

113TH CONGRESS
2D SESSION

S. 2511

AN ACT

To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.

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

1 **SECTION 1. SUBSTANTIAL CESSATION OF OPERATIONS.**

2 (a) IN GENERAL.—Subsection (e) of section 4062 of
3 the Employee Retirement Income Security Act of 1974
4 (29 U.S.C. 1362) is amended to read as follows:

5 “(e) TREATMENT OF SUBSTANTIAL CESSATION OF
6 OPERATIONS.—

7 “(1) GENERAL RULE.—Except as provided in
8 paragraphs (3) and (4), if there is a substantial ces-
9 sation of operations at a facility in any location, the
10 employer shall be treated with respect to any single
11 employer plan established and maintained by the
12 employer covering participants at such facility as if
13 the employer were a substantial employer under a
14 plan under which more than one employer makes
15 contributions and the provisions of sections 4063,
16 4064, and 4065 shall apply.

17 “(2) SUBSTANTIAL CESSATION OF OPER-
18 ATIONS.—For purposes of this subsection:

19 “(A) IN GENERAL.—The term ‘substantial
20 cessation of operations’ means a permanent ces-
21 sation of operations at a facility which results
22 in a workforce reduction of a number of eligible
23 employees at the facility equivalent to more
24 than 15 percent of the number of all eligible
25 employees of the employer, determined imme-
26 diately before the earlier of—

1 “(i) the date of the employer’s deci-
2 sion to implement such cessation, or

3 “(ii) in the case of a workforce reduc-
4 tion which includes 1 or more eligible em-
5 ployees described in paragraph (6)(B), the
6 earliest date on which any such eligible
7 employee was separated from employment.

8 “(B) WORKFORCE REDUCTION.—Subject
9 to subparagraphs (C) and (D), the term ‘work-
10 force reduction’ means the number of eligible
11 employees at a facility who are separated from
12 employment by reason of the permanent ces-
13 sation of operations of the employer at the fa-
14 cility.

15 “(C) RELOCATION OF WORKFORCE.—An
16 eligible employee separated from employment at
17 a facility shall not be taken into account in
18 computing a workforce reduction if, within a
19 reasonable period of time, the employee is re-
20 placed by the employer, at the same or another
21 facility located in the United States, by an em-
22 ployee who is a citizen or resident of the United
23 States.

24 “(D) DISPOSITIONS.—If, whether by rea-
25 son of a sale or other disposition of the assets

1 or stock of a contributing sponsor (or any mem-
2 ber of the same controlled group as such a
3 sponsor) of the plan relating to operations at a
4 facility or otherwise, an employer (the ‘trans-
5 feree employer’) other than the employer which
6 experiences the substantial cessation of oper-
7 ations (the ‘transferor employer’) conducts any
8 portion of such operations, then—

9 “(i) an eligible employee separated
10 from employment with the transferor em-
11 ployer at the facility shall not be taken
12 into account in computing a workforce re-
13 duction if—

14 “(I) within a reasonable period of
15 time, the employee is replaced by the
16 transferee employer by an employee
17 who is a citizen or resident of the
18 United States; and

19 “(II) in the case of an eligible
20 employee who is a participant in a
21 single employer plan maintained by
22 the transferor employer, the trans-
23 feree employer, within a reasonable
24 period of time, maintains a single em-
25 ployer plan which includes the assets

1 and liabilities attributable to the ac-
2 crued benefit of the eligible employee
3 at the time of separation from em-
4 ployment with the transferor em-
5 ployer; and

6 “(ii) an eligible employee who con-
7 tinues to be employed at the facility by the
8 transferee employer shall not be taken into
9 account in computing a workforce reduc-
10 tion if—

11 “(I) the eligible employee is not a
12 participant in a single employer plan
13 maintained by the transferor em-
14 ployer, or

15 “(II) in any other case, the
16 transferee employer, within a reason-
17 able period of time, maintains a single
18 employer plan which includes the as-
19 sets and liabilities attributable to the
20 accrued benefit of the eligible em-
21 ployee at the time of separation from
22 employment with the transferor em-
23 ployer.

24 “(3) EXEMPTION FOR PLANS WITH LIMITED
25 UNDERFUNDING.—Paragraph (1) shall not apply

1 with respect to a single employer plan if, for the
2 plan year preceding the plan year in which the ces-
3 sation occurred—

4 “(A) there were fewer than 100 partici-
5 pants with accrued benefits under the plan as
6 of the valuation date of the plan for the plan
7 year (as determined under section 303(g)(2));
8 or

9 “(B) the ratio of the market value of the
10 assets of the plan to the funding target of the
11 plan for the plan year was 90 percent or great-
12 er.

13 “(4) ELECTION TO MAKE ADDITIONAL CON-
14 TRIBUTIONS TO SATISFY LIABILITY.—

15 “(A) IN GENERAL.—An employer may
16 elect to satisfy the employer’s liability with re-
17 spect to a plan by reason of paragraph (1) by
18 making additional contributions to the plan in
19 the amount determined under subparagraph
20 (B) for each plan year in the 7-plan-year period
21 beginning with the plan year in which the ces-
22 sation occurred. Any such additional contribu-
23 tion for a plan year shall be in addition to any
24 minimum required contribution under section

303 for such plan year and shall be paid not later than the earlier of—

“(i) the due date for the minimum required contribution for such year under section 303(j); or

“(ii) in the case of the first such contribution, the date that is 1 year after the date on which the employer notifies the Corporation of the substantial cessation of operations or the date the Corporation determines a substantial cessation of operations has occurred, and in the case of subsequent contributions, the same date in each succeeding year.

“(B) AMOUNT DETERMINED.—

“(i) IN GENERAL.—Except as provided in clause (iii), the amount determined under this subparagraph with respect to each plan year in the 7-plan-year period is the product of—

“(I) $\frac{1}{7}$ of the unfunded vested benefits determined under section 4006(a)(3)(E) as of the valuation date of the plan (as determined under section 303(g)(2)) for the plan year

preceding the plan year in which the
cessation occurred; and

“(II) the reduction fraction.

“(ii) REDUCTION FRACTION.—For
purposes of clause (i), the reduction frac-
tion of a single employer plan is equal to—

“(I) the number of participants
with accrued benefits in the plan who
were included in computing the work-
force reduction under paragraph
(2)(B) as a result of the cessation of
operations at the facility; divided by

“(II) the number of eligible em-
ployees of the employer who are par-
ticipants with accrued benefits in the
plan, determined as of the same date
the determination under paragraph
(2)(A) is made.

“(iii) LIMITATION.—The additional
contribution under this subparagraph for
any plan year shall not exceed the excess,
if any, of—

“(I) 25 percent of the difference
between the market value of the as-
sets of the plan and the funding tar-

1 get of the plan for the preceding plan
 2 year; over

3 “(II) the minimum required con-
 4 tribution under section 303 for the
 5 plan year.

6 “(C) PERMITTED CESSATION OF ANNUAL
 7 INSTALLMENTS WHEN PLAN BECOMES SUFFI-
 8 CIENTLY FUNDED.—An employer’s obligation to
 9 make additional contributions under this para-
 10 graph shall not apply to—

11 “(i) the first plan year (beginning on
 12 or after the first day of the plan year in
 13 which the cessation occurs) for which the
 14 ratio of the market value of the assets of
 15 the plan to the funding target of the plan
 16 for the plan year is 90 percent or greater,
 17 or

18 “(ii) any plan year following such first
 19 plan year.

20 “(D) COORDINATION WITH FUNDING WAIV-
 21 ERS.—

22 “(i) IN GENERAL.—If the Secretary of
 23 the Treasury issues a funding waiver
 24 under section 302(c) with respect to the
 25 plan for a plan year in the 7-plan-year pe-

riod under subparagraph (A), the additional contribution with respect to such plan year shall be permanently waived.

“(ii) NOTICE.—An employer maintaining a plan with respect to which such a funding waiver has been issued or a request for such a funding waiver is pending shall provide notice to the Secretary of the Treasury, in such form and at such time as the Secretary of the Treasury shall provide, of a cessation of operations to which paragraph (1) applies.

“(E) ENFORCEMENT.—

“(i) NOTICE.—An employer making the election under this paragraph shall provide notice to the Corporation, in accordance with rules prescribed by the Corporation, of—

“(I) such election, not later than 30 days after the earlier of the date the employer notifies the Corporation of the substantial cessation of operations or the date the Corporation determines a substantial cessation of operations has occurred;

1 “(II) the payment of each addi-
2 tional contribution, not later than 10
3 days after such payment;

4 “(III) any failure to pay the ad-
5 ditional contribution in the full
6 amount for any year in the 7-plan-
7 year period, not later than 10 days
8 after the due date for such payment;

9 “(IV) the waiver under subpara-
10 graph (D)(i) of the obligation to make
11 an additional contribution for any
12 year, not later than 30 days after the
13 funding waiver described in such sub-
14 paragraph is granted; and

15 “(V) the cessation of any obliga-
16 tion to make additional contributions
17 under subparagraph (C), not later
18 than 10 days after the due date for
19 payment of the additional contribution
20 for the first plan year to which such
21 cessation applies.

22 “(ii) ACCELERATION OF LIABILITY TO
23 THE PLAN FOR FAILURE TO PAY.—If an
24 employer fails to pay the additional con-
25 tribution in the full amount for any year in

1 the 7-plan-year period by the due date for
 2 such payment, the employer shall, as of
 3 such date, be liable to the plan in an
 4 amount equal to the balance which remains
 5 unpaid as of such date of the aggregate
 6 amount of additional contributions re-
 7 quired to be paid by the employer during
 8 such 7-year-plan period. The Corporation
 9 may waive or settle the liability described
 10 in the preceding sentence, at the discretion
 11 of the Corporation.

12 “(iii) CIVIL ACTION.—The Corpora-
 13 tion may bring a civil action in the district
 14 courts of the United States in accordance
 15 with section 4003(e) to compel an em-
 16 ployer making such election to pay the ad-
 17 ditional contributions required under this
 18 paragraph.

19 “(5) DEFINITIONS.—For purposes of this sub-
 20 section:

21 “(A) ELIGIBLE EMPLOYEE.—The term ‘eli-
 22 gible employee’ means an employee who is eligi-
 23 ble to participate in an employee pension ben-
 24 efit plan (as defined in section 3(2)) established
 25 and maintained by the employer.

“(B) FUNDING TARGET.—The term ‘funding target’ means, with respect to any plan year, the funding target as determined under section 4006(a)(3)(E)(iii)(I) for purposes of determining the premium paid to the Corporation under section 4007 for the plan year.

“(C) MARKET VALUE.—The market value of the assets of a plan shall be determined in the same manner as for purposes of section 4006(a)(3)(E).

“(6) SPECIAL RULES.—

“(A) CHANGE IN OPERATION OF CERTAIN FACILITIES AND PROPERTY.—For purposes of paragraphs (1) and (2), an employer shall not be treated as ceasing operations at a qualified lodging facility (as defined in section 856(d)(9)(D) of the Internal Revenue Code of 1986) if such operations are continued by an eligible independent contractor (as defined in section 856(d)(9)(A) of such Code) pursuant to an agreement with the employer.

“(B) AGGREGATION OF PRIOR SEPARATIONS.—The workforce reduction under paragraph (2) with respect to any cessation of operations shall be determined by taking into ac-

count any separation from employment of any eligible employee at the facility (other than a separation which is not taken into account as workforce reduction by reason of subparagraph (C) or (D) of paragraph (2)) which—

“(i) is related to the permanent cessation of operations of the employer at the facility, and

“(ii) occurs during the 3-year period preceding such cessation.

“(C) NO ADDITION TO PREFUNDING BALANCE.—For purposes of section 303(f)(6)(B) and section 430(f)(6)(B) of the Internal Revenue Code of 1986, any additional contribution made under paragraph (4) shall be treated in the same manner as a contribution an employer is required to make in order to avoid a benefit reduction under paragraph (1), (2), or (4) of section 206(g) or subsection (b), (c), or (e) of section 436 of the Internal Revenue Code of 1986 for the plan year.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to a cessation of operations

1 or other event at a facility occurring on or after the
2 date of enactment of this Act.

3 (2) TRANSITION RULE.—An employer that had
4 a cessation of operations before the date of enact-
5 ment of this Act (as determined under subsection
6 4062(e) of the Employee Retirement Income Secu-
7 rity Act of 1974 as in effect before the amendment
8 made by this section), but did not enter into an ar-
9 rangement with the Pension Benefit Guaranty Cor-
10 poration to satisfy the requirements of such sub-
11 section (as so in effect) before such date of enact-
12 ment, shall be permitted to make the election under
13 section 4062(e)(4) of such Act (as in effect after the
14 amendment made by this section) as if such ces-
15 sation had occurred on such date of enactment.
16 Such election shall be made not later than 30 days
17 after such Corporation issues, on or after such date
18 of the enactment, a final administrative determina-
19 tion that a substantial cessation of operations has
20 occurred.

21 (c) DIRECTION TO THE CORPORATION.—The Pension
22 Benefit Guaranty Corporation shall not take any enforce-
23 ment, administrative, or other action pursuant to section
24 4062(e) of the Employee Retirement Income Security Act
25 of 1974, or in connection with an agreement settling liabil-

1 ity arising under such section, that is inconsistent with
2 the amendment made by this section, without regard to
3 whether the action relates to a cessation or other event
4 that occurs before, on, or after the date of the enactment
5 of this Act, unless such action is in connection with a set-
6 tlement agreement that is in place before June 1, 2014.
7 The Pension Benefit Guaranty Corporation shall not ini-
8 tiate a new enforcement action with respect to section
9 4062(e) of such Act that is inconsistent with its enforce-
10 ment policy in effect on June 1, 2014.

Passed the Senate September 16, 2014.

Attest:

Secretary.

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