PRESENT LAW AND BACKGROUND RELATING TO MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS AND RELATED PROVISIONS OF H.R. 2830, THE "PENSION PROTECTION ACT OF 2005"

Scheduled for a Public Hearing
Before the
SUBCOMMITTEE ON SELECT REVENUE MEASURES
of the
HOUSE COMMITTEE ON WAYS AND MEANS
on June 28, 2005

Prepared by the Staff
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INTRODUCTION

The Subcommittee on Select Revenue Measures of the House Committee on Ways and Means has scheduled a public hearing on funding rules for multiemployer defined benefit plans in H.R. 2830, the "Pension Protection Act of 2005," on June 28, 2005. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides background and present law on multiemployer defined benefit pension plans, describes the multiemployer plan provisions of H.R. 2830, as introduced, and discusses issues relating to the funding status of multiemployer plans.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Relating to Multiemployer Defined Benefit Pension Plans and Related Provisions of H.R. 2830, the "Pension Protection Act of 2005"* (JCX-49-05), June 24, 2005.

EXECUTIVE SUMMARY

A. Background

A multiemployer plan is a plan to which more than one employer contributes, which is maintained pursuant to one or more collective bargaining agreements, and which satisfies such other requirements as specified by the Secretary of Labor. Multiemployer plans are governed by a board of trustees that consist of equal numbers of employer and employee representatives. The level of contributions to such plans is generally set as part of the bargaining process and the plan trustees determine the level of benefits.

Multiemployer plans have certain characteristics that are different from single-employer plans. For example, the solvency of such plans is typically not dependent on the financial health of the employer. Such plans provide an element of portability; a worker can continue to earn benefits under such plans while working for different employers. While multiemployer plans are subject to many of the same rules as single-employer plans, present law also applies special rules to such plans in recognition of their differing features.

The Pension Benefit Guaranty Corporation ("PBGC") guarantees approximately 1,600 multiemployer plans with approximately 9.8 million participants.

B. Present Law

Funding and deduction rules

Multiemployer plans are subject to the same general minimum funding rules as single employer plans. In general, these rules spread the cost of benefits over a number of years. Special rules apply to multiemployer plans in some cases, for example, amortization periods are different for multiemployer plans and such plans are not subject to the deficit reduction contribution rules.

Defined benefit pension plans are required to maintain a special account called a "funding standard account" to which specified charges and credits are made for each plan year, including a charge for normal cost and credits for contributions to the plan. Other charges or credits may apply as a result of decreases or increases in past service liability as a result of plan amendments or experience gains or losses, gains or losses resulting from a change in actuarial assumptions, or a waiver of minimum required contributions. The normal cost for a year is generally required to be funded currently. Other costs are spread (or amortized) over a period of years. In the case of a multiemployer plan, past service liability is amortized over 40 or 30 years depending on how the liability arose, experience gains and losses are amortized over 15 years, gains and losses from changes in actuarial assumptions are amortized over 30 years, and waived funding deficiencies are amortized over 15 years.

In the case of a defined benefit pension plan, the employer generally may deduct the greater of: (1) the amount necessary to satisfy the minimum funding requirement of the plan for the year; or (2) the amount of the plan's normal cost for the year plus the amount necessary to amortize certain unfunded liabilities over 10 years, but limited to the full funding limitation for the year. In order to encourage plan sponsors to fully fund defined benefit pension plans, the maximum amount otherwise deductible generally is not less than the plan's unfunded current liability. Subject to certain exceptions, an employer that makes nondeductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for the year.

The PBGC multiemployer pension insurance program

Multiemployer defined benefit plans, like single-employer plans, are covered by the PBGC insurance program. However, the insured event is different, the nature and amount of the guarantee is different and the premiums are different.

In the case of multiemployer plans, the PBGC guarantees against plan insolvency (rather than plan termination as in the case of single-employer plans), meaning that the plan is unable to pay benefits at the level guaranteed by the PBGC when due. The PBGC assistance is in the form of loans to the plan. The maximum benefit guaranteed by the PBGC in the case of a multiemployer plan is 100 percent of the first $11 of monthly benefits, plus 75 percent of the next $33 of monthly benefits for each year of service. Thus, for example, a participant in a multiemployer plans with 20 years of service would have a maximum annual guaranteed benefit of $8,580 (compared with an annual maximum of approximately $44,000 in the case of a single-employer plan terminating in 2005). PBGC premiums for multiemployer plans reflect this lower guarantee and are $2.60 per participant per plan year. In contrast, in the case of single-employer plans, the flat-rate premium is $19 per participant per year and, in addition, underfunded single-employer plans must pay a premium of $9 per $1,000 of unfunded vested benefits.

Withdrawal liability

ERISA requires that an employer that withdraws from a multiemployer plan in a complete or partial withdrawal at a time when the plan is underfunded is liable to the plan for withdrawal liability. In general, a complete withdrawal occurs when the employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute to the plan. A partial withdrawal generally occurs if there is a 70-percent contribution decline with respect to the employer for a year or there is a partial cessation of the employer's contribution obligation. Special rules apply in certain industries. The amount of withdrawal liability for the employer is based on certain formulas for allocating the unfunded liability to each employer.

Plans in reorganization status

Certain modifications to the funding rules apply to multiemployer plans that experience financial difficulties, referred to as "reorganization status." A plan in reorganization status must increase funding to specified levels and may reduce benefits to the level guaranteed by the PBGC. In general, a plan is in reorganization status if its annual funding level is not sufficient to amortize, in equal annual installments, obligations attributable to participants in pay status over 10 years and obligations attributable to other participants over 25 years.

Insolvency of multiemployer plans

As discussed above, the PBGC may provide financial assistance to a multiemployer plan in the form of a loan if the plan becomes insolvent. In general, a multiemployer plan is insolvent for a year if its available resources (such as cash, marketable assets, and contributions) are not sufficient to make benefit payments when due. In that case, benefit payments must be reduced to the level for which plan resources are available (referred to as the plan's "resource benefit level"). However, benefits are not reduced below the level of basic benefits guaranteed by the PBGC. If the plan's available resources are not sufficient to pay basic benefits, the plan sponsor must apply to the PBGC for financial assistance. The PBGC provides the amount of assistance needed to pay basic benefits. If the plan's resource benefit level increases so that financial assistance is no longer needed, the plan is expected to repay the PBGC for any assistance received.

C. Provisions of H.R. 2830 Relating to Multiemployer Plans

H.R. 2830 would make the following changes relating to multiemployer defined benefit plans:

- Provide that the amortization period for most charges under the minimum funding rules is 15 years and allow for five-year automatic extension of amortization periods (with an additional extension of up to five years if granted by the Secretary of the Treasury);
- Provide additional funding rules and procedures for plans that are in endangered or critical status;
- Make certain changes with respect to the determination of withdrawal liability;
- Require additional disclosure with respect to funding status of a plan; and
- Increase the maximum deduction limit for contributions to a multiemployer plan.

D. Issues Relating to Multiemployer Plans

Information relating to the funding status and solvency of multiemployer plans

Through the 1990s, multiemployer plans enjoyed financial health. The General Accountability Office ("GAO") reported recently that at the end of the 1990s the majority of multiemployer plans had reported assets exceeding 90 percent of total liabilities, with average funding rising to 105 percent in 2000. While recent data is lacking, GAO reports that significant signs of underfunding in the multiemployer program exist, in part due to stock market declines, low interest rates, and other economic conditions. In fiscal year 2003, for the first time in 20 years, the PBGC multiemployer program reported a deficit. The PBGC now views the financial state of the multiemployer system as cause for concern.

The PBGC estimates that total underfunding of defined benefit multiemployer plans is in excess of $150 million at the end of September 2004. For fiscal year 2004, the PBGC multiemployer program had a $1.070 billion in assets and $1.306 billion in liabilities, for deficit of $236 million. This deficit is reduced from the fiscal year 2003 level of $261 million.

The PBGC has made loans to insolvent employer plans rarely, to only 33 multiemployer plans totaling $167 million since 1980.

Issues relating to the funding of multiemployer plans

The core issue relating to underfunding of multiemployer plans is essentially the same as that with respect to single-employer plans, that is, to the extent that plans are not adequately funded, the benefits promised under such plans may not be secure. As is the case with single-employer plans, resolving issues relating to multiemployer plan funding may involve a variety of sometimes competing concerns, including retirement income policy, tax policy, employee rights, and concerns of employers.

Due to their distinctive framework and regulatory structure, multiemployer plans also face some unique issues, suggesting that the solutions with respect to such plans should not in all cases mirror those for single-employer plans. For example, due to the differing PBGC guarantee structure, the burden of underfunding of multiemployer plans is more likely to be borne by contributing employers and covered employees within a particular plan, rather than PBGC premium payors for the system as a whole. In addition, issues with respect to multiemployer plans are shaped by the bargaining process, so that proposals with respect to such plans may need to accommodate and take advantage of that process.

H.R. 2830 contains a number of provisions specifically targeted at underfunding in multiemployer plans.

I. BACKGROUND

The solvency of the private defined benefit pension plan system has been a recurring issue in retirement policy. Defined benefit plans are an important part of retirement income for many Americans. Such plans are often considered to provide secure retirement income. Employers are subject to minimum funding requirements in order to help ensure that the benefits provided for in the plan are funded and, within limits, benefits under such plans are guaranteed by the Pension Benefit Guaranty Corporation (the "PBGC") in the event a plan is terminated with assets insufficient to pay promised benefits. Despite these protections, low funding levels in many defined benefit pension plans have raised questions about benefit security and whether promised benefits will in fact be paid.

Until recently, most attention regarding funding issues relating to defined benefit pension plans has focused on single-employer plans, and the funding and related rules for such plans have been revised in response. More recently, the solvency of multiemployer plans has also been of concern.

A multiemployer plan is a plan to which more than one unrelated employer contributes, which is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor. Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, typically on the basis of hours worked or a similar measure, and the level of plan benefits is established by the plan trustees, often on the basis of length of service or hours worked rather than on compensation. Multiemployer plans may involve hundreds of employers and collective bargaining agreements. Multiemployer plans are often based on an industry, such as construction or trucking.

Multiemployer plans are not as dependent on the financial health of a single employer as are single-employer plans. If a single employer contributing to the plan goes out of business, the plan continues. Multiemployer plans provide an element of portability; a worker may earn benefits under the same plan even though working for numerous employers.

Like single-employer plans, multiemployer plans are subject to regulation under both the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 ("ERISA"). Both the Code and ERISA reflect the fact that the structure and operation of multiemployer plans varies from single-employer plans. Thus, while many of the rules applicable to both types of plans are the same, in some cases special rules apply to multiemployer plans.

For example, as described in detail below, the funding rules for multiemployer plans are different than the rules applicable to single-employer plans. In addition (as described below), multiemployer plans are subject to rules that apply when an employer withdraws from a plan. While the PBGC guarantees benefits under a multiemployer plan, the event guaranteed is not plan termination, but rather is based on the solvency of the plan. The guaranteed benefit is significantly lower than in the case of single-employer plans. Similarly, the premiums for multiemployer plans are significantly lower. Some of the qualification requirements are also different. For example, multiemployer plans are permitted to have longer vesting schedules than single-employer plans under the theory that a worker may earn benefits through working for more than one employer.

II. PRESENT-LAW RULES RELATING TO MULTIEMPLOYER PLANS

A. Funding Rules for Multiemployer Defined Benefit Plans

In general

Multiemployer plans that are defined benefit plans are subject to the same general minimum funding rules as single-employer defined benefit plans, except that different rules apply in some cases. For example, different amortization periods apply for some costs in the case of multiemployer plans. In addition, the deficit reduction contribution rules do not apply to multiemployer plans.

Funding standard account

As an administrative aid in the application of the funding requirements, a defined benefit pension plan is required to maintain a special account called a "funding standard account" to which specified charges and credits are made for each plan year, including a charge for normal cost and credits for contributions to the plan. Other credits or charges may apply as a result of decreases or increases in past service liability as a result of plan amendments or experience gains or losses, gains or losses resulting from a change in actuarial assumptions, or a waiver of minimum required contributions.

If, as of the close of the plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an "accumulated funding deficiency." For example, if the balance of charges to the funding standard account of a plan for a year would be $200,000 without any contributions, then a minimum contribution equal to that amount would be required to meet the minimum funding standard for the year to prevent an accumulated funding deficiency. If credits to the funding standard account exceed charges, a "credit balance" results. The amount of the credit balance, increased with interest, can be used to reduce future required contributions.

Funding methods and general concepts

In general

A defined benefit pension plan is required to use an acceptable actuarial cost method to determine the elements included in its funding standard account for a year. Generally, an actuarial cost method breaks up the cost of benefits under the plan into annual charges consisting of two elements for each plan year. These elements are referred to as: (1) normal cost; and (2) supplemental cost.

Normal cost

The plan's normal cost for a plan year generally represents the cost of future benefits allocated to the year by the funding method used by the plan for current employees and, under some funding methods, for separated employees. Specifically, it is the amount actuarially determined that would be required as a contribution by the employer for the plan year in order to maintain the plan if the plan had been in effect from the beginning of service of the included employees and if the costs for prior years had been paid, and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled.

Supplemental cost

The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. The most common supplemental cost is that attributable to past service liability, which represents the cost of future benefits under the plan: (1) on the date the plan is first effective; or (2) on the date a plan amendment increasing plan benefits is first effective. Other supplemental costs may be attributable to net experience losses, changes in actuarial assumptions, and amounts necessary to make up funding deficiencies for which a waiver was obtained. Supplemental costs must be amortized (i.e., recognized for funding purposes) over a specified number of years, depending on the source.

Valuation of assets

For funding purposes, the actuarial value of plan assets may be used, rather than fair market value. The actuarial value of plan assets is the value determined under a reasonable actuarial valuation method that takes into account fair market value and is permitted under Treasury regulations. Any actuarial valuation method used must result in a value of plan assets that is not less than 80 percent of the fair market value of the assets and not more than 120 percent of the fair market value. In addition, if the valuation method uses average value of the plan assets, values may be used for a stated period not to exceed the five most recent plan years, including the current year.

Reasonableness of assumptions

In applying the funding rules to a multiemployer plan, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, which in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations). In addition, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.

Charges and credits to the funding standard account

In general

Under the minimum funding standard, the portion of the cost of a plan that is required to be paid for a particular year depends upon the nature of the cost. For example, the normal cost for a year is generally required to be funded currently. Other costs are spread (or amortized) over a period of years. In the case of a multiemployer plan, past service liability is amortized over 40 or 30 years depending on how the liability arose, experience gains and losses are amortized over 15 years, gains and losses from changes in actuarial assumptions are amortized over 30 years, and waived funding deficiencies are amortized over 15 years.

Normal cost

Each plan year, a plan's funding standard account is charged with the normal cost assigned to that year under the particular acceptable actuarial cost method adopted by the plan. The charge for normal cost will require an offsetting credit in the funding standard account. Usually, an employer contribution is required to create the credit. For example, if the normal cost for a plan year is $150,000, the funding standard account would be charged with that amount for the year. Assuming that there are no other credits in the account to offset the charge for normal cost, an employer contribution of $150,000 will be required for the year to avoid an accumulated funding deficiency.

Past service liability

There are three separate charges to the funding standard account one or more of which may apply to a multiemployer plan as the result of past service liabilities. In the case of a plan in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA is amortized over 40 years. In the case of a plan which was not in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA is amortized over 30 years. Past service liability due to plan amendments is amortized over 30 years.

Experience gains and losses

In determining plan funding under an actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. The actuarial assumptions are required to be reasonable, as discussed above. If the plan's actual unfunded liabilities are less than those anticipated by the actuary on the basis of these assumptions, then the excess is an experience gain. If the actual unfunded liabilities are greater than those anticipated, then the difference is an experience loss. In the case of a multiemployer plan, experience gains and losses for a year are generally amortized over a 15-year period, resulting in credits or charges to the funding standard account.

Gains and losses from changes in assumptions

If the actuarial assumptions used for funding a plan are revised and, under the new assumptions, the accrued liability of a plan is less than the accrued liability computed under the previous assumptions, the decrease is a gain from changes in actuarial assumptions. If the new assumptions result in an increase in the accrued liability, the plan has a loss from changes in actuarial assumptions. The accrued liability of a plan is the actuarial present value of projected pension benefits under the plan that will not be funded by future contributions to meet normal cost or future employee contributions. In the case of a multiemployer plan, the gain or loss for a year from changes in actuarial assumptions is amortized over a period of 30 years, resulting in credits or charges to the funding standard account.

Funding waivers and amortization of waived funding deficiencies

Within limits, the Secretary of the Treasury is permitted to waive all or a portion of the contributions required under the minimum funding standard for the year (a "waived funding deficiency"). In the case of a multiemployer plan, a waiver may be granted if 10 percent or more of the number of employers contributing to the plan the employer could not make the required contribution without substantial business hardship and if requiring the contribution would be adverse to the interests of plan participants in the aggregate. The minimum funding requirements may not be waived with respect to a multiemployer plan for more five out of any 15 consecutive years.

If a funding deficiency is waived, the waived amount is credited to the funding standard account. In the case of a multiemployer plan, the waived amount is then amortized over a period of 15 years, beginning with the year following the year in which the waiver is granted. Each year, the funding standard account is charged with the amortization amount for that year unless the plan becomes fully funded. In the case of a multiemployer plan, the interest rate used for purposes of determining the amortization on the waived amount is the rate determined under section 6621(b) of the Internal Revenue Code (relating to the Federal short-term rate).

Extension of amortization periods

Amortization periods may be extended for up to 10 years by the Secretary of the Treasury if the Secretary finds that the extension would carry out the purposes of ERISA and would provide adequate protection for participants under the plan and if such Secretary determines that the failure to permit such an extension would (1) result in a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or employee compensation, and (2) be adverse to the interests of plan participants in the aggregate. The interest rate with respect to extensions of amortization periods is the same as that used with respect to waived funding deficiencies.

Alternative funding standard account

As an alternative to applying the rules described above, a plan which uses the entry age normal cost method may satisfy an alternative minimum funding standard. Under the alternative, the minimum required contribution for the year is generally based on the amount necessary to bring the plan's assets up to the present value of accrued benefits, determine using the actuarial assumptions that apply when a plan terminates. The alternative standard has been rarely used.

B. Deduction Limits

Employer contributions to qualified retirement plans are deductible subject to certain limits. In general, separate deduction rules apply with respect to defined benefit plans and defined contribution plans.

In the case of a defined benefit pension plan, the employer generally may deduct the greater of: (1) the amount necessary to satisfy the minimum funding requirement of the plan for the year; or (2) the amount of the plan's normal cost for the year plus the amount necessary to amortize certain unfunded liabilities over 10 years, but limited to the full funding limitation for the year. The full funding limitation is the excess, if any, of (1) the accrued liability of the plan (including normal cost), over (2) the lesser of (a) the market value of plan assets or (b) the actuarial value of plan assets. However, the full funding limit is not less than the excess, if any, of 90 percent of the plan's current liability (including the current liability normal cost) over the actuarial value of plan assets.

In order to encourage plan sponsors to fully fund defined benefit pension plans, the maximum amount otherwise deductible generally is not less than the plan's unfunded current liability.[2] In the case of a single-employer plan covered by the PBGC that terminates during the year, the maximum deductible amount is generally not less than the amount needed to make the plan assets sufficient to fund benefit liabilities as defined for purposes of the PBGC termination insurance program.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees, the total deduction for all plans for a plan year generally is limited to the greater of: (1) 25 percent of compensation; or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (but not less than the amount needed to fund unfunded current liability).

Subject to certain exceptions, an employer that makes nondeductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for the year.

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[2] In the case of a plan with 100 or fewer participants, current liability for this purpose does not include the liability attributable to benefit increases for highly compensated individuals resulting from an amendment that is made or becomes effective, whichever is later, within the last two years.

C. The PBGC Pension Insurance Program and Multiemployer Plans

1. In general

In order to protect plan participants from losing certain retirement benefits, the Pension Benefit Guaranty Corporation ("PBGC"), a corporation within the Department of Labor, was created in 1974 under ERISA to provide an insurance program for benefits under most defined benefit plans maintained by private employers.[3] The PBGC operates separate insurance programs for single-employer and multiemployer defined benefit pension plans.

According to the PBGC, as of September 30, 2004, about 44.4 million participants in more than 31,200 defined benefit plans were insured under its programs. Of these, about 34.6 million participants are covered by approximately 29,600 single-employer pension plans, and about 9.8 million are covered by approximately 1,600 multiemployer plans.[4]

In the case of single-employer plans, the PBGC insures plan termination. If a single-employer plan is terminated, the PBGC guarantees a certain level of basic pension benefits when underfunded plans terminate.

In the case of multiemployer plans, the PBGC insures plan insolvency, rather than plan termination. Accordingly, a multiemployer plan need not be terminated to qualify for PBGC financial assistance, but must be found to be insolvent. A plan is insolvent when its available resources are not sufficient to pay the plan benefits for the plan year in question, or when the sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources will not be sufficient to pay benefits that come due in the next plan year. If it appears that available resources will not support the payment of benefits at the guaranteed level, the PBGC will provide the additional resources needed as a loan. The PBGC may provide loans to the plan year after year. If the plan recovers from insolvency, it must begin repaying loans on reasonable terms in accordance with regulations.

2. Guaranteed benefits

The PBGC guarantees the same type of benefits under both single-employer and multiemployer plans, but a different guarantee ceiling applies.

The PBGC guarantee applies to "basic benefits." Basic benefits generally are benefits accrued before a plan terminates, including (1) benefits at normal retirement age; (2) most early retirement benefits; (3) disability benefits for disabilities that occurred before the plan was terminated; and (4) certain benefits for survivors of plan participants. Generally only that part of

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[3] The PBGC termination insurance program does not cover plans of professional service employers that have fewer than 25 participants.

[4] Pension Benefit Guaranty Corporation Performance and Accountability Report, Fiscal Year 2004 (Nov. 15, 2004).

the retirement benefit that is payable in monthly installments (rather than, for example, lump-sum benefits payable to encourage early retirement) is guaranteed. Retirement benefits that begin before normal retirement age are guaranteed, provided they meet the other conditions of guarantee. Contingent benefits (for example, subsidized early retirement benefits) are guaranteed only if the triggering event occurs before plan termination.

The limit for multiemployer plans is the sum of 100 percent of the first $11 of monthly benefits and 75 percent of the next $33 of monthly benefits for each year of service.[5]

When an underfunded single-employer plan terminates, the amount of benefits that the PBGC will pay depends on legal limits, asset allocation, and recovery on the PBGC's employer liability claim. For single-employer plans terminating in 2005, the maximum guaranteed benefit for an individual retiring at age 65 is $3,698.86 per month or $44,386.32 per year.[6] The dollar limit is indexed annually for inflation. The guaranteed amount is reduced for benefits starting before age 65. In the case of a plan or a plan amendment that has been in effect for less than five years before a plan termination, the amount guaranteed is phased in by 20 percent a year.[7]

3. Sources of PBGC Funding

The PBGC is funded by assets in terminated single-employer plans, amounts recovered from employers who terminate underfunded single-employer plans, premiums paid with respect to covered plans, and investment earnings.

The PBGC premium rate for multiemployer plans is $2.60 per participant per plan year.[8] This flat-rate per-participant premium is the only premium paid to the PBGC for multiemployer plans. At least every five years, the PBGC is required to report to Congress on multiemployer plan premium rates and guarantee levels.

All covered single-employer plans are required to pay a flat per-participant premium and underfunded plans are subject to an additional variable premium based on the level of underfunding. The annual flat-rate per-participant premium has been increased several times since the enactment of ERISA and is currently $19 per participant.[9] In the case of an underfunded plan, additional "variable rate premiums" are required in the amount of $9 per $1,000 of unfunded vested benefits (the amount which would be the unfunded current liability if

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[5] ERISA sec. 4022A(c).

[6] The PBGC generally pays the greater of the guaranteed benefit amount and the amount that was covered by plan assets when it terminated. Thus, depending on the amount of assets in the terminating plan, participants may receive more than the amount guaranteed by PBGC.

[7] The phase in does not apply if the benefit is less than $20 per month.

[8] ERISA sec. 4006(a)(3).

[9] ERISA sec. 4006(a).

only vested benefits were taken into account and if benefits were valued at the variable premium interest rate).

D. Withdrawal Liability

Background

The Multiemployer Pension Plan Amendments Act of 1980[10] ("MEPPA") amended ERISA to require that employers pay withdrawal liability to a multiemployer plan if the employer withdraws from the plan. Before enactment of the withdrawal liability rules, in the event of a termination of a multiemployer plan, employers who had an obligation to contribute to the plan within five years of the termination were liable to the PBGC for a share of unfunded benefits. Prior to MEPPA, it was determined that discrete instances of withdrawal of an employer from a multiemployer plan would not necessarily impair the financial health of the plan, particularly if the industry in question was stable or growing so that it could be expected that the withdrawing employer would be replaced by a new employer or by an expansion of covered employment by other contributing employers. However, concerns were raised that in marginal or contracting industries, the withdrawal of an employer (or employers) might impose inappropriate burdens on remaining employers. In addition, the pre-MEPPA rules were believed to create an incentive to withdraw from a plan so as not to be left with liability to the PBGC in the event the plan terminated. The withdrawal liability rules as added by MEPPA were designed to address these concerns and help promote the financial health of multiemployer plans by requiring withdrawing employers to pay a portion of unfunded benefits existing at the time of withdrawal. While certain changes have been made to these rules since the enactment of MEPPA, the basic structure of the withdrawal liability provisions remains the same.

Determination of withdrawal liability

Under present law, ERISA provides that an employer which withdraws from a multiemployer plan in a complete or partial withdrawal is liable to the plan in the amount determined to be the employer's withdrawal liability.[11] In general, a "complete withdrawal" means the employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute.[12] In determining if there is a complete withdrawal, special rules apply in the case of the building and construction industry, the entertainment industry, and employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry. In the case of employers engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry, a complete withdrawal occurs only if (1) an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, and (2) the PBGC determines that the plan has suffered substantial damage to its contribution base as a result of such cessation, or the employer fails to

[10] Pub. L. No. 96-364 (Sept. 26, 1980).

[11] ERISA sec. 4201.

[12] ERISA sec. 4203.

furnish a bond or amount held in escrow in an amount equal to 50 percent of the withdrawal liability of the employer.[13]

A "partial withdrawal" generally occurs if, on the last day of a plan year, there is a 70-percent contribution decline for such plan year or there is a partial cessation of the employer's contribution obligation.[14] A partial cessation of the employer's obligation occurs if (1) the employer permanently ceases to have an obligation to contribute under one or more, but fewer than all collective bargaining agreements under which obligated to contribute, but the employer continues to perform work in the jurisdiction of the collective bargaining agreement or (2) an employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more, but fewer than all of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.[15]

When an employer withdraws from a multiemployer plan, the plan sponsor is required to determine the amount of the employer's withdrawal liability, notify the employer of the amount of the withdrawal liability, and collect the amount of the withdrawal liability from the employer.[16] The employer's withdrawal liability generally is based on the extent of the plan's unfunded vested benefits for the plan years preceding the withdrawal.[17]

As soon as practical after an employer's complete or partial withdrawal, the plan sponsor must notify the employer of the amount of liability and schedule of payments and demand payment in accordance with the schedule.[18] In general, amounts are required to be paid over the period of years necessary to amortize the amounts in level annual payments.[19] Under a special rule, in cases in which the amortization period exceeds 20 years, the employer's liability is limited to the first 20 annual payments.[20]

ERISA section 4225 provides rules limiting or subordinating withdrawal liability in certain cases. The amount of unfunded vested benefits allocable to an employer is limited in the case of certain sales of all or substantially all of the employer's assets and in the case of an insolvent employer undergoing liquidation or dissolution. Other limitations on withdrawal liability also apply.

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[13] ERISA sec. 4203(d).

[14] ERISA sec. 4205.

[15] ERISA sec. 4205(b)(2).

[16] ERISA sec. 4202.

[17] ERISA secs. 4209 and 4211.

[18] ERISA sec. 4219.

[19] The payments are determined under ERISA sec. 4219(c).

[20] ERISA sec. 4219(c)(1)(B).

A multiemployer plan, other than a plan which primarily covers employees in the building and construction industry, may adopt a rule that an employer who withdraws from the plan is not subject to withdrawal liability if certain requirements are satisfied.[21] In general, the employer is not liable if the employer (1) first had an obligation to contribute to the plan after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980; (2) contributed to the plan for no more than the lesser of six plan years or the number of years required for vesting under the plan; (3) was required to make contributions to the plan for each year in an amount equal to less than two percent of all employer contributions for the year; and (4) never avoided withdrawal liability because of the special rule.

Procedural rules

Under ERISA, the plan sponsor's assessment of withdrawal liability is presumed correct unless the employer shows by a preponderance of the evidence that the plan sponsor's determination of withdrawal liability was unreasonable or clearly erroneous. A similar standard applies in the event the amount of the plan's unfunded vested benefits is challenged.

The first payment of withdrawal liability determined by the plan sponsor is generally due no later than 60 days after demand, even if the employer contests the determination of liability. Disputes between an employer and plan sponsor concerning withdrawal liability are resolved through arbitration, which can be initiated by either party. Even if the employer contests the determination, payments of withdrawal liability must be made by the employer until the arbitrator issues a final decision with respect to the determination submitted for arbitration.

For purposes of withdrawal liability, all trades or businesses under common control are treated as a single employer. In addition, the plan sponsor may disregard a transaction in order to assess withdrawal liability if the sponsor determines that the principal purpose of the transaction was to avoid or evade withdrawal liability. For example, if a subsidiary of a parent company is sold and the subsidiary then withdraws from a multiemployer plan, the plan sponsor may assess withdrawal liability as if the subsidiary were still part of the parent company's controlled group if the sponsor determines that a principal purpose of the sale of the subsidiary was to evade or avoid withdrawal liability.

In the case of an employer that receives a notification of withdrawal liability and demand for payment after October 31, 2003, a special rule may apply if a transaction is disregarded by a plan sponsor in determining that a withdrawal has occurred or that an employer is liable for withdrawal liability. If the transaction that is disregarded by the plan sponsor occurred before January 1, 1999, and at least five years before the date of the withdrawal, then (1) the determination by the plan sponsor that a principal purpose of the transaction was to evade or avoid withdrawal liability is not be presumed to be correct, (2) the plan sponsor, rather than the employer, has the burden to establish, by a preponderance of the evidence, the elements of the claim that a principal purpose of the transaction was to evade or avoid withdrawal liability, and (3) if an employer contests the plan sponsor's determination through an arbitration proceeding,

[21] ERISA sec. 4210.

or through a claim brought in a court of competent jurisdiction, the employer is not obligated to make any withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination.

E. Reorganization Status

In general

As previously discussed, multiemployer defined benefit plans are subject to minimum funding rules similar to those applicable to single-employer defined benefit pension plans.[22] Certain modifications to the single-employer plan funding rules apply to multiemployer plans that experience financial difficulties, referred to as "reorganization status." A plan in reorganization status must increase funding to specified levels and may reduce benefits to the level guaranteed by the PBGC. A cap on year-to-year contribution increases and other relief is available to employers that continue to contribute to the plan.

Reorganization status

A plan is in reorganization status for a year if the contribution needed to balance the charges and credits to its funding standard account exceeds its "vested benefits charge."[23] The plan's vested benefits charge is generally the amount needed to amortize, in equal annual installments, unfunded vested benefits under the plan over: (1) 10 years in the case of obligations attributable to participants in pay status; and (2) 25 years in the case of obligations attributable to other participants. Determination of the vested benefits charge is based on an actuarial valuation of the plan as of the end of the base plan year, with certain adjustments. The base plan year is (1) if there is a relevant collective bargaining agreement, the last plan year ending at least six months before the relevant effective date, or (2) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year. A relevant collective bargaining agreement is a collective bargaining agreement (1) which is in effect for at least six months during the plan year, and (2) which has not been in effect for more than 36 months as of the end of the plan year.

Notice of reorganization

If a multiemployer plan is in reorganization status and a minimum contribution requirement applies, the plan sponsor must provide notice that the plan is in reorganization status and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both).[24] Notice must be provided to every employer who has an obligation to contribute under the plan and to each employee organization representing plan participants.

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[22] See section II.A., above, for a discussion of the minimum funding rules for multiemployer defined benefit plans.

[23] Code sec. 418A; ERISA sec. 4241.

[24] Code sec. 418A; ERISA sec. 4242.

Minimum contribution requirement

In general

When a plan is in reorganization status, an additional funding requirement, the "minimum contribution requirement" applies.[25] Failure to meet the minimum contribution requirement results in a funding deficiency.

In general, the minimum contribution requirement is an amount equal to the excess of (1) the sum of the plan's vested benefit charge for the plan year and the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over (2) the overburden credit. A limitation applies to the minimum contribution requirement so that the rate of increase in contributions is generally limited to seven percent per year.[26]

Adjustments are made if the plan's "current contribution base" for the plan year is less than the plan's "valuation contribution base" for the plan year.[27] A contribution base unit is a unit with respect to which an employer has an obligation to contribute. The current contribution base is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year. The valuation contribution base is the number of contribution base units for which contributions were received for the base plan year, adjusted to reflect certain changes in the contribution base.

Special rules also apply when the plan's cash flow amount exceeds the vested benefit charges. A plan's cash flow amount is the amount of benefit payments under the plan, plus the amount of administrative expenses, reduced by the value of available assets. In such case, the minimum required contribution is an amount equal to (1) the sum of the plan's cash flow amount and the increase in normal cost for the plan year (determined under the entry age normal funding method) which is attributable to plan amendments adopted while the plan was in reorganization, over (2) the overburden credit.

Credit for overburdened plans

If a plan is overburdened, an overburdened credit applies against the plan's minimum required contribution.[28] A plan is overburdened for a plan year if (1) the average number of pay status participants exceeds the average number of active participants in the base year and the two proceeding years, and (2) the rate of employer contributions under the plan equals or exceeds the

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[25] Code sec. 418B; ERISA sec. 4243.

[26] Code sec. 418B(d); ERISA sec. 4243(d).

[27] Code sec. 418B(b)(2); ERISA sec. 4243(b)(2).

[28] Code sec. 418C; ERISA sec. 4244.

greater of (A) the rate for the preceding plan year or (B) the rate for the plan year preceding the first year that the plan is in reorganization.

The amount of the credit is the product of (1) one-half of the average guaranteed benefit paid for the base plan year, and (2) the overburden factor for the plan year. The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed by the PBGC. The overburden factor is an amount equal to (1) the average number of pay status participants for the base plan year, reduced by (2) the average number of active participants for the base plan year and for each of the two plans years preceding the base plan year. The overburden credit cannot exceed the amount of the minimum contribution requirement.

Limitation on lump-sum distributions

When a plan is in reorganization status, a distribution (other than a death benefit) in excess of $1,750 that is attributable to employer contributions may not be made in a lump sum.[29] The distribution must be made in the form of an annuity which provides substantially level payments over the life of the participant.

Adjustments in accrued benefits

Subject to certain requirements, a multiemployer plan in reorganization status may be amended to reduce or eliminate accrued benefits in excess of the amount of benefits guaranteed by the PBGC.[30] This is an exception to the rule prohibiting amendments that decease accrued benefits. If the amendment is adopted within two and one-half months after the end of the plan year, the vested benefits charge used to calculate the minimum contribution requirement may be adjusted. In order for accrued benefits to be reduced, at least six months before the beginning of the plan year in which the amendment is adopted, notice must be given that the plan is in reorganization status and that, if contributions to the plan are not increased, accrued benefits will be reduced or an excise tax will be imposed on employers obligated to contribute to the plan. The notice must be provided to plan participants and beneficiaries, any employer who has an obligation to contribute to the plan, and any employee organization representing employees in the plan.

Determination of insolvency

Because of the likelihood that a plan in reorganization will become insolvent (as discussed below), the plan sponsor of a plan in reorganization is required to periodically compare the value of the plan's assets for the plan year with the total amount of benefit payments made under the plan for the plan year.[31] The plan sponsor must determine either that the value of the plan assets exceeds three times the total amount of benefit payments, or, if not, whether the plan

[29] ERISA sec. 4241(c).

[30] Code sec. 418D; ERISA sec. 4244A.

[31] Code sec. 418E; ERISA sec. 4245(d)(1).

will be insolvent in any of the next three years. This comparison and determination must be made as of the end of the first plan year in which the plan is in reorganization and at least every three plan years thereafter (unless the plan is no longer in reorganization).[32] As discussed below, if the plan sponsor determines that a plan in reorganization may become insolvent, notice of the determination must be provided to the Secretary of the Treasury, the PBGC, employers with an obligation to contribute to the plan, employee organizations representing plan participants, plan participants, and beneficiaries.

[32] Although monitoring for insolvency is required if a plan is in reorganization, a plan may become insolvent without being in reorganization first.

F. Insolvency and Termination of Multiemployer Plans

1. Insolvency

In general

If a multiemployer plan is insolvent, benefit payments generally must be reduced (or "suspended") to the plan's resource benefit level, that is, the level determined by the plan sponsor to be the highest level that can be paid out of the plan's available resources.[33] A plan's available resources means the plan's cash, marketable assets, contributions, withdrawal liability payments and earnings, less reasonable administrative expenses and amounts owed to the PBGC for the repayment of financial assistance (discussed below). However, benefits are not reduced below the level of basic benefits, that is, the level of benefits guaranteed by the PBGC (i.e., the sum of 100 percent of the first $11 of monthly benefits and 75 percent of the next $33 of monthly benefits for each year of service).

If the plan sponsor determines that the plan's resource benefit level for the plan year is below the level of basic benefits, the payment of all benefits other than basic benefits must be suspended. Otherwise, the suspension of benefit payments must apply in substantially uniform proportion to the benefits of all persons in pay status under the plan, subject to Treasury authority to allow equitable variations based on factors such as variations in contribution rates for different participant groups.

A plan is generally not required to make retroactive benefit payments with respect to the portion of benefit payments that were suspended as a result of insolvency. However, if, by the end of the insolvency year, the plan sponsor determines that the plan's available resources in that year could have supported payments above the resource benefit level, the plan sponsor must distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan that year. For this purpose, "excess resources" means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at benefit levels provided under the plan. In addition, if, by the end of the insolvency year, any benefit has not been paid at the resource benefit level, unpaid amounts up to the resource benefit level must be distributed to participants and beneficiaries to the extent possible, taking into account the plan's total available resources in the insolvency year.

Insolvent status

A plan may be insolvent under one of two tests: (1) the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year; or (2) the plan sponsor of a plan in reorganization determines (as described above) that, within the next three plan years, the plan's available resources will not be sufficient to pay benefits under the plan when due for the plan year.

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[33] Code sec. 418E; ERISA sec. 4245.

Notice requirements and other rules

If the plan sponsor determines that the plan's available resources for an upcoming plan year may not be sufficient to pay benefits when due for the plan year (referred to as “impending insolvency”), the plan sponsor must notify the Secretary of the Treasury, the PBGC, and interested parties (i.e., each employer that has an obligation to contribute under the plan, each employee organization representing for collective bargaining purposes plan participants employed by such an employer, and plan participants and beneficiaries). Notice to interested parties must include information that, if insolvency occurs, certain benefit payments will be suspended but basic benefits will continue to be paid. In addition, if, at any time, the plan sponsor reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan year when due for the next plan year, the plan sponsor must make the determination available to interested parties.

No later than three months before the beginning of an insolvency year (i.e., a year for which the plan is insolvent), the plan sponsor of a plan in reorganization must determine the resource benefit level and the level of basic benefits for the year. The plan’s resource benefit level for an insolvency year is based on the plan sponsor’s reasonable projection of the plan’s available resources and the benefits payable under the plan. No later than two months before the beginning of an insolvency year, the plan sponsor must notify the Secretary of the Treasury, the PBGC, and interested parties of the resource benefit level for the year. In addition, if the plan sponsor anticipates that the resource benefit level may not exceed the level of basic benefits, the plan sponsor must notify the PBGC.

Financial assistance from the PBGC

If the plan sponsor of an insolvent plan determines that the plan’s resource benefit level for an insolvency year is below the level of basic benefits, the plan sponsor must apply for financial assistance from the PBGC. In addition, the plan sponsor may apply for financial assistance from the PBGC if the plan’s resource benefit level for an insolvency year is above the level of basic benefits, but the plan sponsor anticipates that, for any month in the year, the plan will not have funds sufficient to pay basic benefits.

After verifying that a plan is or will be insolvent and unable to pay basic benefits when due, the PBGC must provide the plan with financial assistance in the form of a loan in an amount sufficient to enable the plan to pay basic benefits for any insolvency year.[34] Pending the determination of the appropriate amount, the PBGC may provide financial assistance in the amount needed to avoid undue hardship to participants and beneficiaries.

Financial assistance must be provided on terms that the PBGC determines are equitable and are appropriate to prevent unreasonable loss to the PBGC with respect to the plan. If the

[34] ERISA sec. 4261.

plan's resource benefit level increases so that financial assistance is no longer needed, the plan is expected to repay the PBGC on reasonable terms.

2. Termination of multiemployer plans

In general

Termination of a multiemployer defined benefit pension plan can occur as a result of: (1) the adoption of a plan amendment providing that participants receive no credit under the plan for any purpose for service with any employer after a date specified in the amendment (referred to as "freezing accruals"); (2) the adoption of a plan amendment causing the plan to become a defined contribution plan; or (3) the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute to the plan (referred to as "mass withdrawal").[35]

The rules that apply to a terminated multiemployer plan depend on the event that causes termination. However, unlike the termination of a single-employer plan, termination of a multiemployer plan does not of itself result in the end of the operation of the plan or in the PBGC's taking over the plan. Instead, the plan sponsor continues to administer the plan.

Termination as a result of a plan amendment

A minimum rate of employer contribution applies if the plan terminates as a result of a plan amendment that freezes accruals or causes the plan to become a defined contribution plan. In that case, the rate of an employer's contributions under the plan for each plan year beginning on or after the termination date must be no less than the highest rate of contribution at which the employer was obligated to contribute in the five preceding plan years ending on or before the termination date, unless the PBGC approves a lower rate based on a finding that the plan is, or will soon be, fully funded.

Amendment of a multiemployer plan to freeze accruals may be followed by a mass withdrawal from the plan, in which case, the rules applicable to a termination as a result of mass withdrawal apply.

Termination as a result of mass withdrawal

If a plan terminates as a result of mass withdrawal, the plan sponsor continues to be responsible for determining and collecting any withdrawal liability amounts with respect to employers until either plan assets are distributed in full satisfaction of its obligation to pay vested benefits or the PBGC determines that plan assets (exclusive of claims for withdrawal liability) are sufficient to satisfy such obligation.

After a mass withdrawal, unless plan assets are sufficient to fully provide all vested benefits, the plan sponsor must generally limit benefit payments to vested benefit amounts as of the date the plan terminates and must pay benefits attributable to employer contributions (other

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[35] ERISA sec. 4041A.

than a death benefit) only in the form of annuities.[36] In addition, the plan sponsor must reduce vested benefits to the extent needed to ensure that the plan's assets are sufficient to provide all such benefits.[37] If, after such a reduction, the plan's available resources are not sufficient to pay benefits when due for the plan year, the plan sponsor must also reduce benefit payments under the plan to the resource benefit level (as under the insolvency rules) or, if greater, to the level of basic benefits. The plan sponsor must also apply for financial assistance from the PBGC to the extent needed to provide basic benefits.

If the plan assets of a plan terminated as a result of mass withdrawal are sufficient to fully satisfy the plan's obligations for vested benefits, the plan sponsor distributes plan assets by purchasing annuity contracts to provide required annuity benefits and by paying all other benefits in a lump sum (or other form elected by the participant or beneficiary). In that case, employers' obligations to make withdrawal liability payments cease.

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[36] Nonannuity distributions may be made if the value of the participant's entire vested benefit attributable to employer contributions (other than a death benefit) does not exceed $1,750 or in circumstances permitted by the PBGC.

[37] ERISA secs. 4041A(d) and 4281.

III. PROVISIONS OF H.R. 2830, THE "PENSION PROTECTION ACT OF 2005," AS INTRODUCED, RELATING TO MULTIEMPLOYER PLANS[38]

A. Funding Rules for Multiemployer Defined Benefit Plans

1. Funding rules for multiemployer defined benefit plans (secs. 201 and 211 of the bill)

The proposal modifies the amortization periods applicable to multiemployer plans so that the amortization period for most charges is 15 years. Under the proposal, in the case of a plan which was not in existence on January 1, 1974, past service liability under the plan on the first day on which the plan is first subject to ERISA is amortized over 15 years (rather than 30); past service liability due to plan amendments is amortized over 15 years (rather than 30); and experience gains and losses resulting from a change in actuarial assumptions are amortized over 15 years (rather than 30). As under present law, experience gains and losses and waived funding deficiencies are amortized over 15 years. The new amortization periods do not apply to amounts being amortized under present-law amortization periods, that is, no recalculation of amortization schedules already in effect is required under the proposal. The proposal eliminates the alternative funding standard account.

The proposal provides that, upon application to the Secretary of the Treasury and subject to a notice requirement, such Secretary is to grant an extension of the amortization period with respect to any unfunded past service liability, investment loss, or experience loss. The extension may not exceed five years. This automatic extension does not apply unless the applicant demonstrates to the satisfaction of the Treasury Secretary that notice of the application has been provided to each employee organization representing employees covered by the plan and the PBGC.

The Secretary of the Treasury may grant an extension of such amortization periods for an additional five years beyond the automatic extension. The standard for determining whether such an extension may be granted are the same as under present law.

The proposal modifies the interest rate applicable to waived funding deficiencies and extensions of amortization periods so that it is the greater of (1) 150 percent of the Federal mid-term rate, or (2) the rate of interest used under the plan in determining costs.

Effective date.–The proposal is effective for plan years beginning after 2005.

[38] H.R. 2830 was introduced on June 9, 2005, by Mr. Boehner, Mr. Thomas, Mr. Sam Johnson, and others. The provisions of the bill relating only to single-employer plans are not discussed here. Certain proposals applying to both single-employer plans and multiemployer plans are also not discussed. For example, the bill includes a provision modifying the interest rate assumption that must be used in the determination of lump-sum distributions (sec. 301) and a provision that modifies the interest rate assumption that must be used in applying benefit limitations to lump-sum distributions (sec. 302).

2. Additional funding rules for multiemployer plans in endangered or critical status (secs. 202 and 212 of the bill)

In general

The proposal provides additional funding rules for multiemployer defined benefit plans that are in endangered or critical status. The present-law reorganization and insolvency rules continue to apply.

Within 90 days after the first day of the plan year, the plan actuary must certify to the Secretary of the Treasury whether or not the plan is in endangered or critical status for the plan year. If the certification is not made within this period, the plan is presumed to be in critical status. In making the determination whether a plan is in endangered or critical status, the plan actuary must make projections for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of plan assets and the present value of liabilities under the plan for the current year, as set forth in the actuarial statement for the preceding plan year. Any actuarial projection of plan assets must assume (1) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of one or more collective bargaining agreements pursuant to which the plain is maintained for the current plan year continue in effect for the succeeding plan years, or (2) employer and employee contributions projected for the current and succeeding plan years under the terms of such collective bargaining agreements (assuming the continued application of such terms indefinitely to such plan years), but only if the plan actuary determines that there have been no significant demographic changes that would make continued application of such terms unreasonable.

If a plan is certified to be in endangered or critical status for the plan year or is presumed to be in critical status because no certification was made, notice must be provided within 30 days to the participants and beneficiaries, the bargaining parties, the PBGC, the Secretary of Treasury and the Secretary of Labor.

Endangered status

A multiemployer plan is in endangered status if the plan's funding percentage for the plan year is less than 80 percent, or the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years. A plan's funded percentage is the percentage of plan assets over accrued liability of the plan.

Within 240 days after a plan is certified as endangered, the plan sponsor must amend the plan to include a funding improvement plan approved by the bargaining parties. The funding improvement plan must provide that during the funding improvement period, the plan will have a one-third reduction in underfunding and no accumulated funding deficiency for any plan year during the funding improvement period (the “benchmarks”). The funding improvement period is the 10-year period beginning on the earlier of (1) the second anniversary of the date of adoption of the funding improvement plan, or (2) the first day of the first plan year following the year (after certification of endangered status) in which the collective bargaining agreements covering at least 75 percent of active participants have expired.

Within 90 days after a plan is certified as endangered, the plan sponsor must provide to the bargaining parties alternative proposals for revised benefit structures and contribution structures reasonably expected to meet the requirements for the funding improvement plan. The proposals must include (1) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law) and (2) at least one proposal for increases in contributions necessary to achieve the benchmarks assuming no amendments reducing future benefit accruals under the plan. Upon request of any bargaining party who employs at least five percent of the active participants, or represents as an employee organization at least five percent of the participants, the plan sponsor must provide information on other combinations of increases in contributions and reductions in future benefit accruals which would meet the benchmarks. The plan sponsor may provide additional information as it deems appropriate.

Pending approval of the funding improvement plan, the plan sponsor must take all actions (consistent with the terms of the plan and present law) to ensure an increase in the plan's funded percentage and a postponement of an accumulated funding deficiency for at least one additional plan year. These actions include applications for extensions of amortization periods, use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, and reductions in future benefit accruals.

In addition, pending approval of a funding improvement plan, the plan may not be amended to provide (1) a reduction in the level of contributions for participants who are not in pay status; (2) a suspension of contributions with respect to any period of service; or (3) any new or indirect exclusion of younger or newly hired employees from plan participation. Pending approval of a funding improvement plan, the plan cannot be amended to provide any additional optional forms of benefit. In addition, subject to certain exceptions, no amendment may be adopted which increases liabilities of the plan by reason of any increase in benefits, any change in accrual of benefits, or any change in the rate at which benefits become nonforfeitable.

If no plan is adopted by the end of the 240-day period after a plan is certified as endangered, the plan is in critical status as of the first day of the succeeding plan year. Notice must be provided to participants and beneficiaries, the bargaining parties, the PBGC, the Secretary of Treasury and the Secretary of Labor within 30 days of the plan being deemed critical.

A summary of any funding improvement plan and any modifications must be included in the plan's annual report and summary annual report.

Upon adoption of a funding improvement plan, the plan may not be amended to be inconsistent with the funding improvement plan or to increase future benefit accruals, unless the plan actuary certifies in advance, that after taking into account the proposed increase, the plan is reasonably expected to meet the benchmarks.

Critical status

There are several ways that a multiemployer plan can be in critical status. A multiemployer plan is in critical status if:

1. As of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent and the sum of (A) the market value of plan assets, plus (B) the present value of reasonably anticipated employer and employee contributions for the current plan year and the six succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the plan year and the six succeeding plan years,

2. As of the beginning of the current plan year, the sum of (A) the market value of plan assets, plus (B) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the four succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the four succeeding plan years,

3. As of the beginning of the plan year, the funded percentage of the plan is less than 65 percent and the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the four succeeding plan years (taking into account any extension of amortization periods),

4. (A) The plan's normal cost, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the preceding year, exceeds the present value (as of the beginning of the plan year) of the reasonably anticipated employer and employee contributions for the current plan year, (B) the present value (as of the beginning of the plan year) of nonforfeitable benefits of inactive participants is greater than the present value (as of the beginning of the current plan year) of nonforfeitable benefits of active participants, and (C) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the four succeeding plan years, or

5. (A) The funded percentage of the plan is greater than 65 percent for the current plan year and (B) the plan is projected to have an accumulated funding deficiency during any of the following three plan years.

As previously discussed, a plan is in critical status if the plan is in endangered status for the preceding plan year and the requirements applicable to endangered status were not met with respect to the plan.

If a plan is in critical status for a plan year, the plan must be amended within 240 days after the plan is certified (or deemed) as critical to include a rehabilitation plan. A rehabilitation plan must consist of (1) amendments to the plan providing for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures, or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease to be in critical status during the rehabilitation period, (2) measures to provide funding relief or (3) reasonable measures to forestall possible insolvency if the plan sponsor determines that upon exhaustion of all reasonable measures, the plan would not cease to be in critical status during the rehabilitation period. The rehabilitation period is the 10-year period beginning on the earlier of (1) the second anniversary of the date of adoption of the rehabilitation plan or (2) the first day of the first plan year following the year (after certification) in which the collective bargaining agreements covering at least 75 percent of active participants have expired. Any schedule including reductions in future benefit accruals forming part of a rehabilitation plan is applicable with respect to any group of active participants who are employed by any bargaining party in proportion to the extent to which increases in contributions under the schedule apply to such bargaining party.

Within 90 days after a plan is certified as critical (or the date that the requirements for endangered status are not met), the plan sponsor must propose to all bargaining parties a range of alternative schedules of increases in contribution and reductions in future benefit accruals that would carry out a rehabilitation plan. One schedule must show the reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contributions to the plan. If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, one schedule must show the increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law and the rate of future benefit accruals did not exceed one percent per plan year.

Pending approval of a rehabilitation plan, the plan may not be amended to provide (1) a reduction in the level of contributions for participants who are not in pay status; (2) a suspension of contributions with respect to any period of service; or (3) any new or indirect exclusion of younger or newly hired employees from plan participation. Pending approval of a rehabilitation plan, the plan cannot be amended to provide any additional optional forms of benefit. In addition, pending approval of a rehabilitation plan, subject to certain exceptions, no amendment may be adopted which increases liabilities of the plan by reason of any increase in benefits, any change in accrual of benefits, or any change in the rate at which benefits become nonforfeitable.

Upon the adoption of a schedule of increases in contributions or reduction in future benefits as part of a rehabilitation plan, the plan sponsor may, no more than once in any three-year period, amend the plan to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions. A summary of the rehabilitation plan and any modifications, together with annual updates regarding the funding ratio of the plan, must be included in the annual report and summary annual report for the plan year.

The failure of an employer to make contributions in compliance with the rehabilitation schedule may, at the discretion of the plan sponsor, be treated as a complete or partial withdrawal from the plan.

If the rehabilitation plan is not adopted within the 240-day period, the plan must be amended to implement the schedule proposed by the plan sponsor that shows the reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contributions to the plan.

Effective date

The proposal is effective for plan years beginning after 2005.

3. Measures to forestall insolvency of multiemployer plans (sec. 203 of the bill)

Under the proposal, in the case of a multiemployer plan in reorganization, unless the plan sponsor determines that the value of plan assets exceeds three times the total amount of benefit payments, the plan sponsor must determine whether the plan will be insolvent for any of the next five plan years. If the plan sponsor makes a determination that the plan will be insolvent for any of the next five plan years, the plan sponsor must make the comparison of plan assets and benefit payments under the plan at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next five plan years.

Effective date.–The proposal is effective with respect to determinations made in plan years beginning after 2005.

4. Withdrawal liability reforms (sec. 204 of the bill)

Special rules for certain industries

The proposal repeals the special rule relating to complete withdrawal of employers primarily engaged in the long and short haul trucking industry, the household goods moving industry, or the public warehousing industry. Under the proposal, the general rules for determining whether there is a complete withdrawal would apply.

Effective date.−The proposal is effective for cessations to have obligations to contribute to multiemployer plans and cessations of covered operations under such plans occurring on or after January 1, 2006.

Definition of partial withdrawal

Under the proposal, there is a partial withdrawal for the plan year if an employer continues to perform work of the type for which contributions are made under the plan by means of individuals who are not employees of such employer covered by such plan.

Effective date.−The proposal is effective for work performed on or after January 1, 2006.

20-year limit on withdrawal liability

The proposal repeals the present-law rule providing that in cases in which the withdrawal liability amortization period exceeds 20 years, the employer's liability is limited to the first 20 annual payments. Thus, under the proposal, the amortization period required is the period of years necessary to amortize the amounts in level annual payments.[39]

Effective date.−The is effective for withdrawals occurring on or after January 1, 2006.

Limitations on withdrawal liability

The proposal repeals the limitations on withdrawal liability under ERISA section 4225. The special rules under present law limiting withdrawal liability in the case of bona fide sales of assets, insolvent employers undergoing liquidation, and certain other events do not apply in determining the amounts of an employer's withdrawal liability.

Effective date.–The proposal is effective for sales occurring on or after January 1, 2006.

Special rules for building and construction industry

The proposal allows plans which primarily cover employees in the building and construction industry to adopt the rule that an employer who withdraws from the plan is not subject to withdrawal liability if certain requirements are satisfied. If such rule is adopted, the employer is not liable if the employer (1) first had an obligation to contribute to the plan after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980; (2) contributed to the plan for no more than the lesser of six plan years or the number of years required for vesting under the plan; (3) was required to make contributions to the plan for each year in an amount equal to less than two percent of all employer contributions for the year; and (4) never avoided withdrawal liability because of the special rule.

Effective date.−The proposal is effective for withdrawals occurring on or after January 1, 2006.

5. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability (sec. 205 of the bill)

Under the proposal, if (1) a plan sponsor determines that a complete or partial withdrawal of an employer has occurred or an employer is liable for withdrawal liability payments with respect to the complete or partial withdrawal of an employer from the plan; (2) such determination is based in whole or in part on a finding by the plan sponsor that a principal purpose of any transaction that occurred at least five years (two years in the case of a small employer[40]) before the date of complete or partial withdrawal was to evade or avoid withdrawal liability; and (3) the employer contests the plan sponsor's determination through an arbitration proceeding, or through a claim brought in a court of competent jurisdiction, the employer is not

[39] The period of years necessary to amortize the amounts in level annual payments is determined under ERISA sec. 4219(c).

[40] A small employer is an employer who, immediately before the transaction, employs no more than 250 employees.

obligated to make withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination.

Effective date.–The proposal applies to any employer that receives a notification of withdrawal liability and demand for payment on or after the date of enactment.

B. Disclosure

1. Defined benefit plan funding notices (sec. 501 of the bill)

The proposal expands the annual funding notice requirement that applies under present law to multiemployer plans, so that it applies also to single-employer plans and includes a summary of the rules governing termination of a single-employer plan. The proposal also changes the information that must be provided in the notice and accelerates the time when the notice must be provided.

The annual funding notice must include a statement of the ratio, as of the end of the plan year to which the notice relates, of: (1) the number of participants who are not in covered service under the plan and who are either in pay status or have vested benefits under the plan, to (2) the number of participants who are in covered service under the plan. The notice must also include a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as a percentage of total assets) as of the end of the plan year to which the notice relates.

Instead of a statement of the value of the plan's assets, the amount of benefit payments, and the ratio of the assets to the payments for the plan year to which the notice relates (as required under present law), the notice must provide, for the plan year to which the notice relates, a reasonable estimate of the value of the plan's assets, projected liabilities of the plan, and the ratio of these two amounts. For this purpose, a plan's projected liabilities are determined by projecting forward in a reasonable manner to the end of the plan year the liabilities to participants and beneficiaries as of the first day of the plan year, taking into account any significant events that occur during the plan year and that have a material effect on those liabilities, including any plan amendments in effect for the year.

In the case of a multiemployer plan that adopts a funding improvement plan, rehabilitation plan, or modification of either, during the plan year to which the notice relates, the notice must include a summary of the plan or modification.[41]

Under the proposal, the notice must be provided within 90 days of the end of the plan year to which it relates.

<u>Effective date</u>.–The proposal is effective for plan years beginning after December 31, 2005.

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[41] A proposal relating to the adoption of a funding improvement plan or rehabilitation plan by a multiemployer plan in endangered or critical status is described in sections 202 and 212 of the bill.

2. Additional disclosure requirements (sec. 502 of the bill)

Annual report

The proposal requires additional information to be provided in the annual report for a plan year. The proposal also accelerates the time when the summary annual report must be provided to participants and beneficiaries to within 15 days after the due date for filing the annual report.

Under the proposal, the annual report must include the ratio of: (1) the number of inactive participants in the plan as of the end of the plan year, to (2) the number of active participants in the plan as of the end of the plan year. For this purpose, an active participant is an individual who is in covered service under the plan, and an inactive participant is an individual who is not in covered service under the plan and is in pay status or has vested benefits under the plan.

If the liabilities to participants or beneficiaries under the plan as of the end of a plan year consist (in whole or in part) of liabilities to the participants and beneficiaries borne by two or more pension plans as of immediately before the plan year, the annual report must include the funded ratio of each of those plans as of immediately before the plan year and the funded ratio of the plan with respect to which the annual report is filed as of the end of the plan year. For this purpose, funded ratio means the ratio of: (1) the value of the plan's assets, to (2) the liabilities to participants or beneficiaries under the plan.

In the case of a multiemployer plan, the annual report for a plan year must include: (1) the number of employers obligated to contribute to the plan as of the end of the plan year; and (2) the number of participants under the plan on whose behalf no employer contributions have been made to the plan for the plan year. For this purpose, employer contribution means, in connection with a participant, a contribution made by an employer as an employer of that participant.

The proposal requires the actuarial statement filed with the annual return to include a statement explaining the actuarial assumptions and methods used in projecting future retirements and asset distributions under the plan.

Information regarding multiemployer plans

The proposal establishes new disclosure and reporting requirements with respect to multiemployer plans.

The administrator of a multiemployer plan must provide certain information to a participant, beneficiary, or employer having an obligation to contribute to the plan, who makes a written request. The administrator must provide: (1) a copy of any actuary report for any plan year, of which the plan has been in receipt for at least 30 days; and (2) a copy of any financial report prepared for the plan by any plan investment manager or advisor or other person who is a plan fiduciary, of which the plan has been in receipt for at least 30 days. An actuary or financial report must be provided to the requesting participant, beneficiary, or employer within 30 days after the request in a form and manner prescribed by the Secretary of Labor in regulations (to be issued within 90 days of enactment of the proposal).

In addition, the plan sponsor or administrator of a multiemployer plan must provide to any employer having an obligation to contribute to the plan, and which makes a written request, notice of: (1) the amount that would be the employer's withdrawal liability with respect to the plan if the employer withdrew from the plan on the last day of the year preceding the date of the request; and (2) the average increase, per plan participant, in accrued liabilities under the plan as of the end of the preceding plan year to participants on whose behalf no employer contributions are payable (or beneficiaries of such participants), which would be attributable to the withdrawal of the employer. For this purpose, employer contribution means, in connection with a participant, a contribution made by an employer as an employer of that participant. This notice must be provided to the requesting employer within 180 days after the request in a form and manner prescribed by the Secretary of Labor.

Any information required to be provided under the proposal may be provided in written, electronic, or other appropriate form to the extent such form is reasonably available to the persons to whom the information is required to be provided. A person is not entitled to receive more than one copy of any actuary or financial report or more than one notice of withdrawal liability during any 12-month period. The plan administrator may make a reasonable charge to cover copying, mailing, and other costs of furnishing copies or notices under the proposal, subject to a maximum amount that may be prescribed by the Secretary of Labor.

In the case of a failure to comply with these requirements, the Secretary of Labor may assess a civil penalty of up to $1,000 per day for each failure to provide a notice. For this purpose, each violation with respect to a single participant or beneficiary is treated as a separate violation.

Effective date.–The proposal is effective for plan years beginning after December 31, 2005.

C. Deduction Limitations

1. Increase in deduction limits (sec. 701 of the bill)

The proposal modifies the maximum deductible amount in the case of both single-employer defined benefit pension plans and multiemployer defined benefit pension plans. In the case of a multiemployer defined benefit plan, the maximum amount deductible is not less than 140 percent of current liability over the value of plan assets.

The proposal also provides that the overall limit on employer deductions for contributions to combinations of defined benefit and defined contribution plans applies to contributions to one or more defined contribution plans only to the extent that such contributions exceed six percent of compensation otherwise paid or accrued during the taxable year.

Effective date.–The proposal is effective for contributions for taxable years beginning after 2005.

IV. ISSUES RELATING TO THE FUNDING OF MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS

A. Information Relating to the Solvency of Multiemployer Plans

While issues surrounding underfunding of single-employer defined benefit plans have been the subject of debate for many years, at least through the 1990s, multiemployer plans enjoyed relative financial health. The General Accountability Office ("GAO") reported recently that at the end of the 1990s, the majority of multiemployer plans had reported assets exceeding 90 percent of total liabilities, with average funding rising to 105 percent in 2000.[42] While recent data is not available,[43] the GAO reported that significant signs of funding weakness in the multiemployer plan system exist and that stock market declines, low interest rates, and poor economic conditions have likely reduced the assets and increased the liabilities of many multiemployer plans. According to the PBGC, the financial state of the multiemployer program is now a cause for concern (in addition to the continuing concerns regarding the single-employer program).

The multiemployer program is a relatively small portion of the total PBGC insurance system. The multiemployer program covers 9.8 million participants in more than 1,600 plans (compared to 34.6 million participants in 29,600 single-employer plans). Of the PBGC's total deficit for fiscal year 2004 of over $23 billion, $236 million was attributable to the multiemployer program.

In fiscal year 2003, the PBGC multiemployer program experienced its largest deficit in over 20 years. This deficit was attributed largely to a decline in interest rates and the recording of new probable losses for plans projected to become insolvent and require financial assistance from the PBGC to pay benefits. For fiscal year 2003 the multiemployer program reported a deficit of $261 million, with total assets of $1 billion and total liabilities of $1.261 billion.[44]

For fiscal year 2004, the multiemployer program reported a gain of $25 million, compared with a financial loss of $419 million for fiscal year 2003. For fiscal year 2004, the multiemployer program reported a deficit of $236 million, with total assets of $1.070 billion and liabilities of $1.306 billion.[45]

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[42] General Accountability Office, *Private Pensions: Multiemployer Plans Face Short- and Long-Term Challenges* (GAO-04-423), March 2004 (referred to as the "GAO Multiemployer Plan Report").

[43] The PBGC has noted that, compared with data for single-employer plans, the information on multiemployer plans is much less current and complete and is generally two and sometimes three years old.

[44] Information on the status of the PBGC for fiscal year 2003 was obtained from the PBGC 2003 Annual Report.

[45] Information on the status of the PBGC for fiscal year 2004 was obtained from the PBGC 2004 Annual Report.

Total underfunding of multiemployer plans is estimated to exceed $150 billion as of September 30, 2004, and was estimated to be $100 billion at the end of 2003. While most multiemployer plans continue to provide benefits to retirees at unreduced levels, the PBGC has increased its forecast of the number of plans that will likely need financial assistance from 56 plans in 2001 to 62 in 2003. The PBGC estimates that, as of September 30, 2004, it is reasonably possible that multiemployer plans may require future financial assistance in the amount of $108 million (compared to estimates of $63 million as of September 30, 2003, and $127 million as of September 30, 2002).

Table 1, below, summarizes the financial position of the PBGC multiemployer program.

Table 1.–Summary of Financial Position of Multiemployer Program (millions)

	Fiscal year 2003	Fiscal year 2004
Multiemployer program assets	$1,000	$1,070
Multiemployer program liabilities	$1,261	$1,306
Multiemployer program surplus/(deficit)	($261)	($236)

In contrast to the single-employer termination insurance program, under which the PBGC becomes the trustee of underfunded terminated plans and pays benefits directly, in the case of multiemployer plans the PBGC provides financial assistance in the form of loans to insolvent plans that cannot pay guaranteed benefits when due. The GAO reports that the PBGC has made loans rarely−to only 33 multiemployer plans totaling $167 million since 1980, compared with 296 trusteed terminations of single-employer plans and PBGC payments of over $4 billion in 2002-2003 alone.

According to the GAO, private survey data provide corroborating evidence for a decline in funding status of multiemployer plans. The GAO reports that a survey by one actuarial consulting firm shows a decline in the percentage of fully funded client plans from 83 percent in 2001 to 67 percent in 202. The GAO reports that multiemployer plans have continued a steady, long-term decline in numbers and worker participation, with the number of plans dropping by one-quarter since 1980 to less than 1,700 and with only five new plans forming since 1992. The number of workers covered by such plans has fallen by 1.4 million since 1980, with the percent of the private sector labor force covered by such plans declining from 7.7 percent in 1980 to 4.1 percent in 2001.[46]

[46] GAO Multiemployer Plan Report at 3.

B. Discussion of Issues

1. General issues relating to multiemployer plan funding

Many of the issues relating to underfunding of multiemployer plans are similar to the issues that arise with respect to single-employer plans. The core issue is essentially the same--to the extent that promised benefits are not adequately funded, the promises may be illusory and plan participants may not receive the promised level of benefits, thus affecting retirement income security. As is the case with single-employer plans, resolving issues relating to multiemployer plan funding may involve a variety of sometimes competing policy concerns, including both retirement and tax policy issues and the need to balance the rights of plan participants with the concerns of employers. Multiemployer plans also face many of the related challenges as the single-employer defined benefit pension plan system, including a general concern by employers that costs be predictable and manageable, a general trend toward defined contribution plans, and increasing concerns relating to the cost of retiree health benefits, which may compete with pensions for funding.[47]

Due to their distinctive structure and regulatory framework, multiemployer plans also face some unique issues, suggesting that the solutions with respect to such plans should not in all cases mirror those for single-employer pension plans. For example, the level of PBGC guaranteed benefits and PBGC premiums is much lower for multiemployer plans than for single-employer plans. In the case of single-employer plans, to the extent plans are underfunded, other premium payors are likely to bear some of the burden. In the multiemployer context, however, the PBGC guarantee plays a lesser role, so that more of the burden of underfunding is likely to fall on contributing employers with respect to a plan or participants or plan participants, rather than on contributing employers with respect to the system as a whole.

In addition, issues (and possible solutions) relating to multiemployer plans are shaped by the collective bargaining process and the fact that multiemployer plans are trusteed by a joint board including equal numbers of employer and employee representatives. For example, both employers and employees may perceive more direct relationships between increased pension plan contribution levels and wages or other benefits as a result of the bargaining process. In addition, this structure makes it possible for many issues relating to such plans to be resolved jointly among the collective bargaining parties. Thus, some argue that any legislative changes with respect to such plans should facilitate the negotiating process and recognize that an industry-wide, rather than a single-employer based, approach is needed. For example, some have suggested that any legislation should ensure that all parties have adequate information regarding the funding status of the plan in order to facilitate bargaining with respect to the level of required contributions.

[47] See GAO Multiemployer Report at 4.

2. Issues relating to H.R. 2830

In general

H.R. 2830 addresses multiemployer plan funding issues in a number of ways. Some of these changes affect both single-employer and multiemployer plans, while others are targeted specifically at multiemployer plans. A key provision in the bill is that relating to endangered and critical plans. Some issues raised with respect to provisions of the bill are discussed below.

Rules for endangered and critical plans

H.R. 2830 imposes additional rules on multiemployer plans that are in endangered or critical status. Some argue that the present-law rules relating to plan reorganization and insolvency are not triggered until the funded status of the plan is at a level that is too low to allow for recovery. The provisions under the bill relating to endangered and critical status apply in addition to the present-law rules for reorganization and insolvency. The intent of the rules is to require that if a multiemployer plan is funded below certain levels, the bargaining parties must implement a plan which would bring the plans out of the endangered or critical status.

Some question whether the proposed rules require the bargaining parties to take any actions that they could not do themselves under present law, absent the new proposal. However, some believe that providing a statutory framework within which the parties must address funding and solvency issues is of value. Some argue that the implementation of such rules will allow employers and employees more information on the funding status and long-term future of their multiemployer plans. Having such information may provide the parties with a greater incentive to remedy a plan's underfunded status.

Some also question whether the proposal provides sufficient sanctions in the event that the bargaining parties do not adopt a plan to improve the funded status of the plan.

Other provisions

Maximum deductible contributions

The present- and prior-law limits on the maximum deductible contributions for both multiemployer and single-employer plans have been identified by some as a possible contributor to underfunding. These limits are imposed in order to limit the tax benefit associated with tax-qualified plans, and also to limit the potential build up of excess assets, which may then cause increasing pressure to allow access to such assets by employers for non pension purposes.[48] Some argue that these limits may contribute to underfunding by discouraging additional contributions, particularly at times when employers are in a positive cash flow position. On the other hand, some contend that it is unlikely that employers will make additional contributions to multiemployer plans because of the particular structure of such plans. The bill addresses the

[48] For example, if certain requirements are satisfied, present law allows a transfer of excess defined benefit plan assets to pay for retiree health liabilities.

concern that deduction limits impede funding by raising the maximum deductible limits for all defined benefit plans.

Changes to general funding rules for multiemployer plans

The bill also reduces the amortization periods applicable to certain costs under the minimum funding rules for multiemployer plans. These changes may reduce underfunding in some cases.

The bill modifies the rules relating to funding waivers and extensions of amortization periods. The present-law interest rate with respect to such amounts is set by statute at a rate which has been criticized by some as artificially low. This low rate has been viewed as an impediment in allowing some plans to obtain waivers and extensions of amortization periods. The modified rate in the bill is intended to provide a more appropriate interest rate for such amounts. The bill also provides for an automatic wavier of certain amortization periods for five years, with authority for the Secretary of the Treasury to grant an additional waive for up to five more years. Some argue that such extensions contribute to underfunding by slowing down contributions to a plan. On the other hand, it is argued that extensions of amortization periods, like funding waivers, allow employers to temporarily reduce contributions through periods of economic downturn, thus enabling employers to remain in business and maintain the plan.

Measures to forestall insolvency of multiemployer plans

The bill modifies the rule requiring determination of whether the plan will be insolvent to provide that the plan sponsor must determine whether the plan will be insolvent for any of the next five years (rather than three years as under present law). The bill also provides that if the plan sponsor determines that the plan will be insolvent during any of the next five plan years, the required comparison of assets and benefit payments must be made annually.

Many believe that more information should be available to plan participants and contributing employers on the funded status of multiemployer plans. Requiring determinations to be made for additional years in the future and more frequently, will provide greater information to plan participants, contributing employers, the PBGC, and the Secretary of Treasury as notice is required if it is determined that insolvency will result. Earlier determinations may allow plans more time to improve their funded status before reaching the level of insolvency.

Disclosure provisions

The bill modifies the present-law disclosure rules to require that additional information about the funding status of defined benefit pension plans be provided to plan participants. The bill also adds new disclosure requirements under which actuarial and financial information about a multiemployer plan must be available to "interested parties," i.e., participants, employers that are obligated to contribute to the plan, and employee organizations representing plan participants. These additional disclosures reflect concerns that interested parties are sometimes unaware of a plan's funding problems and the resulting risk to employers of increased contributions and to employees of reduced benefits. Although some have raised concerns that additional disclosure requirements may increase the cost of plan administration, they may also enable interested parties to address funding problems before becoming too severe.