

111TH CONGRESS
2^D SESSION

S. 3157

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow time for pensions to fund benefit obligations in light of economic circumstances in the financial markets of 2008, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2010

Mr. CASEY (for himself, Mr. BROWN of Ohio, Ms. STABENOW, and Mr. BURRIS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow time for pensions to fund benefit obligations in light of economic circumstances in the financial markets of 2008, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Create Jobs and Save
5 Benefits Act of 2010”.

6 **SEC. 2. MULTIEMPLOYER PLAN MERGERS AND ALLIANCES.**

7 (a) MULTIEMPLOYER PLAN ALLIANCES.—

1 (1) AMENDMENTS TO ERISA.—

2 (A) Section 4231 of the Employee Retirement
3 Income Security Act of 1974 is amended
4 by adding at the end the following new sub-
5 section:

6 “(e) MULTIEMPLOYER PLAN ALLIANCES.—

7 “(1) IN GENERAL.—The plan sponsor of a mul-
8 tiemployer plan into which another multiemployer
9 plan (referred to in this subsection as the ‘allied
10 plan’) has been merged in accordance with this sec-
11 tion may designate the merger as an alliance to
12 which the rules of this subsection apply by amending
13 such sponsor’s plan—

14 “(A) to identify the allied plan, and

15 “(B) to delineate the terms of operation of
16 the alliance, including the allocation of em-
17 ployer contributions and experience gains and
18 losses between the merged plan and the frozen
19 allied plan.

20 “(2) APPLICABLE PROVISIONS.—Except to the
21 extent otherwise provided in the plan amendment
22 under paragraph (1), sections 302, 304, and 305,
23 part 1 of subtitle E, sections 4244A and 4281, part
24 3 of subtitle E, and section 4261 shall apply to the

1 frozen allied plan and the plan into which the allied
2 plan was merged as if they were separate plans.

3 “(3) FROZEN ALLIED PLAN.—

4 “(A) IN GENERAL.—The term ‘frozen al-
5 lied plan’ means a plan—

6 “(i) which comprises the assets and li-
7 abilities of the allied plan as if it had been
8 amended, effective immediately before the
9 effective date of the merger, to cease all
10 benefit accruals, and

11 “(ii) which is treated in part as a sep-
12 arate plan from the merged plan, as pro-
13 vided in subparagraphs (B) and (C) and
14 paragraph (2).

15 “(B) EMPLOYERS MAINTAINING PLAN.—

16 The employers that were obligated to contribute
17 to the allied plan immediately before the effec-
18 tive date of the merger, and any successors
19 thereto whether by sale, reorganization, or oth-
20 erwise, shall be considered to be the employers
21 maintaining the frozen allied plan to the extent
22 they continue to have an obligation to con-
23 tribute with respect to participants or facilities
24 covered by the allied plan before such effective
25 date.

1 “(C) PARTICIPANTS AND BENE-
2 FICIARIES.—The participants and beneficiaries
3 of the allied plan immediately before the effec-
4 tive date of the merger shall be considered to
5 be the participants and beneficiaries of the fro-
6 zen allied plan on and after such date.

7 “(4) TREATMENT OF MERGED PLAN AS SINGLE
8 PLAN.—Except as provided in paragraphs (2) and
9 (3), the allied plan and the plan into which it has
10 been merged shall be treated as a single plan.

11 “(5) OTHER RULES.—

12 “(A) ADOPTION OF INITIAL PLAN AMEND-
13 MENT.—The plan amendment initially desig-
14 nating a merger as an alliance, identifying the
15 allied plan, and delineating the terms of the al-
16 liance must be adopted by no later than the last
17 day of the plan year in which the merger takes
18 effect.

19 “(B) SUBSEQUENT AMENDMENTS.—The
20 initial plan amendment described in subpara-
21 graph (A) may subsequently be modified or re-
22 pealed, except that the plan shall give notice of
23 any such change to the employers and partici-
24 pants with respect to the allied plan at least 15

1 days before such subsequent amendment takes
2 effect.

3 “(C) DISCRETION TO TREAT MERGERS
4 DIFFERENTLY.—The plan sponsor of a multi-
5 employer plan may, in its discretion, treat some
6 mergers as alliances and others as full mergers,
7 and may prescribe different terms of operation
8 for different alliances, if the basis for such dis-
9 parate treatment is not unreasonable.”.

10 (B) Subsection (b) of section 4231 of such
11 Act is amended by striking “and” at the end of
12 paragraph (3), by striking the period at the end
13 of paragraph (4) and inserting “; and”, and by
14 adding at the end the following new paragraph:

15 “(5) a merger that is designated as an alliance
16 under subsection (e) shall not be treated as failing
17 to meet any of the criteria of this subsection solely
18 because benefits under the allied plan are, or are ex-
19 pected to be, reduced or eliminated pursuant to sec-
20 tion 305 as a result of the endangered or critical
21 status of the frozen allied plan.”.

22 (C) Section 404(a) of such Act is amended
23 by adding at the end the following new para-
24 graph:

1 “(3) With respect to a merger of multiemployer
2 plans, including a merger that is designated as an
3 alliance under section 4231(e), the plan sponsors of
4 a plan which is merging with another plan shall be
5 considered to meet the requirements of paragraph
6 (1)(A) if such plan sponsors determine that the
7 merger is not reasonably likely to be adverse to the
8 long-term interests of the participants and bene-
9 ficiaries of the plan for which such plan sponsors are
10 responsible prior to such merger.”.

11 (D) Section 4231(c) of such Act is amend-
12 ed by striking “The merger of multiemployer
13 plans or the transfer” and inserting “The
14 merger of multiemployer plans, including a
15 merger that is designated as an alliance, or the
16 transfer”.

17 (2) AMENDMENT TO INTERNAL REVENUE CODE
18 OF 1986.—Section 412 of the Internal Revenue Code
19 of 1986 is amended by adding at the end the fol-
20 lowing new subsection:

21 “(f) MULTIEMPLOYER PLAN ALLIANCES.—

22 “(1) IN GENERAL.—Except to the extent other-
23 wise provided in the plan amendment under section
24 4231(e)(1) of the Employee Retirement Income Se-
25 curity Act of 1974 designating a multiemployer plan

1 merger as an alliance, this section and sections 431
2 and 432 shall apply to the frozen allied plan and the
3 plan into which the allied plan was merged as if they
4 were separate plans.

5 “(2) EMPLOYERS MAINTAINING PLAN.—The
6 employers that were obligated to contribute to the
7 allied plan immediately before the effective date of
8 the merger, and any successors thereto whether by
9 sale, reorganization, or otherwise, shall be considered
10 to be the employers maintaining the frozen allied
11 plan to the extent they continue to have an obliga-
12 tion to contribute with respect to participants or fa-
13 cilities covered by the allied plan before such effec-
14 tive date.

15 “(3) PARTICIPANTS AND BENEFICIARIES.—The
16 participants and beneficiaries of the allied plan im-
17 mediately before the effective date of the merger
18 shall be considered to be the participants and bene-
19 ficiaries of the frozen allied plan on and after such
20 date.

21 “(4) TREATMENT OF MERGED PLAN AS SINGLE
22 PLAN.—Except as provided in paragraphs (2) and
23 (3) of section 4231(e) of the Employee Retirement
24 Income Security Act of 1974, the allied plan and the

1 plan into which it has been merged shall be treated
2 as a single plan.

3 “(5) ALLIANCE; ALLIED PLAN; FROZEN ALLIED
4 PLAN.—For purposes of this subsection, the terms
5 ‘alliance’, ‘allied plan’, and ‘frozen allied plan’ shall
6 have the same meanings as when used in section
7 4231(e) of the Employee Retirement Income Secu-
8 rity Act of 1974.”.

9 (b) PBGC ASSISTANCE FOR MULTIEMPLOYER PLAN
10 MERGERS.—Section 4231 of the Employee Retirement In-
11 come Security Act of 1974, as amended by subsection (a),
12 is amended by adding at the end the following new sub-
13 section:

14 “(f) FACILITATED MERGERS.—

15 “(1) IN GENERAL.—When requested to do so
16 by the plan sponsors, the corporation shall take rea-
17 sonable actions to promote and facilitate the merger
18 of two or more multiemployer plans, including a
19 merger that is designated as an alliance under sub-
20 section (e), if it determines that the transaction is
21 in the interests of the participants and beneficiaries
22 of at least one of the plans and is not reasonably ex-
23 pected to be adverse to the long-term interests of the
24 participants and beneficiaries of the other plan or
25 plans. Such facilitation may include training, tech-

1 nical assistance, mediation, communication with
2 stakeholders, and support with related requests to
3 other government agencies.

4 “(2) FINANCIAL ASSISTANCE.—In order to fa-
5 cilitate a merger, including a merger designated as
6 an alliance under subsection (e), which it determines
7 is reasonably necessary to enable one or more of the
8 plans involved to avoid or postpone insolvency, the
9 corporation may provide financial assistance to the
10 merged plan if it reasonably expects that such finan-
11 cial assistance will reduce the corporation’s likely
12 long-term loss with respect to the plans involved.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect as of the first day of the first
15 plan year beginning on or after January 1, 2009.

16 **SEC. 3. STRENGTHENING PARTICIPANTS’ BENEFIT PRO-**
17 **TECTIONS.**

18 (a) INCREASE IN MULTIEMPLOYER BENEFIT GUAR-
19 ANTEE.—Paragraph (1) of section 4022A(c) of the Em-
20 ployee Retirement Income Security Act of 1974 is amend-
21 ed to read as follows:

22 “(c)(1) Except as provided in subsection (g), the
23 monthly benefit of a participant or a beneficiary which is
24 guaranteed under this section by the corporation with re-

1 spect to a plan is the product of the number of the partici-
 2 pant’s years of credited service multiplied by the sum of—

3 “(A) 100 percent of the accrual rate up to \$11,
 4 plus 75 percent of the lesser of—

5 “(i) \$33, or

6 “(ii) the accrual rate, if any, in excess of
 7 \$11, and

8 “(B) 50 percent of the lesser of—

9 “(i) \$40 or

10 “(ii) the accrual rate, if any, in excess of
 11 \$44.”.

12 (b) INCREASE IN ANNUAL PREMIUM RATE PAY-
 13 ABLE.—Subparagraph (A) of section 4006(a)(3) of the
 14 Employee Retirement Income Security Act of 1974 is
 15 amended—

16 (1) by inserting “and before January 1, 2011,”
 17 after “December 31, 2005,” in clause (iv),

18 (2) by striking “or” at the end of clause (iii),

19 (3) by striking the period at the end of clause
 20 (iv) and inserting “, or”, and

21 (4) by adding at the end the following new
 22 clause:

23 “(v) in the case of a multiemployer
 24 plan, for plan years beginning after De-
 25 cember 31, 2010, \$16.00 for each indi-

1 vidual who is a participant in such plan
2 during the applicable plan year.”.

3 (c) CERTAIN PARTITIONS OF ELIGIBLE MULTIEM-
4 PLOYER PLANS.—

5 (1) PARTITIONS.—Section 4233 of the Em-
6 ployee Retirement Income Security Act of 1974 is
7 amended by adding at the end the following new
8 subsection:

9 “(g) INTERIM PARTITION OF ELIGIBLE MULTIEM-
10 PLOYER PLANS.—

11 “(1) IN GENERAL.—Notwithstanding the pre-
12 ceding subsections, if, within the 180-day period be-
13 ginning on the first day of the first plan year begin-
14 ning after the date of the enactment of the Create
15 Jobs and Save Benefits Act of 2010, the plan spon-
16 sor of an eligible multiemployer plan provides to the
17 corporation written notice that such plan elects a
18 partition under this subsection, the corporation shall
19 order a partition of such plan. A partition ordered
20 under the preceding sentence shall be effective on
21 the first day of the calendar month designated by
22 the corporation which is after September 2011 and
23 before March 2012. The written notice required by
24 the first sentence of this paragraph shall include the
25 certifications described in paragraph (2) and a list,

1 certified by the plan sponsor, of eligible partition
2 employers.

3 “(2) ELIGIBLE MULTIEMPLOYER PLAN.—An el-
4 ible multiemployer plan is a multiemployer plan as
5 to which—

6 “(A) the plan actuary has certified pursu-
7 ant to section 305(b) that the plan is in critical
8 status (within the meaning of section
9 305(b)(2)) for the plan year in which the notice
10 described in paragraph (1) is provided to the
11 corporation, and the plan sponsor has certified,
12 consistent with projections provided by the plan
13 actuary, that—

14 “(i) a substantial reduction in the
15 amount of aggregate contributions under
16 the plan has resulted or will result—

17 “(I) from cases or proceedings
18 under title 11, United States Code,
19 with respect to employers which were
20 participating in the plan, or

21 “(II) from the complete with-
22 drawal of employers from the plan
23 without payment of the full amount of
24 such employers’ allocable amount of

1 unfunded vested benefits under sec-
2 tion 4211,

3 as compared to the amount of aggregate
4 contributions that would have been made
5 under the plan but for such cases or pro-
6 ceedings,

7 “(ii) the plan is likely to become insol-
8 vent,

9 “(iii) contributions under the plan will
10 have to be significantly increased to pre-
11 vent the plan from becoming insolvent,

12 “(iv) as of the last day of each of the
13 2 plan years immediately preceding the
14 plan year in which the notice described in
15 paragraph (1) is provided to the corpora-
16 tion—

17 “(I) the ratio of the number of
18 retirees, beneficiaries of deceased par-
19 ticipants, and terminated vested par-
20 ticipants in the plan to the number of
21 the active participants in the plan for
22 each such year was not less than 2 to
23 1, and

24 “(II) the ratio of benefit pay-
25 ments made by the plan for each such

1 year to contributions required to be
2 made to the plan under section 304 or
3 305(e), whichever is applicable, for
4 each such year was not less than 2 to
5 1, and

6 “(v) partition would significantly re-
7 duce the likelihood that the plan will be-
8 come insolvent, or

9 “(B) the plan actuary has certified pursu-
10 ant to section 305(b) that the plan is in endan-
11 gered status (within the meaning of section
12 305(b)(1)) for the plan year in which the notice
13 described in paragraph (1) is provided to the
14 corporation, and the plan sponsor has certified,
15 consistent with projections provided by the plan
16 actuary, that—

17 “(i) clauses (i), (ii), (iii), and (v) of
18 subparagraph (A) apply to the plan,

19 “(ii) as of the last day of each of the
20 2 plan years immediately preceding the
21 plan year in which the notice described in
22 paragraph (1) is provided to the corpora-
23 tion—

24 “(I) the ratio of the number of
25 retirees, beneficiaries of deceased par-

1 participants, and terminated vested par-
2 ticipants in the plan to the number of
3 the active participants in the plan for
4 each such year was not less than 10
5 to 1, and

6 “(II) the ratio of benefit pay-
7 ments made by the plan for each such
8 year to contributions required to be
9 made to the plan under section 304
10 for each such year was not less than
11 2 to 1, and

12 “(iii) the plan suffered a substantial
13 reduction in the amount of contribution
14 base units under the plan as a result of de-
15 clining employment within the industry of
16 employers covered by the plan.

17 “(3) ELIGIBLE PARTITION EMPLOYER.—For
18 purposes of this subsection, the term ‘eligible parti-
19 tion employer’ means an employer which, before the
20 date the notice described in paragraph (1) is pro-
21 vided to the corporation with respect to an eligible
22 multiemployer plan in which the employer partici-
23 pates—

24 “(A) ceased contributions to such eligible
25 multiemployer plan as a result of a case or pro-

1 ceeding under title 11, United States Code,
2 with respect to such employer, or

3 “(B) withdrew completely from such plan
4 without paying the full amount of the employ-
5 er’s allocable amount of unfunded vested bene-
6 fits determined under section 4211.

7 “(4) TRANSFERS UNDER PARTITION ORDER.—

8 “(A) SCOPE OF PARTITION ORDER.—The
9 corporation’s partition order issued under para-
10 graph (1) shall provide for—

11 “(i) a transfer, as of the date of the
12 partition, of the nonforfeitable benefits di-
13 rectly attributable to service with eligible
14 partition employers, and

15 “(ii) a transfer of assets in an amount
16 equal to the greater of—

17 “(I) the amount of assets attrib-
18 utable to any withdrawal liability pay-
19 ments by such employers, as adjusted
20 by any gains or losses thereon and re-
21 duced by any benefit payments made
22 with regard to service with such em-
23 ployers, or

24 “(II) the present value, as deter-
25 mined by the plan actuary of the eligi-

1 ble multiemployer plan, of all non-
2 forfeitable benefits directly attrib-
3 utable to service with eligible partition
4 employers which are expected to be
5 paid within 60 months of the effective
6 date of the partition order.

7 For purposes of clause (ii)(II), the cor-
8 poration shall reduce the 60 month period
9 described therein as necessary in order to
10 allow an eligible multiemployer plan to sat-
11 isfy the requirements of paragraph
12 (2)(A)(v) (including the requirements of
13 such subparagraph as applied to such plan
14 by paragraph (2)(B)(i)).

15 “(B) ACTUARIAL ASSUMPTIONS.—The
16 present value of the nonforfeitable benefits de-
17 scribed in subparagraph (A) shall be deter-
18 mined by the plan actuary on the basis of the
19 assumptions prescribed by the corporation for
20 purposes of section 4044. In determining the
21 benefits attributable to employment with eligible
22 partition employers, a plan may elect to at-
23 tribute all employment of a participant to the
24 participant’s most recent employer under the
25 plan, prorate a participant’s benefit among each

1 of the participant's employers under the plan
2 based on the participant's length of covered em-
3 ployment with each employer, or use any other
4 reasonable method approved by the corporation.

5 “(C) FORM OF ASSET TRANSFER.—Not-
6 withstanding any other provision of this Act or
7 the Internal Revenue Code of 1986—

8 “(i) the transfer of assets required
9 under subparagraph (A)(ii) may, at the
10 discretion of the plan sponsor of the plan
11 created by the partition, be accomplished
12 by means of the transfer of an undivided
13 interest in assets of the remaining eligible
14 multiemployer plan equal in value, on the
15 day before the transfer, to the amount re-
16 quired to be transferred, and

17 “(ii) the combined assets of the re-
18 maining eligible multiemployer plan and of
19 the plan created by the partition may, at
20 the discretion of the plan sponsor of the
21 plan created by the partition, continue to
22 be managed and invested as a pooled fund
23 under the eligible multiemployer plan's in-
24 vestment policies without taking the parti-
25 tion into account, provided that each plan's

1 respective interest in the pooled investment
2 fund is adjusted to reflect investment gains
3 and losses of the fund as a whole and to
4 reflect each plan’s actual benefit payments
5 and expenses of administration.

6 “(D) TRANSFER IN CASE OF DECLINE IN
7 CONTRIBUTIONS.—As of the last day of each of
8 the 3 plan years following the plan year of the
9 effective date of the corporation’s partition
10 order under paragraph (1), the plan sponsor of
11 the remaining eligible multiemployer plan shall
12 determine whether, during such plan year, the
13 total contributions under the plan declined by
14 10 percent or more after the date of such parti-
15 tion order as a result of events described in
16 paragraph (2)(A)(i). If such decline has oc-
17 curred during any such plan year, a transfer (in
18 addition to the transfers required under sub-
19 paragraph (A)) shall be made as of the last day
20 of such plan year of—

21 “(i) the nonforfeitable benefits di-
22 rectly attributable to service with employ-
23 ers that become eligible partition employ-
24 ers (as determined as of the last day of

1 such plan year) after the date of such par-
2 tition order, and

3 “(ii) an amount equal to the greater
4 of—

5 “(I) the amount of assets attrib-
6 utable to any withdrawal liability pay-
7 ments by such employers, as adjusted
8 by any gains or losses thereon and re-
9 duced by any benefit payments made
10 with regard to service with such em-
11 ployers, or

12 “(II) the present value, as deter-
13 mined by the plan actuary of the eligi-
14 ble multiemployer plan, of all non-
15 forfeitable benefits directly attrib-
16 utable to service with eligible partition
17 employers which are expected to be
18 paid within 60 months of the last day
19 of such plan year.

20 “(E) COORDINATED ADMINISTRATION
21 AGREEMENT.—The plan created by the parti-
22 tion and the remaining eligible multiemployer
23 plan may enter into a coordinated administra-
24 tion agreement for the efficient processing of
25 benefit payments and may remit benefit pay-

1 ments to participants and beneficiaries with a
2 single, combined check or other combined
3 means of transfer.

4 “(5) PLAN CREATED BY PARTITION.—The plan
5 created by the partition shall be—

6 “(A) a successor plan to which section
7 4022A applies, and

8 “(B) a terminated multiemployer plan to
9 which section 4041A(d) applies, with respect to
10 which no employer has withdrawal liability ex-
11 cept as provided in paragraph (7).

12 “(6) ADMINISTRATION AND SPONSORSHIP OF
13 PLAN CREATED BY PARTITION.—The plan adminis-
14 trator and the plan sponsor of an eligible multiem-
15 ployer plan before a partition under paragraph (1)
16 shall be the plan administrator and the plan sponsor
17 of the plan created by such partition, unless the cor-
18 poration orders otherwise.

19 “(7) EMPLOYER WITHDRAWAL.—

20 “(A) IN GENERAL.—If an employer com-
21 pletely withdraws (within the meaning of sec-
22 tion 4203) from the plan within 60 months of
23 the corporation’s partition order under para-
24 graph (1), the employer’s withdrawal liability to

1 the plan shall be determined as if the partition
2 had not occurred.

3 “(B) PAYMENT OF WITHDRAWAL LIABIL-
4 ITY.—In the case of an employer that com-
5 pletely withdraws or partially withdraws (within
6 the meaning of section 4205) from the plan
7 after the effective date of the corporation’s par-
8 tition order under paragraph (1), and an em-
9 ployer that completely or partially withdraws
10 before such date whose withdrawal liability to
11 the plan remains outstanding as of such effec-
12 tive date, the withdrawal liability of such em-
13 ployer shall be payable to, and shall be collected
14 by the plan sponsor of, the remaining eligible
15 multiemployer plan.

16 “(8) LIMITATION ON BENEFIT INCREASES.—In
17 the case of a plan that elects a partition under this
18 subsection, in addition to any other applicable re-
19 strictions on benefit increases, such plan may not
20 adopt—

21 “(A) an amendment which increases the li-
22 abilities of the plan by reason of any increase
23 in benefits,

24 “(B) any change which has the effect of
25 increasing the accrual of benefits, or

1 “(C) any change in the rate at which bene-
 2 fits become nonforfeitable under the plan,
 3 for a period of 5 plan years immediately following
 4 the plan year of the corporation’s partition order
 5 under paragraph (1), unless such amendment or
 6 change is required as a condition of qualification
 7 under part I of subchapter D of chapter 1 of the In-
 8 ternal Revenue Code of 1986 or to comply with
 9 other applicable law.”.

10 (2) LIMITATION ON BENEFIT INCREASES FOL-
 11 LOWING A PARTITION.—

12 (A) AMENDMENT TO ERISA.—Section 305
 13 of the Employee Retirement Income Security
 14 Act of 1974 is amended by adding at the end
 15 the following new subsection:

16 “(j) LIMITATION ON BENEFIT INCREASES FOL-
 17 LOWING CERTAIN PARTITIONS.—For limitations in the
 18 case of a plan that elects a partition under section
 19 4233(g), see paragraph (8) thereof.”.

20 (B) AMENDMENT TO INTERNAL REVENUE
 21 CODE OF 1986.—Section 432 of the Internal
 22 Revenue Code of 1986 is amended by adding at
 23 the end the following new subsection:

24 “(j) LIMITATION ON BENEFIT INCREASES FOL-
 25 LOWING CERTAIN PARTITIONS.—In the case of a plan

1 that elects a partition under section 4233(g) of the Em-
 2 ployee Retirement Income Security Act of 1974, in addi-
 3 tion to any other applicable restrictions on benefit in-
 4 creases, such plan may not adopt—

5 “(1) an amendment which increases the liabil-
 6 ities of the plan by reason of any increase in bene-
 7 fits,

8 “(2) any change which has the effect of increas-
 9 ing the accrual of benefits, or

10 “(3) any change in the rate at which benefits
 11 become nonforfeitable under the plan,

12 for a period of 5 plan years immediately following the plan
 13 year of the partition order issued by the Pension Benefit
 14 Guarantee Corporation under paragraph (1) of such sec-
 15 tion, unless such amendment or change is required as a
 16 condition of qualification under part I of subchapter D
 17 of chapter 1 or to comply with other applicable law.”.

18 (3) EFFECT OF PARTITION ON PREMIUMS.—

19 (A) Clause (i) of section 4006(a)(3)(C) of
 20 the Employee Retirement Income Security Act
 21 of 1974 is amended by adding at the end the
 22 following: “For purposes of this subparagraph,
 23 the value of assets held by the corporation and
 24 the basic benefits guaranteed for multiemployer
 25 plans shall not include assets and liabilities

1 transferred pursuant to a partition order under
2 section 4233(g)(1).”

3 (B) Section 4022A(f) of such Act is
4 amended by adding at the end the following
5 new paragraph:

6 “(5) Basic benefits guaranteed in connection with as-
7 sets and liabilities transferred to the corporation pursuant
8 to a partition order under section 4233(g)(1) shall be dis-
9 regarded under paragraphs (1), (2), and (3).”.

10 (4) PBGC GUARANTEE OF PARTITIONED BENE-
11 FITS.—

12 (A) Section 4022A of the Employee Retire-
13 ment Income Security Act of 1974 is amended
14 by adding at the end the following new sub-
15 section:

16 “(i) The monthly benefit of a participant or a bene-
17 ficiary whose benefit was transferred pursuant to a parti-
18 tion under section 4233(g) which is guaranteed under this
19 section by the corporation with respect to a plan is equal
20 to the nonforfeitable benefits of such participant or bene-
21 ficiary transferred pursuant to the partition.”.

22 (B) Section 4022A(c)(1) of such Act is
23 amended by striking “subsection (g)” and in-
24 serting “subsections (g) and (i)”.

1 (5) REPORT TO CONGRESS.—Not later than De-
2 cember 31, 2011, the Secretary of the Treasury and
3 the Secretary of Labor shall submit a joint report to
4 the Committee on Finance and the Committee on
5 Health, Education, Labor, and Pensions of the Sen-
6 ate and the Committee on Ways and Means and the
7 Committee on Education and Labor of the House of
8 Representatives regarding the funding status of
9 those plans that have received a partition order
10 under section 4233(g)(1) of the Employee Retirement
11 Income Security Act of 1974, the amount of
12 assets utilized in connection with any such parti-
13 tions, and any recommendations to extend such parti-
14 tions or to further improve current law with re-
15 spect to such partitions.

16 (6) REHABILITATION PLAN REQUIREMENTS.—

17 (A) AMENDMENTS TO ERISA.—

18 (i) Section 305(e)(3) of the Employee
19 Retirement Income Security Act of 1974 is
20 amended by adding at the end the fol-
21 lowing new subparagraph:

22 “(D) CERTAIN PARTITIONS.—Notwith-
23 standing any other provision of this section, in
24 the case of an eligible multiemployer plan whose
25 plan sponsor elects a partition under section

1 4233(g), the requirements of subparagraph (A)
2 shall not be applied to require any action, op-
3 tion, or measure to be included in the plan’s re-
4 habilitation plan to the extent such action, op-
5 tion, or measure would, in the reasonable deter-
6 mination of the plan sponsor, adversely affect
7 the future level of covered employment under
8 the plan.”.

9 (ii) Section 305(e)(4) of such Act is
10 amended by adding at the end the fol-
11 lowing new subparagraph:

12 “(C) COORDINATION WITH SECTION
13 4233(G).—The modification of a rehabilitation
14 plan by the plan sponsor of a plan that elects
15 a partition under section 4233(g) shall not af-
16 fect the rehabilitation period of such plan, and
17 any change to the rehabilitation plan to reflect
18 the effect of such partition shall constitute an
19 update of the rehabilitation plan as in effect on
20 the day before such partition.”.

21 (B) AMENDMENTS TO THE INTERNAL REV-
22 ENUE CODE OF 1986.—

23 (i) Section 432(e)(3) of the Internal
24 Revenue Code of 1986 is amended by add-

1 ing at the end the following new subpara-
2 graph:

3 “(D) CERTAIN PARTITIONS.—Notwith-
4 standing any other provision of this section, in
5 the case of an eligible multiemployer plan whose
6 plan sponsor elects a partition under section
7 4233(g) of the Employee Retirement Income
8 Security Act of 1974, the requirements of sub-
9 paragraph (A) shall not be applied to require
10 any action, option, or measure to be included in
11 the plan’s rehabilitation plan to the extent such
12 action, option, or measure would, in the reason-
13 able determination of the plan sponsor, ad-
14 versely affect the future level of covered employ-
15 ment under the plan.”.

16 (ii) Section 432(e)(4) of such Code is
17 amended by adding at the end the fol-
18 lowing new subparagraph:

19 “(C) COORDINATION WITH SECTION
20 4233(G) OF ERISA.—The modification of a reha-
21 bilitation plan by the plan sponsor of a plan
22 that elects a partition under section 4233(g) of
23 the Employee Retirement Income Security Act
24 of 1974 shall not affect the rehabilitation period
25 of such plan, and any change to the rehabilita-

1 tion plan to reflect the effect of such partition
2 shall constitute an update of the rehabilitation
3 plan as in effect on the day before such parti-
4 tion.”.

5 (7) ENFORCEMENT.—Section 4003(f)(1) of the
6 Employee Retirement Income Security Act of 1974
7 is amended—

8 (A) by inserting “(A)” after “(f)(1)”, and

9 (B) by adding at the end the following:

10 “(B) The plan sponsor of an eligible multiemployer
11 plan that is adversely affected by the corporation’s failure
12 to issue a partition order as required under section
13 4233(g)(1) may bring an action against the corporation
14 for appropriate equitable relief in the appropriate court.
15 In any such action, the court may order the partition upon
16 finding that the requirements of section 4233(g)(1) have
17 been satisfied.”.

18 (d) FINANCING FOR PARTITIONS AND OTHER SPE-
19 CIAL MATTERS.—

20 (1) OBLIGATIONS OF THE CORPORATION.—The
21 second sentence of section 4002(g)(2) of the Em-
22 ployee Retirement Income Security Act of 1974 is
23 amended to read as follows: “The United States
24 Government is not liable for any obligation or liabil-
25 ity incurred by the corporation, except with respect

1 to liabilities transferred pursuant to a partition of a
2 multiemployer plan under section 4233(g).”

3 (2) PBGC FUND ESTABLISHED.—Section 4005
4 of such Act is amended by striking subsections (d)
5 and (e), by redesignating subsections (f) through (h)
6 as subsections (e) through (g), respectively, and by
7 inserting after subsection (c) the following new sub-
8 section:

9 “(d) ESTABLISHMENT OF FIFTH FUND; PURPOSE;
10 AVAILABILITY, ETC.—

11 “(1) IN GENERAL.—A fifth fund shall be estab-
12 lished for the purposes described in paragraph (2).

13 “(2) USE OF FUND.—The fund established by
14 this subsection shall be used to finance obligations
15 undertaken by the corporation under section 4233.

16 “(3) CREDITS TO FUND.—The fund established
17 under this subsection shall be credited with funds
18 made available to the corporation that are des-
19 ignated for special matters and the earnings thereon,
20 including any amounts received in connection with a
21 partition under section 4233(g), and shall not in-
22 clude premiums paid under section 4007, employer
23 liability or withdrawal liability payments, the assets
24 of terminated plans or repayments of financial as-
25 sistance under section 4261, or other amounts re-

1 ceived in connection with terminated or insolvent
2 plans.

3 “(4) TRANSACTIONS WITH OTHER FUNDS.—
4 Notwithstanding paragraph (3), this fund may en-
5 gage in transactions with the other funds established
6 under this section to the extent reasonable and nec-
7 essary to meet liquidity demands and to maximize
8 the ability of the corporation to accomplish its mis-
9 sion under section 4002(a) without increasing the
10 premiums payable under section 4006.

11 “(5) INVESTMENTS.—The corporation may in-
12 vest amounts of the fund in such obligations as the
13 corporation considers appropriate.

14 “(6) OBLIGATIONS OF UNITED STATES.—Not-
15 withstanding any other provision of this title, obliga-
16 tions of the corporation which are financed by the
17 fund created by this subsection shall be obligations
18 of the United States.”.

19 (3) CONFORMING AMENDMENTS.—

20 (A) Section 4022A(g) of such Act is
21 amended by striking paragraph (2).

22 (B) Part 1 of subtitle E of title IV of such
23 Act is amended by striking section 4222, and
24 the table of contents for such Act is amended
25 by striking the item relating to section 4222.

1 (e) EFFECTIVE DATES.—

2 (1) The amendments made by subsection (a)
3 shall apply with respect to plans that first apply for
4 financial assistance from the Pension Benefit Guar-
5 antee Corporation after the date of the enactment of
6 this Act.

7 (2) The amendments made by subsection (b)
8 shall apply to plan years beginning after December
9 31, 2010.

10 (3) The amendments made by subsections (c)
11 and (d) shall take effect on the date of the enact-
12 ment of this Act.

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