

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2511

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## 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.*





113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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**AN ACT**

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