

104TH CONGRESS
1ST SESSION

H. R. 36

To amend the Employee Retirement Income Security Act of 1974 and related provisions to improve pension plan funding, to limit growth in insurance exposure, to protect the single-employer plan termination insurance program by clarifying the status of claims of the Pension Benefit Guaranty Corporation and the treatment of insolvent pension plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. FAWELL introduced the following bill; which was referred to the Committee on Economic and Education Opportunities 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

A BILL

To amend the Employee Retirement Income Security Act of 1974 and related provisions to improve pension plan funding, to limit growth in insurance exposure, to protect the single-employer plan termination insurance program by clarifying the status of claims of the Pension Benefit Guaranty Corporation and the treatment of insolvent pension plans, and for other purposes.

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. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Pension Security Act of 1995”.

4 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title and table of contents.
- Sec. 2. Amendment of ERISA.

TITLE I—AMENDMENTS TO PENSION PLAN FUNDING
REQUIREMENTS

- Sec. 101. Revision of additional funding requirements for plans that are not
multiemployer plans.
- Sec. 102. Effective dates.

TITLE II—AMENDMENTS TO TITLE IV OF ERISA

- Sec. 201. Limitation on benefits guaranteed.
- Sec. 202. Enforcement of minimum funding requirements.
- Sec. 203. Recovery ratio payable under Corporation’s guaranty.
- Sec. 204. Elimination of the seventh revolving fund.
- Sec. 205. Distress termination criteria for banking institutions.

TITLE III—EMPLOYER LIABILITY, LIEN AND PRIORITY

Subtitle A—Amendments to the Employee Retirement Income Security Act of
1974

- Sec. 301. Employer liability lien and priority amount.
- Sec. 302. Clarification of priorities in conformity with the Employee Retirement
Income Security Act of 1974.
- Sec. 303. Liability upon liquidation of contributing sponsor where plan remains
ongoing.

5 **SEC. 2. AMENDMENT OF ERISA.**

6 The sections of the Employee Retirement Income Se-
7 curity Act of 1974 which are amended by the subsequent
8 provisions of this Act are amended so as to read as such
9 sections would read if the Uruguay Round Agreements
10 Act had not been enacted. References to such sections in
11 the subsequent provisions of this Act shall be deemed ref-
12 erences to such sections as amended by this section. This

1 section shall be effective as if included in the Uruguay
2 Round Agreements Act.

3 **TITLE I—AMENDMENTS TO PEN-**
4 **SION PLAN FUNDING RE-**
5 **QUIREMENTS**

6 **SEC. 101. REVISION OF ADDITIONAL FUNDING REQUIRE-**
7 **MENTS FOR PLANS THAT ARE NOT MULTIEM-**
8 **PLOYER PLANS.**

9 (a) ACCUMULATED FUNDING DEFICIENCY.—Section
10 302(a)(2) of the Employee Retirement Income Security
11 Act of 1974 (29 U.S.C. 1082(a)(2)) is amended—

12 (1) by striking “the excess of the total charges
13 to the funding standard account” through the end of
14 that sentence, and inserting “the largest of—”; and

15 (2) by adding at the end the following:

16 “(A) the lesser of—

17 “(i) the excess of the total charges to
18 the funding standard account for all plan
19 years (beginning with the first plan year to
20 which this section applies) over the total
21 credits to such account for such years, or,

22 “(ii) the excess of the total charges to
23 the alternative minimum funding standard
24 account for such plan years over the total
25 credits to such account for such years; or,

1 “(B) if applicable, the underfunding reduc-
2 tion requirement under subsection (d), or,

3 “(C) if applicable, the solvency mainte-
4 nance requirement under subsection (g).”

5 (b) UNDERFUNDING REDUCTION REQUIREMENT.—
6 Section 302(d) of such Act (29 U.S.C. 1082(d)) is amend-
7 ed to read as follows:

8 “(d) UNDERFUNDING REDUCTION REQUIREMENT
9 FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

10 “(1) UNDERFUNDING REDUCTION REQUIRE-
11 MENT.—In the case of a defined benefit plan (other
12 than a multiemployer plan) that has an initial fund-
13 ing ratio of less than 100 percent for any plan year,
14 the underfunding reduction requirement for such
15 plan year is the sum of:

16 “(A) an amount equal to the product of—

17 “(i) the initial unfunded liability of
18 the plan multiplied by

19 “(ii) 30 percent, reduced by the prod-
20 uct of—

21 “(I) .25 multiplied by

22 “(II) the excess (if any) of the
23 initial funding ratio of the plan over
24 35 percent;

1 “(B) the charges to the funding standard
2 account for normal cost under subparagraph
3 (b)(2)(A) and for the amounts necessary to am-
4 ortize any waived funding deficiencies under
5 subparagraph (b)(2)(C);

6 “(C) the excess (if any) of—

7 “(i) the sum of charges to the funding
8 standard account for plans years beginning
9 after December 31, 1998, for net experi-
10 ence losses under clause (b)(2)(B)(iv) and
11 net losses resulting from changes in actu-
12 arial assumptions under clause
13 (b)(2)(B)(v) over—

14 “(ii) the sum of credits to the funding
15 standard account for plan years beginning
16 after December 31, 1998—

17 “(I) for net experience gains
18 under clause (b)(3)(B)(ii) and net
19 gains resulting from changes in actu-
20 arial assumptions under clause
21 (b)(3)(B)(iii); and

22 “(II) for amounts considered con-
23 tributed by the employer under sub-
24 paragraph (b)(3)(A) (to the extent
25 they are necessary to avoid an accu-

1 mulated funding deficiency under sec-
2 tion 302(b)); and

3 “(D) the net of—

4 “ (i) charges to the funding standard
5 account for plan years beginning on or be-
6 fore December 31, 1998, for net experience
7 losses under clause (b)(2)(B)(iv) and net
8 losses resulting from changes in actuarial
9 assumptions under clause (b)(2)(B)(v);
10 and

11 “(ii) the sum of credits to the funding
12 standard account for plan years beginning
13 on or before December 31, 1998—

14 “(I) for net experience gains
15 under clause (b)(3)(B)(ii) and net
16 gains resulting from changes in actu-
17 arial assumptions under clause
18 (b)(3)(B)(iii); and

19 “(II) amounts considered contrib-
20 uted by the employer under subpara-
21 graph (b)(3)(A) (to the extent they
22 are necessary to avoid an accumulated
23 funding deficiency under section
24 302(b)).

1 “(2) DEFINITIONS.—For definitions relating to
2 this subsection, see subsection (g)(3).

3 “(3) APPLICATION TO SMALL PLANS.—For the
4 application of this subsection to small plans, see sub-
5 section (g)(4).”

6 (c) SOLVENCY MAINTENANCE REQUIREMENT.—Sec-
7 tion 302 of such Act is further amended—

8 (1) by redesignating subsection (g) as (h) as
9 subsections (h) and (i), respectively; and

10 (2) by inserting after subsection (f) the follow-
11 ing new subsection:

12 “(g) SOLVENCY MAINTENANCE REQUIREMENT FOR
13 PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

14 “(1) SOLVENCY MAINTENANCE REQUIRE-
15 MENT.—In the case of a defined benefit plan (other
16 than a multiemployer plan) that has an initial fund-
17 ing ratio of less than 100 percent for any plan year,
18 the solvency maintenance requirement for such plan
19 year is (subject to paragraph (2)) the sum of—

20 “(A) the sum of:

21 “(i) all disbursements from the plan
22 for the plan year, and

23 “(ii) an amount equal to the initial
24 unfunded liability of the plan multiplied by

1 the interest rate used by such plan (deter-
 2 mined under subparagraph (b)(5)(A));

3 “(B) the charges described in section
 4 302(d)(1)(B);

5 “(C) the amount described in section
 6 302(d)(1)(C); and

7 “(D) the amount described in section
 8 302(d)(1)(D).

9 “(2) LIMITATION ON SOLVENCY MAINTENANCE
 10 REQUIREMENT.—For plan years commencing after
 11 December 31, 1998, the amount required under
 12 paragraph (1) shall not exceed the sum of—

13 “(A) the amount required under section
 14 302(d); and

15 “(B) the product desired by multiplying—

16 “(i) the excess (if any) of—

17 “(I) the amount required under
 18 paragraph (1) over

19 “(II) the amount required under
 20 section 302(d); by—

21 “(ii) the applicable percentage.

22 “(3) APPLICABLE PERCENTAGE.—For purposes
 23 of paragraph (2)(B)(ii), the applicable percentage is:

“For plan years commencing after:	The applicable percentage is:
December 31, 1998	20 percent
December 31, 1999	40 percent
December 31, 2000	60 percent

December 31, 2001	80 percent
December 31, 2002	100 percent.

1 “(4) DEFINITIONS.—For purposes of this sub-
2 section and subsection (d)—

3 “(A) INITIAL UNFUNDED LIABILITY.—The
4 term ‘initial unfunded liability’ means the ex-
5 cess (if any) of the amount necessary to satisfy
6 the initial termination liability of the plan over
7 the initial value of assets of the plan.

8 “(B) INITIAL FUNDING RATIO.—The term
9 ‘initial funding ratio’ means the ratio of (i) the
10 initial value of assets of the plan to (ii) the
11 amount necessary to satisfy the initial termi-
12 nation liability of the plan.

13 “(C) INITIAL TERMINATION LIABILITY.—
14 The term ‘initial termination liability’ means all
15 liabilities with respect to employees and their
16 beneficiaries under the plan in the meaning of
17 section 401(a)(2) of the Internal Revenue Code
18 of 1986 as of the first day of the plan year.

19 “(D) INITIAL VALUE OF ASSETS.—The
20 term ‘initial value of assets’ means the value of
21 the assets of the plan determined under section
22 302(c)(2) as of the first day of the plan year.

23 “(E) DISBURSEMENTS FROM THE PLAN.—

1 “(i) IN GENERAL.—The term ‘dis-
2 bursements from the plan’ means benefit
3 payments, including purchases of annuities
4 or payment of lump sums in satisfaction of
5 liabilities, administrative expenditures or
6 any other disbursements from the plan or
7 its trust.

8 “(ii) SPECIAL RULE FOR PURCHASES
9 OF ANNUITIES AND PAYMENT OF LUMP
10 SUMS.—In determining the applicable
11 amounts attributable to purchases of annu-
12 ities or the payment of lump sums under
13 clause (i), the actual purchase or lump
14 sum amounts paid by the plan or trust
15 shall be multiplied by the excess (if any) of
16 one over the initial funding ratio of the
17 plan.

18 “(5) SPECIAL RULES FOR SMALL PLANS.—

19 “(A) PLANS WITH 100 OR FEWER PARTICI-
20 PANTS.—This subsection and subsection (d)
21 shall not apply to any plan for any plan year
22 if on each day during the preceding plan year
23 such plan had no more than 100 participants.

24 “(B) PLANS WITH MORE THAN 100 BUT
25 NOT MORE THAN 150 PARTICIPANTS.—In the

1 case of a plan to which subparagraph (A) does
2 not apply and which on each day during the
3 preceding year had no more than 150 partici-
4 pants, the additional amounts required by the
5 underfunding reduction requirement under sub-
6 section (d) or the solvency maintenance require-
7 ment under this subsection shall be equal to the
8 product of—

9 “(i) the excess of such requirements
10 (determined without regard to this sub-
11 paragraph) over the funding deficiency (if
12 any) under subsection 302(b), multiplied
13 by;

14 “(ii) 2 percent for the highest number
15 of participants in excess of 100 on any
16 such day.”

17 “(C) AGGREGATION OF PLANS.—For pur-
18 poses of this paragraph, all defined benefit
19 plans maintained by the same employer (or any
20 member of such employer’s controlled group)
21 shall be treated as 1 plan, but only employees
22 of such employer or member shall be taken into
23 account.”

24 (d) CONFORMING AMENDMENTS.—

1 (1) Section 302(b)(5)(B) of such Act (29
2 U.S.C. 1082(b)(5)(B)) is amended by striking “and
3 for purposes of determining a plan’s required con-
4 tribution under section 302(d)” and inserting
5 “under section 302(c)(7)(B)”.

6 (2) Section 302(c)(7)(B) of such Act (29
7 U.S.C. 1082(c)(7)(B)) is amended by striking “has
8 the meaning given such term by subsection
9 302(d)(7) (without regard to subparagraph (D)
10 thereof)” and inserting “means all liabilities with re-
11 spect to employees and their beneficiaries under the
12 plan within the meaning of applicable Federal law
13 determined by using the interest rate under section
14 302(b)(5)(B)”.

15 (3) Section 307 of such Act (29 U.S.C. 1085b)
16 is amended—

17 (A) by striking “current liability”, “funded
18 current liability percentage”, “unfunded current
19 liability”, and “302(d)” each place they appear
20 and inserting “initial termination liability”,
21 “initial funding ratio”, “initial unfunded liabil-
22 ity”, and “302(g)”, respectively; and

23 (B) in subsection (f), by striking “except”
24 and all that follows and inserting “except that
25 in computing initial unfunded liability there

1 shall not be taken into account an amount
2 equal to the initial unfunded liability of the
3 plan as of the beginning of the first plan year
4 beginning after December 31, 1987 (determined
5 without regard to any plan amendment increas-
6 ing liabilities adopted after October 16, 1987),
7 reduced by an amount equal to the product of
8 the amount necessary to amortize such pre-
9 1988 initial unfunded liability in equal annual
10 installments over a period of 18 plan years (be-
11 ginning with the first plan year beginning after
12 December 31, 1988) multiplied by the number
13 of years (but not more than 18) beginning since
14 December 31, 1988.”.

15 **SEC. 102. EFFECTIVE DATES.**

16 The amendments made by this subtitle shall be effec-
17 tive for plan years beginning after December 31, 1998.

18 **TITLE II—AMENDMENTS TO**
19 **TITLE IV OF ERISA**

20 **SEC. 201. LIMITATION ON BENEFITS GUARANTEED.**

21 (a) IN GENERAL.—Section 4022(b) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C.
23 1322(b)) is amended by adding after paragraph (7) the
24 following new paragraph:

1 “(8)(A) Benefits under a new plan or any increase
2 in benefits under a plan resulting from a plan amendment,
3 which new plan or amendment was adopted or became ef-
4 fective after December 31, 1996, shall be disregarded, un-
5 less—

6 “(i) the plan was fully funded for vested bene-
7 fits for the plan year that the new plan or amend-
8 ment was adopted or became effective, whichever is
9 later, or became fully funded for vested benefits in
10 a subsequent plan year; and

11 “(ii) the new plan or amendment was adopted
12 or effective, whichever is later, at least one year
13 prior to the date of plan termination.

14 “(B) For purposes of this paragraph, a plan is ‘fully
15 funded for vested benefits’ for any plan year if such plan
16 has no unfunded vested benefits (within the meaning of
17 section 4006(a)(3)(E)(iii)) as of the last day of such plan
18 year.

19 “(C)(i) Except as provided in clause (ii), paragraph
20 (7) and subparagraphs (B) and (C) of paragraph (5) shall
21 not apply to benefits disregarded under subparagraph (A).

22 “(ii) This paragraph shall not apply, and paragraph
23 (7) and subparagraphs (B) and (C) of paragraph (5) shall
24 apply to any new plan or plan amendment resulting from

1 a collective bargaining agreement or amendment thereto
2 entered and ratified on or prior to December 31, 1996.”.

3 (b) NO GUARANTY FOR NEW UNPREDICTABLE CON-
4 TINGENT EVENT BENEFITS.—Subsection (b) of section
5 4022 of such Act (as amended by subsection (b) of this
6 section) is further amended by adding at the end the fol-
7 lowing new paragraph:

8 “(9)(A) Notwithstanding paragraph (8), any unpre-
9 dictable contingent event benefit (or any increase in such
10 a benefit) created by any plan provision or amendment
11 adopted or effective after December 31, 1996, shall not
12 be guaranteed.

13 “(B) For purposes of this section, an ‘unpredictable
14 contingent event benefit’ means any benefit contingent on
15 an event other than—

16 “(i) age, service, compensation, death or dis-
17 ability, or

18 “(ii) an event which is reasonably and reliably
19 predictable (as determined under regulations pre-
20 scribed by the corporation).”.

21 (c) CONFORMING AMENDMENT.—Section 4022(b)(1)
22 of such Act (29 U.S.C. 1322(b)(1)) is amended by insert-
23 ing “, (8), or (9)” after “paragraph (7)”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall be effective on December 31, 1996.

1 **SEC. 202. ENFORCEMENT OF MINIMUM FUNDING REQUIRE-**
2 **MENTS.**

3 (a) IN GENERAL.—Paragraph (1) of section 4003(e)
4 of Employee Retirement Income Security Act of 1974 (29
5 U.S.C. 1303(e)(1)) is amended by inserting after “title”
6 the following: “and, in the case of a plan to which this
7 title applies under section 4021, section 302”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall be effective for installments and other
10 payments required under section 302 of the Employee Re-
11 tirement Income Security Act of 1974 due on or after the
12 date of the enactment of this Act.

13 **SEC. 203. RECOVERY RATIO PAYABLE UNDER CORPORA-**
14 **TION'S GUARANTY.**

15 (a) IN GENERAL.—Section 4022(c)(3)(B) of the Em-
16 ployee Retirement Income Security Act of 1974 (29
17 U.S.C. 1322(c)(3)(B)) is amended—

18 (1) by redesignating clauses (i) and (ii) as
19 clauses (ii) and (iii) respectively; and

20 (2) by inserting before clause (ii) (as so redesign-
21 nated) the following new clause:

22 “(i) the outstanding amount of benefit li-
23 abilities does not exceed \$20,000,000,”.

24 (b) TERMINATIONS.—Clause (iii) of section
25 4022(c)(3)(B) of such Act (29 U.S.C. 1322(c)(3)(B)), as
26 redesignated by subsection (a), is amended—

1 (1) by inserting “, or proceedings were insti-
2 tuted under section 4042,” after “provided”; and

3 (2) by striking “in which occurs the date of the
4 notice of intent to terminate with respect to the plan
5 termination”.

6 (c) CONFORMING AMENDMENTS.—Clause (i) of sec-
7 tion 9312(b)(3)(B) of the Pension Protection Act is
8 amended—

9 (1) by inserting “, or proceedings were insti-
10 tuted under section 4042,” after “provided”; and

11 (2) by striking “1990” and inserting “1994”.

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect as if included in section
14 9312(b)(3) of the Pension Protection Act (Public Law
15 100–203; 101 Stat. 1330–362).

16 **SEC. 204. ELIMINATION OF THE SEVENTH REVOLVING**
17 **FUND.**

18 (a) TRANSFER.—Effective September 30, 1997, all
19 assets and liabilities of the fund described in section
20 4005(f)(1) of the Employee Retirement Income Security
21 Act of 1974 (as in effect before the amendments made
22 by this section) shall be transferred to the fund established
23 pursuant to section 4005(a) of such Act with respect to
24 basic benefits guaranteed under section 4022 of such Act.

1 (b) REPEAL.—Section 4005 of the Employee Retirement
2 Income Security Act of 1974 (29 U.S.C. 1305) is
3 amended—

4 (1) by striking subsection (f); and

5 (2) by redesignating subsections (g) and (h) as
6 subsections (f) and (g), respectively.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply with respect to fiscal years begin-
9 ning after September 30, 1997.

10 **SEC. 205. DISTRESS TERMINATION CRITERIA FOR CERTAIN**
11 **FINANCIAL INSTITUTIONS.**

12 (a) IN GENERAL.—Subclause (I) of section
13 4041(c)(2)(B)(i) of the Employee Retirement Income Se-
14 curity Act of 1974 (29 U.S.C. 1341(c)(2)(B)(i)(I)) is
15 amended by inserting “Federal law or” before “law of a
16 State”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to plan terminations under section
19 4041 of the Employee Retirement Income Security Act of
20 1974 with respect to which notices of intent to terminate
21 under section 4041(a)(2) of such Act are provided on or
22 after the date of the enactment of this Act.

1 **TITLE III—EMPLOYER**
2 **LIABILITY, LIEN AND PRIORITY**

3 **SEC. 301. EMPLOYER LIABILITY LIEN AND PRIORITY**
4 **AMOUNT.**

5 (a) REVISED LIMITATIONS ON LIEN AND TAX PRIOR-
6 ITY AMOUNT.—Section 4068(a) of the Employee Retire-
7 ment Income Security Act of 1974 (29 U.S.C. 1368(a))
8 is amended—

9 (1) by striking “If any person liable to the cor-
10 poration” and inserting “(1) Subject to paragraphs
11 (2) and (3), if any person liable to the corporation”;

12 (2) by striking “section 4062” and inserting
13 “section 4062(a)(1)”;

14 (3) by striking the comma after “belonging to
15 such person” and inserting a period;

16 (4) by striking “except that such lien” and in-
17 serting the following:

18 “(2) In the case of plan terminations under sec-
19 tion 4041 with respect to which notices of intent to
20 terminate under section 4041(a)(2) are provided be-
21 fore January 1, 1997, and plan terminations with
22 respect to which proceedings are instituted by the
23 corporation before January 1, 1997, the lien estab-
24 lished under paragraph (1)”;

1 (5) by adding at the end the following new
2 paragraph:

3 “(3)(A) In the case of plan terminations under
4 section 4041 with respect to which notices of intent
5 to terminate under section 4041(a)(2) are provided
6 on or after January 1, 1997, and plan terminations
7 with respect to which proceedings are instituted by
8 the corporation on or after January 1, 1997, the lien
9 established under paragraph (1) may not be in an
10 amount in excess of the sum of—

11 “(i) the amount of benefits attributable to
12 the occurrence of unpredictable contingent
13 events valued as of the date of plan termination
14 arising at any time during the 3 years preced-
15 ing the date of plan termination (to the extent
16 not funded prior to plan termination), plus

17 “(ii) the greater of—

18 “(I) 30 percent of the collective net
19 worth of all persons described in section
20 4062(a), or

21 “(II) the currently applicable percent-
22 age of the excess of the amount of un-
23 funded benefit liabilities under the plan as
24 of the date of plan termination over the
25 amount described in clause (i).

1 “(B) For purposes of this paragraph—

2 “(i) the term ‘currently applicable percent-
3 age’ means—

4 “(I) with respect to plan terminations
5 initiated in calendar year 1997, 10 per-
6 cent,

7 “(II) with respect to plan termi-
8 nations initiated in any calendar year after
9 1997 and before 2017, the percentage de-
10 termined under this clause with respect to
11 plan terminations initiated in the preceding
12 calendar year, plus 2 percent, and

13 “(III) with respect to plan termi-
14 nations initiated in calendar years after
15 2016, 50 percent.

16 “(ii) The term ‘amount of benefits attrib-
17 utable to the occurrence of unpredictable con-
18 tingent events’ means, with respect to any plan,
19 the present value of unpredictable contingent
20 event benefits (within the meaning of section
21 302(d)(7)(B)(ii)), determined as of the termi-
22 nation date on the basis of assumptions pre-
23 scribed by the corporation for purposes of sec-
24 tion 4044.

1 “(C) In applying subparagraph (A), the cor-
2 poration may disregard subclause (I) of clause (ii)
3 thereof if the corporation determines, in its sole dis-
4 cretion, that disregarding such subclause (I) is cost-
5 effective.”.

6 (b) CONFORMING AND CLARIFYING AMENDMENTS
7 RELATING TO AMOUNT ENTITLED TO PRIORITY TREAT-
8 MENT IN CASES OF INSOLVENCY.—Section 4068(c)(2) of
9 such Act (29 U.S.C. 1368(c)(2)) is amended by inserting
10 “(A)” after “(2)” and by adding at the end the following
11 new subparagraph:

12 “(B) Subparagraph (A) shall apply—

13 “(i) in the case of terminations described in
14 paragraph (2) of subsection (a), only with respect to
15 so much of the liability as does not exceed the
16 amount determined under such paragraph (2), and

17 “(ii) in the case of terminations described in
18 paragraph (3) of subsection (a), only with respect to
19 so much of the liability as does not exceed the
20 amount determined under such paragraph (3).”.

21 (c) CLARIFICATION OF PBGC CLAIM.—Section
22 4068(c)(2) of such Act (29 U.S.C. 1368(c)(2)) is amend-
23 ed—

24 (1) by striking “the lien imposed under sub-
25 section (a)” and inserting “the liability to the cor-

1 poration under section 4062(a)(1), 4063, or 4064”;
2 and

3 (2) by inserting “which is” after “tax”, and by
4 inserting “and assigned priority” after “United
5 States”.

6 (d) EFFECTIVE DATES.—

7 (1) Section 4068(a)(2) of the Employee Retire-
8 ment Income Security Act of 1974 (as amended by
9 subsection (a)) and section 4068(c)(2)(B)(i) of such
10 Act (as amended by subsection (b)) shall be effective
11 with respect to plan terminations under section 4041
12 of such Act with respect to which notices of intent
13 to terminate under section 4041(a)(2) of such Act
14 are provided before January 1, 1997, and plan ter-
15 minations with respect to which proceedings are in-
16 stituted by the Pension Benefit Guaranty Corpora-
17 tion under section 4042 of such Act before January
18 1, 1997.

19 (2) Section 4068(a)(3) of the Employee Retire-
20 ment Income Security Act of 1974 (as amended by
21 subsection (a)) and section 4068(c)(2)(B)(ii) of such
22 Act (as amended by subsection (b)) shall be effective
23 with respect to plan terminations under section 4041
24 of such Act with respect to which notices of intent
25 to terminate under section 4041(a)(2) of such Act

1 are provided on or after January 1, 1997, and plan
2 terminations with respect to which proceedings are
3 instituted by the Pension Benefit Guaranty Corpora-
4 tion under section 4042 of such Act on or after Jan-
5 uary 1, 1997.

6 (3) The amendment made by subsection (a)(2)
7 shall be effective as if included in the enactment of
8 section 11011(a) of the Single-Employer Pension
9 Plan Amendments Act of 1986 (Public Law 99-272;
10 100 Stat. 253).

11 (4) The amendment made by subsection (c)
12 shall be effective as if included in the enactment of
13 section 9312(b)(2)(B) of the Pension Protection Act
14 (Public Law 100-203, 101 Stat. 1330-361).

15 **SEC. 302. CLARIFICATION OF PRIORITIES IN CONFORMITY**
16 **WITH THE EMPLOYEE RETIREMENT INCOME**
17 **SECURITY ACT OF 1974.**

18 (a) PRIORITY AS EXPENSES ARISING BEFORE COM-
19 MENCEMENT OF CASE.—Paragraph (7) of section 507(a)
20 of title 11 of the United States Code is amended—

21 (1) in subparagraph (F), by striking “or” at
22 the end;

23 (2) in subparagraph (G), by striking the period
24 at the end and inserting a semicolon; and

1 (3) by adding after subparagraph (G) the fol-
2 lowing:

3 “(H) unpaid contributions (including inter-
4 est) to pension plans for plan years beginning
5 after December 31, 1987, which are attrib-
6 utable to the period prior to the date of the fil-
7 ing of the petition and treated as taxes owing
8 to the United States under section
9 412(n)(4)(C) of the Internal Revenue Code of
10 1986; or

11 “(I) liability (including interest) arising
12 under section 4062(a)(1), 4063, or 4064 of the
13 Employee Retirement Income Security Act of
14 1974 to the extent it is treated as a tax under
15 section 4068(c)(2) of such Act, if the date of
16 pension plan termination is on or prior to the
17 date of the filing of the petition.

18 For purposes of subparagraph (I), the date of plan termi-
19 nation, the amount of the liability, and the extent to which
20 the liability is treated as a tax shall be determined in ac-
21 cordance with the provisions of the Employee Retirement
22 Income Security Act of 1974 and the regulations promul-
23 gated thereunder.”.

1 (b) PRIORITY AS ADMINISTRATIVE EXPENSES ARISING
2 AFTER COMMENCEMENT OF CASE.—Section 503(b)
3 of such title 11 is amended—

4 (1) in paragraph (5), by striking “and” at the
5 end;

6 (2) in paragraph (6), by striking the period and
7 inserting “; and”; and

8 (3) by adding at the end the following:

9 “(7)(A) unpaid contributions (including interest)
10 est) to pension plans for plan years beginning after
11 December 31, 1987, which are attributable to the
12 period beginning on the date of the filing of the peti-
13 tion and treated as taxes owing to the United States
14 under section 412(n)(4)(C) of the Internal Revenue
15 Code of 1986; and

16 “(B) liability (including interest) arising under
17 section 4062(a)(1), 4063, or 4064 of the Employee
18 Retirement Income Security Act of 1974 to the ex-
19 tent it is treated as a tax under section 4068(c)(2)
20 of such Act, if the date of pension plan termination
21 is after the date of the filing of the petition.

22 For purposes of paragraph (7)(B), the date of plan termi-
23 nation, the amount of the liability, and the extent to which
24 the liability is treated as a tax shall be determined in ac-
25 cordance with the provisions of the Employee Retirement

1 Income Security Act of 1974 and the regulations promul-
2 gated thereunder.”.

3 (c) NOTICE REQUIRED WHERE FEDERALLY IN-
4 SURED PENSION PLAN IS ADMINISTERED BY THE DEBT-
5 OR OR ITS AFFILIATE.—Rule 2002(j) of the Bankruptcy
6 Rules (11 U.S.C. Appendix) is amended by inserting be-
7 fore the period at the end the following: “; (5) to the Pen-
8 sion Benefit Guaranty Corporation in any case in which
9 the debtor or an affiliate of the debtor maintains a pension
10 plan to which title IV of the Employee Retirement Income
11 Security Act of 1974 applies.”.

12 (d) EFFECTIVE DATE.—Sections 507(a)(7)(H) and
13 503(b)(7)(A) of title 11 of the United States Code (as
14 amended by this section) shall be effective as if included
15 in section 9304(e) of the Pension Protection Act (Public
16 Law 100–203; 101 Stat. 1330–348). Sections
17 507(a)(7)(I) and 503(b)(7)(B) of such title (as amended
18 by this section) shall be effective with respect to cases
19 under such title which commence on or after the date of
20 the enactment of this Act or cases under such title which
21 are pending on the date of the enactment of this Act and
22 in which claims for liability have not been resolved as of
23 such date.

1 **SEC. 303. LIABILITY UPON LIQUIDATION OF CONTRIBUTING**
2 **SPONSOR WHERE PLAN REMAINS ONGOING.**

3 (a) IN GENERAL.—Section 4062 of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C. 1362)
5 is amended by adding at the end the following new sub-
6 section:

7 “(f) LIABILITY ON LIQUIDATION OF CONTRIBUTING
8 SPONSOR.—

9 “(1) IN GENERAL.—In any case in which all or
10 substantially all of the assets of a person who is a
11 contributing sponsor of a single-employer plan are
12 liquidated in a case under title 11, United States
13 Code, or under any similar Federal law or law of a
14 State or political subdivision of a State, and in the
15 course of such liquidation another member of such
16 person’s controlled group remains a contributing
17 sponsor of the plan or is liable for payment of con-
18 tributions or installments under section 302(c)(11)
19 of this Act, such person shall be deemed liable under
20 subsection (b) as if such plan had terminated under
21 section 4041(c) in the course of such liquidation and
22 as if the termination date were the date determined
23 by the corporation as the date on which the liquida-
24 tion was initiated.

25 “(2) APPLICABILITY OF OTHER PROVISIONS.—
26 Any provision of this Act or any other provision of

1 law that applies to liability under this section upon
2 termination of a plan shall apply in the same man-
3 ner and to the same extent to the liability estab-
4 lished under this subsection. For purposes of this
5 paragraph, the date referred to in paragraph (1)
6 shall be deemed the date of plan termination.

7 “(3) TRANSFER OF LIABILITY PAYMENTS TO
8 THE ONGOING PLAN.—The corporation shall pay to
9 the plan amounts collected by the corporation in sat-
10 isfaction of any liability established under this sub-
11 section in connection with such plan.

12 “(4) REGULATIONS.—The corporation may pre-
13 scribe regulations under this subsection. Such regu-
14 lations may—

15 “(A) prescribe rules governing—

16 “(i) the basis upon which the plan will
17 continue as an ongoing plan maintained by
18 other members of the controlled group,

19 “(ii) the determination of whether a
20 liquidation referred to in this subsection
21 has occurred, and

22 “(iii) the assignment of the corpora-
23 tion’s claim to liability payments under
24 this subsection to other members of the
25 controlled group as a means of collecting

1 such payments, subject to the transfer of
2 such payments to the plan, and

3 “(B) provide alternative arrangements for
4 making liability payments under this sub-
5 section.”.

6 (b) CONFORMING AMENDMENT.—Section 4062(a)(1)
7 of such Act (29 U.S.C. 1362(a)(1)) is amended by striking
8 “subsection (b)” and inserting “subsections (b) and (f)”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall be effective for liquidations initiated on
11 or after the date of the enactment of this Act.

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