

104TH CONGRESS
1ST SESSION

H. R. 37

To amend the Employee Retirement Income Security Act of 1974 to improve pension plan funding.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1995

Mr. FAWELL introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

A BILL

To amend the Employee Retirement Income Security Act of 1974 to improve pension plan funding.

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 “Pension Funding Im-
5 provement Act of 1995”.

6 **SEC. 2. AMENDMENT OF ERISA.**

7 The sections of the Employee Retirement Income Se-
8 curity Act of 1974 which are amended by the subsequent
9 provisions of this Act are amended so as to read as such
10 sections would read if the Uruguay Round Agreements

1 Act had not been enacted. References to such sections in
2 the subsequent provisions of this Act shall be deemed ref-
3 erences to such sections as amended by this section. This
4 section shall be effective as if included in the Uruguay
5 Round Agreements Act.

6 **TITLE I—PENSION PLAN** 7 **FUNDING**

8 **SEC. 101. AMENDMENTS TO PENSION PLAN FUNDING RE-** 9 **QUIREMENTS.**

10 Section 302(a)(2) of the Employee Retirement In-
11 come Security Act of 1974 (29 U.S.C. 1082(a)(2)) is
12 amended by striking “the excess of the total charges to
13 the funding standard account” through the end of that
14 sentence, and inserting “the largest of—

15 “(A) the lesser of—

16 “(i) the excess of the total charges to
17 the funding standard account for all plan
18 years (beginning with the first plan year to
19 which this section applies) over the total
20 credits to such account for such years;

21 “(ii) the excess of the total charges to
22 the alternative minimum funding standard
23 account for such plan years over the total
24 credits to such account for such years;

1 “(B) the excess (if any) of the
2 underfunding reduction requirement (if any) for
3 the plan year applicable under subsection (d)
4 over the amount considered contributed by the
5 employer to or under the plan for the plan year;
6 or

7 “(C) the excess (if any) of the solvency
8 maintenance requirement (if any) for the plan
9 year applicable under subsection (g) over the
10 amount considered contributed by the employer
11 to or under the plan for the plan year.”

12 **SEC. 102. UNDERFUNDING REDUCTION REQUIREMENT.**

13 Subsection (d) of section 302 of the Employee Retire-
14 ment Income Security Act of 1974 (29 U.S.C. 1082(d))
15 is amended to read as follows:

16 “(d) UNDERFUNDING REDUCTION REQUIREMENT
17 FOR PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

18 “(1) UNDERFUNDING REDUCTION REQUIRE-
19 MENT.—In the case of a defined benefit plan (other
20 than a multiemployer plan) which has a funded cur-
21 rent liability percentage of less than 100 percent (as
22 of the first day of the plan year), the underfunding
23 reduction requirement for such plan year is the sum
24 of—

25 “(A) an amount equal to the product of—

1 “(i) the funded current liability per-
2 centage of the plan (as of such first day),
3 multiplied by

4 “(ii) 30 percent, reduced by the prod-
5 uct of—

6 “(I) .25 multiplied by

7 “(II) the excess (if any) of the
8 funded current liability percentage of
9 the plan (as of such first day) over 35
10 percent;

11 “(B) the expected increase in the current
12 liability attributable to benefits accruing during
13 the plan year;

14 “(C) the amount described in subsection
15 (b)(2)(C) as necessary to amortize any waived
16 funding deficiency; and

17 “(D) the unpredictable contingent event
18 amount (if any) for such plan year.

19 The underfunding reduction requirement shall not
20 exceed the sum of the amount necessary to increase
21 the funded current liability percentage (as of such
22 first day) to 100 percent and the amount determined
23 under subparagraph (B).

24 “(2) UNPREDICTABLE CONTINGENT EVENT
25 AMOUNT.—

1 “(A) IN GENERAL.—The unpredictable
2 contingent event amount with respect to a plan
3 for any plan year is an amount equal to the
4 greater of—

5 “(i) the applicable percentage of the
6 product of—

7 “(I) 100 percent, reduced (but
8 not below zero) by the funded current
9 liability percentage for the plan year,
10 multiplied by

11 “(II) the amount of unpredict-
12 able contingent event benefits paid
13 during the plan year, including (ex-
14 cept as provided by the Secretary) any
15 payment for the purchase of an annu-
16 ity contract for a participant or bene-
17 ficiary with respect to such benefits,
18 or

19 “(ii) the amount which would be de-
20 termined for the plan year if the unpredict-
21 able contingent event benefit liabilities
22 were amortized in equal annual install-
23 ments over 7 plan years (beginning with
24 the plan year in which such event occurs).

25 “(B) APPLICABLE PERCENTAGE.—

In the case of plan years beginning in:	The applicable percentage is:
1991 and 1992	5
1993	10
1994	15
1995	20
1996	30
1997	40
1998	50
1999	60
2000	70
2001	80
2002	90
2003 and thereafter	100

1 “(C) PARAGRAPH NOT TO APPLY TO EX-
2 ISTING BENEFITS.—This paragraph shall not
3 apply to unpredictable contingent event benefits
4 (and liabilities attributable thereto) for which
5 the event occurred before the first plan year be-
6 ginning after December 31, 1990.

7 “(D) SPECIAL RULE FOR FIRST YEAR OF
8 AMORTIZATION.—Unless the employer elects
9 otherwise, the amount determined under sub-
10 paragraph (A) for the plan year in which the
11 event occurs shall be equal to 150 percent of
12 the amount determined under subparagraph
13 (A)(i). The amount under subparagraph (A)(ii)
14 for subsequent plan years in the amortization
15 period shall be adjusted in the manner provided
16 by the Secretary to reflect the application of
17 this subparagraph.

18 “(3) CURRENT LIABILITY.—For purposes of
19 this subsection and subsection (g)—

1 “(A) IN GENERAL.—The term “current li-
2 ability” means all liabilities to employees and
3 their beneficiaries under the plan.

4 “(B) TREATMENT OF UNPREDICTABLE
5 CONTINGENT EVENT BENEFITS.—

6 “(i) IN GENERAL.—For purposes of
7 subparagraph (A), any unpredictable con-
8 tingent event benefit shall not be taken
9 into account until the event on which the
10 benefit is contingent occurs.

11 “(ii) UNPREDICTABLE CONTINGENT
12 EVENT BENEFIT.—The term ‘unpredictable
13 contingent event benefit’ means any benefit
14 contingent on an event other than—

15 “(I) age, service, compensation,
16 death, or disability, or

17 “(II) an event which is reason-
18 ably and reliably predictable (as deter-
19 mined by the Secretary).

20 “(C) INTEREST RATES USED.—The rate of
21 interest used to determine current liability shall
22 be the rate of interest used under subsection
23 (b)(5); except that the permissible range under
24 subparagraph (B)(ii) of subsection (b)(5) shall

1 not exceed 100 percent of the weighted average
2 referred to in such subparagraph.

3 “(D) CERTAIN SERVICE DISREGARDED.—

4 “(i) IN GENERAL.—In the case of a
5 participant to whom this subparagraph ap-
6 plies, only the applicable percentage of the
7 years of service before such individual be-
8 came a participant shall be taken into ac-
9 count in computing the current liability of
10 the plan.

11 “(ii) APPLICABLE PERCENTAGE.—For
12 purposes of clause (i), the applicable per-
13 centage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
1	20
2	40
3	60
4	80
5 or more	100

14 “(iii) PARTICIPANTS TO WHOM THIS
15 SUBPARAGRAPH APPLIES.—This subpara-
16 graph shall apply to any participant who,
17 at the time of becoming a participant—

18 “(I) has not accrued any other
19 benefit under any defined benefit plan
20 (whether or not terminated) main-
21 tained by the employer or a member

1 of the same controlled group of which
2 the employer is a member,

3 “(II) who first becomes a partici-
4 pant under the plan in a plan year be-
5 ginning after December 31, 1989, and

6 “(III) has years of service great-
7 er than the minimum years of service
8 necessary for eligibility to participate
9 in the plan.

10 “(iv) ELECTION.—An employer may
11 elect not to have this subparagraph apply.
12 Such an election, once made, may be re-
13 voked only with the consent of the Sec-
14 retary.

15 “(4) OTHER DEFINITIONS.—For purposes of
16 this subsection and subsection (o)—

17 “(A) UNFUNDED CURRENT LIABILITY.—
18 The term ‘unfunded current liability’ means,
19 with respect to any plan year, the excess (if
20 any) of—

21 “(i) the current liability under the
22 plan, over

23 “(ii) the value of the plan assets de-
24 termined under subsection (c)(2), reduced

1 by any credit balance in the funding stand-
2 ard account.

3 “(B) FUNDED CURRENT LIABILITY PER-
4 CENTAGE.—The term ‘funded current liability
5 percentage’ means, with respect to any plan
6 year, the percentage which—

7 “(i) the amount determined under
8 subparagraph (A)(ii), is of

9 “(ii) the current liability under the
10 plan.

11 “(5) SPECIAL RULES FOR SMALL PLANS.—

12 “(A) PLANS WITH 100 OR FEWER PARTICI-
13 PANTS.—This subsection and subsection (g)
14 shall not apply to any plan for any plan year
15 if on each day during the preceding plan year
16 such plan had no more than 100 participants.

17 “(B) PLANS WITH MORE THAN 100 BUT
18 NOT MORE THAN 150 PARTICIPANTS.—In the
19 case of a plan to which subparagraph (A) does
20 not apply and which on each day during the
21 preceding year had no more than 150 partici-
22 pants, the additional amounts required by the
23 underfunding reduction requirement under this
24 subsection or the solvency maintenance require-

1 ment under subsection (g) shall be equal to the
2 product of—

3 “(i) the excess of such requirements
4 (determined without regard to this sub-
5 paragraph) over the funding deficiency (if
6 any) under subsection (b), multiplied by,

7 “(ii) 2 percent for the highest number
8 of participants in excess of 100 on any
9 such day.

10 “(C) AGGREGATION OF PLANS.—For pur-
11 poses of this paragraph, all defined benefit
12 plans maintained by the same employer (or any
13 member of such employer’s controlled group)
14 shall be treated as 1 plan, but only employees
15 of such employer or member shall be taken into
16 account.

17 “(D) CONTROLLED GROUP.—For purposes
18 of this paragraph, the term ‘controlled group’
19 means any group treated as a single employer
20 under subsection (b), (c), (m), or (o) of section
21 414.”

22 **SEC. 103. SOLVENCY MAINTENANCE REQUIREMENTS.**

23 Section 302 of the Employee Retirement Income Se-
24 curity Act of 1974 (29 U.S.C. 1082) is amended—

1 (1) by redesignating subsections (g) and (h) as
2 subsections (h) and (i), respectively, and

3 (2) by inserting after subsection (f) the follow-
4 ing new subsection:

5 “(g) SOLVENCY MAINTENANCE REQUIREMENT FOR
6 PLANS THAT ARE NOT MULTIEMPLOYER PLANS.—

7 “(1) SOLVENCY MAINTENANCE REQUIRE-
8 MENT.—In the case of a defined benefit plan (other
9 than a multiemployer plan) which has a funded cur-
10 rent liability percentage of less than 100 percent (as
11 of the first day of the plan year), the solvency main-
12 tenance requirement for such plan year is the sum
13 of—

14 “(A) the sum of:

15 “(i) all disbursements from the plan
16 for the plan year, and

17 “(ii) an amount equal to the unfunded
18 current liability of the plan (as of such
19 first day) multiplied by the interest rate
20 used by such plan to determine current li-
21 ability,

22 “(B) the amount determined under sub-
23 section (d)(1)(B), and

24 “(C) the amount determined under sub-
25 section (d)(1)(C).

1 The solvency maintenance requirement shall not ex-
 2 ceed the sum of the amount necessary to increase
 3 the funded liability percentage (as of such first day)
 4 to 100 percent and the amount determined under
 5 subparagraph (B).

6 “(2) LIMITATION ON SOLVENCY MAINTENANCE
 7 REQUIREMENT.—

8 “(A) IN GENERAL.—The amount required
 9 under paragraph (1) for any plan year shall not
 10 exceed the sum of—

11 “(i) the amount required under sub-
 12 section (d); and

13 “(ii) the product of—

14 “(I) the excess (if any) of the
 15 amount required under paragraph (1)
 16 over the amount required under sub-
 17 section (d); multiplied by

18 “(II) the applicable percentage,

19 “(B) APPLICABLE PERCENTAGE.—For
 20 purposes of subparagraph (A), the applicable
 21 percentage is:

“For plan years beginning in:	The applicable percentage is:
1995	20 percent
1996	40 percent
1997	60 percent
1998	80 percent
1999 or thereafter	100 percent.

22 “(3) DISBURSEMENTS FROM THE PLAN.—

1 “(A) IN GENERAL.—The term ‘disburse-
2 ments from the plan’ means benefit payments,
3 including purchases of annuities or payment of
4 lump sums in satisfaction of liabilities, adminis-
5 trative expenditures or any other disbursements
6 from the plan or its trust.

7 “(B) SPECIAL RULE FOR PURCHASES OF
8 ANNUITIES AND PAYMENT OF LUMP SUMS.—In
9 determining the applicable amounts attributable
10 to purchases of annuities or the payment of
11 lump sums under clause (i), the actual purchase
12 or lump sum amounts paid by the plan or trust
13 shall be multiplied by the excess (if any) of one
14 over the initial funding ratio of the plan.”

15 **SEC. 104. TRANSITION USE OF CREDIT BALANCES FROM**
16 **PLAN YEARS BEFORE 1996.**

17 At the election of the employer maintaining a defined
18 benefit plan subject to the requirements of section 302 of
19 the Employee Retirement Income Security Act of 1974,
20 the amounts required under sections 302(d) and 302(g)
21 of such Act, as amended by this Act, may be reduced by
22 the net of (1) the sum of credits to the funding standard
23 account for plan years beginning on or before December
24 31, 1995, arising under clauses (ii) and (iii) of section
25 302(b)(3)(B) of such Act and for amounts considered con-

1 tributed by the employer under section 302(b)(3)(A) of
2 such Act (to the extent necessary to avoid an accumulated
3 funding deficiency under section 302(f) of such Act) and
4 (2) charges to the funding standard account for plan years
5 beginning on or before December 31, 1995, arising under
6 clauses (iv) and (v) of section 302(b)(2)(B) of such Act.

7 **SEC. 105. EFFECTIVE DATES.**

8 The amendments made by this title shall apply to
9 plan years beginning after December 31, 1995.

10 **TITLE II—REQUIRED SECURITY**
11 **FOR CERTAIN PLAN AMEND-**
12 **MENTS**

13 **SEC. 201. INCREASE IN REQUIRED FUNDING PERCENTAGE.**

14 (a) IN GENERAL.—Paragraph (2) of section 307(a)
15 of the Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1085b(a)(2)) is amended by striking “60 per-
17 cent” and inserting “90 percent”.

18 (b) CONFORMING AMENDMENT.—Subsection (d) of
19 section 302 of such Act (29 U.S.C. 1082(d)) is amended
20 by striking “60 percent” and inserting “90 percent”.

21 **SEC. 202. INCREASE IN AMOUNT OF REQUIRED SECURITY.**

22 (a) IN GENERAL.—Subsection (c) of section 307 of
23 the Employee Retirement Income Security Act of 1974
24 (29 U.S.C. 1085b(c)) is amended to read as follows:

1 “(c) AMOUNT OF SECURITY.—The security shall be
2 in an amount equal to the excess (if any) of—

3 “(1) the amount of additional plan assets which
4 would be necessary to increase the funded current li-
5 ability percentage under the plan to 90 percent, in-
6 cluding the amount of the unfunded current liability
7 under the plan attributable to the plan amendment,
8 over

9 “(2) \$1,000,000.”

10 (b) CONFORMING AMENDMENT.—Subsection (f) of
11 section 307 of such Act is amended by striking “, except
12 that” and all that follows and inserting a period.

13 **SEC. 203. PROVISIONS MADE APPLICABLE TO MULTIEM-**
14 **PLOYER PLANS.**

15 Paragraph (1) of section 307(a) of the Employee Re-
16 tirement Income Security Act of 1974 (29 U.S.C.
17 1085b(a)(1)) is amended by striking “(other than a multi-
18 employer plan)”.

19 **SEC. 204. CRIMINAL PENALTY MADE APPLICABLE.**

20 Section 501 of the Employee Retirement Income Se-
21 curity Act of 1974 (29 U.S.C. 1131) is amended by insert-
22 ing “or of section 307” after “this subtitle”.

23 **SEC. 205. EFFECTIVE DATE.**

24 The amendments made by this title shall apply to
25 plan amendments adopted after 1995.

1 **TITLE III—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 301. REPORTS BY PENSION BENEFIT GUARANTY COR-**
4 **PORATION AND CONGRESSIONAL BUDGET**
5 **OFFICE.**

6 Effective with respect to fiscal years ending after
7 September 30, 1995, section 4008 of the Employee Retire-
8 ment Income Security Act of 1974 is amended by—

9 (1) striking “five” in the second sentence of
10 such section and inserting “five, ten, twenty and
11 thirty”,

12 (2) adding at the end thereof the following new
13 sentences: “The actuarial evaluation shall set forth
14 alternative premium schedules to assure that the as-
15 sets of the corporation equal or exceed its liabilities
16 during such periods. For any fiscal year that it
17 deems appropriate, the Congressional Budget Office
18 may transmit a separate report that analyzes and
19 comments upon the actuarial evaluation prepared by
20 the corporation (and premium schedules contained
21 therein).”

22 **SEC. 302. CERTAIN INFORMATION REQUIRED TO BE FUR-**
23 **NISHED TO PBGC.**

24 (a) GENERAL RULE.—Subtitle A of title IV of the
25 Employee Retirement Income Security Act of 1974 (29

1 U.S.C. 1301 et seq.) is amended by adding at the end
2 the following new section:

3 **“SEC. 4010. AUTHORITY TO REQUIRE CERTAIN INFORMA-**
4 **TION.**

5 “(a) GENERAL RULE.—For plans described in sub-
6 section (b), the corporation may require that a plan spon-
7 sor or members of a sponsor’s controlled group provide
8 the corporation with such records, documents, or other in-
9 formation that the corporation deems necessary to deter-
10 mine the liabilities and assets of plans covered by this title,
11 or the financial condition of sponsors or members of spon-
12 sors’ controlled groups maintaining plans covered by this
13 title.

14 “(b) DESCRIPTION OF PLANS.—For purposes of sub-
15 section (a), a plan is described in this subsection if—

16 “(1) the underfunding under such plan exceeds
17 \$10,000,000;

18 “(2) the number of participants under such
19 plan is greater than 2,000; or

20 “(3) minimum funding waivers in excess of
21 \$1,000,000 have been granted with respect to such
22 plan.

23 For purposes of this section, all plans maintained by the
24 same sponsor (or any member of such sponsor’s controlled
25 group) shall be treated as 1 plan. For purposes of this

1 subsection, determinations of liabilities and assets shall be
2 made in the same manner as under section 4006.”

3 (b) CLERICAL AMENDMENT.—The table of contents
4 contained in section 1 of such Act is amended by inserting
5 after the item relating to section 4009 the following new
6 item:

“Sec. 4010. Authority to require certain information.”



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