

113TH CONGRESS
2^D SESSION

S. 2511

AN ACT

To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SUBSTANTIAL CESSATION OF OPERATIONS.**

2 (a) IN GENERAL.—Subsection (e) of section 4062 of
3 the Employee Retirement Income Security Act of 1974
4 (29 U.S.C. 1362) is amended to read as follows:

5 “(e) TREATMENT OF SUBSTANTIAL CESSATION OF
6 OPERATIONS.—

7 “(1) GENERAL RULE.—Except as provided in
8 paragraphs (3) and (4), if there is a substantial ces-
9 sation of operations at a facility in any location, the
10 employer shall be treated with respect to any single
11 employer plan established and maintained by the
12 employer covering participants at such facility as if
13 the employer were a substantial employer under a
14 plan under which more than one employer makes
15 contributions and the provisions of sections 4063,
16 4064, and 4065 shall apply.

17 “(2) SUBSTANTIAL CESSATION OF OPER-
18 ATIONS.—For purposes of this subsection:

19 “(A) IN GENERAL.—The term ‘substantial
20 cessation of operations’ means a permanent ces-
21 sation of operations at a facility which results
22 in a workforce reduction of a number of eligible
23 employees at the facility equivalent to more
24 than 15 percent of the number of all eligible
25 employees of the employer, determined imme-
26 diately before the earlier of—

1 “(i) the date of the employer’s deci-
2 sion to implement such cessation, or

3 “(ii) in the case of a workforce reduc-
4 tion which includes 1 or more eligible em-
5 ployees described in paragraph (6)(B), the
6 earliest date on which any such eligible
7 employee was separated from employment.

8 “(B) WORKFORCE REDUCTION.—Subject
9 to subparagraphs (C) and (D), the term ‘work-
10 force reduction’ means the number of eligible
11 employees at a facility who are separated from
12 employment by reason of the permanent ces-
13 sation of operations of the employer at the fa-
14 cility.

15 “(C) RELOCATION OF WORKFORCE.—An
16 eligible employee separated from employment at
17 a facility shall not be taken into account in
18 computing a workforce reduction if, within a
19 reasonable period of time, the employee is re-
20 placed by the employer, at the same or another
21 facility located in the United States, by an em-
22 ployee who is a citizen or resident of the United
23 States.

24 “(D) DISPOSITIONS.—If, whether by rea-
25 son of a sale or other disposition of the assets

1 or stock of a contributing sponsor (or any mem-
2 ber of the same controlled group as such a
3 sponsor) of the plan relating to operations at a
4 facility or otherwise, an employer (the ‘trans-
5 feree employer’) other than the employer which
6 experiences the substantial cessation of oper-
7 ations (the ‘transferor employer’) conducts any
8 portion of such operations, then—

9 “(i) an eligible employee separated
10 from employment with the transferor em-
11 ployer at the facility shall not be taken
12 into account in computing a workforce re-
13 duction if—

14 “(I) within a reasonable period of
15 time, the employee is replaced by the
16 transferee employer by an employee
17 who is a citizen or resident of the
18 United States; and

19 “(II) in the case of an eligible
20 employee who is a participant in a
21 single employer plan maintained by
22 the transferor employer, the trans-
23 feree employer, within a reasonable
24 period of time, maintains a single em-
25 ployer plan which includes the assets

1 and liabilities attributable to the ac-
2 crued benefit of the eligible employee
3 at the time of separation from em-
4 ployment with the transferor em-
5 ployer; and

6 “(ii) an eligible employee who con-
7 tinues to be employed at the facility by the
8 transferee employer shall not be taken into
9 account in computing a workforce reduc-
10 tion if—

11 “(I) the eligible employee is not a
12 participant in a single employer plan
13 maintained by the transferor em-
14 ployer, or

15 “(II) in any other case, the
16 transferee employer, within a reason-
17 able period of time, maintains a single
18 employer plan which includes the as-
19 sets and liabilities attributable to the
20 accrued benefit of the eligible em-
21 ployee at the time of separation from
22 employment with the transferor em-
23 ployer.

24 “(3) EXEMPTION FOR PLANS WITH LIMITED
25 UNDERFUNDING.—Paragraph (1) shall not apply

1 with respect to a single employer plan if, for the
2 plan year preceding the plan year in which the ces-
3 sation occurred—

4 “(A) there were fewer than 100 partici-
5 pants with accrued benefits under the plan as
6 of the valuation date of the plan for the plan
7 year (as determined under section 303(g)(2));
8 or

9 “(B) the ratio of the market value of the
10 assets of the plan to the funding target of the
11 plan for the plan year was 90 percent or great-
12 er.

13 “(4) ELECTION TO MAKE ADDITIONAL CON-
14 TRIBUTIONS TO SATISFY LIABILITY.—

15 “(A) IN GENERAL.—An employer may
16 elect to satisfy the employer’s liability with re-
17 spect to a plan by reason of paragraph (1) by
18 making additional contributions to the plan in
19 the amount determined under subparagraph
20 (B) for each plan year in the 7-plan-year period
21 beginning with the plan year in which the ces-
22 sation occurred. Any such additional contribu-
23 tion for a plan year shall be in addition to any
24 minimum required contribution under section

1 303 for such plan year and shall be paid not
2 later than the earlier of—

3 “(i) the due date for the minimum re-
4 quired contribution for such year under
5 section 303(j); or

6 “(ii) in the case of the first such con-
7 tribution, the date that is 1 year after the
8 date on which the employer notifies the
9 Corporation of the substantial cessation of
10 operations or the date the Corporation de-
11 termines a substantial cessation of oper-
12 ations has occurred, and in the case of
13 subsequent contributions, the same date in
14 each succeeding year.

15 “(B) AMOUNT DETERMINED.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in clause (iii), the amount deter-
18 mined under this subparagraph with re-
19 spect to each plan year in the 7-plan-year
20 period is the product of—

21 “(I) $\frac{1}{7}$ of the unfunded vested
22 benefits determined under section
23 4006(a)(3)(E) as of the valuation
24 date of the plan (as determined under
25 section 303(g)(2)) for the plan year

1 preceding the plan year in which the
2 cessation occurred; and

3 “(II) the reduction fraction.

4 “(ii) REDUCTION FRACTION.—For
5 purposes of clause (i), the reduction frac-
6 tion of a single employer plan is equal to—

7 “(I) the number of participants
8 with accrued benefits in the plan who
9 were included in computing the work-
10 force reduction under paragraph
11 (2)(B) as a result of the cessation of
12 operations at the facility; divided by

13 “(II) the number of eligible em-
14 ployees of the employer who are par-
15 ticipants with accrued benefits in the
16 plan, determined as of the same date
17 the determination under paragraph
18 (2)(A) is made.

19 “(iii) LIMITATION.—The additional
20 contribution under this subparagraph for
21 any plan year shall not exceed the excess,
22 if any, of—

23 “(I) 25 percent of the difference
24 between the market value of the as-
25 sets of the plan and the funding tar-

1 get of the plan for the preceding plan
2 year; over

3 “(II) the minimum required con-
4 tribution under section 303 for the
5 plan year.

6 “(C) PERMITTED CESSATION OF ANNUAL
7 INSTALLMENTS WHEN PLAN BECOMES SUFFI-
8 CIENTLY FUNDED.—An employer’s obligation to
9 make additional contributions under this para-
10 graph shall not apply to—

11 “(i) the first plan year (beginning on
12 or after the first day of the plan year in
13 which the cessation occurs) for which the
14 ratio of the market value of the assets of
15 the plan to the funding target of the plan
16 for the plan year is 90 percent or greater,
17 or

18 “(ii) any plan year following such first
19 plan year.

20 “(D) COORDINATION WITH FUNDING WAIV-
21 ERS.—

22 “(i) IN GENERAL.—If the Secretary of
23 the Treasury issues a funding waiver
24 under section 302(c) with respect to the
25 plan for a plan year in the 7-plan-year pe-

1 riod under subparagraph (A), the addi-
2 tional contribution with respect to such
3 plan year shall be permanently waived.

4 “(ii) NOTICE.—An employer main-
5 taining a plan with respect to which such
6 a funding waiver has been issued or a re-
7 quest for such a funding waiver is pending
8 shall provide notice to the Secretary of the
9 Treasury, in such form and at such time
10 as the Secretary of the Treasury shall pro-
11 vide, of a cessation of operations to which
12 paragraph (1) applies.

13 “(E) ENFORCEMENT.—

14 “(i) NOTICE.—An employer making
15 the election under this paragraph shall
16 provide notice to the Corporation, in ac-
17 cordance with rules prescribed by the Cor-
18 poration, of—

19 “(I) such election, not later than
20 30 days after the earlier of the date
21 the employer notifies the Corporation
22 of the substantial cessation of oper-
23 ations or the date the Corporation de-
24 termines a substantial cessation of op-
25 erations has occurred;

1 “(II) the payment of each addi-
2 tional contribution, not later than 10
3 days after such payment;

4 “(III) any failure to pay the ad-
5 ditional contribution in the full
6 amount for any year in the 7-plan-
7 year period, not later than 10 days
8 after the due date for such payment;

9 “(IV) the waiver under subpara-
10 graph (D)(i) of the obligation to make
11 an additional contribution for any
12 year, not later than 30 days after the
13 funding waiver described in such sub-
14 paragraph is granted; and

15 “(V) the cessation of any obliga-
16 tion to make additional contributions
17 under subparagraph (C), not later
18 than 10 days after the due date for
19 payment of the additional contribution
20 for the first plan year to which such
21 cessation applies.

22 “(ii) ACCELERATION OF LIABILITY TO
23 THE PLAN FOR FAILURE TO PAY.—If an
24 employer fails to pay the additional con-
25 tribution in the full amount for any year in

1 the 7-plan-year period by the due date for
2 such payment, the employer shall, as of
3 such date, be liable to the plan in an
4 amount equal to the balance which remains
5 unpaid as of such date of the aggregate
6 amount of additional contributions re-
7 quired to be paid by the employer during
8 such 7-year-plan period. The Corporation
9 may waive or settle the liability described
10 in the preceding sentence, at the discretion
11 of the Corporation.

12 “(iii) CIVIL ACTION.—The Corpora-
13 tion may bring a civil action in the district
14 courts of the United States in accordance
15 with section 4003(e) to compel an em-
16 ployer making such election to pay the ad-
17 ditional contributions required under this
18 paragraph.

19 “(5) DEFINITIONS.—For purposes of this sub-
20 section:

21 “(A) ELIGIBLE EMPLOYEE.—The term ‘eli-
22 gible employee’ means an employee who is eligi-
23 ble to participate in an employee pension ben-
24 efit plan (as defined in section 3(2)) established
25 and maintained by the employer.

1 “(B) FUNDING TARGET.—The term ‘fund-
2 ing target’ means, with respect to any plan
3 year, the funding target as determined under
4 section 4006(a)(3)(E)(iii)(I) for purposes of de-
5 termining the premium paid to the Corporation
6 under section 4007 for the plan year.

7 “(C) MARKET VALUE.—The market value
8 of the assets of a plan shall be determined in
9 the same manner as for purposes of section
10 4006(a)(3)(E).

11 “(6) SPECIAL RULES.—

12 “(A) CHANGE IN OPERATION OF CERTAIN
13 FACILITIES AND PROPERTY.—For purposes of
14 paragraphs (1) and (2), an employer shall not
15 be treated as ceasing operations at a qualified
16 lodging facility (as defined in section
17 856(d)(9)(D) of the Internal Revenue Code of
18 1986) if such operations are continued by an el-
19 igible independent contractor (as defined in sec-
20 tion 856(d)(9)(A) of such Code) pursuant to an
21 agreement with the employer.

22 “(B) AGGREGATION OF PRIOR SEPARA-
23 TIONS.—The workforce reduction under para-
24 graph (2) with respect to any cessation of oper-
25 ations shall be determined by taking into ac-

1 count any separation from employment of any
2 eligible employee at the facility (other than a
3 separation which is not taken into account as
4 workforce reduction by reason of subparagraph
5 (C) or (D) of paragraph (2)) which—

6 “(i) is related to the permanent ces-
7 sation of operations of the employer at the
8 facility, and

9 “(ii) occurs during the 3-year period
10 preceding such cessation.

11 “(C) NO ADDITION TO PREFUNDING BAL-
12 ANCE.—For purposes of section 303(f)(6)(B)
13 and section 430(f)(6)(B) of the Internal Rev-
14 enue Code of 1986, any additional contribution
15 made under paragraph (4) shall be treated in
16 the same manner as a contribution an employer
17 is required to make in order to avoid a benefit
18 reduction under paragraph (1), (2), or (4) of
19 section 206(g) or subsection (b), (c), or (e) of
20 section 436 of the Internal Revenue Code of
21 1986 for the plan year.”.

22 (b) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendment made by
24 this section shall apply to a cessation of operations

1 or other event at a facility occurring on or after the
2 date of enactment of this Act.

3 (2) TRANSITION RULE.—An employer that had
4 a cessation of operations before the date of enact-
5 ment of this Act (as determined under subsection
6 4062(e) of the Employee Retirement Income Secu-
7 rity Act of 1974 as in effect before the amendment
8 made by this section), but did not enter into an ar-
9 rangement with the Pension Benefit Guaranty Cor-
10 poration to satisfy the requirements of such sub-
11 section (as so in effect) before such date of enact-
12 ment, shall be permitted to make the election under
13 section 4062(e)(4) of such Act (as in effect after the
14 amendment made by this section) as if such ces-
15 sation had occurred on such date of enactment.
16 Such election shall be made not later than 30 days
17 after such Corporation issues, on or after such date
18 of the enactment, a final administrative determina-
19 tion that a substantial cessation of operations has
20 occurred.

21 (c) DIRECTION TO THE CORPORATION.—The Pension
22 Benefit Guaranty Corporation shall not take any enforce-
23 ment, administrative, or other action pursuant to section
24 4062(e) of the Employee Retirement Income Security Act
25 of 1974, or in connection with an agreement settling liabil-

1 ity arising under such section, that is inconsistent with
2 the amendment made by this section, without regard to
3 whether the action relates to a cessation or other event
4 that occurs before, on, or after the date of the enactment
5 of this Act, unless such action is in connection with a set-
6 tlement agreement that is in place before June 1, 2014.
7 The Pension Benefit Guaranty Corporation shall not ini-
8 tiate a new enforcement action with respect to section
9 4062(e) of such Act that is inconsistent with its enforce-
10 ment policy in effect on June 1, 2014.

Passed the Senate September 16, 2014.

Attest:

Secretary.

113TH CONGRESS
2^D SESSION

S. 2511

AN ACT

To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.