

**TECHNICAL EXPLANATION OF  
H.R. 7327, THE  
“WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008,”  
AS PASSED BY THE HOUSE ON DECEMBER 10, 2008**

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a technical explanation of H.R. 7327, the “Worker, Retiree, and Employer Recovery Act of 2008,” as passed by the House of Representatives on December 10, 2008. The bill makes technical corrections to the Pension Protection Act of 2006 (the “Act”),<sup>2</sup> and provides for additional amendments to the Act, the Internal Revenue Code (the “Code”), the Employee Retirement Income Security Act of 1974 (“ERISA”), and the Age Discrimination in Employment Act of 1967 (“ADEA”).

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, “*Technical Explanation of H.R. 7327, the “Worker, Retiree, and Employer Recovery Act of 2008,” as passed by the House on December 10, 2008*” (JCX-85-08), December 11, 2008. This document can also be found on our website at [www.jct.gov](http://www.jct.gov).

<sup>2</sup> Pub. L. No. 109-280.

## **TITLE I – TECHNICAL CORRECTIONS RELATED TO THE PENSION PROTECTION ACT OF 2006**

### **A. Technical Corrections to the Act (secs. 101 through 112 of the bill)**

#### **1. Amendments relating to Title I of the Act: Reform of the Funding Rules for Single-Employer Defined Benefit Pension Plans**

##### **Minimum Funding Standards (Act secs. 101 and 111)**

##### **Prohibition on increases in benefits while a waiver is in effect (ERISA sec. 302(c)(7)(A) and Code sec. 412(c)(7)(A))**

The Act restates the prior-law provision prohibiting plan amendments that increase benefits while a waiver or amortization extension is in effect or if a retroactive amendment was previously made within a certain period. As under prior law, an exception applies for a plan amendment increasing benefits that only repeals a previously made retroactive amendment. The provision provides that the references to retroactive amendments are limited to those that reduced accrued benefits.

##### **Minimum funding standards (ERISA sec. 302(d)(1) and Code sec. 412(d)(1))**

Under the Act, the Secretary of the Treasury must approve a change in a plan's funding method, valuation date, or a plan year. The provision deletes the reference to valuation date because a change in such date is a change in the plan's funding method.

##### **Funding Rules for Single-Employer Defined Benefit Plans (Act secs. 102 and 112)**

##### **Determination of target normal cost (ERISA sec. 303(b), (i) and Code sec. 430(b), (i))**

The Act defines the term "target normal cost" for a plan year as the present value of all benefits which are expected to accrue or be earned under the plan during the plan year. The provision clarifies that a plan's target normal cost is increased by the amount of plan-related expenses expected to be paid from plan assets during the plan year, and is decreased by the amount of mandatory employee contributions expected to be made to the plan during the plan year. This clarification is effective for plan years beginning after December 31, 2008, and is elective for the preceding plan year.

##### **Determination of at-risk status (ERISA sec. 303(i)(4)(B) and Code sec. 430(i)(4)(B))**

Under the Act, the 80-percent and 70-percent prongs of the at-risk status definition are based on funded status for the preceding plan year. The Act provides that determination of the 70-percent prong for 2008 may be determined using methods of estimation provided by the Secretary of Treasury. The provision applies this rule also for purposes of the 80-percent prong (as phased in under the Act).

### **Quarterly contributions (ERISA sec. 303(j)(3)) and Code sec. 430(j)(3))**

Under the Act, quarterly contributions are required if a plan has a funding shortfall for the preceding year. The provision includes a transition rule for the 2008 plan year; under this rule, in the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary of the Treasury may provide.

The quarterly installment rules require a higher rate of interest to be charged on required contributions. Small plans are permitted to use a valuation date other than the first day of the plan year. The provision provides that the Secretary of the Treasury is to prescribe rules relating to interest charges and credits in the case of a plan with a valuation date other than the first day of the plan year.

### **Benefit Limitations under Single-Employer Plans (Act secs. 103 and 113)**

#### **Definition of prohibited payment (ERISA sec. 206(g)(3)(E) and Code sec. 436(d)(5))**

The Act provides that certain underfunded plans may not make prohibited payments, which include accelerated forms of distribution such as lump sums. Present law provides that if the present value of a participant's vested benefit exceeds \$5,000,<sup>3</sup> the benefit may not be distributed without the participant's consent. If the vested benefit is less than or equal to this amount, the consent requirement does not apply. The provision provides that the payment of benefits that may be immediately distributed without the consent of the participant is not a prohibited payment.

#### **Small plans (ERISA sec. 206(g)(10) and Code sec. 436(k))**

The benefit restriction provisions are based upon a plan's adjusted funding target attainment percentage as of the first day of the plan year. This presents issues for small plans, which are allowed to designate any day of the plan year as their valuation date, because a plan's adjusted funding target attainment percentage cannot be determined until the valuation date. The provision provides that the Secretary of the Treasury may prescribe rules for the application of the benefit restrictions which are necessary to reflect the alternate valuation date.

#### **Notice requirement (Act sec. 103(b) and ERISA sec. 101(j))**

The provision provides that the Secretary of the Treasury, in consultation with the Secretary of Labor, has the authority to prescribe rules applicable to the notice of funding-based limitations on distributions required under section 101(j) of ERISA as added by the Act.

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<sup>3</sup> The portion of a participant's benefit that is attributable to amounts rolled over from another plan may be disregarded in determining the present value of the participant's vested benefit.

### **Definition of single employer plan (Code sec. 436(l))**

The Act provides rules under ERISA and the Code that limit the benefits and benefit accruals that can be provided under a single employer plan, depending on the funding level of the plan. The provision adds a definition of the term “single employer plan” for purposes of the limitations in the Code.

### **Technical and Conforming Amendments** **(Act secs. 107 and 114)**

The Act provides for technical and conforming amendments to reflect the new funding rules. The provision provides that the effective date for the amendments to the excise tax on a failure to satisfy the funding rules is taxable years beginning after 2007 and, for the other technical and conforming amendments, plan years beginning after 2007.

### **Restrictions on Funding of Nonqualified Deferred Compensation Plans by Employers Maintaining Underfunded or Terminated Single-Employer Plans** **(Act sec. 116 and Code sec. 409A(b)(3)(A)(ii))**

The Act provides that if, during any restricted period in which a defined benefit pension plan of an employer is in at-risk status, assets are set aside (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation of an applicable covered employee, such assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under Code section 83.

The Act further provides that if a nonqualified deferred compensation plan of an employer provides that assets will be restricted to the provision of benefits under the plan in connection with a restricted period (or other similar financial measure as determined by the Secretary of the Treasury) of any defined benefit pension plan of the employer, or assets are so restricted, such assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under Code section 83. The provision provides that this rule applies with respect to assets that are restricted under the plan with respect to a covered employee.

## **2. Amendments relating to Title II of the Act: Funding Rules for Multiemployer Defined Benefit Plans**

### **Funding Rules for Multiemployer Defined Benefit Plans** **(Act secs. 201 and 211)**

#### **Shortfall funding method (Act sec. 201(b))**

The Act provides that a multiemployer plan meeting certain criteria may adopt, use or cease using the shortfall funding method and such adoption, use, or cessation of use is deemed to be approved by the Secretary of the Treasury. One of the criteria is that “the plan has not used the shortfall funding method during the 5-year period ending on the day before the date the plan

is to use the method” under the Act. The provision changes this so that the criterion is that “the plan has not adopted or ceased using the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method” under the Act.

**Funding Rules for Multiemployer Plans in Endangered or Critical Status**  
**(Act secs. 202 and 212)**

**Notice requirements (ERISA secs. 305(b)(3)(D), 305(e)(8)(C), and Code secs. 432(b)(3)(D), 432(e)(8)(C))**

The Act requires the plan sponsor of a multiemployer plan to distribute a notice if the plan is in endangered or critical status and if the plan is required to make reductions to adjustable benefits. The provision clarifies that the Secretary of the Treasury, in consultation with the Secretary of Labor, shall provide guidance with respect to the plan sponsor’s notice obligations.

**Implementation and enforcement of default schedule (ERISA secs. 305(c)(7), 305(e)(3)(C), and Code secs. 432(c)(7), 432(e)(3)(C))**

Under the Act, a default schedule applies if a funding improvement plan or rehabilitation plan is not timely adopted. The provision removes the rule that provides that the default schedule is implemented upon the date on which the Department of Labor certifies that the parties are at impasse. Thus, under the provisions, the plan trustees are required to implement the default schedule within 180 days of the expiration date of the collective bargaining agreement. In addition, the provision clarifies that any failure to make a default schedule contribution is enforceable under sec. 515 of ERISA.

**Restriction on payment of lump sums while plan is in critical status (ERISA sec. 305(f)(2)(A) and Code sec. 432(F)(2)(A))**

Under the Act, the payment of accelerated forms of payment, including lump sums, while a plan is in critical status is restricted. Under the provision, the restriction on payment of accelerated forms of payment applies only to participants whose benefit commencement date is after notice of the plan’s critical status is provided. This change conforms the rule for multiemployer plans to the rule applicable to single-employer plans.

**Definition of plan sponsor (Code sec. 432(i)(9))**

The funding rules for multiemployer plans and the excise tax rules that apply in the event of a failure to comply with the funding rules refer to the term “plan sponsor.” This term is not defined in the Code. The provision adds a definition to the Code that conforms with the applicable ERISA definition.

**Excise tax on trustees for failure to adopt a timely rehabilitation plan (Code sec. 4971(g)(4))**

The Act imposes an excise tax on the sponsor of a multiemployer plan in the event of a failure to timely adopt a rehabilitation plan. Under the Act, the plan sponsor has a 240 day period in which it must adopt a plan. The excise tax for failure to timely adopt is based on the beginning of this 240 day period, rather than the end of the period. The provision revises the



calculation of the excise tax so that it applies to the period beginning on the due date for adoption of the rehabilitation plan.

### **Effective date of excise tax provisions (Act sec. 212(e))**

The Act provides that the excise tax provisions relating to a failure to satisfy the multiemployer plan funding rules are effective with respect to plan years beginning after 2007. The provision clarifies that the excise tax provisions are effective with respect to taxable years beginning after 2007.

## **3. Amendments relating to Title III of the Act: Interest Rate Provisions**

### **Extension of Replacement of 30-Year Treasury Rates (Act sec. 301)**

The Pension Funding Equity Act of 2004 provided for a temporary interest rate. The Pension Funding Equity Act of 2004 also provided that, if certain requirements were satisfied, plan amendments to reflect such interest rate did not need to be made before the last day of the first plan year beginning on or after January 1, 2006. The Act extended the temporary interest rate through 2007 and also extended the required amendment date by changing “January 1, 2006” to “January 1, 2008.” The provision further extends the required amendment date to conform generally to the amendment period permitted under the Act.

### **Interest Rate Assumption for Determination of Lump Sum Distributions (Act sec. 302 and Code sec. 415(b)(2)(E))**

The Act amended the interest and mortality table used in calculating the minimum value of certain optional forms of benefit, such as lump sums. The provision clarifies that the mortality table required to be used in calculating the minimum value of optional forms of benefit is also used in adjusting benefits and limits for purposes of applying the Code section 415 limitation on benefits that may be provided under a defined benefit plan. This clarification of the required mortality table is effective for years beginning after December 31, 2008. However, a plan may elect to use the new mortality table for years beginning after December 31, 2007, and before January 1, 2009, or for any portion of such a year.

## **4. Amendments relating to Title IV of the Act: PBGC Guarantee and Related Provisions**

### **Missing Participants (Act sec. 410)**

#### **Plans covered by missing participant program (ERISA sec. 4050(d))**

The Act extended the prior-law missing participant program to terminating multiemployer plans and to certain plans not subject to the termination insurance program of the Pension Benefit Guaranty Corporation (“PBGC”). Under the provision, the missing participant program applies to plans that have at no time provided for employer contributions. In addition, the provision limits the program to qualified plans.

## **5. Amendments relating to Title V of the Act: Disclosure**

### **Defined Benefit Plan Funding Notice and Disclosure of Withdrawal Liability** **(Act sec. 501 and ERISA sec. 101(f))**

Under the Act, the administrator of a single employer or a multiemployer defined benefit plan must provide an annual plan funding notice (section 101(f) of ERISA). The provision conforms the measurement dates of several of the items that must be included in the notice and also conforms the information that must be provided by the administrator of a multiemployer plan with respect to the assets and liabilities of the plan to the information that must be provided by the administrator of a single employer plan.

### **Access to Multiemployer Pension Plan Information** **(Act sec. 502 and ERISA secs. 101(k), 101(l), and 4221(e))**

Under the Act, the administrator of a multiemployer plan is required to provide participants and employers copies of certain financial reports prepared by an investment manager, advisor or other fiduciary, upon request (section 101(k) of ERISA). However, the administrator is prohibited from disclosing “any individually identifiable information regarding any plan participant, beneficiary, employee, fiduciary, or contributing employer.” The provision clarifies that this prohibition does not prevent the plan from disclosing the identities of the investment managers or advisors, or any other person preparing a financial report (other than an employee of the plan), whose performance is being reported on or evaluated.

Under the Act, the plan sponsor or administrator of a multiemployer plan must provide upon an employer’s request certain information regarding the employer’s withdrawal liability with respect to the plan (section 101(l) of ERISA). The provision repeals section 4221(e) of ERISA, which also requires the disclosure upon an employer’s request information relating to the employer’s withdrawal liability.

### **Disclosure of Termination Information to Plan Participants** **(Act sec. 506 and ERISA secs. 4041 and 4042)**

In the case of an involuntary termination of a plan, the Act requires the plan sponsor (or administrator) and the PBGC to disclose certain information to affected parties, and special rules apply with respect to the disclosure of confidential information by the plan sponsor (or administrator). Under the provision, these special rules relating to the disclosure of confidential information also apply to the PBGC.

Under the Act, the plan administrator must provide affected parties with certain information that it has provided to the PBGC. The provision clarifies that this information includes information that the plan administrator is required to disclose to the PBGC at the time the written notice of intent to terminate is given as well as information the plan administrator is required to disclose to the PBGC after the notice of intent to terminate is given.

**Periodic Pension Benefit Statements**  
**(Act sec. 508 and ERISA sec. 209(a))**

The Act revises the rules that apply under ERISA with respect to a plan administrator's obligation to provide periodic information relating to a participant's accrued benefits under a plan (section 105 of ERISA). The provision makes conforming changes to section 209 of ERISA, which also imposes recordkeeping and reporting obligations with respect to participant benefits.

**Notice to Participants or Beneficiaries of Blackout Periods**  
**(Act sec. 509 and ERISA sec. 101(i)(8)(B))**

The Sarbanes-Oxley Act of 2002 amended ERISA to require that participants and beneficiaries of an individual account plan be provided advance notice of a blackout period during which certain plan operations, such as the ability to make investment changes, will be restricted. The notice requirement does not apply to one-participant plans. The Act amended the definition of one-participant plan to conform to Department of Labor regulations. The Act, however, did not provide complete conformity with those regulations. The provision amends the Act so that the definition of one-participant plan for purposes of the notice is in conformity with Department of Labor regulations. Under the provision, a one-participant plan means a retirement plan that on the first day of the plan year: (1) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or (2) covered only one or more partners (or partners and their spouses) in the plan sponsor. Thus, under the provision, plans that are not subject to title I of ERISA are not subject to the blackout notice provisions.<sup>4</sup>

**6. Amendments relating to Title VI of the Act: Investment Advice, Prohibited Transactions, and Fiduciary Rules**

**Prohibited Transaction Rules Relating to Financial Investments**  
**(Act sec. 611, ERISA sec. 408(b)(18)(C), and Code sec. 4975(d)(21)(C))**

Under the Act, an exemption from the prohibited transaction rules of the Code and ERISA applies in the case of foreign exchange transactions between a plan and a bank or broker-dealer if certain requirements are met. Included in the Act is a requirement that the exchange rate used by the bank or broker-dealer for a particular transaction cannot deviate by more or less than three percent from the interbank bid and asked rates for transactions of comparable size and maturity. Under the provision, the exchange rate cannot deviate by more than three percent.

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<sup>4</sup> This provision is effective as if included in the Sarbanes-Oxley Act.

## **7. Amendments relating to Title VII of the Act: Benefit Accrual Standards**

### **Benefit Accrual Standards** **(Act sec. 701)**

#### **Preservation of capital (ERISA sec. 204(b)(5)(B)(i)(II) and Code sec. 411(b)(5)(B)(i)(II))**

The Act prohibits an applicable defined benefit plan account balance from being reduced below the aggregate amount of contributions. Under the provision, failure to comply with this rule is treated as a violation of the age discrimination rules under ERISA or the Code, as applicable.

#### **Application of present-value rules (ERISA sec. 203(f)(1)(B) and Code sec. 411(a)(13)(A)(ii))**

The Act permits an applicable defined benefit plan to distribute a participant's accrued benefit under the plan in an amount equal to the participant's hypothetical account balance under the plan without violating the present-value rules of ERISA section 205(g) and Code section 417(e). ERISA section 203(e) and Code section 411(a)(11), which allow automatic cash-outs of amounts not exceeding \$5,000, apply the section 205(g) and section 417(e) present-value rules by cross-reference. The provision adds cross-references to apply the new ERISA and Code provisions for purposes of ERISA section 203(e) and Code section 411(a)(11).

#### **Effective date (Act sec. 701(e))**

The general effective date under Act section 701(e)(1) is periods beginning on or after June 29, 2005, and special effective dates are provided for certain provisions. The provision provides that the vesting provisions under Act section 701 are effective on the basis of plan years and that the vesting provisions apply with respect to participants with an hour of service after the applicable effective date for a plan.

The Act established interest credit requirements for applicable defined benefit plans, which, under the general effective date, would apply to periods beginning on or after June 29, 2005. Act section 701(e)(3) provides that, in the case of a plan in existence on June 29, 2005, the new interest credit rules apply to years beginning after December 31, 2007, unless the employer elects to apply them for any period beginning after June 29, 2005, and before the rules would otherwise apply. The provision changes this rule so that it refers to any period beginning "on or after" June 29, 2005.

The Act established rules with respect to a conversion of a plan into an applicable defined benefit plan. Act section 701(e)(5) provides that these rules are applicable to plan amendments adopted after, and taking effect after, June 29, 2005. Similarly, ERISA section 204(b)(5)(B)(ii) and Code section 411(b)(5)(B)(ii) apply the conversion rules to conversion amendments adopted after June 29, 2005. The provision clarifies that the effective date for the conversion rules is on or after June 29, 2005.

The Act establishes a special effective date for the vesting and interest crediting requirements for applicable defined benefit plans in the case of a collectively bargained plan. The provision clarifies that these rules do not apply to plan years beginning before the earlier of:

- (1) the later of the termination of the collective bargaining agreement or January 1, 2008, or
- (2) January 1, 2010.

## **8. Amendments relating to Title VIII of the Act: Pension Related Revenue Provisions**

### **Deduction Limitations** **(Act secs. 801 and 803)**

#### **Increase in deduction limit for single-employer plans (Act sec. 801 and Code sec. 404)**

If an employer sponsors one or more defined benefit plans and one or more defined contribution plans that cover at least one of the same employees, an overall deduction limitation applies to the total contributions to all plans for a plan year. The overall deduction limit is generally the greater of (1) 25 percent of compensation or (2) the amount necessary to meet the minimum funding requirement of the defined benefit plan for the plan year. Under the Act, in the case of a single-employer plan not covered by the PBGC, the combined plan limit is not less than the plan's funding shortfall as determined under the funding rules. Under the provision, in the case of a single-employer plan not covered by the PBGC, the combined plan limit is not less than the excess (if any) of the plan's funding target over the value of the plan's assets.

#### **Updating deduction rules for combination of plans (Act sec. 803 and Code sec. 404(a)(7))**

If an employer sponsors one or more defined benefit plans and one or more defined contribution plans that cover at least one of the same employees, an overall deduction limitation applies to the total contributions to all plans for a plan year. The overall deduction limit is generally the greater of (1) 25 percent of compensation or (2) the amount necessary to meet the minimum funding requirement of the defined benefit plan for the plan year. The Act provides that the overall deduction limit applies to contributions to one or more defined contribution plans only to the extent that such contributions exceed six percent of compensation. IRS guidance (Notice 2007-28, 2007-14 I.R.B. 880) takes the position that if defined contribution plan contributions are less than six percent of compensation, contributions to the defined benefit plan are still subject to limitation of the greater of 25 percent of compensation or the minimum required contribution. The provision provides that if defined contributions are less than six percent of compensation, the defined benefit plan is not subject to the overall deduction limit. If defined contributions exceed six percent of compensation, only defined contributions in excess of six percent are counted toward the overall deduction limit.

### **Improvements in Portability, Distributions, and Contribution Rules** **(Act secs. 824 and 829)**

#### **Allow direct rollovers from retirement plans to Roth IRAs (Act sec. 824 and Code sec. 408A(c)(3)(B), (d)(3)(B))**

The Act permits distributions from tax-qualified retirement plans, tax-sheltered annuities, and governmental 457 plans to be rolled over directly from such plan into a Roth IRA, subject to certain conditions. Such conditions include recognition of the distribution in gross income (except to the extent it represents a return of after-tax contributions) and phase-out of the ability to perform such a rollover pursuant to the distributee's adjusted gross income. The provision

provides that a rollover from a Roth designated account in a tax-qualified retirement plan or tax-sheltered annuity (described in section 402A of the Code) to a Roth IRA is not subject to the gross income inclusion and adjusted gross income conditions.

**Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions (Act sec. 829 and Code sec. 402(c)(11), (f)(2)(A))**

The Act permits rollovers of benefits of nonspouse beneficiaries from qualified plans and similar arrangements. The provision clarifies that the current law treatment with respect to a trustee-to-trustee transfer from an inherited IRA to another inherited IRA continues to apply. Under the provision, effective for plan years beginning after December 31, 2009, rollovers by nonspouse beneficiaries are generally subject to the same rules as other eligible rollovers.

**Health and Medical Benefits  
(Act secs. 841 and 845)**

**Use of excess pension assets for future retiree health benefits and collectively bargained retiree health benefits (Act sec. 841 and Code sec. 420)**

In the case of a section 420 transfer, present law requires the funded status of the defined benefit plan to be maintained by employer contributions or asset transfers from the health accounts. Under the provision, asset transfers from the health accounts to maintain the plan's funded status are not subject to the excise tax on reversions.

The provision also allows assets transferred to a health benefits account in a qualified section 420 transfer to be used to pay health liabilities in excess of current-year retiree health liabilities. In the case of a qualified future transfer, assets may be used to pay qualified current retiree health liabilities which the plan reasonably estimates will be incurred. In the case of a collectively bargained transfer, assets may be used to pay collectively bargained retiree health liabilities.

**Distributions from governmental retirement plans for health and long-term care insurance for public safety officers (Act sec. 845 and Code sec. 402(l))**

The Act provides an exclusion from gross income for up to \$3,000 annually for certain pension distributions used to pay for qualified health insurance premiums. Under IRS Notice 2007-7,<sup>5</sup> Q&A 23, the exclusion applies only to insurance issued by an insurance company regulated by a State (including a managed care organization that is treated as issuing insurance) and thus does not apply to self-insured plans. Under the provision, the exclusion applies to coverage under an accident or health plan (rather than accident or health insurance). That is, the exclusion applies to self-insured plans as well as to insurance issued by an insurance company.

Under the provision, when determining the portion of a distribution that would otherwise be includible in income, the otherwise includible amount is determined as if all amounts to the

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<sup>5</sup> 2007-5 I.R.B. 395.

credit of the eligible public safety officer in all eligible retirement plans were distributed during the taxable year. The provision also clarifies that the income exclusion only applies with respect to distributions from the plan (or plans) maintained by the employer from which the individual retired as a public safety officer.

**United States Tax Court Modernization**  
**(Act secs. 854 and 856)**

**Annuities to surviving spouses and dependent children of special trial judges**  
**(Act sec. 854, Code sec. 3121(b)(5)(E), and Social Security Act sec. 210(a)(5)(E))**

Under the Act, participation in the survivor annuity program for survivors of judges of the United States Tax Court is extended to special trial judges of the United States Tax Court, and conforming changes are made to various provisions of the Code. One of the conforming changes is to specify that employment for purposes of the Federal Insurance Contributions Act (“FICA”) includes service performed as a special trial judge of the United States Tax Court. Under the provision, this conforming amendment is repealed. Thus, the provision provides that employment as a special trial judge of the United States Tax Court is covered employment for purposes of FICA under the rules that otherwise apply to Federal employees.

**Provisions for recall (Act sec. 856 and Code Sec. 7443B)**

The Act provides for rules regarding the temporary recall to judicial duties of retired special trial judges of the United States Tax Court and the compensation of such judges during the period of recall. The provision repeals these rules.

**9. Amendments relating to Title IX of the Act: Increase in Pension Plan Diversification and Participation and Other Pension Provisions**

**Defined Contribution Plans Required to Provide Employees with Freedom to Invest Their Plan Assets (Act sec. 901 and Code sec. 401(a)(35)(E))**

Under the Act, the diversification requirements do not apply with respect to a one-participant retirement plan. The provision conforms the Code’s definition of the term “one-participant retirement plan” to the definition of the term under ERISA.

**Increasing Participation through Automatic Contribution Arrangements**  
**(Act sec. 902 and Code sec. 414(w))**

The Act provides rules permitting an employee to withdraw certain amounts (referred to as “permissible withdrawals”) in the case of an eligible automatic contribution arrangement under an applicable employer plan. The provision repeals the requirement that an eligible automatic contribution arrangement satisfy, in the absence of a participant investment election, the requirements of ERISA section 404(c)(5) (which generally authorizes the Secretary of Labor to issue regulations under which a participant is treated as exercising control over the assets in the participant’s account under a plan with respect to default investments). The provision also extends the permissible withdrawal rules to SIMPLE IRAs (Code sec. 408(p)) and SARSEPs (Code sec. 408(k)(6)). The provision also provides that a permissive withdrawal is disregarded

for purposes of applying the annual limitation on elective deferrals that applies to a taxpayer under Code section 402(g)(1).

The Act also provides that, in the case of a distribution of an excess contribution and income allocable to such contribution in order to satisfy the rules relating to a qualified cash or deferral arrangement under Code section 401(k) (or the similar distribution rules under Code section 401(m) in the case of excess aggregate contributions relating to matching contributions or employee contributions), the income that must be distributed is the income allocable to the excess contribution (or excess aggregate contribution) through the end of the year for which the distribution is made. The provision applies this limit on the amount of income that must be distributed to the rules that apply to the distribution of excess deferrals and allocable income under Code section 402(g).

**Treatment of Eligible Combined Defined Benefit Plans and  
Qualified Cash or Deferred Arrangements  
(Act sec. 903, Code sec. 414(x)(1), and ERISA sec. 210(e))**

Under the Act, a qualified employer may establish a combined plan that consists of a defined benefit plan and a qualified cash or deferral arrangement described in Code section 401(k), provided that certain requirements are satisfied. The Act also provides that the rules of ERISA are applied to the defined benefit component and the individual account component of a combined plan in the same manner as if each component were not part of the combined plan. Thus, for example, the defined benefit component of the combined plan may be subject to the insurance program in Title IV of ERISA, while the individual account component is not. The provision provides that in the case of a termination of a combined plan, the individual account and defined benefit components must be terminated separately.

**10. Amendments relating to Title X of the Act: Spousal Pension Protection Provisions**

**Extension of Tier II Railroad Retirement Benefits to Surviving Former Spouses  
(Act sec. 1003)**

The Act provides rules relating to the survivor benefits payable under the Railroad Retirement Act. The provision clarifies that a former spouse has an independent entitlement to immediate commencement of benefits if three conditions are satisfied. First, the employee must have completed 10 years of service in the railroad industry (or five years of service after December 31, 1995); second, the spouse or former spouse must have attained age 62; and third, the employee must have attained age 62. In addition, the provision provides that a former spouse's Tier II benefits under the Railroad Retirement Act continue after the death of the employee. The provision is effective for payments due for months after August, 2007.

**11. Amendments relating to Title XI of the Act: Administrative Provisions**

**No Reduction in Unemployment Compensation as a Result of Pension Rollovers  
(Act sec. 1105)**

Under present law, unemployment compensation payable by a State to an individual generally is reduced by the amount of retirement benefits received by the individual. Under the



Act, rollover contributions are not included in retirement payments for which States are required to reduce unemployment compensation under Federal law, however, States are not prohibited from reducing unemployment compensation by such rollover contributions. Under the provision, unemployment compensation payable by a State to an individual may not be reduced by the amount of a rollover contribution.

## **B. Other Provisions**

### **1. Amendments Related to Sections 102 and 112 of the Pension Protection Act of 2006 (sec. 121 of the bill and sec. 430(g)(3)(B) of the Code)**

#### **Present Law**

In the case of a single-employer defined benefit pension plan, the Act provides new rules for determining minimum required contributions that must be made to fund the plan.<sup>6</sup> In general, the minimum required contribution to a single-employer defined benefit pension plan for a plan year depends on a comparison of the value of the plan's assets as of the beginning of the plan year with the plan's funding target and the plan's target normal cost.<sup>7</sup> The plan's funding target for a plan year is the present value of all benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is the present value of benefits expected to accrue or be earned during the plan year. In general, a plan has a funding shortfall for a plan year if the plan's funding target for the year exceeds the value of the plan's assets. In such a case, the minimum required contribution for the plan year generally is equal to the sum of the plan's target normal cost for the year and a portion of the funding shortfall for that year and prior plan years.<sup>8</sup>

Under the Act's minimum funding rules, the value of plan assets generally is the fair market value of the assets. However, the value of plan assets may be determined on the basis of the averaging of fair market values, but only if such method: (1) is permitted under regulations; (2) does not provide for averaging of fair market values over more than the period beginning on the last day of the 25th month preceding the month in which the plan's valuation date occurs and ending on the valuation date; and (3) does not result in a determination of the value of plan assets that at any time is less than 90 percent or more than 110 percent of the fair market value of the assets at that time. The Act's rules also provide that any averaging must be adjusted for contributions to the plan and distributions to participants as provided by the Secretary of the Treasury.

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<sup>6</sup> The Code and ERISA contain parallel minimum funding rules.

<sup>7</sup> A plan with 100 or fewer participants is permitted to designate any day during the plan year as its valuation date for purposes of the minimum funding rules.

<sup>8</sup> A shortfall amortization base is generally established for each year for which a plan has a funding shortfall, and each base is amortized over a seven-year period. The base is generally comprised of the funding shortfall for that year, less the present value of shortfall amortization installments that apply to the current year and succeeding years on account of prior-year shortfall amortization bases. The aggregate of the shortfall amortization installments for the current plan year is referred to as the shortfall amortization charge, and this charge is added to the plan's target normal cost in determining the minimum required contribution.

Proposed regulations have been issued that permit the value of plan assets to be determined on the basis of averaging.<sup>9</sup> Under the proposed regulations, the average value of plan assets generally is increased for contributions that are included in the last valuation date during the averaging period but that were not included in the prior valuation dates during the averaging period. Similarly, the average value generally is decreased for distributions included in the last valuation date during the averaging period but that were not included in the prior valuation dates during the averaging period.

### **Explanation of Provision**

The provision provides that, in determining the value of a plan's assets under the averaging method, such averaging will be adjusted for expected earnings as specified by the Secretary of the Treasury. Such an adjustment is in addition to the present law adjustments for contributions and distributions. Expected earnings are to be determined by a plan's actuary on the basis of an assumed earnings rate for the plan that is specified by the actuary. The assumed earnings rate specified by the actuary cannot exceed the applicable third segment rate.<sup>10</sup>

### **Effective Date**

The provision is effective as if included in the Act.

## **2. Modification of interest rate assumption required with respect to certain small employer plans (sec. 122 of the bill and sec. 415(b)(2)(E) of the Code)**

### **Present Law**

Annual benefits payable under a defined benefit pension plan generally may not exceed the lesser of (1) 100 percent of average compensation, or (2) \$185,000 (for 2008).<sup>11</sup> The dollar limit generally applies to a benefit payable in the form of a straight life annuity. If the benefit is not in the form of a straight life annuity (e.g., a lump sum), the benefit generally is adjusted to an equivalent straight life annuity. For purposes of adjusting a benefit in a form that is subject to the minimum value rules, such as a lump-sum benefit, the interest rate used generally must be not less than the greater of: (1) 5.5 percent; (2) the rate that provides a benefit of not more than

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<sup>9</sup> 72 F.R. 74215 (December 31, 2007).

<sup>10</sup> The minimum funding rules specify the interest rates that must be used in determining a plan's target normal cost and funding target. Under the rules, present value generally is determined using three interest rates, each of which applies to benefit payments expected to be made from the plan during a certain period. The third segment rate applies to benefits reasonably determined to be payable after the end of the 20-year period that applies to the first and second segment rates. Each segment rate is a single interest rate determined by the Secretary of the Treasury on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period. The yield curve used by the Secretary is based on yields on investment grade corporate bonds that are in the top three quality levels available.

<sup>11</sup> Sec. 415(b)(1).

105 percent of the benefit that would be provided if the rate (or rates) applicable in determining minimum lump sums were used; or (3) the interest rate specified in the plan.

### **Explanation of Provision**

Under the provision, in the case of a plan maintained by an eligible employer, the interest rate used in adjusting a benefit in a form that is subject to the minimum value rules generally must be not less than the greater of: (1) 5.5 percent; or (2) the interest rate specified in the plan. The term eligible employer is defined in the same manner as under section 408(p) (describing an employer which is eligible to sponsor a SIMPLE plan).<sup>12</sup> Thus, for any year, the term means an employer which had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year. An eligible employer who maintains a defined benefit pension plan for one or more years and who fails to be an eligible employer in a subsequent year is treated as an eligible employer for the two years following the last year the employer was an eligible employer (provided that the reason for failure to qualify is not due to an acquisition, disposition, or similar transaction involving the eligible employer).

### **Effective Date**

The provision is effective for years beginning after December 31, 2008.

### **3. Determination of market rate of return for governmental plans (sec. 123 of the bill and sec. 4(i) of ADEA)**

#### **Present Law**

The Act amended the Code, ERISA, and ADEA, to provide for parallel age discrimination rules in the case of an applicable defined benefit plan. Included among the rules is a requirement relating to interest credits provided under such a plan. Under the Act, an applicable defined benefit plan is a defined benefit pension plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation. The Act also provides that the Secretary of the Treasury is to provide rules which include in the definition of an applicable defined benefit plan any defined benefit plan (or portion of such a plan) which has an effect similar to an applicable defined benefit plan.

Under the parallel Code, ERISA, and ADEA rules, an applicable defined benefit plan satisfies the interest credit requirement if the terms of the plan provide that any interest credit (or equivalent amount) for any plan year is at a rate that is not greater than a market rate of return. The Act also provides that an interest rate (or equivalent amount) of less than zero shall in no event result in a hypothetical account balance or similar amount being less than the aggregate amount of hypothetical contributions credited to the account. The Act provides that the Secretary of the Treasury may provide rules governing the calculation of a market rate of return and for permissible methods of crediting interest to the account (including fixed or variable interest

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<sup>12</sup> Sec. 408(p)(1)(D).

rates) resulting in effective rates of return that meet the requirements of the provision. The Code and ERISA rules do not apply in the case of an applicable defined benefit plan that is a governmental plan. A governmental plan is generally defined for this purpose as a plan that is established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.<sup>13</sup>

In the case of a plan in existence on June 29, 2005, the interest credit requirements for an applicable defined benefit plan generally apply to years beginning after December 31, 2007. In the case of a plan maintained pursuant to one or more collective bargaining agreements, a delayed effective date applies.

### **Explanation of Provision**

Under the provision, ADEA is amended to provide that, in the case of a governmental plan, a rate of return or method of crediting interest that is established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) is generally treated as a market rate of return and as a permissible method of crediting interest for purposes of the Act's interest credit requirement.<sup>14</sup> This special treatment does not apply, however, if the rate of return or method of crediting interest violates another requirement of ADEA (other than the interest credit requirement).

### **Effective Date**

The provision is effective as if included in the Act.

## **4. Treatment of certain reimbursements from governmental plans for medical care (sec. 124 of the bill and sec. 105 of the Code)**

### **Present Law**

The gross income of an employee generally does not include employer-provided coverage under an accident or health plan. With respect to amounts received under such a plan, section 105(a) provides that such amounts are includible in gross income to the extent (1) such amounts are attributable to contributions by the employer which were not includible in the gross

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<sup>13</sup> Sec. 414(d). The definition of governmental plan in section 414(d) has three provisions. The first provision includes any plan that is established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing. The second provision relates to certain Railroad Retirement Act plans and plans of international organizations. The third provision relates to any plan maintained by an Indian tribal government or political subdivision thereof, or by an agency or instrumentality of any of an Indian tribal government.

<sup>14</sup> The definition of governmental plan for purposes of this provision only includes a plan that is established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing.

income of the employee, or (2) are paid by the employer. Notwithstanding this general inclusion rule, section 105(b) provides that gross income does not include amounts received if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for medical care expenses of the taxpayer, the taxpayer's spouse, or the taxpayer's dependents.<sup>15</sup>

In Revenue Ruling 2006-36,<sup>16</sup> the Internal Revenue Service held that amounts paid to an employee under a medical expense reimbursement plan are not excludible from an employee's gross income if the plan permits amounts to be paid as medical benefits to a designated beneficiary, other than the employee's spouse or dependents. Thus, under the ruling, none of the amounts paid by such a plan to any person, including reimbursements of medical expenses of the employee, the employee's spouse, or the employee's dependents, are excludible.

### **Explanation of Provision**

The provision provides that, for purposes of section 105(b), amounts paid (directly or indirectly) to a taxpayer from a specified health plan shall not fail to be excluded from gross income solely because the plan provides for reimbursements of health care expenses of a deceased plan participant's beneficiary. In order for the provision to apply, the plan must have provided for reimbursement of a deceased participant's beneficiary on or before January 1, 2008. A specified plan is an accident or health plan that is funded by a medical trust that is established in connection with a public retirement system if such trust (1) has been authorized by a State legislature; or (2) has received a favorable ruling from the Internal Revenue Service that the trust's income is not includible in gross income under section 115 (providing an exclusion from gross income for States and their political subdivisions).

### **Effective Date**

The provision is effective with respect to payments made before, on, or after enactment.

## **5. Rollover of amounts received in airline carrier bankruptcy to Roth IRAs (sec. 125 of the bill)**

### **Present Law**

The Code provides for two types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs.<sup>17</sup> In general, contributions (other than a rollover contribution) to a traditional IRA may be deductible, and distributions from a traditional IRA are includible in gross income to the extent not attributable to a return of nondeductible contributions. In contrast,

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<sup>15</sup> As defined in section 152, but determined without regard to sections (b)(1), (b)(2), and (d)(1)(B).

<sup>16</sup> 2006-2 C.B. 353. The ruling is effective for plan years beginning after December 31, 2008, in the case of plans including certain reimbursement provisions on or before August 14, 2006.

<sup>17</sup> Traditional IRAs are described in section 408, and Roth IRAs are described in section 408A.

contributions to a Roth IRA are not deductible, and qualified distributions from a Roth IRA are excludable from gross income. Distributions from a Roth IRA that are not qualified distributions are includible in gross income to the extent attributable to earnings. In general, a qualified distribution is a distribution that is made on or after the individual attains age 59-½, death, or disability or which is a qualified special purpose distribution.

The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount (\$5,000 for 2008); or (2) the amount of the individual's compensation that is includible in gross income for the year. As under the rules relating to traditional IRAs, a contribution of up to the dollar limit for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for taxpayers with adjusted gross income for the taxable year over certain indexed levels. The adjusted gross income phase-out ranges for 2008 are: (1) for single taxpayers, \$101,000 to \$116,000; (2) for married taxpayers filing joint returns, \$159,000 to \$169,000; and (3) for married taxpayers filing separate returns, \$0 to \$10,000.

The foregoing contribution limitations for IRAs do not apply in the case of a rollover contribution to an IRA. If certain requirements are satisfied, a participant in an employer-sponsored qualified plan (which includes a tax-qualified retirement plan described in section 401(a), an employee retirement annuity described in section 403(a), a tax-sheltered annuity described in section 403(b), and a governmental section 457(b) plan) or a traditional IRA may roll over distributions from the plan, annuity or IRA into another plan, annuity or IRA. For distributions after December 31, 2007, certain taxpayers also are permitted to make rollover contributions into a Roth IRA (subject to inclusion in gross income of any amount that would be includible were it not part of the rollover contribution).

### **Explanation of Provision**

Under the provision, a qualified airline employee may contribute any portion of an airline payment amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of enactment of the provision). Such a contribution is treated as a qualified rollover contribution to the Roth IRA. Thus, the portion of the airline payment amount contributed to the Roth IRA is includible in gross income to the extent that such payment would be includible were it not part of the rollover contribution.

Under the provision, an airline payment amount is defined as any payment of any money or other property payable by a commercial passenger airline to a qualified airline employee: (1) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007; and (2) in respect of the qualified airline employee's interest in a bankruptcy claim against the airline carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount. An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits. In determining the amount that may be contributed to a Roth IRA under the provision, any reduction in the airline payment amount on account of employment tax withholding is disregarded. A qualified airline employee is an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained

by the carrier which (1) is qualified under section 401(a) and (2) was terminated or became subject to the benefit accrual and other restrictions applicable to plans maintained by commercial passenger airlines pursuant to paragraphs 402(b)(2) and (3) of the Act.

The provision also requires certain information reporting to the Secretary of Treasury and qualified airline employees with respect to airline payment amounts within 90 days of such payment (or if later, within 90 days of enactment of this provision)

### **Effective Date**

The proposal is effective with respect to contributions to a Roth IRA made after enactment with respect to airline payment amounts paid before, on, or after such date.

## **6. Determination of asset value for special airline funding rules (sec. 126 of the bill and sec. 402 of the Act)**

### **Present Law**

The Act provides for special minimum funding rules for certain eligible plans. For purposes of the rules, an eligible plan is a single-employer defined benefit pension plan sponsored by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline.

The plan sponsor of an eligible plan may make one of two alternative elections. In the case of a plan that meets certain benefit accrual and benefit increase restrictions, an election allowing a 17-year amortization of the plan's unfunded liability is available, with the minimum required contribution being determined under a special method. A plan that does not meet such requirements may elect to use a 10-year amortization period in amortizing the plan's shortfall amortization base for the first taxable year beginning in 2008.

The employer may select either a plan year beginning in 2006 or 2007 as the first plan year to which the 17-year amortization period election applies. Under the special method applicable to a plan that elects the 17-year amortization period, the minimum required contribution for any applicable plan year during the amortization period is the amount required to amortize the plan's unfunded liability, determined as of the first day of the plan year, in equal annual installments over the remaining amortization period. For this purpose, the amortization period is the 17-plan-year period beginning with the first applicable plan year. Thus, the annual amortization amount is redetermined each year, based on the plan's unfunded liability at that time and the remainder of the amortization period. For any plan years beginning after the end of the amortization period, the plan is subject to the generally applicable minimum funding rules (as provided under the Act, including the benefit limitations applicable to underfunded plans).

For purposes of the 17-year amortization period election, a plan's unfunded liability is the unfunded accrued liability under the plan, determined under the unit credit funding method and a rate of interest of 8.85 percent is used in determining the plan's accrued liability. In addition, the value of plan assets used must be the fair market value.



### **Explanation of Provision**

Under the provision, the value of plan assets for purposes of determining the minimum required contribution of an eligible employer under the 17-year amortization period election may be determined under a valuation method that is permissible under the minimum funding rules applicable to a single-employer defined benefit pension plan that is not sponsored by an eligible employer. Thus, the value of plan assets may be determined as fair market value or on the basis of the averaging method specified in section 430(g)(3) of the Code and section 303(g)(3) of ERISA.

### **Effective Date**

The provision is effective for plan years beginning after December 31, 2007.

## **7. Modification of penalty for failure to file partnership returns (sec. 127 of the bill and sec. 6698 of the Code)**

### **Present Law**

A partnership generally is treated as a pass-through entity. Income earned by a partnership, whether distributed or not, is taxed to the partners. Distributions from the partnership generally are tax-free. The items of income, gain, loss, deduction or credit of a partnership generally are taken into account by a partner as allocated under the terms of the partnership agreement. If the agreement does not provide for an allocation, or the agreed allocation does not have substantial economic effect, then the items are to be allocated in accordance with the partners' interests in the partnership. To prevent double taxation of these items, a partner's basis in its interest is increased by its share of partnership income (including tax-exempt income), and is decreased by its share of any losses (including nondeductible losses).

Under present law, a partnership is required to file a tax return for each taxable year. The partnership's tax return is required to include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. In addition to applicable criminal penalties, present law imposes an assessable civil penalty for the failure to timely file a partnership return. The penalty generally is \$85 per partner for each month (or fraction of a month) that the failure continues, up to a maximum of 12 months for returns required to be filed after December 20, 2007.

### **Explanation of Provision**

Under the provision, the penalty for failure to file partnership returns is increased by \$4 per partner.

### **Effective Date**

The provision applies to returns required to be filed after December 31, 2008.

## **8. Modification of penalty for failure to file S corporation returns (sec. 128 of the bill and sec. 6699 of the Code)**

### **Present Law**

In general, an S corporation is not subject to corporate-level income tax on its items of income and loss. Instead, an S corporation passes through its items of income and loss to its shareholders. The shareholders take into account separately their shares of these items on their individual income tax returns.

Under present law, S corporations are required to file a tax return for each taxable year. The S corporation's tax return is required to include the following: the names and addresses of all persons owning stock in the corporation at any time during the taxable year; the number of shares of stock owned by each shareholder at all times during the taxable year; the amount of money and other property distributed by the corporation during the taxable year to each shareholder and the date of such distribution; each shareholder's pro rata share of each item of the corporation for the taxable year; and such other information as the Secretary may require.

Present law imposes an assessable monthly penalty for any failure to timely file an S corporation return or any failure to provide the information required to be shown on such a return. The penalty is \$85 times the number of shareholders in the S corporation during any part of the taxable year for which the return was required, for each month (or a fraction of a month) during which the failure continues, up to a maximum of 12 months.

### **Explanation of Provision**

Under the provision, the penalty for failure to file S corporation returns is increased by \$4 per shareholder.

### **Effective Date**

The provision applies to returns required to be filed after December 31, 2008.

## TITLE II – PENSION PROVISIONS RELATING TO ECONOMIC CRISIS

### A. Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts (sec. 201 of the bill and sec. 401(a)(9) of the Code)

#### Present law

#### Required minimum distributions

Employer-provided qualified retirement plans and individual retirement accounts and annuities (IRAs) are subject to required minimum distribution rules. A qualified retirement plan for this purpose means a tax-qualified plan described in section 401(a) (such as a defined benefit pension plan or a section 401(k) plan), employee retirement annuities described in section 403(a), tax-sheltered annuities described in section 403(b), and a plan described in section 457(b) that is maintained by a governmental employer.<sup>18</sup> An employer-provided qualified retirement plan that is a defined contribution plan is a plan which provides (1) an individual account for each participant and (2) for benefits based on the amount contributed to the participant's account, and any income, expenses, gains, losses, and forfeitures of accounts of other participants which may be allocated to such participant's account.<sup>19</sup>

Required minimum distributions generally must begin by April 1 of the calendar year following the later of the calendar year in which the individual (employee or IRA owner) reaches age 70 ½. However, in the case of an employer-provided qualified retirement plan, the required minimum distribution date for an individual who is not a 5-percent owner of the employer maintaining the plan is delayed to April 1 of the year following the year in which the individual retires.

For IRAs and defined contributions plans, the required minimum distribution for each year generally is determined by dividing the account balance as of the end of the prior year by a distribution period,<sup>20</sup> generally a number in the uniform lifetime table.<sup>21</sup> This table is based on joint life expectancies of the individual and a hypothetical beneficiary 10 years younger than the individual. For an individual with a spouse as designated beneficiary who is more than 10 years younger (and thus the number of years in the couple's joint life expectancy is greater than the uniform life time table), the joint life expectancy of the couple is used. There are special rules in the case of annuity payments from an insurance contract.

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<sup>18</sup> The required minimum distribution rules also apply to section 457(b) plans maintained by tax-exempt employers other than governmental employers.

<sup>19</sup> Sec. 414(i).

<sup>20</sup> Treas. Reg. sec. 1.401(a)(9)-5.

<sup>21</sup> Treas. Reg. sec. 1.401(a)(9)-9.

If an individual dies on or after the individual's required beginning date, the required minimum distribution is also determined by dividing the account balance as of the end of the prior year by a distribution period. The distribution period is equal to the remaining years of the beneficiary's life expectancy or, if there is no designated beneficiary, a distribution period equal to the remaining years of the deceased individual's single life expectancy, using the age of the deceased individual in the year of death.<sup>22</sup>

In the case of an individual who dies before the individual's required beginning date, there are two methods for satisfying the after death required minimum distribution rules, the life expectancy rule or the five year rule. Under the life expectancy rule, annual required minimum distributions must begin no later than December 31 of the calendar year immediately following the calendar year in which the individual died. This rule is only available if the designated beneficiary is an individual (e.g., not the individual's estate or a charity). If the designated beneficiary is the individual's spouse, commencement of distributions can be delayed until December 31 of the calendar year in which the deceased individual would have attained age 70 ½. The required minimum distribution for each year is also determined by dividing the account balance as of the end of the prior year by a distribution period, which is determined by reference to the beneficiary's life expectancy.<sup>23</sup> Under the five-year rule, the individual's entire account must be distributed no later than December 31 of the calendar year containing the fifth anniversary of the individual's death.<sup>24</sup>

A special after-death rule applies for an IRA if the beneficiary of the IRA is the surviving spouse. The surviving spouse is permitted to choose to calculate required minimum distributions while the spouse is alive, and after the spouse's death, as though the spouse is the IRA owner, rather than a beneficiary.

Roth IRAs are not subject to the minimum distribution rules during the IRA owner's lifetime. However, Roth IRAs are subject to the post-death minimum distribution rules that apply to traditional IRAs. For Roth IRAs, the IRA owner is treated as having died before the individual's required beginning date. Thus only the life expectancy rule and the five year rule apply.

Failure to make a required minimum distribution triggers a 50-percent excise tax, payable by the individual or the individual's beneficiary. The tax is imposed during the taxable year that begins with or within the calendar year during which the distribution was required.<sup>25</sup>

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<sup>22</sup> Treas. Reg. sec. 1.401(a)(9)-5, A-5(a).

<sup>23</sup> Treas. Reg. sec. 1.401(a)(9)-5, A-5(b).

<sup>24</sup> Treas. Reg. sec. 1.401(a)(9)-3, Q&As 1, 2.

<sup>25</sup> Sec. 4974(a).

The tax may be waived if the distribution did not occur because of reasonable error and reasonable steps are taken to remedy the violation.<sup>26</sup>

### **Eligible rollover distributions**

With certain exceptions, distributions from an employer-provided qualified retirement plan are eligible to be rolled over tax free into another employer-provided qualified retirement plan or an IRA. This can be achieved by contributing the amount of the distribution to the other plan or IRA within 60 days of the distribution, or by a direct payment by the plan to the other plan or IRA (referred to as a “direct rollover”). Distributions that are not eligible for rollover include (i) any distribution that is one of a series of periodic payments generally for a period of 10 years or more (or, if a shorter period, certain life expectancies) and (ii) any distribution to the extent that the distribution is a required minimum distribution.<sup>27</sup>

For any distribution that is eligible for rollover, an employer-provided tax-qualified retirement plan must offer the distributee the right to have the distribution made in a direct rollover<sup>28</sup> and, before making the distribution, the plan administrator must provide the distributee with a written explanation of the direct rollover right and related tax consequences.<sup>29</sup> If a distributee does not choose to have the distribution made in a direct rollover, the distribution is generally subject to mandatory 20-percent income tax withholding.<sup>30</sup>

### **Explanation of Provision**

Under the provision, no minimum distribution is required for calendar year 2009 from individual retirement plans and employer-provided qualified retirement plans that are defined contribution plans (within the meaning of section 414(i)). Thus any annual minimum distribution for 2009 from these plans required under current law, otherwise determined by dividing the account balance by a distribution period, is not required to be made. The next required minimum distribution would be for calendar year 2010. This relief applies to life-time distributions to employees and IRA owners and after-death distributions to beneficiaries.

In the case of an individual whose required beginning date is April 1, 2010 (e.g., the individual attained age 70 1/2 in 2009), the first year for which a minimum distribution is required under current law is 2009. Under the provision, no distribution is required for 2009

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<sup>26</sup> Sec. 4974(d).

<sup>27</sup> Sec. 402(c)(4). Distributions that are not eligible rollover distributions also include distributions made upon hardship of the employee and any qualified disaster relief distribution (within the meaning of section 72(t)(2)(G)).

<sup>28</sup> Sec. 401(a)(31).

<sup>29</sup> Sec. 402(f).

<sup>30</sup> Sec. 3405(c). This mandatory withholding does not apply to a distributee that is a beneficiary other than a surviving spouse of an employee.

and, thus, no distribution will be required to be made by April 1, 2010. However, the provision does not change the individual's required beginning date for purposes of determining the required minimum distribution for calendar years after 2009. Thus, for an individual whose required beginning date is April 1, 2010, the required minimum distribution for 2010 will be required to be made no later than the last day of calendar year 2010. If the individual dies on or after April 1, 2010, the required minimum distribution for the individual's beneficiary will be determined using the rule for death on or after the individual's required beginning date.

If the five year rule applies to an account with respect to any decedent, under the provision, the five year period is determined without regard to calendar year 2009. Thus, for example, for an account with respect to an individual who died in 2007, under the provision, the five year period ends in 2013 instead of 2012.

If all or a portion of a distribution during 2009 is an eligible rollover distribution because it is no longer a required minimum distribution under this provision, the distribution shall not be treated as an eligible rollover distribution for purposes of the direct rollover requirement and notice and written explanation of the direct rollover requirement, as well as the mandatory 20-percent income tax withholding for eligible rollover distributions, to the extent the distribution would have been a required minimum distribution for 2009 absent this provision. Thus, for example, if an employer-provided qualified retirement plan distributes an amount to an individual during 2009 that is an eligible rollover distribution but would have been a required minimum distribution for 2009, the plan is permitted but not required to offer the employee a direct rollover of that amount and provide the employee with a written explanation of the requirement. If the employee receives the distribution, the distribution is not subject to mandatory 20-percent income tax withholding, and the employee can roll over the distribution by contributing it to an eligible retirement plan within 60 days of the distribution.

#### **Effective Date**

The provision is effective for calendar years beginning after December 31, 2008. However, the provision does not apply to any required minimum distribution for 2008 that is permitted to be made in 2009 by reason of an individual's required beginning date being April 1, 2009.

**B. Transition Rule Clarification  
(sec. 202 of the bill and sec. 430 of the Code)**

**Present Law**

The Act modified the minimum funding rules for single-employer defined benefit pension plans, generally for plan years beginning after December 31, 2007. Under the Act, the minimum required contribution to a single-employer defined benefit pension plan for a plan year generally depends on a comparison of the value of the plan's assets with the plan's funding target and target normal cost. A plan's funding target is the present value of all benefits accrued or earned as of the beginning of the plan year and a plan's target normal cost for a plan year is the present value of benefits expected to accrue or be earned during the plan year. In general, a plan has a funding shortfall if the plan's funding target for the year exceeds the value of the plan's assets, and a shortfall amortization base is generally required to be established for a plan year if the plan has a funding shortfall for a plan year.

Under a special rule, a shortfall amortization base does not have to be established for a plan year if the value of a plan's assets<sup>31</sup> is at least equal to the plan's funding target for the plan year. For purposes of the special rule, a transition rule applies for plan years beginning after 2007 and before 2011. The transition rule does not apply to a plan that (1) is not in effect for 2007, or (2) was subject to certain deficit reduction contribution rules for 2007 (i.e., a plan covering more than 100 participants and with a funded current liability below a specified threshold).

Under the transition rule, a shortfall amortization base does not have to be established for a plan year during the transition period if the value of plan assets<sup>32</sup> for the plan year is at least equal to the applicable percentage of the plan's funding target for the year. The applicable percentage is 92 percent for 2008, 94 percent for 2009, and 96 percent for 2010. However, the transition rule does not apply to a plan for any plan year after 2008 unless, for each preceding plan year after 2007, the plan's shortfall amortization base was zero (i.e., the plan was eligible for the special rule each preceding year).

**Explanation of Provision**

The provision extends the transition rule to plan year beginning after 2008 even if, for each preceding plan year after 2007, the plan's shortfall amortization base was not zero.

The provision provides that in determining a plan's funding shortfall for the year only the applicable percentage of the funding target is taken into account, rather than the entire funding target. The applicable percentage is 92 percent for 2008, 94 percent for 2009, and 96 percent for

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<sup>31</sup> Plan assets are reduced by any prefunding balance, but only if the employer elects to use any portion of the prefunding balance to reduce required contributions for the year.

<sup>32</sup> Plan assets are reduced by any prefunding balance, but only if the employer elects to use the prefunding balance to reduce required contributions for the year.

2010.<sup>33</sup> Thus, for example, if a plan was funded at 91 percent for 2008, the funding shortfall for 2008 would be 1 percent and the plan would be able to continue to use the transition rule in 2009. The plan would then need to fund to 94 percent, rather than 100 percent, in 2009.

**Effective Date**

The provision is effective as if included in the Act.

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<sup>33</sup> Sec. 430(c)(5)(B).



**C. Temporary Modification of Application of Limitation on Benefit Accruals  
(sec. 203 of the bill)**

**Present Law**

A single-employer defined benefit pension plan is required to comply with certain funding-based limits described in section 436 on benefits and benefit accruals.<sup>34</sup> These limits were added by the Act and are generally applicable to plan years beginning after December 31, 2007. Among the limitations is the requirement that if the plan's adjusted funding target attainment percentage is less than 60 percent for a plan year, all future benefit accruals under the plan must cease as of the valuation date for the plan year ("future benefit accrual limitation"). This future benefit accrual limitation applies only for purposes of the accrual of benefits; service during the freeze period is counted for other purposes. For example, if accruals are frozen pursuant to the limitation, service performed during the freeze period still counts for vesting purposes. Written notice must be provided to plan participants and beneficiaries if a section 436 limitation provision applies to a plan.

The term "funding target attainment percentage" is defined in the same way as under the minimum funding rules applicable to single-employer defined benefit pension plans, and is the ratio, expressed as a percentage, that the value of the plan's assets (generally reduced by any funding standard carryover balance and prefunding balance) bears to the plan's funding target for the year (determined without regard to whether a plan is in at-risk status under the minimum funding rules). A plan's adjusted funding target attainment percentage is determined in the same way, except that the value of the plan's assets and the plan's funding target are both increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees made by the plan during the two preceding plan years. Special rules apply for determining a plan's adjusted funding target attainment percentage in the case of a fully funded plan and for plan years beginning in 2007 and before 2011.

The future benefit accrual limitation ceases to apply with respect to any plan year, effective as of the first day of the plan year, if the plan sponsor makes a contribution (in addition to any minimum required contribution for the plan year) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent. The future benefit accrual limitation also does not apply for the first five years a plan (or a predecessor plan) is in effect.

If a limitation on future benefit accruals ceases to apply to a plan, all such benefit accruals resume, effective as of the day following the close of the period for which the limitation applies. In addition, section 436 provides that nothing in the rules is to be construed as affecting a plan's treatment of benefits which would have been paid or accrued but for the limitation.

**Explanation of Provision**

Under the provision, in the case of the first plan year beginning during the period of October 1, 2008, through September 30, 2009, the future benefit accrual limitation of section 436

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<sup>34</sup> Secs. 401(a)(29) and 436. Parallel rules apply under ERISA.

is applied by substituting the plan's adjusted funding target attainment percentage for the preceding plan year for the percentage for such first plan year in the period. Thus, the future benefit accrual limitation of section 436 is avoided if the plan's adjusted funding target attainment percentage for the preceding plan year is 60 percent or greater. The provision is not intended to place a plan in a worse position with respect to the future benefit accrual limitation of section 436 than would apply absent the provision. Thus, the provision does not apply if the adjusted funding target attainment percentage for the current plan year is greater than the preceding year.

#### **Effective Date**

The provision is effective for the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009.

**D. Temporary Delay of Designation of Multiemployer Plans  
as in Endangered or Critical Status  
(sec. 204 of the bill)**

**Present Law**

**In General**

Under section 432,<sup>35</sup> additional funding rules apply to a multiemployer defined benefit pension plan that is in endangered or critical status. These rules require the adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. In the case of a plan in critical status, additional required contributions and benefit reductions apply and employers are relieved of liability for minimum required contributions under the otherwise applicable funding rules, provided that a rehabilitation plan is adopted and followed.

Section 432 is effective for plan years beginning after 2007. The additional funding rules for plans in endangered or critical status do not apply to plan years beginning after December 31, 2014. If a plan is operating under a funding improvement or rehabilitation plan for its last year beginning before January 1, 2015, the plan shall continue to operate under such funding improvement or rehabilitation plan during any period after December 31, 2014, that such funding improvement or rehabilitation plan is in effect.

**Annual certification of status; notice; annual reports**

Not later than the 90th day of each plan year, the plan actuary must certify to the Secretary of the Treasury and to the plan sponsor whether or not the plan is in endangered or critical status for the plan year. In the case of a plan that is in a funding improvement or rehabilitation period, the actuary must certify whether or not the plan is making scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Failure of the plan's actuary to certify the status of the plan is treated as a failure to file the annual report (thus, an ERISA penalty of up to \$1,100 per day applies).

If a plan is certified to be in endangered or critical status, notification of the endangered or critical status must be provided within 30 days after the date of certification to the participants and beneficiaries, the bargaining parties, the PBGC and the Secretary of Labor.

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<sup>35</sup> Parallel rules apply under ERISA.

## **Endangered status**

### Definition of endangered status

A multiemployer plan is in endangered status if the plan is not in critical status and, as of the beginning of the plan year, (1) the plan's funded percentage for the plan year is less than 80 percent, or (2) 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 (taking into account amortization extensions). A plan's funded percentage is the percentage of plan assets over accrued liability of the plan. A plan that meets the requirements of both (1) and (2) is treated as in seriously endangered status.

### Information to be provided to bargaining parties

Within 30 days of the adoption of a funding improvement plan, the plan sponsor must provide to the bargaining parties schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan. The applicable benchmarks are the requirements of the funding improvement plan (discussed below).

### Funding improvement plan and funding improvement period

In the case of a multiemployer plan in endangered status, a funding improvement plan must be adopted within 240 days following the deadline for certifying a plan's status.<sup>36</sup> A funding improvement plan is a plan which consists of the actions, including options or a range of options, to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan of certain requirements.

The funding improvement plan must provide that during the funding improvement period, the plan will have a certain required increase in the funded percentage and no accumulated funding deficiency for any plan year during the funding improvement period, taking into account amortization extensions (the "applicable benchmarks"). In the case of a plan that is not in seriously endangered status, under the applicable benchmarks, the plan's funded percentage must increase such that the funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of (1) the funded percentage at the beginning of the period, plus (2) 33 percent of the difference between 100 percent and the percentage in (1). Thus, the difference between 100 percent and the plan's funded percentage at the beginning of the period must be reduced by at least one-third during the funding improvement period.

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<sup>36</sup> This requirement applies for the initial determination year (i.e., the first plan year that the plan is in endangered status).

The funding improvement period is the 10-year period beginning on the first day of the first plan year beginning after the earlier of (1) the second anniversary of the date of adoption of the funding improvement plan, or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of endangered status for the initial determination year and covering, as of such date, at least 75 percent of the plan's active participants. The period ends if the plan is no longer in endangered status or if the plan enters critical status.

In the case of a plan in seriously endangered status that is funded 70 percent or less, under the applicable benchmarks, the difference between 100 percent and the plan's funded percentage at the beginning of the period must be reduced by at least one-fifth during the funding improvement period. In the case of such plans, a 15-year funding improvement period is used. Special rules apply in the case of a seriously endangered plan that is more than 70 percent funded as of the beginning of the initial determination year.

Certain restrictions apply during the period beginning on the date of certification for the initial determination year and ending on the day before the first day of the funding improvement period and during the funding improvement period (e.g., upon the adoption of a funding improvement plan, the plan may not be amended to be inconsistent with the funding improvement plan).

#### Excise taxes

If the funding improvement plan requires an employer to make contributions to the plan, an excise tax applies upon the failure of the employer to make such required contributions within the time required under the plan. The amount of tax is equal to the amount of the required contribution the employer failed to make in a timely manner.

In the case of a plan in endangered status, which is not in seriously endangered status, a civil penalty of \$1,100 a day applies for the failure of the plan to meet the applicable benchmarks by the end of the funding improvement period.

In the case of a plan in seriously endangered status, an excise tax applies for the failure to meet the benchmarks by the end of the funding improvement period. In such case, an excise tax applies based on the greater of (1) the amount of the contributions necessary to meet such benchmarks or (2) the plan's accumulated funding deficiency. The excise tax applies for each succeeding plan year until the benchmarks are met.

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the excise tax on employers failing to make required contributions and the excise tax for failure to achieve the applicable benchmarks. The party against whom the tax is imposed has the burden of establishing that the failure was due to reasonable cause and not willful neglect.

## **Critical status**

### Definition of critical status

A multiemployer plan is in critical status for a plan year if as of the beginning of the plan year:

1. 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 each of 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 benefits projected to be payable under the plan during the current plan year and each of the six succeeding plan years (plus administrative expenses),
2. (A) The plan has an accumulated funding deficiency for the current plan year, not taking into account any amortization extension, or (B) the plan is projected to have an accumulated funding deficiency for any of the three succeeding plan years (four succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any amortization extension,
3. (A) The plan's normal cost for the current plan year, 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 of the reasonably anticipated employer contributions for the current plan year, (B) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and (C) 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 (not taking into account amortization period extensions), or
4. The sum of (A) the market value of plan assets, plus (B) the present value of the reasonably anticipated employer 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 benefits projected to be payable under the plan during the current plan year and each of the four succeeding plan years (plus administrative expenses).

### Additional contributions during critical status

In the case of a plan in critical status, the provision imposes an additional required contribution ("surcharge") on employers otherwise obligated to make a contribution in the initial critical year, i.e., the first plan year for which the plan is in critical status. The amount of the surcharge is five percent of the contribution otherwise required to be made under the applicable collective bargaining agreement. The surcharge is 10 percent of contributions otherwise required in the case of succeeding plan years in which the plan is in critical status. The surcharge applies 30 days after the employer is notified by the plan sponsor that the plan is in critical status and the surcharge is in effect. The surcharges are due and payable on the same schedule as the

contributions on which the surcharges are based. Failure to make the surcharge payment is treated as a delinquent contribution. The surcharge is not required with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other agreement) that includes terms consistent with a schedule presented by the plan sponsor. The amount of the surcharge may not be the basis for any benefit accrual under the plan.

#### Reductions to previously earned benefits

Notwithstanding the anti-cutback rules that otherwise apply under the Code and ERISA, the plan sponsor may generally make any reductions to adjustable benefits<sup>37</sup> which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedules required to be provided by the plan sponsor (as discussed below).

The plan sponsor must include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under the Code and ERISA and considered appropriate by the plan sponsor based on the plan's then current overall funding status.

Notice of any reduction of adjustable benefits must be provided at least 30 days before the general effective date of the reduction for all participants and beneficiaries. Benefits may not be reduced until the notice requirement is satisfied. Notice must be provided to (1) plan participants and beneficiaries; (2) each employer who has an obligation to contribute under the plans; and (3) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such employer.

#### Notice to bargaining parties

Within 30 days after adoption of the rehabilitation plan, the plan sponsor must provide to the bargaining parties schedules showing revised benefit structures, revised contribution structures, or both which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan.<sup>38</sup> The schedules must reflect reductions in future benefit accruals and adjustable benefits and increases in contributions that the plan sponsor determined are reasonably necessary to emerge from critical

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<sup>37</sup> Adjustable benefits means (1) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits; (2) any early retirement benefit or retirement-type subsidy and any benefit payment option (other than the qualified joint-and-survivor annuity); and (3) benefit increase that would not be eligible for PBGC guarantee on the first day of the initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

<sup>38</sup> A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement must remain in effect for the duration of the collective bargaining agreement.

status. One schedule must be designated as the default schedule and must assume no increases in contributions other than increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under the anti-cutback rules) have been reduced. The plan sponsor may also provide additional information as appropriate.

### Rehabilitation plan

If a plan is in critical status for a plan year, the plan sponsor must adopt a rehabilitation plan within 240 days following the required date for the actuarial certification of critical status.<sup>39</sup>

A rehabilitation plan is a plan which consists of actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonable anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefits accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions.

A rehabilitation plan must provide annual standards for meeting the requirements of the rehabilitation. The plan must also include the schedules required to be provided to the bargaining parties.

If the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan cannot reasonably be expected to emerge from critical status by the end of the rehabilitation period, the plan must include reasonable measures to emerge from critical status at a later time or to forestall possible insolvency. In such case, the plan must set forth alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

### Rehabilitation period

The rehabilitation period is the 10-year period beginning on the first day of the first plan year following the earlier of (1) the second anniversary of the date of adoption of the rehabilitation plan or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of critical status for the initial critical year and covering at least 75 percent of the active participants in the plan. The rehabilitation period ends if the plan emerges from critical status.

Restrictions apply during the period beginning on the date of certification and ending on the day before the first day of the rehabilitation period and during the rehabilitation period. For example, beginning on the date that notice of certification of the plan's critical status is sent, lump sum and other similar benefits may not be paid. The restriction does not apply if the present value of the participant's accrued benefit does not exceed \$5,000. The restriction also

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<sup>39</sup> The requirement applies with respect to the initial critical year.



does not apply to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

#### Rules for reductions in future benefit accrual rates

Any schedule including reductions in future benefit accruals forming part of a rehabilitation plan must not reduce the rate of benefit accruals below (1) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to one percent of the contributions required to be made with respect to a participant or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or (2) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate is determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors that the plan sponsor determines to be relevant. The provision does not limit the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates described above.

#### Excise taxes

If the rehabilitation plan requires an employer to make contributions to the plan, an excise tax applies upon the failure of the employer to make such required contributions within the time required under the plan. The amount of tax is equal to the amount of the required contribution the employer failed to make in a timely manner.

In the case of a plan in critical status, if a rehabilitation plan is adopted and complied with, employers are not liable for contributions otherwise required under the general funding rules. In addition, the present-law excise tax on failures to make such contributions does not apply.

If a plan fails to leave critical status at the end of the rehabilitation period or fails to make scheduled progress in meeting its requirements under the rehabilitation plan for three consecutive years, the present law excise tax applies based on the greater of (1) the amount of the contributions necessary to leave critical status or make scheduled progress or (2) the plan's accumulated funding deficiency. The excise tax applies for each succeeding plan year until the requirements are met.

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the excise tax on employers failing to make required contributions and the excise tax for failure to meet the rehabilitation plan requirements or make scheduled progress.

#### **Explanation of Provision**

Under the provision, the sponsor of a multiemployer defined benefit pension plan may elect for an applicable plan year to treat the plan's status for purposes of section 432 the same as

the plan's status for the preceding plan year. The applicable plan year is the first plan year beginning during the period from October 1, 2008, through September 30, 2009. Thus, for example, a calendar year plan that is not in critical or endangered status for 2008 may elect to retain its non-critical and non-endangered status for 2009, and a plan that was in either critical or endangered status for 2008 may elect to retain such status for 2009. If section 432 did not apply to a plan for the year preceding the applicable plan year, the plan's sponsor may elect to treat the plan's status for the applicable plan year as the status that would have applied to the plan had section 432 applied for the preceding plan year.

An election under the provision may only be revoked with the consent of the Secretary of the Treasury and special notice provisions apply with respect to the election and the notification of participants, the bargaining parties, the PBGC, and the Secretary of Labor.

In the case of a plan that elects to retain its endangered or critical status, the plan is not required to update its funding improvement or rehabilitation plan and schedules until the plan year that follows the applicable plan year. If an election is made by a plan under the provision and, without regard to the election, the plan is certified by the plan's actuary for the applicable plan year to be in critical status, the plan is treated as a plan in critical status for purposes of the special rules that relieve contributing employers from liability for minimum required contributions (that would apply under the otherwise applicable minimum funding rules) and the excise tax that applies in the case of a failure to make such contributions.

#### **Effective Date**

The provision is effective for the first plan year beginning during the period from October 1, 2008, through September 30, 2009.

**E. Temporary Extension of the Funding Improvement and Rehabilitation Periods  
for Multiemployer Pension Plans in Critical and Endangered  
Status for 2008 or 2009  
(sec. 205 of the bill)**

**Present Law**

Under section 432, additional funding rules apply to a multiemployer defined benefit pension plan that is in endangered or critical status. These rules require the adoption of and compliance with (1) a funding improvement plan in the case of a multiemployer plan in endangered status, and (2) a rehabilitation plan in the case of a multiemployer plan in critical status. Section 432 is effective for plan years beginning after 2007.

The funding improvement period is the 10-year period beginning on the first day of the first plan year beginning after the earlier of (1) the second anniversary of the date of adoption of the funding improvement plan, or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of endangered status for the initial determination year and covering, as of such date, at least 75 percent of the plan's active participants. The period ends if the plan is no longer in endangered status or if the plan enters critical status.

The rehabilitation period is the 10-year period beginning on the first day of the first plan year following the earlier of (1) the second anniversary of the date of adoption of the rehabilitation plan or (2) the expiration of collective bargaining agreements that were in effect on the due date for the actuarial certification of critical status for the initial critical year and covering at least 75 percent of the active participants in the plan. The rehabilitation period ends if the plan emerges from critical status.

**Explanation of Provision**

Under the provision, a plan sponsor of a multiemployer defined benefit pension plan may elect for a plan year beginning in 2008 or 2009 to extend the plan's otherwise applicable funding improvement or rehabilitation period by three years.

**Effective Date**

The provision is effective for plan years beginning after December 31, 2007.