

110TH CONGRESS  
2D SESSION

# H. R. 5754

To amend the Employee Retirement Income Security Act of 1974 and title 11, United State Code, to provide necessary reforms for employee pension benefit plans.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 9, 2008

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

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 and title 11, United State Code, to provide necessary reforms for employee pension benefit 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.**

4 This Act may be cited as the “Employees’ Pension  
5 Security Act of 2008”.

**TITLE I—TRUSTEESHIP OF  
SINGLE-EMPLOYER PLANS**

**SEC. 101. REQUIREMENTS RELATING TO TRUSTEESHIP OF  
SINGLE-EMPLOYER PLANS.**

(a) IN GENERAL.—Section 403(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(a)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting “(1)” after “(a)”; and

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

“(2)(A) The assets of a pension plan which is a single-employer plan shall be held in trust by a joint board of trustees, which shall consist of two or more trustees representing on an equal basis the interests of the employer or employers maintaining the plan and the interests of the participants and their beneficiaries.

“(B)(i) Except as provided in clause (ii), in any case in which the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and one or more employers, the trustees representing the interests of the participants and their beneficiaries pursuant to subparagraph (A) shall be designated by such employee organizations.

1       “(ii) Clause (i) shall not apply with respect to a plan  
2 described in such clause if the employee organization (or  
3 all employee organizations, if more than one) referred to  
4 in such clause file with the Secretary, in such form and  
5 manner as shall be prescribed in regulations of the Sec-  
6 retary, a written waiver of their rights under clause (i).

7       “(iii) In any case in which clause (i) does not apply  
8 with respect to a pension plan which is a single-employer  
9 plan because the plan is not described in clause (i) or be-  
10 cause of a waiver filed pursuant to clause (ii), the trustee  
11 or trustees representing the interests of the participants  
12 and their beneficiaries shall consist of one or more partici-  
13 pants under the plan elected to serve as such in accord-  
14 ance with this clause. The Secretary shall provide by regu-  
15 lation for a secret ballot of the participants under the plan  
16 for purposes of such election, and for certification of the  
17 results thereof to the participants (and any employee orga-  
18 nization referred to in clause (ii)) and to the employer.”.

19       (b) CONFORMING AMENDMENTS.—Section 403(a)(1)  
20 of such Act (as redesignated under subsection (a)) is  
21 amended—

22               (1) by striking “Such trustee or trustees” and  
23       inserting “Except as provided in paragraph (2), such  
24       trustee or trustees”;

1           (2) by striking “fiduciary, and upon accept-  
 2           ance” and inserting “fiduciary. Upon acceptance”;  
 3           and

4           (3) in subparagraph (A) (as so redesignated),  
 5           by striking “the plan” the first place it appears and  
 6           inserting “in the case of a plan other than a pension  
 7           plan which is a single-employer plan, the plan”.

8   **SEC. 102. EFFECTIVE DATE.**

9           The amendments made by this title shall apply with  
 10          respect to plan years beginning after 180 days after the  
 11          date of the enactment of this Act. The Secretary of Labor  
 12          shall prescribe the initial regulations necessary to carry  
 13          out the provisions of such amendments not later than 90  
 14          days after the date of the enactment of this Act.

15                   **TITLE II—INVESTMENT**  
 16                   **INFORMATION**

17   **SEC. 201. PROVISION TO PARTICIPANTS AND BENE-**  
 18                   **FICIARIES OF MATERIAL INVESTMENT IN-**  
 19                   **FORMATION IN ACCURATE FORM.**

20          (a) IN GENERAL.—Section 404(c) of the Employee  
 21          Retirement Income Security Act of 1974 (29 U.S.C.  
 22          1104(c)) is amended by adding at the end the following  
 23          new paragraph:

24                   “(6) PROVISION OF ACCURATE MATERIAL IN-  
 25          VESTMENT ADVICE.—The plan sponsor and plan ad-

1 administrator of a pension plan described in paragraph  
2 (1) shall have a fiduciary duty to ensure that each  
3 participant and beneficiary under the plan, in con-  
4 nection with the investment by the participant or  
5 beneficiary of plan assets in the exercise of his or  
6 her control over assets in his account, is provided  
7 with all material investment information regarding  
8 investment of such assets to the extent that the pro-  
9 vision of such information is generally required to be  
10 disclosed by the plan sponsor to investors in connec-  
11 tion with such an investment under applicable secu-  
12 rities laws. The provision by the plan sponsor or  
13 plan administrator of any misleading investment in-  
14 formation shall be treated as a violation of this para-  
15 graph.”.

16 (b) ENFORCEMENT.—

17 (1) IN GENERAL.—Section 502(c) of such Act  
18 (29 U.S.C. 1132(c)) is amended—

19 (A) by redesignating paragraph (9) as  
20 paragraph (10); and

21 (B) by inserting after paragraph (8) the  
22 following new paragraph:

23 “(9) The Secretary may assess a civil penalty against  
24 any person of up to \$1,000 a day from the date of the  
25 person’s failure or refusal to comply with the requirements

1 of section 404(c)(6) until such failure or refusal is cor-  
 2 rected.”.

3 (2) CONFORMING AMENDMENT.—Section  
 4 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is  
 5 amended by striking “(7), or (8)” and inserting  
 6 “(7), (8), or (9)”.

7 **SEC. 202. EFFECTIVE DATE OF TITLE.**

8 The amendments made by this title shall apply with  
 9 respect to investments made on or after the date of the  
 10 enactment of this Act.

11 **TITLE III—STRENGTHENED PRO-**  
 12 **TECTIONS AGAINST ABUSE**  
 13 **OF THE BANKRUPTCY AND**  
 14 **TERMINATION PROCESS**

15 **SEC. 301. ADDITIONAL REQUIREMENTS FOR TERMINATION.**

16 (a) ADDITIONAL REQUIREMENTS FOR DISTRESS  
 17 TERMINATION.—Section 4041(c)(2) of the Employee Re-  
 18 tirement Income Security Act of 1974 (29 U.S.C.  
 19 1341(c)(2)) is amended by adding at the end the fol-  
 20 lowing:

21 “(E) ADDITIONAL REQUIREMENTS.—Not-  
 22 withstanding any other provision of this section,  
 23 unless the corporation or the court, in the case  
 24 of a distress termination pursuant to subpara-  
 25 graph (B)(ii), has determined that reasonable

1 efforts to consider available alternatives to ter-  
2 mination (including, but not limited to, alter-  
3 natives described in section 4042(c)(4)) have  
4 been undertaken by such person (and, in the  
5 case of a plan maintained pursuant to a collec-  
6 tive bargaining agreement, have been under-  
7 taken by the bargaining parties in good faith  
8 bargaining), the plan may not be terminated. A  
9 participant or beneficiary of the plan or an em-  
10 ployee organization representing such partici-  
11 pants or beneficiaries may bring an action in  
12 the appropriate court to challenge such deter-  
13 mination by the corporation and seek equitable  
14 relief or must be afforded an opportunity to be  
15 heard by the appropriate court if a court is  
16 making such determination.”.

17 (b) ADDITIONAL REQUIREMENTS FOR COURT DE-  
18 CREES.—Section 4042(c)(1) of such Act (29 U.S.C.  
19 1342(c)(1)) is amended—

20 (1) by inserting after the first sentence the fol-  
21 lowing new sentences: “The court may not enter  
22 such a decree unless that court has found that rea-  
23 sonable efforts to consider available alternatives to  
24 termination (including, but not limited to, alter-  
25 natives described in paragraph (4) have been under-

1        taken by the plan sponsor (and, in the case of a plan  
2        maintained pursuant to a collective bargaining  
3        agreement, have been undertaken by the bargaining  
4        parties in good faith bargaining). There is a pre-  
5        sumption that a plan need not be terminated if the  
6        plan sponsor can continue in business, outside a case  
7        under title 11, United States Code (or under any  
8        similar law of a State or a political subdivision of a  
9        State) in which reorganization is sought, without  
10       terminating the plan.”; and

11                (2) in the sentence following the sentences in-  
12       sserted by paragraph (1), by striking “the preceding  
13       sentence” and inserting “the first sentence of this  
14       paragraph,”.

15        (c) RIGHT TO INTERVENE TO CHALLENGE COURT  
16       DECREE.—Section 4042(c) of such Act (as amended by  
17       subsection (b)) is further amended by inserting after the  
18       fourth sentence the following new sentence: “If any party  
19       consisting of the plan sponsor, a plan participant, or (in  
20       the case of a plan maintained pursuant to a collective bar-  
21       gaining agreement) the employee organization rep-  
22       resenting plan participants for purposes of collective bar-  
23       gaining disagrees with any such determination by the cor-  
24       poration, such party may intervene in the proceeding to  
25       challenge the determinations of the corporation.”.



1       (d) CONSIDERATION OF ALTERNATIVES BY COR-  
2       PORATION AND PLAN SPONSOR.—Section 4042(c) of such  
3       Act (as amended by the preceding provisions of this sec-  
4       tion) is further amended by adding after the seventh sen-  
5       tence the following: “The corporation and the plan admin-  
6       istrator may proceed with such an agreement only if they  
7       have made reasonable efforts to consider available alter-  
8       natives to termination (including, but not limited to, alter-  
9       natives described in paragraph (4) of this subsection) and  
10      the plan participants and beneficiaries have been provided  
11      with at least 60 days notice before such agreement is given  
12      effect. During such 60-day period, a participant or bene-  
13      ficiary of the plan or an employee organization rep-  
14      resenting such participants or beneficiaries may bring an  
15      action in the appropriate court to seek appropriate equi-  
16      table relief if such reasonable efforts have not been  
17      made.”.

18      (e) EFFORTS BY THE CORPORATION AT CONSULTA-  
19      TION WITH PARTIES.—Section 4042(c) of such Act is  
20      amended by adding at the end the following new para-  
21      graph:

22               “(4) CONSULTATION REGARDING REASONABLE  
23               AVAILABLE ALTERNATIVES TO TERMINATION.—

24                       “(A) IN GENERAL.—Prior to making any  
25               determination referred to in the preceding pro-

visions of this subsection, the corporation shall consult with the plan participants and (in the case of a plan maintained pursuant to a collective bargaining agreement) the employee organization representing plan participants for purposes of collective bargaining to determine whether there are any reasonable available alternatives to termination (including, but not limited to, alternatives described subparagraph (B)).

“(B) REASONABLE ALTERNATIVES TO TERMINATION.—The reasonable alternatives to termination referred to in subparagraph (A) consist of measures which are in the best interest of plan participants and which include (but are not limited to) the following:

“(i) Financing or loans sought by any member of the plan sponsor’s controlled group, with or without assistance from the corporation, in order to obtain plan financing, including back-up guarantees to any such financing which the corporation is hereby authorized to provide for such purpose.

1 “(ii) New plan structures agreed to by  
2 the parties, such as transfer of plan liabil-  
3 ities to multiemployer plans, new benefit  
4 formulas for new hires or non-vested par-  
5 ticipants, or other plan restructuring alter-  
6 natives agreed to by the parties.

7 “(iii) Reinsurance which the corpora-  
8 tion is hereby authorized to obtain for the  
9 plan.

10 “(iv) An agreement by the parties au-  
11 thorizing alternative funding schedules, ap-  
12 proved by the corporation, which would  
13 modify plan funding, subject to the min-  
14 imum funding requirements for the plan  
15 under part 3 of subtitle B of title I.

16 “(v) Purchase by the plan sponsor of  
17 an annuity contract to cover liabilities of  
18 the plan, which the corporation is hereby  
19 authorized to guarantee as necessary to se-  
20 cure such a contract.”.

21 (f) NOTICE OF RIGHT TO CHALLENGE DETERMINA-  
22 TIONS RELATING TO PLAN TERMINATION.—

23 (1) PROCEDURE FOR STANDARD TERMI-  
24 NATIONS.—Section 4041(b)(2)(B) of such Act (29  
25 U.S.C. 1341(b)(2)(B)) is amended in clause (i) by

1 striking “and” at the end, in clause (ii)(V) by strik-  
2 ing “require.” and inserting “require, and”, and by  
3 inserting after clause (ii) the following new clause:

4 “(iii) the right of participants and  
5 beneficiaries to challenge determinations  
6 under this section.”.

7 (2) TERMINATION PROCEEDINGS FOR DISTRESS  
8 TERMINATIONS AND TERMINATIONS COMMENCED BY  
9 THE PBGC.—Section 4042(a) of such Act (29 U.S.C.  
10 1342(a)) is amended by adding at the end the fol-  
11 lowing new sentence: “Prior to commencing pro-  
12 ceedings under this section with respect to any plan,  
13 the corporation shall provide notice to plan partici-  
14 pants and beneficiaries of the right to challenge de-  
15 terminations under this section, written in a manner  
16 likely to be understood by the participant or bene-  
17 ficiary.”.

18 **SEC. 302. EFFECTIVE DATE OF TITLE.**

19 The amendments made by this title shall apply with  
20 respect to any plans undergoing termination proceedings  
21 pursuant to section 4041 or 4042 of the Employee Retire-  
22 ment Income Security Act of 1974 which are pending on  
23 or after the date of the enactment of this Act.

1 **TITLE IV—RECOVERY OF BEN-**  
2 **EFIT LIABILITIES WHICH ARE**  
3 **NOT GUARANTEED**

4 **SEC. 401. AMENDMENT TO TITLE 11 OF THE UNITED**  
5 **STATES CODE.**

6 Section 507(a)(1) of title 11, United States Code, is  
7 amended by adding at the end the following:

8 “(D) Subject to subparagraphs (A), (B),  
9 and (C), allowed unsecured claims for benefit li-  
10 abilities to participants and beneficiaries under  
11 a single-employer plan (as defined in section  
12 4001(a)(15) of the Employee Retirement In-  
13 come Security Act of 1974) in connection with  
14 the termination of the plan, in excess of the  
15 benefits payable to the participants and bene-  
16 ficiaries by the Pension Benefit Guaranty Cor-  
17 poration under section 4022 of the Employee  
18 Retirement Income Security Act of 1974 in  
19 connection with such termination.”.

20 **SEC. 402. EFFECTIVE DATE; APPLICATION OF AMENDMENT.**

21 (a) **EFFECTIVE DATE.**—Except as provided in sub-  
22 section (b), section 401 and the amendment made by such  
23 section shall take effect on the date of the enactment of  
24 this Act.

1       (b) APPLICATION OF AMENDMENT.—The amendment  
2 made by section 401 shall not apply with respect to cases  
3 commenced under title 11 of the United States Code be-  
4 fore the date of the enactment of this Act.

○