

an explanation of the assumptions underlying this analysis; and

(2) if the analysis under paragraph (1) concludes that the premium levels are insufficient to meet such obligations (or are in excess of the levels sufficient to meet such obligations), a proposed schedule of revised premiums sufficient to meet (but not exceed) such obligations.

29 USC 1306  
note.

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to plan years beginning after December 31, 2014.

## TITLE II—REMEDATION MEASURES FOR DEEPLY TROUBLED PLANS

### SEC. 201. CONDITIONS, LIMITATIONS, DISTRIBUTION AND NOTICE REQUIREMENTS, AND APPROVAL PROCESS FOR BENEFIT SUSPENSIONS UNDER MULTIEMPLOYER PLANS IN CRITICAL AND DECLINING STATUS.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) GENERAL RULE FOR PLAN IN CRITICAL AND DECLINING STATUS.—Section 305(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(a)) is amended—

(A) in paragraph (1)(B), by striking “and” at the end;

(B) in paragraph (2)(B), by striking the period at the end and inserting “, and”; and

(C) by adding at the end the following:

“(3) if the plan is in critical and declining status—

“(A) the requirements of paragraph (2) shall apply to the plan; and

“(B) the plan sponsor may, by plan amendment, suspend benefits in accordance with the requirements of subsection (e)(9).”.

(2) CRITICAL AND DECLINING STATUS DEFINED.—Section 305(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(b)), as amended by sections 102 and 104, is further amended by adding at the end the following:

“(6) CRITICAL AND DECLINING STATUS.—For purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the plan is projected to become insolvent within the meaning of section 4245 during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent).”.

(3) ANNUAL CERTIFICATION.—Section 305(b)(3)(A)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(b)(3)(A)(i)) is amended—

(A) by striking “and whether” and inserting “, whether”, and

(B) by inserting “, and whether or not the plan is or will be in critical and declining status for such plan year” before “, and” at the end.

(4) ANNUAL FUNDING NOTICES.—Section 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B)) is amended—

- (A) by redesignating clauses (vi) through (x) as clauses (vii) through (xi), respectively; and
- (B) by inserting after clause (v) the following:

“(vi) in the case of a multiemployer plan, whether the plan was in critical and declining status under section 305 for such plan year and, if so—

- “(I) the projected date of insolvency;
- “(II) a clear statement that such insolvency may result in benefit reductions; and
- “(III) a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency.”.

(5) PROJECTIONS OF ASSETS AND LIABILITIES.—Section 305(b)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(b)(3)(B)) is amended by adding at the end the following:

“(iv) PROJECTIONS OF CRITICAL AND DECLINING STATUS.—In determining whether a plan is in critical and declining status as described in subsection (e)(9), clauses (i), (ii), and (iii) shall apply, except that—

“(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e), and

“(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.”.

(6) BENEFIT SUSPENSIONS FOR MULTIEMPLOYER PLANS IN CRITICAL AND DECLINING STATUS.—Section 305(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)) (as amended by section 109) is amended by inserting after paragraph (8) the following:

“(9) BENEFIT SUSPENSIONS FOR MULTIEMPLOYER PLANS IN CRITICAL AND DECLINING STATUS.—

“(A) IN GENERAL.—Notwithstanding section 204(g) and subject to subparagraphs (B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits which the sponsor deems appropriate.

“(B) SUSPENSION OF BENEFITS.—

“(i) SUSPENSION OF BENEFITS DEFINED.—For purposes of this subsection, the term ‘suspension of benefits’ means the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.

“(ii) LENGTH OF SUSPENSIONS.—Any suspension of benefits made under subparagraph (A) shall remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with

subparagraph (E) or the suspension of benefits expires by its own terms.

“(iii) NO LIABILITY.—The plan shall not be liable for any benefit payments not made as a result of a suspension of benefits under this paragraph.

“(iv) APPLICABILITY.—For purposes of this paragraph, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants shall also apply with respect to benefits of beneficiaries or alternative payees of participants.

“(v) RETIREE REPRESENTATIVE.—

“(I) IN GENERAL.—In the case of a plan with 10,000 or more participants, not later than 60 days prior to the plan sponsor submitting an application to suspend benefits, the plan sponsor shall select a participant of the plan in pay status to act as a retiree representative. The retiree representative shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

“(II) REASONABLE EXPENSES FROM PLAN.—The plan shall provide for reasonable expenses by the retiree representative, including reasonable legal and actuarial support, commensurate with the plan’s size and funded status.

“(III) SPECIAL RULE RELATING TO FIDUCIARY STATUS.—Duties performed pursuant to subclause (I) shall not be subject to section 404(a). The preceding sentence shall not apply to those duties associated with an application to suspend benefits pursuant to subparagraph (G) that are performed by the retiree representative who is also a plan trustee.

“(C) CONDITIONS FOR SUSPENSIONS.—The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the following conditions are met:

“(i) Taking into account the proposed suspensions of benefits (and, if applicable, a proposed partition of the plan under section 4233), the plan actuary certifies that the plan is projected to avoid insolvency within the meaning of section 4245, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or if no such expiration date is set, indefinitely.

“(ii) The plan sponsor determines, in a written record to be maintained throughout the period of the benefit suspension, that the plan is still projected to become insolvent unless benefits are suspended under this paragraph, although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension). In its determination, the plan sponsor may take into account factors including the following:

“(I) Current and past contribution levels.

“(II) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals).

“(III) Prior reductions (if any) of adjustable benefits.

“(IV) Prior suspensions (if any) of benefits under this subsection.

“(V) The impact on plan solvency of the subsidies and ancillary benefits available to active participants.

“(VI) Compensation levels of active participants relative to employees in the participants’ industry generally.

“(VII) Competitive and other economic factors facing contributing employers.

“(VIII) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan.

“(IX) The impact of past and anticipated contribution increases under the plan on employer attraction and retention levels.

“(X) Measures undertaken by the plan sponsor to retain or attract contributing employers.

“(D) LIMITATIONS ON SUSPENSIONS.—Any suspensions of benefits made by a plan sponsor pursuant to this paragraph shall be subject to the following limitations:

“(i) The monthly benefit of any participant or beneficiary may not be reduced below 110 percent of the monthly benefit which is guaranteed by the Pension Benefit Guaranty Corporation under section 4022A on the date of the suspension.

“(ii)(I) In the case of a participant or beneficiary who has attained 75 years of age as of the effective date of the suspension, not more than the applicable percentage of the maximum suspendable benefits of such participant or beneficiary may be suspended under this paragraph.

“(II) For purposes of subclause (I), the maximum suspendable benefits of a participant or beneficiary is the portion of the benefits of such participant or beneficiary that would be suspended pursuant to this paragraph without regard to this clause;

“(III) For purposes of subclause (I), the applicable percentage is a percentage equal to the quotient obtained by dividing—

“(aa) the number of months during the period beginning with the month after the month in which occurs the effective date of the suspension and ending with the month during which the participant or beneficiary attains the age of 80, by

“(bb) 60 months.

“(iii) No benefits based on disability (as defined under the plan) may be suspended under this paragraph.

“(iv) Any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233), shall be

reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

“(v) In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233, the suspension of benefits may not take effect prior to the effective date of such partition.

“(vi) Any suspensions of benefits shall be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the following:

“(I) Age and life expectancy.

“(II) Length of time in pay status.

“(III) Amount of benefit.

“(IV) Type of benefit: survivor, normal retirement, early retirement.

“(V) Extent to which participant or beneficiary is receiving a subsidized benefit.

“(VI) Extent to which participant or beneficiary has received post-retirement benefit increases.

“(VII) History of benefit increases and reductions.

“(VIII) Years to retirement for active employees.

“(IX) Any discrepancies between active and retiree benefits.

“(X) Extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status.

“(XI) Extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability.

“(vii) In the case of a plan that includes the benefits described in clause (III), benefits suspended under this paragraph shall—

“(I) first, be applied to the maximum extent permissible to benefits attributable to a participant’s service for an employer which withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) or an agreement with the plan,

“(II) second, except as provided by subclause (III), be applied to all other benefits that may be suspended under this paragraph, and

“(III) third, be applied to benefits under a plan that are directly attributable to a participant’s service with any employer which has, prior to the date of enactment of the Multiemployer Pension Reform Act of 2014—

“(aa) withdrawn from the plan in a complete withdrawal under section 4203 and has

paid the full amount of the employer's withdrawal liability under section 4201(b)(1) or an agreement with the plan, and

“(bb) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

“(E) BENEFIT IMPROVEMENTS.—

“(i) IN GENERAL.—The plan sponsor may, in its sole discretion, provide benefit improvements while any suspension of benefits under the plan remains in effect, except that the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless—

“(I) such action is accompanied by equitable benefit improvements in accordance with clause (ii) for all participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement for such participant or beneficiary not in pay status took effect; and

“(II) the plan actuary certifies that after taking into account such benefits improvements the plan is projected to avoid insolvency indefinitely under section 4245.

“(ii) EQUITABLE DISTRIBUTION OF BENEFIT IMPROVEMENTS.—

“(I) LIMITATION.—The projected value of the total liabilities for benefit improvements for participants and beneficiaries not in pay status by the date of the first day of the plan year in which the benefit improvements are proposed to take effect, as determined as of such date, may not exceed the projected value of the liabilities arising from benefit improvements for participants and beneficiaries with benefit commencement dates prior to the first day of such plan year, as so determined.

“(II) EQUITABLE DISTRIBUTION OF BENEFITS.—The plan sponsor shall equitably distribute any increase in total liabilities for benefit improvements in clause (i) to some or all of the participants and beneficiaries whose benefit commencement date is before the date of the first day of the plan year in which the benefit improvements are proposed to take effect, taking into account the relevant factors described in subparagraph (D)(vi) and the extent to which the benefits of the participants and beneficiaries were suspended.

“(iii) SPECIAL RULE FOR RESUMPTIONS OF BENEFITS ONLY FOR PARTICIPANTS IN PAY STATUS.—The plan

sponsor may increase liabilities of the plan through a resumption of benefits for participants and beneficiaries in pay status only if the plan sponsor equitably distributes the value of resumed benefits to some or all of the participants and beneficiaries in pay status, taking into account the relevant factors described in subparagraph (D)(vi).

“(iv) SPECIAL RULE FOR CERTAIN BENEFIT INCREASES.—This subparagraph shall not apply to a resumption of suspended benefits or plan amendment which increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvements took effect which—

“(I) the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan, or

“(II) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code of 1986 or to comply with other applicable law, as determined by the Secretary of the Treasury.

“(v) ADDITIONAL LIMITATIONS.—Except for resumptions of suspended benefits described in clause (iii), the limitations on benefit improvements while a suspension of benefits is in effect under this paragraph shall be in addition to any other applicable limitations on increases in benefits imposed on a plan.

“(vi) DEFINITION OF BENEFIT IMPROVEMENT.—For purposes of this subparagraph, the term ‘benefit improvement’ means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become non-forfeitable under the plan.

“(F) NOTICE REQUIREMENTS.—

“(i) IN GENERAL.—No suspension of benefits may be made pursuant to this paragraph unless notice of such proposed suspension has been given by the plan sponsor concurrently with an application for approval of such suspension submitted under subparagraph (G) to the Secretary of the Treasury to—

“(I) such plan participants and beneficiaries who may be contacted by reasonable efforts,

“(II) each employer who has an obligation to contribute (within the meaning of section 4212(a)) under the plan, and

“(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

“(ii) CONTENT OF NOTICE.—The notice under clause (i) shall contain—

“(I) sufficient information to enable participants and beneficiaries to understand the effect

of any suspensions of benefits, including an individualized estimate (on an annual or monthly basis) of such effect on each participant or beneficiary,

“(II) a description of the factors considered by the plan sponsor in designing the benefit suspensions,

“(III) a statement that the application for approval of any suspension of benefits shall be available on the website of the Department of the Treasury and that comments on such application will be accepted,

“(IV) information as to the rights and remedies of plan participants and beneficiaries,

“(V) if applicable, a statement describing the appointment of a retiree representative, the date of appointment of such representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact such representative, and

“(VI) information on how to contact the Department of the Treasury for further information and assistance where appropriate.

“(iii) FORM AND MANNER.—Any notice under clause

(i)—

“(I) shall be provided in a form and manner prescribed in guidance by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, notwithstanding any other provision of law,

“(II) shall be written in a manner so as to be understood by the average plan participant, and

“(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

“(iv) OTHER NOTICE REQUIREMENT.—Any notice provided under clause (i) shall fulfill the requirement for notice of a significant reduction in benefits described in section 204(h).

“(v) MODEL NOTICE.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall in the guidance prescribed under clause (iii)(I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

“(G) APPROVAL PROCESS BY THE SECRETARY OF THE TREASURY IN CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION AND THE SECRETARY OF LABOR.—

“(i) IN GENERAL.—The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application to the Secretary of the Treasury for approval of the suspensions of benefits. If the plan sponsor submits an

application for approval of the suspensions, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve the application upon finding that the plan is eligible for the suspensions and has satisfied the criteria of subparagraphs (C), (D), (E), and (F).

“(ii) SOLICITATION OF COMMENTS.—Not later than 30 days after receipt of the application under clause (i), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish a notice in the Federal Register soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made and other interested parties. The application for approval of the suspension of benefits shall be published on the website of the Secretary of the Treasury.

“(iii) REQUIRED ACTION; DEEMED APPROVAL.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve or deny any application for suspensions of benefits under this paragraph within 225 days after the submission of such application. An application for suspension of benefits shall be deemed approved unless, within such 225 days, the Secretary of the Treasury notifies the plan sponsor that it has failed to satisfy one or more of the criteria described in this paragraph. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, rejects a plan sponsor’s application, the Secretary of the Treasury shall provide notice to the plan sponsor detailing the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial by the Secretary of the Treasury of an application shall be treated as a final agency action for purposes of section 704 of title 5, United States Code.

“(iv) AGENCY REVIEW.—In evaluating whether the plan sponsor has met the criteria specified in clause (ii) of subparagraph (C), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall review the plan sponsor’s consideration of factors under such clause.

“(v) STANDARD FOR ACCEPTING PLAN SPONSOR DETERMINATIONS.—In evaluating the plan sponsor’s application, the Secretary of the Treasury shall accept the plan sponsor’s determinations unless it concludes, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan sponsor’s determinations were clearly erroneous.

“(H) PARTICIPANT RATIFICATION PROCESS.—

“(i) IN GENERAL.—No suspension of benefits may take effect pursuant to this paragraph prior to a vote of the participants of the plan with respect to the suspension.

“(ii) ADMINISTRATION OF VOTE.—Not later than 30 days after approval of the suspension by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (G), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall administer a vote of participants and beneficiaries of the plan. Except as provided in clause (v), the suspension shall go into effect following the vote unless a majority of all participants and beneficiaries of the plan vote to reject the suspension. The plan sponsor may submit a new suspension application to the Secretary of the Treasury for approval in any case in which a suspension is prohibited from taking effect pursuant to a vote under this subparagraph.

“(iii) BALLOTS.—The plan sponsor shall provide a ballot for the vote (subject to approval by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor) that includes the following:

“(I) A statement from the plan sponsor in support of the suspension.

“(II) A statement in opposition to the suspension compiled from comments received pursuant to subparagraph (G)(ii).

“(III) A statement that the suspension has been approved by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor.

“(IV) A statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect.

“(V) A statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension.

“(VI) A statement that insolvency of the Pension Benefit Guaranty Corporation would result in benefits lower than benefits paid in the case of plan insolvency.

“(iv) COMMUNICATION BY PLAN SPONSOR.—It is the sense of Congress that, depending on the size and resources of the plan and geographic distribution of the plan’s participants, the plan sponsor should take such steps as may be necessary to inform participants about proposed benefit suspensions through in-person meetings, telephone or internet-based communications, mailed information, or by other means.

“(v) SYSTEMICALLY IMPORTANT PLANS.—

“(I) IN GENERAL.—Not later than 14 days after a vote under this subparagraph rejecting a suspension, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall determine whether the plan is a systemically important plan. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation

and the Secretary of Labor, determines that the plan is a systemically important plan, not later than the end of the 90-day period beginning on the date the results of the vote are certified, the Secretary of the Treasury shall, notwithstanding such adverse vote—

“(aa) permit the implementation of the suspension proposed by the plan sponsor; or

“(bb) permit the implementation of a modification by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of such suspension (so long as the plan is projected to avoid insolvency within the meaning of section 4245 under such modification).

“(II) RECOMMENDATIONS.—Not later than 30 days after a determination by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan is systemically important, the Participant and Plan Sponsor Advocate selected under section 4004 may submit recommendations to the Secretary of the Treasury with respect to the suspension or any revisions to the suspension.

“(III) SYSTEMICALLY IMPORTANT PLAN DEFINED.—

“(aa) IN GENERAL.—For purposes of this subparagraph, a systemically important plan is a plan with respect to which the Pension Benefit Guaranty Corporation projects the present value of projected financial assistance payments exceeds \$1,000,000,000 if suspensions are not implemented.

“(bb) INDEXING.—For calendar years beginning after 2015, there shall be substituted for the dollar amount specified in item (aa) an amount equal to the product of such dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is such contribution and benefit base for calendar year 2014. If the amount otherwise determined under this item is not a multiple of \$1,000,000, such amount shall be rounded to the next lowest multiple of \$1,000,000.

“(vi) FINAL AUTHORIZATION TO SUSPEND.—In any case in which a suspension goes into effect following a vote pursuant to clause (ii) (or following a determination under clause (v) that the plan is a systemically important plan), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall issue a final authorization to suspend with respect to the suspension

not later than 7 days after such vote (or, in the case of a suspension that goes into effect under clause (v), at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period described in clause (v)(I)).

“(I) JUDICIAL REVIEW.—

“(i) DENIAL OF APPLICATION.—An action by the plan sponsor challenging the denial of an application for suspension of benefits by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, may only be brought following such denial.

“(ii) APPROVAL OF SUSPENSION OF BENEFITS.—

“(I) TIMING OF ACTION.—An action challenging a suspension of benefits under this paragraph may only be brought following a final authorization to suspend by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (H)(vi).

“(II) STANDARDS OF REVIEW.—

“(aa) IN GENERAL.—A court shall review an action challenging a suspension of benefits under this paragraph in accordance with section 706 of title 5, United States Code.

“(bb) TEMPORARY INJUNCTION.—A court reviewing an action challenging a suspension of benefits under this paragraph may not grant a temporary injunction with respect to such suspension unless the court finds a clear and convincing likelihood that the plaintiff will prevail on the merits of the case.

“(iii) RESTRICTED CAUSE OF ACTION.—A participant or beneficiary affected by a benefit suspension under this paragraph shall not have a cause of action under this title.

“(iv) LIMITATION ON ACTION TO SUSPEND BENEFITS.—No action challenging a suspension of benefits following the final authorization to suspend or the denial of an application for suspension of benefits pursuant to this paragraph may be brought after one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

“(J) SPECIAL RULE FOR EMERGENCE FROM CRITICAL STATUS.—A plan certified to be in critical and declining status pursuant to projections made under subsection (b)(3) for which a suspension of benefits has been made by the plan sponsor pursuant to this paragraph shall not emerge from critical status under paragraph (4)(B), until such time as—

“(i) the plan is no longer certified to be in critical or endangered status under paragraphs (1) and (2) of subsection (b), and

“(ii) the plan is projected to avoid insolvency under section 4245.”.

(7) RULES RELATING TO WITHDRAWAL LIABILITY.—

(A) **BENEFIT SUSPENSIONS DISREGARDED.**—Section 305(g)(1) of the Employee Retirement Income Security Act of 1974, as added by section 109, is further amended by inserting “or benefit reductions or suspensions while in critical and declining status under subsection (e)(9)), unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status,” after “benefit reductions under subsection (e)(8) or (f)”.

(B) **AUTHORITY OF PLAN TO SUBORDINATE WITHDRAWAL LIABILITY CLAIMS.**—Section 4219(d) of such Act (29 U.S.C. 1399(d)) is amended by striking the period at the end and inserting “or to any arrangement relating to withdrawal liability involving the plan.”.

(C) **CIVIL ACTIONS.**—Section 4003(f)(1) of such Act (29 U.S.C. 1303(f)(1)) is amended by inserting “plan sponsor,” before “fiduciary”.

29 USC 1085  
note.

(8) **GUIDANCE.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish appropriate guidance to implement section 305(e)(9) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)).

(b) **AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.**—

26 USC 432.

(1) **GENERAL RULE FOR PLAN IN CRITICAL AND DECLINING STATUS.**—Section 432(a) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1)(B), by striking “and” at the end;

(B) in paragraph (2)(B), by striking the period at the end and inserting “, and”; and

(C) by adding at the end the following:

“(3) if the plan is in critical and declining status—

“(A) the requirements of paragraph (2) shall apply to the plan; and

“(B) the plan sponsor may, by plan amendment, suspend benefits in accordance with the requirements of subsection (e)(9).”.

(2) **CRITICAL AND DECLINING STATUS DEFINED.**—Section 432(b) of the Internal Revenue Code of 1986, as amended by sections 102 and 104, is further amended by adding at the end the following:

“(6) **CRITICAL AND DECLINING STATUS.**—For purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the plan is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent).”.

(3) **ANNUAL CERTIFICATION.**—Section 432(b)(3)(A)(i) of the Internal Revenue Code of 1986 is amended—

(A) by striking “and whether” and inserting “, whether”, and

(B) by inserting “, and whether or not the plan is or will be in critical and declining status for such plan year” before “, and” at the end.

(4) PROJECTIONS OF ASSETS AND LIABILITIES.—Section 432(b)(3)(B) of the Internal Revenue Code of 1986 is amended by adding at the end the following: 26 USC 432.

“(iv) PROJECTIONS OF CRITICAL AND DECLINING STATUS.—In determining whether a plan is in critical and declining status as described in subsection (e)(9), clauses (i), (ii), and (iii) shall apply, except that—

“(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e), and

“(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.”.

(5) BENEFIT SUSPENSIONS FOR MULTIEMPLOYER PLANS IN CRITICAL AND DECLINING STATUS.—Section 432(e) of the Internal Revenue Code of 1986 (as amended by section 109) is amended by inserting after paragraph (8) the following:

“(9) BENEFIT SUSPENSIONS FOR MULTIEMPLOYER PLANS IN CRITICAL AND DECLINING STATUS.—

“(A) IN GENERAL.—Notwithstanding section 411(d)(6) and subject to subparagraphs (B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits which the sponsor deems appropriate.

“(B) SUSPENSION OF BENEFITS.—

“(i) SUSPENSION OF BENEFITS DEFINED.—For purposes of this subsection, the term ‘suspension of benefits’ means the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.

“(ii) LENGTH OF SUSPENSIONS.—Any suspension of benefits made under subparagraph (A) shall remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with subparagraph (E) or the suspension of benefits expires by its own terms.

“(iii) NO LIABILITY.—The plan shall not be liable for any benefit payments not made as a result of a suspension of benefits under this paragraph.

“(iv) APPLICABILITY.—For purposes of this paragraph, all references to suspensions of benefits, increases in benefits, or resumptions of suspended benefits with respect to participants shall also apply with respect to benefits of beneficiaries or alternative payees of participants.

“(v) RETIREE REPRESENTATIVE.—

“(I) IN GENERAL.—In the case of a plan with 10,000 or more participants, not later than 60 days prior to the plan sponsor submitting an application to suspend benefits, the plan sponsor shall select a participant of the plan in pay status to act as a retiree representative. The retiree representative shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

“(II) REASONABLE EXPENSES FROM PLAN.—The plan shall provide for reasonable expenses by the retiree representative, including reasonable legal and actuarial support, commensurate with the plan’s size and funded status.

“(III) SPECIAL RULE RELATING TO FIDUCIARY STATUS.—Duties performed pursuant to subclause (I) shall not be subject to section 4975. The preceding sentence shall not apply to those duties associated with an application to suspend benefits pursuant to subparagraph (G) that are performed by the retiree representative who is also a plan trustee.

“(C) CONDITIONS FOR SUSPENSIONS.—The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the following conditions are met:

“(i) Taking into account the proposed suspensions of benefits (and, if applicable, a proposed partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974), the plan actuary certifies that the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or if no such expiration date is set, indefinitely.

“(ii) The plan sponsor determines, in a written record to be maintained throughout the period of the benefit suspension, that the plan is still projected to become insolvent unless benefits are suspended under this paragraph, although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension). In its determination, the plan sponsor may take into account factors including the following:

“(I) Current and past contribution levels.

“(II) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals).

“(III) Prior reductions (if any) of adjustable benefits.

“(IV) Prior suspensions (if any) of benefits under this subsection.

“(V) The impact on plan solvency of the subsidies and ancillary benefits available to active participants.

“(VI) Compensation levels of active participants relative to employees in the participants’ industry generally.

“(VII) Competitive and other economic factors facing contributing employers.

“(VIII) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan.

“(IX) The impact of past and anticipated contribution increases under the plan on employer attrition and retention levels.

“(X) Measures undertaken by the plan sponsor to retain or attract contributing employers.

“(D) LIMITATIONS ON SUSPENSIONS.—Any suspensions of benefits made by a plan sponsor pursuant to this paragraph shall be subject to the following limitations:

“(i) The monthly benefit of any participant or beneficiary may not be reduced below 110 percent of the monthly benefit which is guaranteed by the Pension Benefit Guaranty Corporation under section 4022A of the Employee Retirement Income Security Act of 1974 on the date of the suspension.

“(ii)(I) In the case of a participant or beneficiary who has attained 75 years of age as of the effective date of the suspension, not more than the applicable percentage of the maximum suspendable benefits of such participant or beneficiary may be suspended under this paragraph.

“(II) For purposes of subclause (I), the maximum suspendable benefits of a participant or beneficiary is the portion of the benefits of such participant or beneficiary that would be suspended pursuant to this paragraph without regard to this clause;

“(III) For purposes of subclause (I), the applicable percentage is a percentage equal to the quotient obtained by dividing—

“(aa) the number of months during the period beginning with the month after the month in which occurs the effective date of the suspension and ending with the month during which the participant or beneficiary attains the age of 80, by

“(bb) 60 months.

“(iii) No benefits based on disability (as defined under the plan) may be suspended under this paragraph.

“(iv) Any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

“(v) In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233 of the Employee Retirement Income Security Act of 1974,

the suspension of benefits may not take effect prior to the effective date of such partition.

“(vi) Any suspensions of benefits shall be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the following:

“(I) Age and life expectancy.

“(II) Length of time in pay status.

“(III) Amount of benefit.

“(IV) Type of benefit: survivor, normal retirement, early retirement.

“(V) Extent to which participant or beneficiary is receiving a subsidized benefit.

“(VI) Extent to which participant or beneficiary has received post-retirement benefit increases.

“(VII) History of benefit increases and reductions.

“(VIII) Years to retirement for active employees.

“(IX) Any discrepancies between active and retiree benefits.

“(X) Extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status.

“(XI) Extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability.

“(vii) In the case of a plan that includes the benefits described in clause (III), benefits suspended under this paragraph shall—

“(I) first, be applied to the maximum extent permissible to benefits attributable to a participant’s service for an employer which withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 4201(b)(1) of the Employee Retirement Income Security Act of 1974 or an agreement with the plan,

“(II) second, except as provided by subclause (III), be applied to all other benefits that may be suspended under this paragraph, and

“(III) third, be applied to benefits under a plan that are directly attributable to a participant’s service with any employer which has, prior to the date of enactment of the Multiemployer Pension Reform Act of 2014—

“(aa) withdrawn from the plan in a complete withdrawal under section 4203 of the Employee Retirement Income Security Act of 1974 and has paid the full amount of the employer’s withdrawal liability under section 4201(b)(1) of such Act or an agreement with the plan, and

“(bb) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

“(E) BENEFIT IMPROVEMENTS.—

“(i) IN GENERAL.—The plan sponsor may, in its sole discretion, provide benefit improvements while any suspension of benefits under the plan remains in effect, except that the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless—

“(I) such action is accompanied by equitable benefit improvements in accordance with clause (ii) for all participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement for such participant or beneficiary not in pay status took effect; and

“(II) the plan actuary certifies that after taking into account such benefits improvements the plan is projected to avoid insolvency indefinitely under section 418E.

“(ii) EQUITABLE DISTRIBUTION OF BENEFIT IMPROVEMENTS.—

“(I) LIMITATION.—The projected value of the total liabilities for benefit improvements for participants and beneficiaries not in pay status by the date of the first day of the plan year in which the benefit improvements are proposed to take effect, as determined as of such date, may not exceed the projected value of the liabilities arising from benefit improvements for participants and beneficiaries with benefit commencement dates prior to the first day of such plan year, as so determined.

“(II) EQUITABLE DISTRIBUTION OF BENEFITS.—The plan sponsor shall equitably distribute any increase in total liabilities for benefit improvements in clause (i) to some or all of the participants and beneficiaries whose benefit commencement date is before the date of the first day of the plan year in which the benefit improvements are proposed to take effect, taking into account the relevant factors described in subparagraph (D)(vi) and the extent to which the benefits of the participants and beneficiaries were suspended.

“(iii) SPECIAL RULE FOR RESUMPTIONS OF BENEFITS ONLY FOR PARTICIPANTS IN PAY STATUS.—The plan sponsor may increase liabilities of the plan through a resumption of benefits for participants and beneficiaries in pay status only if the plan sponsor equitably

distributes the value of resumed benefits to some or all of the participants and beneficiaries in pay status, taking into account the relevant factors described in subparagraph (D)(vi).

“(iv) SPECIAL RULE FOR CERTAIN BENEFIT INCREASES.—This subparagraph shall not apply to a resumption of suspended benefits or plan amendment which increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvements took effect which—

“(I) the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan, or

“(II) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A or to comply with other applicable law, as determined by the Secretary of the Treasury.

“(v) ADDITIONAL LIMITATIONS.—Except for resumptions of suspended benefits described in clause (iii), the limitations on benefit improvements while a suspension of benefits is in effect under this paragraph shall be in addition to any other applicable limitations on increases in benefits imposed on a plan.

“(vi) DEFINITION OF BENEFIT IMPROVEMENT.—For purposes of this subparagraph, the term ‘benefit improvement’ means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become non-forfeitable under the plan.

“(F) NOTICE REQUIREMENTS.—

“(i) IN GENERAL.—No suspension of benefits may be made pursuant to this paragraph unless notice of such proposed suspension has been given by the plan sponsor concurrently with an application for approval of such suspension submitted under subparagraph (G) to the Secretary of the Treasury to—

“(I) such plan participants and beneficiaries who may be contacted by reasonable efforts,

“(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

“(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

“(ii) CONTENT OF NOTICE.—The notice under clause (i) shall contain—

“(I) sufficient information to enable participants and beneficiaries to understand the effect of any suspensions of benefits, including an individualized estimate (on an annual or monthly

basis) of such effect on each participant or beneficiary,

“(II) a description of the factors considered by the plan sponsor in designing the benefit suspensions,

“(III) a statement that the application for approval of any suspension of benefits shall be available on the website of the Department of the Treasury and that comments on such application will be accepted,

“(IV) information as to the rights and remedies of plan participants and beneficiaries,

“(V) if applicable, a statement describing the appointment of a retiree representative, the date of appointment of such representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact such representative, and

“(VI) information on how to contact the Department of the Treasury for further information and assistance where appropriate.

“(iii) FORM AND MANNER.—Any notice under clause

(i)—

“(I) shall be provided in a form and manner prescribed in guidance by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, notwithstanding any other provision of law,

“(II) shall be written in a manner so as to be understood by the average plan participant, and

“(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

“(iv) OTHER NOTICE REQUIREMENT.—Any notice provided under clause (i) shall fulfill the requirement for notice of a significant reduction in benefits described in section 4980F.

“(v) MODEL NOTICE.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall in the guidance prescribed under clause (iii)(I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

“(G) APPROVAL PROCESS BY THE SECRETARY OF THE TREASURY IN CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION AND THE SECRETARY OF LABOR.—

“(i) IN GENERAL.—The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application to the Secretary of the Treasury for approval of the suspensions of benefits. If the plan sponsor submits an application for approval of the suspensions, the Secretary of the Treasury shall approve, in consultation with the Pension Benefit Guaranty Corporation and

the Secretary of Labor, the application upon finding that the plan is eligible for the suspensions and has satisfied the criteria of subparagraphs (C), (D), (E), and (F).

“(ii) SOLICITATION OF COMMENTS.—Not later than 30 days after receipt of the application under clause (i), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish a notice in the Federal Register soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made and other interested parties. The application for approval of the suspension of benefits shall be published on the website of the Department of the Treasury.

“(iii) REQUIRED ACTION; DEEMED APPROVAL.—The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve or deny any application for suspensions of benefits under this paragraph within 225 days after the submission of such application. An application for suspension of benefits shall be deemed approved unless, within such 225 days, the Secretary of the Treasury notifies the plan sponsor that it has failed to satisfy one or more of the criteria described in this paragraph. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, rejects a plan sponsor’s application, the Secretary of the Treasury shall provide notice to the plan sponsor detailing the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of an application shall be treated as final agency action for purposes of section 704 of title 5, United States Code.

“(iv) AGENCY REVIEW.—In evaluating whether the plan sponsor has met the criteria specified in clause (ii) of subparagraph (C), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall review the plan sponsor’s consideration of factors under such clause.

“(v) STANDARD FOR ACCEPTING PLAN SPONSOR DETERMINATIONS.—In evaluating the plan sponsor’s application, the Secretary of the Treasury shall accept the plan sponsor’s determinations unless it concludes, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan sponsor’s determinations were clearly erroneous.

“(H) PARTICIPANT RATIFICATION PROCESS.—

“(i) IN GENERAL.—No suspension of benefits may take effect pursuant to this paragraph prior to a vote of the participants of the plan with respect to the suspension.

“(ii) ADMINISTRATION OF VOTE.—Not later than 30 days after approval of the suspension by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (G), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall administer a vote of participants and beneficiaries of the plan. Except as provided in clause (v), the suspension shall go into effect following the vote unless a majority of all participants and beneficiaries of the plan vote to reject the suspension. The plan sponsor may submit a new suspension application to the Secretary of the Treasury for approval in any case in which a suspension is prohibited from taking effect pursuant to a vote under this subparagraph.

“(iii) BALLOTS.—The plan sponsor shall provide a ballot for the vote (subject to approval by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor) that includes the following:

“(I) A statement from the plan sponsor in support of the suspension.

“(II) A statement in opposition to the suspension compiled from comments received pursuant to subparagraph (G)(ii).

“(III) A statement that the suspension has been approved by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor.

“(IV) A statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect.

“(V) A statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension.

“(VI) A statement that insolvency of the Pension Benefit Guaranty Corporation would result in benefits lower than benefits paid in the case of plan insolvency.

“(iv) COMMUNICATION BY PLAN SPONSOR.—It is the sense of Congress that, depending on the size and resources of the plan and geographic distribution of the plan’s participants, the plan sponsor should take such steps as may be necessary to inform participants about proposed benefit suspensions through in-person meetings, telephone or internet-based communications, mailed information, or by other means.

“(v) SYSTEMICALLY IMPORTANT PLANS.—

“(I) IN GENERAL.—Not later than 14 days after a vote under this subparagraph rejecting a suspension, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall determine whether the plan is a systemically important plan. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation

and the Secretary of Labor, determines that the plan is a systemically important plan, not later than the end of the 90-day period beginning on the date the results of the vote are certified, the Secretary of the Treasury shall, notwithstanding such adverse vote—

“(aa) permit the implementation of the suspension proposed by the plan sponsor; or

“(bb) permit the implementation of a modification by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of such suspension (so long as the plan is projected to avoid insolvency within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974 under such modification).

“(II) RECOMMENDATIONS.—Not later than 30 days after a determination by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan is systemically important, the Participant and Plan Sponsor Advocate selected under section 4004 of the Employee Retirement Income Security Act of 1974 may submit recommendations to the Secretary of the Treasury with respect to the suspension or any revisions to the suspension.

“(III) SYSTEMICALLY IMPORTANT PLAN DEFINED.—

“(aa) IN GENERAL.—For purposes of this subparagraph, a systemically important plan is a plan with respect to which the Pension Benefit Guaranty Corporation projects the present value of projected financial assistance payments exceeds \$1,000,000,000 if suspensions are not implemented.

“(bb) INDEXING.—For calendar years beginning after 2015, there shall be substituted for the dollar amount specified in item (aa) an amount equal to the product of such dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) for the preceding calendar year and the denominator of which is such contribution and benefit base for calendar year 2014. If the amount otherwise determined under this item is not a multiple of \$1,000,000, such amount shall be rounded to the next lowest multiple of \$1,000,000.

“(vi) FINAL AUTHORIZATION TO SUSPEND.—In any case in which a suspension goes into effect following a vote pursuant to clause (ii) (or following a determination under clause (v) that the plan is a systemically

important plan), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall issue a final authorization to suspend with respect to the suspension not later than 7 days after such vote (or, in the case of a suspension that goes into effect under clause (v), at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period described in clause (v)(I)).

“(I) JUDICIAL REVIEW.—

“(i) DENIAL OF APPLICATION.—An action by the plan sponsor challenging the denial of an application for suspension of benefits by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, may only be brought following such denial.

“(ii) APPROVAL OF SUSPENSION OF BENEFITS.—

“(I) TIMING OF ACTION.—An action challenging a suspension of benefits under this paragraph may only be brought following a final authorization to suspend by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (H)(vi).

“(II) STANDARDS OF REVIEW.—

“(aa) IN GENERAL.—A court shall review an action challenging a suspension of benefits under this paragraph in accordance with section 706 of title 5, United States Code.

“(bb) TEMPORARY INJUNCTION.—A court reviewing an action challenging a suspension of benefits under this paragraph may not grant a temporary injunction with respect to such suspension unless the court finds a clear and convincing likelihood that the plaintiff will prevail on the merits of the case.

“(iii) RESTRICTED CAUSE OF ACTION.—A participant or beneficiary affected by a benefit suspension under this paragraph shall not have a cause of action under this title.

“(iv) LIMITATION ON ACTION TO SUSPEND BENEFITS.—No action challenging a suspension of benefits following the final authorization to suspend or the denial of an application for suspension of benefits pursuant to this paragraph may be brought after one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

“(J) SPECIAL RULE FOR EMERGENCE FROM CRITICAL STATUS.—A plan certified to be in critical and declining status pursuant to projections made under subsection (b)(3) for which a suspension of benefits has been made by the plan sponsor pursuant to this paragraph shall not emerge from critical status under paragraph (4)(B), until such time as—

“(i) the plan is no longer certified to be in critical or endangered status under paragraphs (1) and (2) of subsection (b), and

“(ii) the plan is projected to avoid insolvency under section 418E.”.

(6) **RULE RELATING TO WITHDRAWAL LIABILITY.**—Section 432(g)(1) of the Internal Revenue Code of 1986, as added by section 109, is further amended by inserting “, or benefit reductions or suspensions while in critical and declining status under subsection (e)(9)), unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status,” after “benefit reductions under subsection (e)(8) or (f)”.

26 USC 432 note.

(7) **GUIDANCE.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish appropriate guidance to implement section 432(e)(9) of the Internal Revenue Code of 1986.

26 USC 432 note.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act.

## **DIVISION P—OTHER RETIREMENT-RELATED MODIFICATIONS**

### **SEC. 1. SUBSTANTIAL CESSATION OF OPERATIONS.**

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

“(e) **TREATMENT OF SUBSTANTIAL CESSATION OF OPERATIONS.**—

“(1) **GENERAL RULE.**—Except as provided in paragraphs (3) and (4), if there is a substantial cessation of operations at a facility in any location, the employer shall be treated with respect to any single employer plan established and maintained by the employer covering participants at such facility as if the employer were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 4063, 4064, and 4065 shall apply.

“(2) **SUBSTANTIAL CESSATION OF OPERATIONS.**—For purposes of this subsection:

“(A) **IN GENERAL.**—The term ‘substantial cessation of operations’ means a permanent cessation of operations at a facility which results in a workforce reduction of a number of eligible employees at the facility equivalent to more than 15 percent of the number of all eligible employees of the employer, determined immediately before the earlier of—

“(i) the date of the employer’s decision to implement such cessation, or

“(ii) in the case of a workforce reduction which includes 1 or more eligible employees described in paragraph (6)(B), the earliest date on which any such eligible employee was separated from employment.

“(B) **WORKFORCE REDUCTION.**—Subject to subparagraphs (C) and (D), the term ‘workforce reduction’ means the number of eligible employees at a facility who are