such waiver is
5 a business necessity for the plan sponsor,
6 as determined under such regulations, and
7 is in the interest of plan participants and
8 beneficiaries, as determined under such
9 regulations; and

10 “(iii) after the participants, in such
11 form and manner as shall be provided in
12 such regulations, have been notified of the
13 filing of the application for the waiver and
14 have been provided a reasonable oppor-
15 tunity to provide in advance comments to
16 the Secretary regarding the proposed waiv-
17 er.

18 “(6) EFFECT OF WAIVER GRANTED BY SEC-
19 RETARY.—To the extent that any requirement of the
20 termination fairness standard of this section is
21 waived by the Secretary with respect to any disquali-
22 fied individual under paragraph (5) in the case of
23 any plan amendment having the effect of a termi-
24 nation described in paragraph (1)(A), such require-
25 ment under the termination fairness standard of

1 paragraph (2) shall not apply with respect to such
 2 individual in the case of such plan amendment.”.

3 (b) EFFECTIVE DATE.—The amendment made by
 4 this section shall apply to—

5 (1) plan amendments adopted on or after May
 6 10, 2005; and

7 (2) plan amendments adopted before such date
 8 implementing a plan termination as described in sec-
 9 tion 206(g)(1) of the Employee Retirement Income
 10 Security Act of 1974 (as added by this section)
 11 based on a bankruptcy reorganization in a case
 12 under title 11 of the United States Code (or under
 13 any similar law of a State or a political subdivision
 14 of a State) pending on such date.

15 **SEC. 102. PENALTY ON FUNDING NONQUALIFIED DE-**
 16 **FERRED COMPENSATION PLANS IN THE**
 17 **EVENT OF A PENSION PLAN TERMINATION**
 18 **BASED ON BANKRUPTCY REORGANIZATION**
 19 **OR A CONVERSION OF A PENSION PLAN TO A**
 20 **CASH BALANCE PLAN.**

21 (a) IN GENERAL.—Section 502 of the Employee Re-
 22 tirement Income Security Act of 1974 (29 U.S.C. 1132)
 23 is amended—

24 (1) in subsection (a)—

1 (A) in paragraph (8), by striking “; or”
 2 and inserting a semicolon;

3 (B) in paragraph (9), by striking the pe-
 4 riod and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(10) by a fiduciary of a defined benefit plan
 7 described in section 206(g) to enjoin any act or
 8 practice that violates such section and to obtain re-
 9 lief described under subsection (c)(8).”; and

10 (2) in subsection (c), by—

11 (A) redesignating paragraph (8) as para-
 12 graph (9); and

13 (B) inserting after paragraph (7) the fol-
 14 lowing:

15 “(8) In an action pursuant to subsection
 16 (a)(10), if the court finds a violation of section
 17 206(g), the court shall order the plan sponsor to pay
 18 to the defined benefit plan an amount equal to the
 19 amount of the accrual described in section
 20 206(g)(2)(A) comprising the failure or the amount
 21 of the distribution described in section 206(g)(2)(B)
 22 comprising the failure, whichever is applicable.”.

23 (b) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to—

1 (1) plan amendments adopted on or after May
2 10, 2005; and

3 (2) plan amendments adopted before such date
4 implementing a plan termination as described in sec-
5 tion 206(g)(1) of the Employee Retirement Income
6 Security Act of 1974 (as added by this section)
7 based on a bankruptcy reorganization in a case
8 under title 11 of the United States Code (or under
9 any similar law of a State or a political subdivision
10 of a State) pending on such date.

11 **TITLE II—FAIRNESS IN FUNDING**

12 **SEC. 201. PROHIBITION UNDER ERISA AGAINST FUNDING**

13 **NONQUALIFIED DEFERRED COMPENSATION** 14 **PLANS WHILE MAINTAINING UNDERFUNDED** 15 **DEFINED BENEFIT PLANS.**

16 (a) IN GENERAL.—Part 3 of subtitle B of title I of
17 the Employee Retirement Income Security Act of 1974 is
18 amended—

19 (1) by redesignating section 308 as section 309;
20 and

21 (2) by inserting after section 307 the following
22 new section:

1 **“SEC. 308. FUNDING REQUIREMENTS WITH RESPECT TO**
 2 **UNDERFUNDED SINGLE-EMPLOYER DEFINED**
 3 **BENEFIT PLAN VIOLATED BY FUNDING OF**
 4 **COVERED DEFERRED COMPENSATION PLAN.**

5 “(a) IN GENERAL.—In any case in which, as of the
 6 valuation date for any plan year of a defined benefit plan
 7 which is a single-employer plan, the funded current liabil-
 8 ity percentage of such plan is less than 75 percent, during
 9 the period beginning with such date and ending imme-
 10 diately before the valuation date for the following plan
 11 year—

12 “(1) the plan sponsor of such defined benefit
 13 plan (or any member of the plan sponsor’s controlled
 14 group) may not contribute to a covered deferred
 15 compensation plan maintained by the plan sponsor
 16 (or any such member); and

17 “(2) a disqualified individual may not accrue
 18 any amount of deferred compensation under the
 19 terms of any covered deferred compensation plan
 20 maintained by the plan sponsor of such defined ben-
 21 efit plan (or by any member of the plan sponsor’s
 22 controlled group), irrespective of whether the accrual
 23 in deferred compensation is expressed in the form of
 24 a promise, a guarantee, or any other representation.

25 “(b) DEFINITIONS; SPECIAL RULE.—For purposes of
 26 this section—

1 “(1) The term ‘funded current liability percent-
2 age’ has the meaning provided in section
3 302(d)(8)(B).

4 “(2) The term ‘covered deferred compensation
5 plan’ has the meaning provided in section
6 206(g)(3)(C).

7 “(3) The term ‘disqualified individual’ has the
8 meaning provided in section 206(g)(3)(D).

9 “(4) The term ‘controlled group’ has the mean-
10 ing provided in section 302(c)(11)(B)(ii).

11 “(5) Any reference to deferred compensation
12 shall be treated as including references to income at-
13 tributable to such compensation or income.

14 “(c) WAIVER.—

15 “(1) IN GENERAL.—The Secretary may waive
16 the application of any requirement with respect to
17 any contribution described in subsection (a)(1) or
18 any accrual described in subsection (a)(2). The Sec-
19 retary may grant such waiver only after consultation
20 with the Pension Benefit Guaranty Corporation.

21 “(2) REQUIREMENTS FOR WAIVER.—A waiver
22 may be granted under paragraph (1) only—

23 “(A) upon the filing with the Secretary by
24 the plan sponsor of an application for such

1 waiver, in such form and manner as shall be
2 prescribed in regulations of the Secretary;

3 “(B) upon a showing, to the satisfaction of
4 the Secretary, that such waiver is a business
5 necessity for the plan sponsor, as determined
6 under such regulations, and is in the interest of
7 plan participants and beneficiaries, as deter-
8 mined under such regulations; and

9 “(C) after the participants, in such form
10 and manner as shall be provided in such regula-
11 tions, have been notified of the filing of the ap-
12 plication for the waiver and have been provided
13 a reasonable opportunity to provide in advance
14 comments to the Secretary regarding the pro-
15 posed waiver.

16 “(d) EFFECT OF WAIVER.—To the extent that a
17 waiver is granted by the Secretary under subsection (c)
18 with respect to any contribution described in subsection
19 (a)(1) or any accrual described in subsection (a)(2), the
20 requirements of subsection (a) shall not apply with respect
21 to such contribution or accrual.”.

22 (b) CLERICAL AMENDMENT.—The table of contents
23 in section 1 of such Act is amended by striking the item
24 relating to section 308 and inserting the following new
25 items:

“Sec. 308. Funding requirements with respect to underfunded single-employer defined benefit plan violated by funding of covered deferred compensation plan.

“Sec. 309. Effective dates.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to plan years begin-
3 ning on or after January 1, 2006.

4 **SEC. 202. PENALTY ON FUNDING NONQUALIFIED DE-**
5 **FERRED COMPENSATION PLANS WHILE**
6 **MAINTAINING UNDERFUNDED DEFINED BEN-**
7 **EFIT PLANS.**

8 (a) IN GENERAL.—Subsection 502 of the Employee
9 Retirement Income Security Act of 1974 (29 U.S.C. 1132)
10 is amended—

11 (1) in subsection (a)(10) (as added by section
12 101), by inserting “or 308” after “206(g)”; and

13 (2) in subsection (c) (as amended by section
14 101), by amending paragraph (8) to read as follows:

15 “(8) In an action pursuant to subsection
16 (a)(10), if the court finds a violation—

17 “(A) of section 206(g), the court shall
18 order the plan sponsor to pay to the defined
19 benefit plan an amount equal to the amount of
20 the accrual described in section 206(g)(2)(A)
21 comprising the failure or the distribution de-
22 scribed in section 206(g)(2)(B) comprising the
23 failure, whichever is applicable; and

1 “(B) of section 308, the court shall order
 2 the plan sponsor to pay to the defined benefit
 3 plan an amount equal to the amount of any de-
 4 ferred compensation accrued to a disqualified
 5 individual in violation of such section.”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply with respect to plan years begin-
 8 ning on or after January 1, 2006.

9 **TITLE III—FAIRNESS IN** 10 **DISCLOSURE**

11 **SEC. 301. DISCLOSURE WITH RESPECT TO BENEFITS** 12 **UNDER NONQUALIFIED DEFERRED COM-** 13 **PENSATION PLANS.**

14 (a) IN GENERAL.—Section 101 of the Employee Re-
 15 tirement Income Security Act of 1974 (29 U.S.C. 1021)
 16 is amended—

17 (1) by redesignating subsection (j) as sub-
 18 section (k); and

19 (2) by inserting after subsection (i) the fol-
 20 lowing new subsection:

21 “(j) DISCLOSURE WITH RESPECT TO BENEFITS
 22 UNDER COVERED DEFERRED COMPENSATION PLANS.—

23 “(1) IN GENERAL.—In any case in which—

24 “(A) an amendment to a pension plan is
 25 adopted which has the effect of—

1 “(i) eliminating future benefit accru-
2 als under the plan;

3 “(ii) converting the plan to a cash bal-
4 ance plan in a case described in section
5 206(g)(1)(B);

6 “(iii) reducing the rate of future ben-
7 efit accruals under the plan (in the case of
8 a defined benefit plan); or

9 “(iv) reducing future employer con-
10 tributions under the plan (in the case of a
11 defined contribution plan); or

12 “(B) the plan administrator of a pension
13 plan has filed under section 4041(a)(2) a notice
14 of intent to terminate such plan in a distress
15 termination under section 4041(c) based on
16 bankruptcy reorganization or, in advance of fil-
17 ing such a notice, has filed a motion with the
18 court in the proceedings relating to such bank-
19 ruptcy reorganization seeking approval to com-
20 mence proceedings for such a distress termi-
21 nation,

22 the plan administrator shall provide to each plan
23 participant and beneficiary a notice under this sub-
24 section with respect to each covered deferred com-
25 pensation plan maintained by the plan sponsor of

1 the pension plan (and each member of the plan
2 sponsor's controlled group).

3 “(2) NOTICE.—A notice required under this
4 subsection with respect to a covered deferred com-
5 pensation plan shall set forth, in language calculated
6 to be understood by the average pension plan partic-
7 ipant—

8 “(A) a complete summary description of
9 the terms of the covered deferred compensation
10 plan;

11 “(B) the actuarial present value of the
12 benefit liabilities of the covered deferred com-
13 pensation plan, as of the most recent valuation
14 date of such plan;

15 “(C) any additional cost to the plan spon-
16 sor (or to the member of the plan sponsor's
17 controlled group), for the preceding plan year of
18 such plan, of maintaining such covered deferred
19 compensation plan, including tax expenditures
20 attributable to the maintenance of such plan
21 (or, if not known on the date of the notice, a
22 reasonable estimation thereof); and

23 “(D) in any case described in paragraph
24 (1)(B)—

1 “(i) a statement that the notice of in-
2 tent to terminate or motion has been filed;
3 and

4 “(ii) a statement of the extent to
5 which the actuarial present value of benefit
6 liabilities of the pension plan referred to in
7 paragraph (1)(B) is expected to be reduced
8 by reason of the termination.

9 “(3) TIMING OF NOTICE.—A notice under this
10 subsection shall be provided—

11 “(A) not later than 15 days after—

12 “(i) the date of the adoption of the
13 amendment described in paragraph (1)(A);
14 or

15 “(ii) the date of the notice of intent to
16 terminate described in paragraph (1)(B),
17 (as the case may be), and

18 “(B) in the same manner as is provided
19 under section 104(b)(1) with respect to sum-
20 mary descriptions of plan modifications or
21 changes.

22 “(4) DEFINITIONS; SPECIAL RULE.—For pur-
23 poses of this subsection—

24 “(A) The term ‘cash balance plan’ has the
25 meaning provided in section 206(g)(3)(A).

1 “(B) The term ‘covered deferred com-
 2 pensation plan’ has the meaning provided in
 3 section 206(g)(3)(C).

4 “(C) The term ‘controlled group’ has the
 5 meaning provided in section 302(c)(11)(B)(ii).

6 “(D) Whether a termination of a plan
 7 which is a distress termination under section
 8 4041(c) is based on bankruptcy reorganization
 9 shall be determined as provided in section
 10 206(g)(3)(E).”.

11 (b) ENFORCEMENT.—Section 502(c)(1) of such Act
 12 (29 U.S.C. 1132(c)(1)) is amended by striking “or section
 13 101(e)(1)” and inserting “or subsection (e)(1) or (j)(1)
 14 of section 101”.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply with respect to—

17 (1) plan amendments adopted on or after Janu-
 18 ary 1, 2006; and

19 (2) notices of intent to terminate or motions
 20 (described in section 101(j)(1)(B) of the Employee
 21 Retirement Income Security Act of 1974) (as added
 22 by this section) filed on or after such date.

○