SUMMARY AND COMPARISON OF LEADING SINGLE-EMPLOYER PENSION FUNDING PROPOSALS

ISSUE	CURRENT LAW	ADMINISTRATION PROPOSAL[1]	THE PENSION PROTECTION ACT OF 2005 (H.R. 2830)[2]	NESTEG (S. 219)[3]	COMMENTS
APPLICABILITY	Single employer plans, multiple employer plans, and multiemployer plans are subject to minimum funding standards.	The Administration proposal would change the funding rules for single employer plans and multiple employer plans.	H.R. 2830 would change the funding rules for single employer plans, multiple employer plans and multiemployer plans.	Same as Administration proposal, except that S. 219 also includes modest changes to the funding rules for multiemployer plans.	Governmental plans, non-electing church plans, and fully insured plans are exempt under current law and would continue to be exempt under all of the proposals.
OVERVIEW	In general, a sponsor of a plan which has over 100 participants must make minimum contributions equal to the greater of (a) the contributions required under the deficit reduction contribution ("DRC") rules, or (b) the contributions required under the plan's funding standard account (the "ERISA funding rules").	The current law two-tiered system would be replaced with a single approach modeled closely on the DRC rules. Subject to special effective dates, the proposal would generally be effective for plan years beginning after 2005.	Same as Administration proposal. Subject to special effective dates, the proposal would generally be effective for plan years beginning after 2005.	Same as Administration proposal. Subject to special effective dates, the proposal would generally be effective for plan years beginning after 2006.	S. 219 would extend the current funding rules through 2006, including use of the temporary long-term corporate bond rate in effect during 2004 and 2005.
MEASUREMENT OF LIABILITY					
BENEFITS TAKEN INTO ACCOUNT IN MEASURING LIABILITY	Liability under the DRC rules ("current liability") is equal to benefits accrued to date. Future accruals are disregarded (including expected pay increases in final pay plans and	Same as current liability.	Same as current liability.	Same as current liability.	

[1] On February 7, 2005, the Administration released its proposal for reform of current pension funding rules. The proposal can be found at http://www.treas.gov/offices/tax-policy/library/bluebk05.pdf.

[2] On June 9, 2005, House Education & Workforce Chairman John Boehner (R-OH), House Ways & Means Chairman Bill Thomas (R-CA), and others introduced H.R. 2830, the Pension Protection Act of 2005. The full House Education & Workforce Committee held a markup on June 29, 2005 and reported the bill. This chart summarizes H.R. 2830 and the amendments accepted at the June 29 Committee markup; however, the final text of the bill has not yet been officially released.

[3] On July 22, 2005, the Joint Committee on Taxation ("JCT") released a description of the Senate Finance Committee Chairman's mark of revised S. 219, The National Employee Savings and Trust Equity Guarantee Act of 2005. The Senate Finance Committee held a markup on July 26 and unanimously reported the bill. This chart summarizes the pension funding and related elements of S. 219 and the amendments accepted at the Committee markup as described by JCT; however, text of the bill has not yet been released.

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	expected increases in flat dollar plans).				
INTEREST RATE	Prior to 2004, the interest rate used to determine current liability was based on the 30-year Treasury bond. For plan years beginning in 2004 and 2005, the interest rate is based on a mix of long-term corporate bonds that are AAA, AA and A rated. After 2005, the interest rate is scheduled to revert to the rate on the 30-year Treasury bond.	The interest rate used to determine liability would be based on AA rated corporate bonds of varying maturities.	The interest rate used to determine liability would be based on “investment grade corporate bonds” of varying maturities.	The interest rate used to determine liability would be based on “high-quality corporate bonds of varying maturities.”	It is not entirely clear what bonds would be taken into account under either H.R. 2830 or S. 219, including whether these bills are intended to include a broader class of bonds than is included under the current law long-term corporate bond rate (i.e., AAA, AA, and A) or the Administration proposal (i.e., AA). In this regard, for example, H.R. 2830 uses the phrase “investment grade corporate bonds,” which under Standard & Poor’s rating system, would generally include AAA, AA, A, and BBB bonds.
YIELD CURVE	Not applicable. Liabilities of all durations are valued using a single interest rate.	The particular interest rate used to value a liability under the Administration proposal would be selected from a yield curve based on the expected duration of the liability. The yield curve would be developed and published by the Treasury Department.	Same as Administration proposal. However, instead of a different interest rate for each duration, there would be a separate rate for each of three “segments” of liabilities. The three segments would be for liabilities with durations under 5 years, between 5 and 20 years, and longer than 20 years. The segments would be derived from a yield curve developed and published monthly by the Treasury Department.	Same as Administration proposal.	Under H.R. 2830, there are at least three open issues regarding how the interest rate for each segment would be derived. First, as mentioned above, it is not entirely clear which classes of bonds would be taken into account. Second, it is not clear how the different classes of bonds would be weighted, e.g., as the average of all the classes or to reflect the prevalence of different classes of bonds. Third, it is not clear how the rate for each segment would be selected, e.g., as the average of all rates in the segment or as the weighted average of all rates in the segment. The resolution of these issues (in legislative history or by the Secretary of Treasury) could have a material

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					effect on the interest rates.
INTEREST RATE SMOOTHING	The interest rate used to value liabilities is the weighted average of the interest rate for the four years preceding the valuation date. The weighting used is 40%, 30%, 20% and 10% starting with the most recent year in the four-year period.	The interest rates that comprise the yield curve would be averaged over the 90 business days preceding the valuation date.	The interest rates that comprise the yield curve would be the weighted average of interest rates over the 3 years preceding the valuation date. The weighting used would be 50%, 35%, and 15% starting with the most recent year in the three-year period.	The interest rates that comprise the yield curve would be averaged over the business days occurring during the three months preceding the valuation date.	S. 219 provides for even less interest rate smoothing than the Administration proposal. In contrast, H.R. 2830 provides less smoothing than current law, but materially more than either the Administration proposal or S. 219.
MORTALITY TABLE	The Secretary of Treasury prescribes the mortality tables used in determining a plan's current liability. Currently, the 1983 Group Annuity Mortality Table ("GAM 1983") is used.	Same as current law.	*In General*. Updates GAM 1983 with the RP-2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of enactment. *Substitute Mortality Table*. Allows a plan to use a substitute mortality table if the Secretary of Treasury determines that (i) the table reflects the actual experience of the pension plan and projected trends in experience and (ii) the table is significantly different than RP-2000. Treasury has 180 days beginning on the date of the submission to reject a substitute table.	Same as current law, but indicates that the Secretary of Treasury should consider taking into account projected trends in pension plan experience and projections of future improvements in mortality.	The substitute mortality procedure in H.R. 2830 applies on a plan by plan basis. Also, it appears that a plan using a substitute mortality table to measure liability would also use that table to determine the amount payable under the minimum value rules (e.g., the minimum lump sum payable).

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OPTIONAL FORMS OF DISTRIBUTION	An assumption regarding the probability that lump sums and other optional forms of distribution will be paid is not required (or permitted) under the DRC rules.	Probability that lump sums and other optional forms of distribution will be paid would need to be taken into account, and any difference in value would need to be reflected in liability.	Same as Administration proposal.	Same as Administration proposal.	The amount of lump sums generally would not be the same as current liability because, for example, lump sum amounts are determined using a spot interest rate whereas current liability is determined using a smoothed interest rate. There is no phase-in for this change under any of the proposals, which could have a material effect on liability calculations for plans that have significant lump sums.
AT RISK PLANS	Not applicable	Would distinguish between at risk plans and other plans. At risk plans are plans sponsored by employers that have debt rated below investment grade (i.e., junk bond status) by all of the major credit rating agencies that rate the sponsor. For at risk plans, the plan's actuary would have to (i) assume that all participants will retire upon reaching the earliest retirement age; (ii) assume that benefits will be paid in lump sums (or in whatever form results in the largest liability for the plan); and (ii) apply a "loading factor" equal to $700 per participant plus 4% of current liability for the plan year (collectively termed "At-Risk Liability"). *Unrated Sponsors*. The PBGC would develop a matrix for sponsors that do not have debt	Same as the Administration's proposal but defines at risk plans differently. Does not use credit ratings to define at risk plans. Instead, defines plans as at risk based on whether they are funded at less than 60%. For at risk plans, the plan's actuary would have to assume that all participants will elect benefits at times and in forms that will result in the highest present value of liabilities and apply the same loading factor under the Administration proposal. *Phase-In*. At risk liability would be phased in 20% per year.	Similar to the Administration proposal in that it distinguishes between at risk plans and other plans based on whether a plan is sponsored by an employer that is financially weak. An employer is considered financially weak (i) if it has senior unsecured debt that is rated below investment grade by all of the nationally recognized statistical rating organizations ("NRSRO") that rate the sponsor's debt or (ii) where no outstanding senior unsecured debt has been rated by an NRSRO but where one or more NRSRO has made an issuer credit rating for the sponsor and all such organizations have rated the sponsor as below investment grade. However, if an employer is a member of a controlled group, the employer is not treated as financially weak if a significant member of	At-risk classification would mandate assuming that every participant will receive the most valuable form of payment at the most valuable date. Some have described this as "worse than the worst case." Under all of the proposals, it appears that an at risk plan would have to continue to make amortization payments attributable to the shortfall (discussed below) based on at risk liability even after the plan is no longer considered at risk. It is only when the plan is 100% funded on a non-at risk basis that the plan would be permitted to terminate the amortization payments. There are a number of concerns about basing the pension funding rules on credit ratings, as the Administration Proposal and S. 219 would.

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		that is rated to determine whether their plans are at risk plans. *Phase-In*. At risk liability would be phased in 20% per year so long as the sponsor's debt remained in junk bond status but would disappear immediately once the debt was rated investment grade by a major credit rating agency.		the controlled group is not considered financially weak. Unlike the Administration proposal, S. 219 does not treat a plan as at risk until the employer has been financially weak for three consecutive plan years (as of the plan valuation date). Significantly, for this purpose, plan years beginning before the date of enactment are not taken into account. *Unrated Sponsors*. In the case of a plan sponsored by an employer that does not have outstanding senior unsecured debt rated by an NRSRO and no such organization has made an issuer crediting rating for the employer, the Secretary of Treasury is to issue regulations for determining whether an employer is financially weak. *Small Plan Exception*. Plans that have fewer than 500 participants cannot be considered at risk regardless of the employer's credit rating. *100% Funded Exception*. A plan that is fully funded (taking into account the phased-in target) on a non-at risk basis as of the valuation date would not be considered an at-risk plan even if the sponsor's debt rating would otherwise cause the plan to fall within the at risk rules.	For example, there generally are questions about the credit rating agencies and the transparency of the rating process. In addition, the use of credit ratings to increase funding obligations could encourage a downward spiral for companies that might otherwise recover. There are at least two issues related to the operation of the 100% funded exception. First, there is a question whether years covered by the 100% exception count towards the phase-in. If years covered by the exception count towards the phase-in, a plan that slips below the 100% threshold could be subject to an extremely sharp increase in liability and required contributions. Second, it appears (although it is not entirely clear) that the 100% exception is based on the funded status of the plan during the current year. This would make applicability of the exception much more volatile. It also stands in marked contrast to the funding triggers for benefit restrictions, which generally work off of the prior year's funding percentage. The improvement period rule treats improving companies that have a very low credit rating more favorably than non-improving companies that

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				Phase-In. At risk liability would be phased-in in the same manner as at-risk liability under the Administration's proposal (including disappearing immediately once the debt is rated investment grade by any NRSRO). However, a special rule applies during an improvement period. Under that rule, the applicable phase-in percentage for an improvement period is equal to the applicable phase-in percentage of the plan for the year immediately preceding. An improvement period occurs if, as of the current plan year, the employer has senior unsecured debt rated below investment grade, but receives a higher credit rating than that received from any rating organization as of the valuation date for the preceding year (i.e., the Phase-In is frozen during any improvement period).	have a better credit rating but are below investment grade. This seems odd given that the weaker company continues to present more risk of business failure.
PLANS OTHER THAN AT RISK PLANS	The plan's actuary must use the prescribed interest rate and mortality table, discussed above. Otherwise, the plan's actuary determines current liability on the basis of certain actuarial assumptions and methods, including when participants will retire and whether participants are likely to take a lump sum. Each assumption must be (1) "reasonable (taking into account the experience of the plan and reasonable expectations)" or, when taken	For plans other than at risk plans, the plan's actuary would prescribe the relevant assumptions (other than interest rate and mortality), subject to current law standards.	Same as Administration proposal.	Same as Administration proposal.	

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	together, produce a total contribution that is the same as if each assumption and method were reasonable, and (2) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.				
PHASE-IN FOR LIABILITY CHANGES	Not applicable	The change in liability attributable to the new interest rate, yield curve, and smoothing rules would be phased in during 2006 and 2007. During 2006, liability would be one-third new liability and two-thirds liability under the rules in effect immediately before the new legislation. Those ratios would be flipped during 2007.	Same as Administration proposal for change in liability attributable to the new interest rate, yield curve, and smoothing rules. The change in liability attributable to the new mortality table would be phased in ratably over the 5-year period beginning in 2006.	During 2006, liability would be based on the funding rules in effect during 2004 and 2005. During 2007, the changes in liability attributable to the new interest rate, yield curve, and smoothing rules would be phased-in one-third new liability and two-thirds liability under the rules in effect immediately before the new legislation. Those ratios would be flipped during 2008.	
MEASUREMENT OF ASSETS					
ASSET VALUATION	Under current law, a plan can use the actual fair market value on the valuation date or the prescribed average value. Treasury regulations recognize that there may be short-run fluctuations in the value of assets and allow for the actuarial smoothing of asset values over a period of time (i.e., the prescribed average value) within a prescribed corridor (generally no less than 80% of current fair market value and no more than 120% of current fair market value).	Current law actuarial smoothing of asset values would be repealed. Asset valuations would have to be done on a fair market value basis as of the valuation date.	Actuarial smoothing of asset valuations would be permitted under methods prescribed by the Treasury. However, the prescribed corridor would be narrowed from current law to 90% to 110% of fair market value. In addition, any actuarial method of asset smoothing would be impermissible to the extent it provides for the averaging of asset values over more than the current plan year and the 2 preceding plan year.	Same as Administration proposal except that plans may elect to average fair market values over no more than the 3-month period ending on the valuation date.	H.R. 2830 effectively restricts asset smoothing to 2 years. Only small plans would be able to use 3-year smoothing of assets because of the valuation date rules, discussed below. S. 219 would permit only very limited actuarial smoothing of asset values (over 3 months).
VALUATION DATE					
	The valuation date for determining plan assets and	The valuation date would be the first day of the plan year.	Same as Administration proposal but the exception for	Same as Administration proposal.	

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	liabilities must be during the plan year or within one month prior to the beginning of the plan year. A valuation date may be used from the immediately preceding year provided that, as of that date, plan assets are not less than 100% of the plan's current liability.	However, plans with 100 or fewer participants on each day of the preceding plan year could choose any day during the plan year as the valuation date.	small plans is for plans with 500 or fewer participants.		
MINIMUM REQUIRED CONTRIBUTION					
TRIGGER	Contributions under the DRC rules are required if, as of the valuation date, a plan falls below 90% funded on a current liability basis, or 80% for plans that have been 90% funded in two consecutive years out of the last three years.	Contributions would be required for a plan year if the sum of (i) the plan's normal cost for the year and (ii) the plan's liability on the valuation date are more than the value of the plan's assets.	Same as Administration proposal.	Same as Administration proposal.	
MINIMUM REQUIRED CONTRIBUTION	Very generally, if the DRC rules apply, sponsors must contribute normal cost plus a specified percentage of the plan's unfunded liabilities.	In general, the minimum contribution would be the sum of (i) the plan's normal cost for the plan year and (ii) the required shortfall amortization charge.	Same as Administration proposal.	Same as Administration proposal, except that, for plan years beginning after 2007, it would provide for limits on the annual increases and decreases in contributions. Under these limits, the minimum required contribution for a plan year could not increase or decrease from one plan year to the next by more than the adjustment limit. The adjustment limit would be the greater of (i) 30% of the plan's normal cost for the preceding year or (ii) 2% of the plan's target liability for the preceding plan year. *Adjustment for Last Amortization Payment.* For this purpose, the minimum required contribution for the prior year would be reduced by any amortization	S. 219 eliminates the "front-end smoothing" of asset values and interest rates that currently provides funding predictibility and relies instead on "back-end smoothing." This also stands in contrast to H.R. 2830, which preserves but restricts current law smoothing of asset values and interest rates. One significant problem with the limitation on annual increases and decreases is that the 2% of liability limit treats plans that pay lump sums more favorably than plans that do not pay lump sums. This arises because lump sum payments reduce liability, which correspondingly creates a more favorable limit on minimum contribution increases.

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				payment that was the last scheduled payment in a series of scheduled amortization payments. Note: The increase/decrease limit would not apply to costs attributable to current year benefit improvements. Note: Minimum contributions would not be required if a plan has assets in excess of the sum of normal cost and target liability.	The adjustment for the last scheduled amortization payment is intended to avoid unfairly high required contributions for plans that have adverse experience near the end of the amortization period. Note: Under S. 219, contributions may be made in excess of the maximum required contribution, subject to limitations on deductible contributions.
NORMAL COST	The present value of the expected increase in current liability due to benefits accruing during the plan year.	The present value of all benefits that the plan is expected to pay in the future that accrue during the year (including any increase in benefits earned in prior years attributable to compensation increases).	Same as Administration proposal. A contribution equal to the plan's normal cost would be due every year unless the plan is more than 100% funded, in which case the normal cost contribution is reduced (but not below zero) by the surplus.	Same as H.R 2830.	Note that normal cost differs depending on whether a plan is considered "at risk," discussed above.
SHORTFALL AMORTIZATION CHARGE	DRC contribution percentages currently range from 30% (for plans that are funded at or below a 60% level) to just over 18% (for plans just below 90% funded) of the difference between plan assets and 100% of liabilities. *Early Termination of Amortization*. DRC contributions are no longer required once a plan is at least 90% funded.	*In general*. Sponsors must contribute an amount equal to the difference between plan assets and 100% of liabilities amortized on a level basis over 7 years. *Treatment of remaining amortization payments*. Payments due under an amortization schedule (i.e., payments for years 2-7) are included in plan assets based on their present value (in effect, as a note). A new amortization schedule would be established for any new shortfall after taking into	Same as Administration proposal but the present value of the amortization payments would be valued using the segment rates. In addition, for plans that were subject to the DRC rules for the plan year beginning in 2005, the 100% funding target would be phased in so that the shortfall amortization charge would be based on a percentage of the funding target. The applicable percentage would be as follows: 2006 – 92%; 2007 – 94%; 2008	Generally the same as Administration proposal beginning in 2007. In addition, a transition rule applies that phases in the 100% funding target so that the shortfall amortization charge would be based on a percentage of the funding target. The applicable percentage would be as follows: 2007 – 93%; 2008 – 96%; and 100% thereafter. A 5-year transition applies in the case of plans with 100 or fewer participants (i.e., 2007 – 92%;	The phase-in of the funding target under H.R. 2830 is limited to plans that are subject to the DRC in 2005. [This appears to be a drafting error.] Under both H.R. 2830 and S. 219, the phase-in of the 100% target is on top of the phase-in of the new interest rate and new mortality table used in measuring liabilities. That is, the liability to which the 100% target phase-in applies is liability measured using the phasing in interest rate and mortality table assumptions.

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		account the present value of expected amortization payments. The present value of the amortization payments would be valued using the yield curve. *Early Termination of Amortization*. Contributions made in excess of the minimum as well as favorable investment returns would <u>not</u> reduce remaining payments due under an amortization schedule. Amortization payments would terminate early only if the plan's assets exceed the plan's liabilities.	– 96%; 2009 – 98%; and 100% thereafter.	2008 – 94%, etc.). *60% Rule*. A plan that falls below 60% funded must contribute an amount immediately (i.e., no amortization) sufficient to bring the plan to at least a 60% funded level or provide security in lieu of contributions. The security is released at the end of the prohibited period for the failure to which the security relates. The plan may foreclose on the security (1) if the employer fails to meet any minimum funding requirement (other than the one for which the security was provided), (2) after 7 years, or (3) if the plan terminates.	*Note*: The phase-ins under both bills do not apply for any purpose other than determining the minimum required contribution. As a result, for example, whether the funding percentage triggers for the benefit restrictions apply is based on a 100% funding target, not the phased-in target.
WAIVER AMORTIZATION CHARGE	The IRS may grant a waiver of the minimum funding standard if the sponsor would be otherwise unable to satisfy current funding liabilities without experiencing a "temporary business hardship," and if the application of the standard would be adverse to the interests of plan participants. The waived amount is called the "waived funding deficiency," and is amortized over 5 years.	Same as current law.	Same as current law.	Same as current law except the charge is valued using the interest rate determined under the yield curve method for the plan year in which the funding deficiency to which the charge arose.	
CREDIT BALANCES					
IN GENERAL	Under current law, if a sponsor makes a contribution in excess of the minimum required contribution in any year, the excess plus interest is maintained as a "credit	Contributions in excess of the minimum required contribution would not receive any special treatment, i.e., there would be no credit balances. The Administration proposal would	In general, the proposal permits the continued use of credit balances. The proposal distinguishes between existing credit balances, called the Funding Standard Carryover	Except as discussed below, the same as current law.	H.R. 2830 generally preserves credit balances, but it would significantly change the rules applicable to credit balances. As discussed below, in many respects, the bill forces many

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	balance" that can be credited against future required contributions.	apply to existing credit balances, which would be eliminated.	Balance ("Old Credit Balances") and credit balances earned prospectively, called the Pre-Funding Balance ("New Credit Balances").		employers to make the unpalatable choice between waiving most of their credit balances or accepting significant benefit restrictions and/or at risk status. S. 219 is more closely aligned to the current law credit balance rules but would make changes that would erode credit balances rapidly relative to current law.
ADJUSTMENT FOR GAINS AND LOSSES	Credit balances are adjusted at the rate of return assumed by the actuary for ERISA funding purposes (e.g., 8%). Credit balances do not adjust immediately if the underlying value of the assets increases or decreases or does not increase at the plan's assumed rate of return. Instead, gains and losses are amortized over 5 years under the ERISA funding rules.	Not applicable	Credit balances would be adjusted to reflect a plan's actual (not assumed) rate of return. The actual rate of return would be the net gain or loss (determined on the basis of fair market value) experienced by all plan assets, taking into account contributions, distributions and other plan payments in accordance with regulations to be issued by the Treasury Department. For Old Credit Balances, the adjustment would apply prospectively (i.e., the credit balance immediately before the first plan year to which the legislation applies would be the opening balance).	Same as H.R. 2830.	
IMPACT ON MINIMUM CONTRIBUTION	Credit balances are not subtracted from assets for purposes of determining whether the DRC rules apply to a plan, i.e., for purposes of the 80%/90% DRC threshold. Credit balances are subtracted from assets for purposes of determining the DRC	Not applicable	In general, the same as current law. Credit balances are not subtracted from assets for purposes of determining whether the shortfall contribution rules apply. However, all credit balances are subtracted from assets for purposes of determining the amount of underfunding if a	Unlike current law, S. 219 would subtract credit balances from assets for purposes of determining whether the shortfall contribution rules apply. In addition, like current law and H.R. 2830, all credit balances are subtracted from assets for purposes of determining the amount of	Under S. 219, a plan that, for example, has 100 in liabilities; 110 in assets; and 30 in credit balances would be subject to the shortfall contribution rules and would be considered 80% funded for purposes of determining the amount of the shortfall contribution. The 30 credit balance could be used to

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	percentage contribution (e.g., 18% of shortfall). Credit balances can be used to satisfy a minimum contribution obligation.		shortfall contribution is required. Subject to the restrictions on use, discussed below, credit balances may be used to satisfy a minimum contribution obligation.	underfunding if a shortfall contribution is required.	satisfy the contribution obligation. However, this system would generally erode credit balances very quickly. In contrast, under H.R. 2830, the shortfall contribution rules would not be triggered for plans that are 100 percent funded (without subtracting credit balances).
RESTRICTIONS ON USE	None	Not applicable	H.R. 2830 would prohibit plans from using credit balances to satisfy a contribution obligation if a plan was below 80% funded in the preceding year. For this purpose, New Credit Balances are subtracted from assets. However, Old Credit Balances are not subtracted from assets.	None	Under H.R. 2830, a plan that, for example, has 100 in liabilities; 85 in assets; 10 in Old Credit Balances, and 10 in New Credit Balances would be considered 75% funded for this purpose because the 10 in New Credit Balances would be subtracted from assets.
IMPACT ON BENEFIT RESTRICTIONS	Credit balances are not subtracted from assets for purposes of determining whether the 60% restriction, discussed below, applies.	Not applicable	In general, all credit balances are subtracted from assets for purposes of determining whether a benefit restriction applies. *100% Funded Exception*: There is an exception for plans that are 100% funded without subtracting credit balances. Fully funded plans are not subject to the benefit restrictions even if they have credit balances that, if subtracted, would bring the plan below 100% funded. For this purpose, the phase-in of the 100% target for plans subject to the DRC during 2005 does not apply.	Credit balances are not subtracted from assets for purposes of determining whether any of the restrictions on benefits, discussed below, are triggered.	The fact that under H.R. 2830 credit balances are subtracted from assets for benefit restriction purposes means, for example, that a plan that has 100 in liabilities; 90 in assets; and 40 in credit balances would be considered 50% funded for benefit restriction purposes. The net result would be that the plan could not pay lump sum benefits and would have to be frozen. The exception for plans that are 100% funded was added to H.R. 2830 during the full Committee markup in partial response to employer concerns about the inappropriate impact of subtracting credit balances from assets for purposes of the benefit restrictions.

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IMPACT ON AT RISK TRIGGER	Not applicable	Not applicable	All credit balances are subtracted from assets for purposes of determining whether a plan is considered "at risk."	In general, not applicable because the at risk rules turn on credit ratings rather than funded status. However, for purposes of the 100% funded exception to the at risk rules, credit balances would not be subtracted from assets.	H.R. 2830 would mean, for example, that a plan that has 100 in liabilities; 90 in assets; and 40 in credit balances would be considered 50% funded and therefore would be considered an at risk plan, in which case the plan could be considered even more substantially underfunded due to the redefinition of liability for at risk plans, discussed above.
ELECTIVE REDUCTIONS IN CREDIT BALANCES	None	Not applicable	A plan may elect to reduce its credit balances. That is, a plan may elect to forego a credit balance, in which case it would not be subtracted from assets for any purposes. Once reduced, however, the credit balance would be gone forever. A plan may not elect to reduce its New Credit Balances while it has a remaining Old Credit Balance.	Not applicable.	Under H.R. 2830, a plan might be effectively forced to reduce its credit balances, for example, to avoid triggering the restrictions on benefits or to avoid "at risk" classification.
ORDERING RULE	Not applicable	Not applicable	New Credit Balances cannot be used to satisfy a minimum required contribution obligation until all of the Old Credit Balances are used.	Not applicable.	Old Credit Balances receive more favorable treatment than New Credit Balances under H.R. 2830. The ordering rule is intended to accelerate the phase-out of that more favorable treatment.
EFFECT ON OTHER RULES	Not applicable	Not applicable	Credit balances are subtracted from plan assets for various other purposes including, but not limited to, certain disclosure requirements and whether a plan is required to make quarterly contributions.	Not applicable.	
TIMING OF CONTRIBUTIONS					
QUARTERLY CONTRIBUTION	Plans that have a current liability percentage of less than	Same as current law for plans that have a funding shortfall	Same as Administration proposal but the RAP safe	Same as Administration proposal.	For purposes of determining whether quarterly contributions

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REQUIREMENT	100%, including plans that are subject to the DRC rules, must make quarterly contributions, due on the 15th day following the end of each quarter in the plan year, the amount of which is a specified percentage of the plan's required annual payment (the "RAP"). Generally, the RAP is the lesser of 90% of the plan's current year minimum funding requirement or 100% of the plan's minimum funding requirement for the preceding year. Single employer plans which are required to make these quarterly contributions must also make a contribution to its funding standard account if there is a "liquidity shortfall."	for the preceding year.	harbor of 100% of the prior year's minimum funding requirement would not be available during 2006. As a result, the RAP for 2006 would be 90% of the minimum funding requirement under the new rules.	Note: If a plan fails to pay the full amount of a required quarterly contribution, the amount of interest charged is equal to the applicable effective rate of interest for the plan plus five percentage points. A plan's applicable effective rate of interest is equal to the single rate of interest which, if used to determine the present value of the expected benefit payments under the plan, would result in an amount equal to the plan's target liability for the plan year."	are required during 2006, H.R. 2830 would look at whether the plan had a "funding shortfall" during 2005. This could mean that whether quarterly contributions are required for a plan would depend on whether the plan would have had a funding shortfall had the bill been in effect during 2005. Many large plans rely on the safe harbor of 100% of the prior year's minimum contributions to determine quarterly contributions, and the absence, under H.R. 2830, of that safe harbor during 2006 could make determining the RAP during the first quarter of 2006 problematic.
8 ½ MONTH GRACE PERIOD	A sponsor has a grace period of 8 ½ months after the end of the plan year to make contributions necessary to avoid a funding deficiency and a penalty.	Provides that a contribution made after the valuation date for the year would be credited against the minimum required contribution for the year based on its present value as of the valuation date, discounted from the date actually contributed and determined using the average effective interest rate that applied in the determination of liability.	Same as Administration proposal.	Same as Administration proposal.	
CONSEQUENCES OF FAILURE TO MAKE REQUIRED CONTRIBUTIONS					
AUTOMATIC EXCISE TAX	Failure to fund results in an automatic excise tax on the plan. An automatic "first tier" tax is imposed for each taxable year on the accumulated funding deficiency for the plan year ending with or within the taxable year. If a plan does not	Same as current law.	Same as current law.	Same as current law.	

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	correct the deficiency by contributing the amount necessary to reduce the deficiency to zero within the "taxable period," a "second tier" tax is imposed equal to 100% of the accumulated funding deficiency to the extent correction has not occurred.				
PBGC LIEN	If a plan sponsor fails to make the required installment contributions and the aggregate amount of the late payments plus interest exceeds $1 million, a lien will arise equal to the unpaid balance of all installments and other amounts due under Code section 412.	Same as current law.	Same as current law.	Same as current law.	
WAIVER	The IRS may grant a waiver of the minimum funding standard if the sponsor would be otherwise unable to satisfy current funding liabilities without experiencing a "temporary business hardship," and if the application of the standard would be adverse to the interests of plan participants. The waived amount is called the "waived funding deficiency," and is added to a plan's funding liability and is amortized over 5 years. Informal IRS guidance, in the form of private letter rulings, makes clear that the amortization of a previously waived funding deficiency cannot itself be waived again.	Same as current law.	Same as current law. Codifies informal Treasury guidance providing that a previously waived funding deficiency cannot itself be waived again.	Same as H.R. 2830.	
RESTRICTIONS ON PLAN BENEFITS TIED TO PLAN FUNDING					
LIMITATIONS ON BENEFIT	*General Restriction on Benefit Increases for Certain Plans:* A plan	For a plan that is not more than 80% funded, benefit	For a plan that is less than 80% funded, benefit increases (i.e.,	For a plan that is less than 80% funded, "applicable benefit	S. 219 (unlike the other proposals) does not permit a

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INCREASES	is prohibited from adopting an amendment which increases its liabilities if: • the plan has sought and obtained a waiver of minimum funding deficiency; • the period over which plan liabilities are amortized has been extended, or • a retroactive plan amendment has been made in the past 12 months. *Security Rule for Benefit Increases by Qualifying Underfunded Plans.* Under current law, if a pension plan (with more than 100 participants) has a funding ratio below 60 percent of current liability, the company generally may not provide a benefit increase greater than $10 million unless the increase is immediately funded or security is provided to fully fund the improvement.	increases (i.e., amendments that increase benefits) would be prohibited (unless immediately paid for).	amendments that increase benefits) would be prohibited (unless immediately paid for).	increases" would be prohibited. An applicable benefit increase is any increase in liabilities (whether by plan amendment or otherwise) which occurs by reason of: (1) any increase in benefits; (2) a change in the accrual of benefits, or (3) a change in the rate at which benefits become nonforfeitable under the plan. *Special Rule for Collectively-Bargained Plans.* In the case of a plan maintained pursuant to a collective bargaining agreement, an applicable benefit increase would not include any increase in liabilities (1) under a formula which is not based on a participant's compensation, if the rate of increase is not in excess of the contemporaneous rate of increase in average wages covered by the plan or (2) in the case of increases in liabilities by reason of a collective bargaining agreement ratified before the plan was less than 80% funded, the restriction does not apply for years before the earlier of: (i) the date the collective bargaining agreement expires and (ii) the date which is 3 years after the date the limitation would otherwise apply.	sponsor to immediately fund a benefit increase that would otherwise be prohibited. As a result, an employer must contribute an amount sufficient to bring a plan up to at least 80% funded to increase benefits (subject to S. 219's exceptions) as well as pay for the benefit increase. The special rule for collectively bargained plans permits benefit improvements in flat dollar plans that do not exceed wage increases.
LIMITATIONS ON LUMP SUMS	If a quarterly installment is less than the amount required to cover the plan's liquidity	Restrictions on lump sums would vary depending on the plan's funded status and the	Does not adopt the Administration proposal's use of credit ratings. H.R. 2830	Does not adopt the Administration proposal's use of credit ratings. S. 219 does,	

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	shortfall, limits apply to the benefits that can be paid from a plan during the period of underpayment. During that period, a plan many not make: (1) any payment in excess of the monthly amount paid under a single life annuity (plus any social security supplement) in the case of a participant or beneficiary whose annuity starting date occurs during that period; (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits (e.g., an annuity contract); or (3) any other payment specified in Treasury regulations.	plan sponsor's credit rating. *Plan Sponsor Without Investment Grade Rating*. A plan of a sponsor which does not have an investment grade rating from at least one of the major credit rating agencies (or, in the case of a private sponsor, is considered to be in junk bond status under the PBGC matrix) could not pay lump sums if the plan is 80% or less well funded, apparently for the duration of both the sponsor's junk bond status and its funding condition. *Plan Sponsor With Investment Grade Rating*. Lump sums could not be paid if the plan is 60% or less well funded.	does, however, impose limitations on lump sums based on a plan's funded status. For a plan that was less than 80% funded for the prior year, lump sums (and other accelerated forms of payment) would be prohibited. Lump sums may be resumed once a plan is at least 80% funded but a plan amendment resuming lump sum payouts is required.	however, impose limitations on lump sums based on a plan's funded status. For a plan that is less than 60% funded for the prior plan year, certain payments could not be made until the plan was funded at least 60%. If the plan is not at least 60% funded by the end of the plan year, the plan would continue to be subject to restrictions even if it is funded at or in excess of 60% as of the start of the next plan year. In that case, the restriction would be lifted only when the plan has been 60% funded for two consecutive plan years. Payments subject to the restrictions include lump sums and are those restricted under the current law liquidity restrictions (described under the Current Law column of the Limitations on Lump Sums heading). However, S. 219 would allow for certain otherwise prohibited payments so long as the payments do not exceed the lesser of 50% of (i) the amount payable absent the prohibition, or (ii) the present value of the maximum amount of the PBGC guarantee.	
LIMITATIONS ON ACCRUALS	None	*Plan Sponsor Without Investment Grade Rating*. A plan of a sponsor which does not have an investment grade rating from at least one of the major credit rating agencies (or, in the case of a private sponsor, is	Does not adopt the Administration proposals use of credit ratings. The proposal does, however, require plan freezes based on funded status. For a plan that was less than	Does not adopt the Administration proposals use of credit ratings. The proposal does, however, require plan freezes based on funded status. For a plan that is less than 60%	Under H.R. 2830, a plan that is frozen by reason of falling below 60% funded generally may not resume benefit accruals until it reaches at least 80% funded because a plan amendment is required to

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		considered to be in junk bond status under the PBGC matrix) would have to be frozen if it is 60% or less well funded. *Plan Sponsor With Investment Grade Rating*. No mandatory freeze regardless of funded status.	60% funded for the prior year, the plan generally would have to be frozen (including compensation upticks) until the plan is funded at least 60% for two consecutive plan years. Accruals may be resumed once a plan is at least 60% funded but a plan amendment resuming accruals is required.	funded for the prior plan year, the plan generally would have to be frozen (including compensation upticks) until the plan was funded at least 60%. If the plan is not at least 60% funded by the end of the plan year, the plan would continue to be subject to restrictions for the preceding plan year even if it is funded at or in excess of 60% as of the start of the next plan year. Unless the plan provides otherwise, a plan amendment would not be required to resume accruals. During a freeze period, any death or disability benefit or any social security supplement would have to be frozen at the amount such benefit was at immediately before the freeze period. All other ancillary benefits would have to be eliminated. *Special Rule for Collectively-Bargained Plans*. In the case of a plan maintained pursuant to a collective bargaining agreement, the restriction would not apply for years before the earlier of: (i) the date the collective bargaining agreement expires and (ii) the date which is 3 years after the date the limitation would otherwise apply.	resume accruals and plan amendments increasing benefits are prohibited for plans between 60% and 80% funded.
IN BANKRUPTCY	Sponsors in bankruptcy may not adopt an amendment to an underfunded plan that increases plan liabilities as a	A plan of a sponsor in bankruptcy would have to be frozen (including apparently a ban on compensation upticks	Not included.	Not included.	Although H.R. 2830 and S. 219 do not currently include the Administration's proposed changes, such changes would

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	result of (i) increased benefits, (ii) a change in benefit accruals, or (iii) a change in the rate at which benefits become nonforfeitable under the plan, unless the amendment does not become effective until after the effective date of the sponsor's reorganization. The restriction, however, does not apply to amendments that provide for reasonable de minimis increases in liabilities, repeal an amendment made within the first 2 ½ months of the plan year, or are required to satisfy the Code's qualification requirements.	in a final average pay plan) and lump sums could not be paid to participants (apparently for the duration of the bankruptcy).			be within the jurisdiction of the Judiciary Committee.
NOTICE TO PARTICIPANTS OF BENEFIT RESTRICTIONS	A plan is required to provide notice of the filing of the application for waiver or extension of amortization periods to each employee organization representing employees covered by the affected plan, and each participant, beneficiary, and alternate payee.	Plans that become subject to benefit limitations would be required to furnish a notice to affected participants and beneficiaries within a reasonable time *after* the date the limitation applies (or, to the extent set forth by the Secretary of Labor, a reasonable period before the limitation applies). A notice also would be required to be furnished within a reasonable time of the date a limitation ceases to apply.	A plan administrator must provide written notice to plan participants and beneficiaries within 30 days *after* the plan has become subject to the restriction on optional forms of payment (lump sums), or at such other time as may be determined by the Secretary. It appears that a special notice would not be required for a plan that is forced to freeze accruals by reason of the 60% rule. Further, because the freeze would happen by operation of law, it appears the ERISA section 204(h) notice would not be required.	Plans that become subject to benefit limitations would be required to furnish a notice to affected participants and beneficiaries within a reasonable time *before* the date the limitation applies. A notice of the date a limitation ceases to apply would be required. The Secretary of Treasury has authority to provide that a notice may be provided at a later time if it is not practicable to provide the notice in advance. An excise tax applies in the case of a failure to provide a required notice. The excise tax is $100 per day for each participant or beneficiary, until the information is provided or corrected. If the employer exercises reasonable diligence to meet the requirement, the	

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				total excise tax imposed during a taxable year will not exceed $500,000. The Secretary of Labor may also impose a penalty of up to $100 per day from the time of the failure.	
EFFECTIVE DATE	Not applicable.	The restrictions on benefits would apply to plan years beginning after December 31, 2006, subject to a delayed effective date for collectively bargained plans. For such plans, the restrictions on benefits would be effective for plan years beginning after the later of (1) the date on which the last collective bargaining agreement expires or (2)January 1, 2009.	Same as Administration Proposal.	Same as Administration Proposal.	
PBGC REFORMS					
FLAT RATE PREMIUMS	All single-employer defined benefit pension plans pay a basic flat-rate premium of $19 per participant per year.	Flat rate premiums would be increased from $19 to $30 with no phase-in and would be indexed for wage growth on a prospective basis.	Same as the Administration proposal. The increase would, however, be delayed until plan years beginning in 2008. From 2006 to 2009, the increase would be phased-in, e.g., in 2006, the rate would be $21.20, and in 2010, the rate would be $30 (indexed for wage growth). For pension plans that are less than 80% funded, the increase would be phased in from 2006 to 2008, i.e., fully effective in 2008. The proposal would also index the flat-rate premium for wage growth. *Note*: Credit balances would be subtracted from assets in	Same as Administration proposal, but includes a reduced flat-rate premium for new plans of small employers. Under the proposal, for the first 5 years of a new single-employer plan of a small employer (i.e., 100 or fewer employees), the premium is reduced to $5 per plan participant.	As introduced, H.R. 2830 would have phased-in the flat rate premium from 2008-2011. As marked up by the Subcommittee, the flat rate premium increase was accelerated by 2 years.

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			determining whether the 80% rule applies.		
VARIABLE RATE PREMIUMS	Very generally, certain underfunded single-employer pension plans pay an additional variable-rate premium of $9 per $l,000 of unfunded vested benefits.	The PBGC board would have authority to increase or decrease the amount of the variable rate premium.	The rate would stay at $9 per $1,000 of unfunded vested benefits, although new rules for calculating premiums would be provided (see below).	The general rate would stay at $9 per $1,000 of unfunded vested benefits as of the close of the preceding year, although new rules for calculating premiums would be provided (see below). For new plans, the rate would be phased-in over six years starting at 0% and increasing in level 20% increments for each year. For small plans (i.e., 25 or fewer employees), the variable rate premium is no more than $5 per participant. The provisions governing new plans and small employer plans would be effective beginning in 2006.	As introduced, H.R. 2830 would have indexed the variable-rate premium for wage growth. This provision was deleted during the Subcommittee markup.
EXCEPTIONS TO THE VARIABLE RATE PREMIUM	A plan is not required to pay the variable-rate premium if it meets any of the following exceptions: • The plan has no vested participants. • The plan is fully insured plan under Code section 412(i). • The plan is a fully funded small plan. • The plan has filed a notice of intent to terminate in a standard termination. • The plan is at the full funding limit.	Variable rate premiums would be charged based on the extent to which a plan is less than 100% funded (taking into account only vested benefits). The full funding limit exception would be repealed.	Same as the Administration proposal.	Same as the Administration proposal.	All three proposals would dramatically increase variable rate premiums for many plans by repealing the full funding limit exemption, which many plans rely on currently.
CALCULATING THE VARIABLE RATE PREMIUM	The amount of a plan's unfunded vested benefits is the excess of the plan's vested benefits amount over the value of the plan's assets. For this	Liability for purposes of the variable rate premium would be the same as liability for purposes of the funding rules.	Liability for purposes of the variable rate premium would be the same as liability for purposes of the funding rules but the interest rate would be a	For plan years beginning in 2006, the interest rate used in determining plan liability for plan years beginning in 2005 would continue to apply for	

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	purpose, liability is determined using the applicable mortality table and 85% of the interest rate used for purposes of the funding rules but without smoothing. Assets may be valued using actuarial valuations (including actuarial smoothing of assets). By statute, for the first plan year for which the Secretary of Treasury updates the applicable mortality table, the interest rate used to determine liability for variable rate premium purposes is 100% of the rate used for funding purposes and assets will have to be valued at fair market value (i.e., no actuarial valuations).		spot rate (i.e., not smoothed over 3 years) and assets would have to be valued at fair market value (i.e., no actuarial valuations). The new measure of liability for variable rate premium purposes would be phased in over the same period as the new measure of liability for funding purposes. *Note*: It is unclear whether credit balances are subtracted from assets for purposes of determining the amount of underfunding.	plan years beginning in 2006. For plan years beginning after 2006, liability for purposes of the variable rate premium would be the same as liability for purposes of the funding rules.	
PAYMENTS OF INTEREST BY PBGC ON EMPLOYER OVERPAYMENT	Current law permits the PBGC to charge interest on underpayment of premiums but does not permit the PBGC to pay interest on overpayments.	No provision.	No provision.	Would allow the PBGC to pay interest made on overpayments by premium payors. Interest would be calculated at the same rate and in the same manner as interest charged on premium underpayments. The provision would be effective on a prospective basis only.	
PBGC GUARANTEED BENEFITS	Under current law, a pension plan continues as an ongoing plan, and active participants continue to accrue benefits, until that plan is terminated or benefits are frozen in accordance with the requirements of ERISA. As such, the PBGC guaranteed benefit for participants continues to increase commensurate with benefit increases (e.g., cost-of-living	The PBGC guaranteed benefit for participants in a particular plan would be frozen as of the date a sponsor entered bankruptcy. Presumably this means the current law guarantee phase-in for benefit increases would not continue, and the dollar amount of the guarantee would not be adjusted based on changes in the cost-of- living, as it would otherwise be.	Not included	Like the Administration proposal, provides that the PBGC guaranteed benefit for participants in a particular plan would be frozen as of the date a sponsor entered bankruptcy.	

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	adjustments) up to applicable maximum limits even when a sponsor is in bankruptcy until the plan is either terminated or otherwise frozen by the sponsor.	Participants would have to be notified when a sponsor enters bankruptcy of the effect of bankruptcy on the plans, e.g., no lump sums, plan frozen. The PBGC would have authority to perfect its lien against missed contributions that should have been made during bankruptcy.			
SUBSTANTIAL OWNER RULE PERTAINING TO PBGC GUARANTEED BENEFITS	A plan or plan amendment increasing benefits must be in effect for at least 60 months before plan termination for PBGC to guarantee the full amount of the benefit. In the case of a "substantial owner" – defined as one who owns more than 10% of the voting stock of a corporation or all the stock of a corporation – the guaranteed basic benefit is phased in over to years.	No provision	No provision.	Would amend the rule pertaining to "substantial owners" to provide that the 60-month phase-in of guaranteed benefits applies to a substantial owner with less than 50 percent ownership interest. For all other substantial owners, would impose a phase-in of 10 years. The proposal would be effective for plan terminations beginning in 2005.	
PBGC ALLOCATION OF RECOVERED AMOUNTS	Amounts received by the PBGC in recovery actions against sponsors of terminated plans for unfunded benefit liabilities are allocated between the PBGC and plan assets based on an average recovery ratio rather than the actual amount recovered for each specific plan, with certain exceptions for very large plans. The average recovery ratio is based on the preceding five-year period. In contrast, amounts recovered by the PBGC from an employer for contributions owed to the plan are treated as plan assets and are allocated to	No provision.	No provision.	Would make two changes to current law rules. First, the proposal would institute a seven-year period for purposes of determining the average recovery ration for use in allocating recovered amounts attributable to unfunded benefits. Second, the proposal would institute an average recovery ratio for use in allocating recovered amounts attributable to missed employer contributions. The proposal would be effective for any plan termination for which notices of intent to terminate are provided on or after 30 days	

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	plan benefits in the same manner as other assets in the plan's trust as of the plan termination date.			after enactment.	
LUMP SUMS					
INTEREST RATE	Statutory assumptions must be used in determining the minimum value of certain optional forms of payments, including lump sums. The statutory assumptions consist of an applicable interest rate and an applicable mortality table. The applicable interest rate is the annual interest rate on 30-year Treasury securities.	The minimum value (i.e., the amount) of lump sums and certain other optional forms of payments would have to be calculated using interest rates derived from the Administration's yield curve.	Same as the Administration proposal but using H.R. 2830's modified yield curve. *Note*: The interest rate used for the minimum value of lump sums would be a spot rate, not the smoothed rate used to measure liability.	Same as the Administration proposal.	The general effect of the use of the yield curve for this purpose is that younger participants would get smaller lump sums relative to older participants. In converting to a lump sum under H.R. 2830, it appears that the modified yield curve would be applied to each projected annuity payment. This approach should avoid any cliff effect as a participant moves to another segment. Unless the current whipsaw problem is fixed, all three proposals would pose a problem for plans with respect to cash balance plan interest crediting rates.
MORTALITY TABLE	The applicable mortality table is a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1994 Group Annuity Reserving Table ("94 GAR").	Same as current law.	RP-2000 Combined Mortality Table, as published by the Society of Actuaries. It appears that plans that use a substitute mortality table in measuring liability also use the table to determine the amount of lump sums.	Same as current law, but indicates that the Secretary of Treasury should consider taking into account projected trends in pension plan experience and projections of future improvements in mortality in updating the table.	
SPECIAL EFFECTIVE DATE	Not applicable	The changes in interest rate would be phased-in. During 2007, liability would be one-third new liability and two-thirds liability under the rules in effect immediately before the new legislation. Those ratios	The changes with respect to the use of the modified yield curve and RP-2000 Combined Mortality Table would be phased in 20% annually over 5 years beginning in 2006.	Phases in the use of the yield curve method at a level rate of 20% over five years beginning in 2007. Note: Provides that plan amendments providing for the	

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		would be flipped during 2008.		use of the phase-in rates and yield curve method will not constitute an impermissible cutback so long as certain requirements are met.	
DISCLOSURE TO PENSION AGENCIES					
ANNUAL REPORT (FORM 5500)	Pension plan are generally required to file an annual report on Form 5500. Defined benefit plans subject to the minimum funding rules are required to file an actuarial statement (Schedule B) each year with the Form 5500. The Schedule B must be certified by an enrolled actuary and must report information on the plan's assets, liabilities, and compliance with the funding requirements. The Form 5500 is due 7 months after the end of the plan year, but a 2½ month extension is available (to October 15) for a calendar year plan).	The Form 5500 would disclose the plan's ongoing and at risk liability (whether or not at risk) and market value of assets. In the case of a plan with more than 100 participants and that had assets less than the funding target as of the prior valuation date, the Schedule B would be due no later than the 15th day of the second month following the close of the plan year (February 15 for a calendar year plan). An amended Schedule B would be required for contributions for a plan year made after the due date but before the end of the grace period.	The Form 5500 would disclose the plan's liability, assets and funded status. The information required on the Form 5500 would also be expanded to include the ratio of inactive participants (retired or terminated) to active participants. The due date for the Schedule B would not be accelerated. Automatic 2 ½ month extensions would no longer be available, however plans would still be permitted to file a Form 5500 up to 275 days after the end of the plan year.	Same as Administration proposal.	
PBGC 4010 INFORMATION	Section 4010 of ERISA generally requires companies sponsoring defined benefit pension plans with more than $50 million of underfunding to provide the PBGC with confidential corporate information and a statement of the plan's funded status on a termination basis. The plan's funded status on a termination basis is calculated using PBGC specified assumptions, which generally result in a substantially greater liability	The requirements for reporting under section 4010 of ERISA would be revised to be consistent with other elements of the pension reform proposal.	The $50 million trigger would be eliminated. Instead, plans that (i) are less than 60% funded (after subtracting credit balances) for the preceding year or (ii) are less than 75% funded (after subtracting credit balances) and sponsored by an employer in a troubled industry, would be required to provide the PBGC with the information currently required under section 4010. Whether an industry is troubled would turn on the PBGC's	No change	All three proposals would dispense with the termination liability concept. That is, 4010 information would be calculated using the same assumptions that are used to calculate a plan's funding obligations. The Subcommittee markup of H.R. 2830 changed the 4010 trigger to 60% funded percentage, which should be a welcome change for many large plans that were well-funded but

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	than under current liability.		determination of whether there is substantial unemployment or underemployment and the sales and profits are depressed or declining.		had a shortfall of $50 million. The full Committee added the 75% funded percentage and troubled industry trigger in response to concerns that the PBGC would not receive enough information.
DISCLOSURE TO PARTICIPANTS					
PLAN FUNDING NOTICE	Multiemployer defined benefit plans, but not single employer plans, must provide an annual plan funding notice to each plan participant and beneficiary, each labor organization representing participants and beneficiaries, to each contributing employer, and to the PBGC.	No change	The plan funding notice for multiemployer defined benefit plans would be extended to single employer defined benefit plans, which would have to provide an annual notice of plan funding within 90 days after the end of the plan year. The notice would include a reasonable estimate of the value of the plan's assets, the plan's projected liabilities and the plan's funded ratio as of the last day of the plan year. In addition, a statement setting forth the plan's funding policy and asset allocation of investments would be required. *Note*: This change would be effective for plan years beginning after December 31, 2005 so that the first notice would be due in 2007.	No change	
NOTICE TO PARTICIPANTS OF PBGC 4010 FILING	Employers are not required to provide notice to participants of a PBGC 4010 filing. Additionally, ERISA section 4010(c) provides that any information or documentary materials submitted to the PBGC as part of a 4010 filing shall be exempt from disclosure.	All information filed with the PBGC pursuant to section 4010 would be subject to disclosure, except for confidential "trade secrets and commercial or financial information" under the FOIA.	Employers that provide PBGC 4010 information would have to provide a notice to participants of the submission no later than 90 days after submission. The notice would have to include information about the aggregate funding status of all of the single-employer defined benefit plans	Same as Administration proposal.	

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			of the employer, including, for example, the aggregate funded status of the plans.		
SUMMARY ANNUAL REPORT (SAR)	In general, a plan must distribute a Summary Annual Report ("SAR") to all participants and beneficiaries annually, on or before the last day of the ninth month after the close of the plan year. A plan's SAR is required by regulation to fairly summarize the plan's latest annual report fairly. The format provided by the DOL is a fill-in-the-blank report. The SAR must be furnished within 9 months after the end of the plan year (or, if an extension applies for the filing of the Form 5500, 2 months after the extended due date).	The SAR would include a presentation of the funding status of the plan for each of the last 3 years. The funding status would be shown as a percentage based on the ratio of the plan's assets to its funding target. In addition, the SAR would include information on the company's financial health and on the PBGC guarantee. The deadline for providing the SAR would be 15 business days after the due date for filing the annual report.	Same as the Administration proposal (including the accelerated 15-day deadline) except does not require that the SAR include information on the company's financial health and on the PBGC guarantee.	Same as the Administration proposal (including the accelerated 15-day deadline) with respect to the summary annual report. *Summary Actuarial Report.* Would also require that a plan provide to participants and beneficiaries a summary actuarial report. The report would generally include the same information as the summary annual report along with a statement whether minimum funding obligations had been met and, if not, the amount of the deficit and other relevant information, as determined by the Secretary of Treasury. Would have the same deadline as the summary annual report and would impose an excise tax of $100 per day for each participant or beneficiary for failure to provide the report, with limited exceptions. The proposal would be effective for plan years beginning in 2007.	
PARTICIPANT NOTICE OF UNDER-FUNDING	Section 4011 of ERISA generally requires a plan that is less than 90% funded and required to pay a variable rate premium to notify participants, beneficiaries, and collective bargaining representatives, if any, of the plan's funded status	The participant notice requirement under ERISA section 4011 would be eliminated (and replaced by the expanded SAR, discussed below).	No change	No change	H.R. 2830 and S. 219 do not eliminate the current law notice requirements of ERISA section 4011. The continued application of section 4011 is puzzling given that the plan funding notice and enhanced Summary Annual Report

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	and the limits of the PBGC guarantee. The notice must be furnished no later than 2 months after the filing deadline for the Form 5500.				("SAR") under the bill would provide participants with ample and timely notice of plan underfunding.
PARTICIPANT BENEFIT STATEMENTS	ERISA requires that a plan administrator furnish a benefit statement to any participant or beneficiary who makes a written request. The statement must indicate the participant or beneficiary's total accrued benefit and vested accrued benefit, or the earliest date on which the accrued benefit will become vested. ERISA also requires that a plan administrator provide a statement of benefits to certain participants who separate from service within 180 days after the end of the plan year.	No provision	No provision	With the exception of governmental and church plans, would require plans to either (i) furnish a benefit statement at least once every three years to all participants with a vested benefit and who are employed at the end of the plan year, or (ii) provide notice to such participants of their right to receive a benefit statement. The benefit statement must indicate various information including (i) accrued benefits, (ii) vested benefits, and (iii) an explanation of any offset. Would provide rules regarding the manner in which the statement must be written and delivered and would direct the Secretary of labor to issue model benefit statements within 180 days of enactment. Would provide an excise tax of $100 per day per participant or beneficiary for failure to comply with the rule, with limited exception and would provide for ERISA enforcement. The proposal would be	

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				effective for plan years beginning in 2007, with exceptions for collectively bargained plans.	
DEDUCTION LIMITS					
GENERALLY	Under current law, an employer may generally deduct plan contributions that increase the plan's funding level to 100% of current liability. This limit does not allow plans to create a funding cushion to help satisfy future liabilities. If a sponsor makes contributions in excess of the deduction limits, the contributions are nondeductible and subject to a 10% excise tax under Code section 4972.	Under the Administration proposal, the defined benefit plan deduction limit would be based on the following three rules. 1. Contributions to reach a plan's at risk liability (i.e., liability determined as if the sponsor was in junk bond status for five years) would always be deductible. 2. Contributions to pre-fund expected compensation upticks in a final average pay plan and expected increases in a flat-dollar plan would be permitted. 3. It would always be permissible to fund up to 130% of the plan's funding target.	Employers would be permitted to make contributions equal to either (i) a plan's at-risk normal liability plus total at-risk liability, or (ii) 150% of the plan's normal liability plus normal cost.	For 2006, maximum deductible contributions would increase to excess of 180% of current liability over plan assets. For plan years beginning after 2006, employers could generally make deductible contributions equal to the excess of target liability, target normal cost, and the "cushion amount" over the value of plan assets. However, if the at risk rules do not apply, a plan may always make deductible contributions equal to at least the excess of at-risk liability and at-risk normal cost (as if the at-risk rules applied) over the value of plan assets. Cushion Amount. The cushion amount is the sum of (1) 80% of target liability and (2) the amount target liability would increase if projected compensation increases were taken into account in determining liability or, if the plan does not base benefits on compensation, increases in benefits that are expected to occur in succeeding plan years (determined on the basis of average annual increases over the preceding 6 years). For this purpose, the limits on compensation that may be taken into account (IRC section	S. 219 includes a very substantial increase in the limits on deductible contributions, very generally allowing deductible contributions in excess of 180% of liability over plan assets. The restriction on plans that may take into account projected increases in the compensation and benefit limits is intended to limit deductible contributions to small plans.

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				401(a)(17)) and the limits on benefits (IRC section 415(b)) apply, but, in the case of a plan covered by the PBGC insurance program, projected increases in these limits may be taken into account.	
COMBINED PLAN LIMIT	An employer that maintains both a defined contribution plan and a defined benefit plan may only make deductible contributions to the two plans up to the greatest of the following: • 25% of participants' compensation; • the minimum funding requirement with respect to the defined benefit plan; or • if the DRC rules apply, the amount needed to bring the plan to 100% of current liability. In general, elective contributions are disregarded for this purpose.	No proposal	Employer contributions to a defined contribution plan would be disregarded for purposes of the combined plan limit to the extent those contributions did not exceed 6% of participants' compensation.	For 2006, the combined plan limit applies only to the extent that contributions by an employer to one or more defined contribution plans exceed six percent of compensation paid or accrued to the beneficiaries under the plan. In determining the excise tax, matching contributions that are nondeductible because of application of the limit are disregarded. For plan years beginning after 2006, the combined plan limit would no longer apply to single employer plans covered by the PBGC insurance program. For plans not covered by the PBGC insurance program, the combined plan limit would continue to apply but only to the extent contributions exceed 6% of compensation.	
MISCELLANEOUS					
NQDC FUNDING RESTRICTIONS	There are no specific restrictions on the establishment or funding of executive compensation under the DRC Rules or ERISA Rules.	For a company that sponsors an "at risk" plan, the company would not be permitted to fund an executive's nonqualified deferred compensation arrangements through a rabbi trust, insurance policy or other funding mechanism that limits immediate access to such	Provides that if a sponsor's plan is in "at-risk status," any assets set aside in a trust (or other arrangement as determined by the Secretary of Treasury) for purposes of paying nonqualified deferred compensation ("NQDC") are deemed transferred to the	Provides that a company cannot directly or indirectly transfer assets or otherwise reserve assets in a trust or other arrangement for the purposes of paying nonqualified deferred compensation for "covered employees" if (i) the sponsor has a plan in "at-risk" status	It is not clear whether H.R. 2830 would cause pre-existing rabbi trusts to become taxable once a sponsor's plan falls into the at risk classification or whether H.R. 2830 would be restricted to contributions made during the period the sponsor's plan is in at risk

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		resources by the company or by creditors. The rules would apply to any top executive in any company in the controlled group (or former employee who was a top executive at time of termination from employment). The proposal would prohibit any funding of executive compensation occurring less than 6 months before or 6 months after the termination of a plan whose assets are insufficient to provide all the benefits due under the plan	executive under section 83 and are includible in income (if vested), regardless of whether or not such assets are available to satisfy the claims of general creditors. Any subsequent increases in the value of the trust are deemed taxable to the executive under section 83.	that is less than 60% funded, (ii) the plan sponsor is in bankruptcy, or (iii) for a 12-month period beginning on the date which is six months before the termination date of a plan that is subject to benefit limitations. A "covered employee" includes the CEO and the four highest compensated officers for the taxable year of the plan sponsor or controlled group. A covered employee also includes a former employee if he or she was a covered employee at time of termination of employment. Requires that the plan administrator notify the sponsor if the restrictions apply and provides that any fiduciary of the plan must have access to the financial records of the sponsor (or member of controlled group) to determine if assets were transferred in violation of the rule. Creates an excise tax for failure to provide the notice. Creates a right of action by DOL or a fiduciary against a plan sponsor or member of a controlled group to recover assets or funds that are set aside in violation of the rule or to compel production of records. Includes a provision allowing for recovery of attorney fees.	status.

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				Like H.R. 2830, provides that any assets or funds transferred in violation of the rule are deemed to be transferred to the covered employee under section 83 and are taxable to the covered employee The proposal would be effective beginning in 2007.	
CONTINGENT EVENT BENEFITS	A plan may provide for benefits which are payable upon the occurrence of a plant shut down or another unpredictable contingent event. Under current rules, a plan need not pre-fund these benefits.	Prohibits the payment of shutdown benefits and other unpredictable contingent event benefits. Requires the elimination of plan provisions providing for such benefits and provides that such elimination would not violate anti-cutback rules. If a prohibited benefit became payable after February 1, 2005 and before effective date of prohibition, the benefit would not be covered by the PBGC guarantee.	Same as Administration proposal, except the proposal is effective for events occurring on or after January 1, 2007 (subject to a delayed effective date for collectively bargained plans) and there is no change in the PBGC guarantee.	Does not prohibit the payment of shutdown benefits and other unpredictable contingent event benefits. Provides that PBGC guarantee provisions and the current law phase-in (i.e., 20% of the guaranteed benefit a year) apply to such benefits as if the plan amendment providing for such benefits was adopted on the date the event occurred which provides for the payment of such benefits (i.e., date of shutdown versus date of amendment providing for shutdown benefits). The proposal would be effective for benefits that become payable as a result of a plant shutdown or other covered event that occurs after July 21, 2005.	
ESOP FLOOR OFFSET PLANS	ERISA generally limits the extent to which defined benefit plans may invest in employer stock to 10% of the plan's assets. For this purpose, since 1987, a floor offset arrangement generally is treated as a single plan so that all of the assets of the defined benefit	Proposes the repeal of the 1987 grandfather by requiring floor offset plans to reduce their holding of company stock to no more than 10% of the total combined assets of the defined benefit and defined contribution plan over a period of no more than 7 years. The	No proposal	Directs the Department of Treasury and the PBGC to undertake a study to determine the number of floor-offset ESOPs still in existence and the extent to which such plans pose a risk to participants or the PBGC. The study is due within 1 year after the date of	

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	and defined contribution plans are aggregated for purposes of the 10% limitation. As a result, a floor offset plan generally cannot include an ESOP or other defined contribution plan that is significantly invested in company stock without running afoul of the 10% limitation. Under a special grandfather provision, however, floor offset arrangements in effect on or before December 17, 1987 are grandfathered.	reduction would apply on a graduated basis pursuant to regulations to be issued.		enactment.	
SECTION 415 LIMIT ON BENEFITS	Annual benefits payable under a defined benefit plan generally may not exceed the lesser of: (i) $170,000 (for 2005) or (ii) 100% of average compensation. If the benefit is not paid in the form of a single life annuity, the benefit generally is adjusted to an equivalent single life annuity. The interest rate that is used for adjusting optional forms of payment subject to the minimum value rules is the applicable interest rate (currently, the annual interest rate on 30-year Treasury securities). For 2004 and 2005, that rate cannot be less than the greater of: (i) 5.5% or (ii) the rate specified under the plan.	No change	Provides that the rate used to adjust a form of payment subject to the minimum value rules cannot be less than the greatest of: (i) 5.5%, (ii) the rate that provides a benefit of not more than 105% of the benefit that would be provided if the applicable interest was used; or (iii) the rate specified under the plan.	Makes permanent the current rule that the rate used to adjust a form of payment subject to the minimum value rules cannot be less than the greater of: (i) 5.5%, or (ii) the rate specified under the plan.	
DB/K PLANS	No special rules	No change	No change	Provides rules for "DB/K" plans, which are a combination of a defined benefit plan and a section 401(k) plan. The defined benefit and 401(k) components of the DB/K plan	The DB/K proposal provides incentives and a simplified reporting requirement for small businesses establishing DB/K plans.

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				are subject to the present-law rules for defined benefit plans and 401(k) plans. But a DB/K plan that meets certain requirements enjoys certain advantages, discussed below. The defined benefit component of a DB/K is required to provide a minimum benefit of 1% of final average compensation per year of service up to 20 years. Benefits under the defined benefit component must be fully vested after 3 years. The 401(k) component must provide matching contributions of at least 50% up to 4% of compensation. The matching contributions must be fully vested and satisfy other present-law rules for safe harbor contributions. In addition, the 401(k) component must provide for automatic enrollment up to 4% of pay. A DB/K that satisfies these requirements (1) is exempt from the top-heavy rules; (2) deemed to satisfy the ADP test for elective contributions; (3)may be funded through a single trust; and (4) may file a single Form 5500 annual return (and a single SAR). The proposal would be effective for plan years beginning after December 31, 2006.	

OTHER PROVISIONS					Proposals addressing other issues are contained in the various packages. These include changes with respect to multiemployer plan funding, hybrid plans, investment advice, ERISA modernization, and certain defined contribution reforms. Those items are beyond the scope of this chart.

For more information regarding the single-employer pension funding proposals, please contact Randy Hardock, Kent Mason, Jamey Delaplane, Jason Bortz or Seth Perretta of Davis & Harman LLP at 202-347-2230.

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