

DESCRIPTION OF H.R. 3396
("RETIREMENT PROTECTION ACT")
AND POSSIBLE CHAIRMAN'S AMENDMENT

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INTRODUCTION

This document¹, prepared by the staff of the Joint Committee on Taxation, provides a description of, and possible Chairman's amendment to, the provisions contained in H.R. 3396 ("Retirement Protection Act"), which is scheduled for markup in the House Committee on Ways and Means on July 22, 1994. H.R. 3396 was introduced on October 28, 1993, by Representatives William Ford and Rostenkowski (by request) as the Administration's proposal. The bill was referred jointly to the Committee on Education and Labor and the Committee on Ways and Means. H.R. 3396 contains the Administration's recommendations to modify the funding and plan termination rules applicable to single-employer defined benefit pension plans and to make other changes in the rules applicable to tax-qualified pension plans.

Part I of the pamphlet is a summary of the provisions of H.R. 3396. Part II describes present law and the provisions of H.R. 3396. Part III contains a possible Chairman's amendment to the provisions of H.R. 3396.

¹ This document may be cited as follows: Joint Committee on Taxation, Description of H.R. 3396 ("Retirement Protection Act") and Possible Chairman's Amendment (JCX-8-94), July 21, 1994.

I. SUMMARY OF H.R. 3396 ("RETIREMENT PROTECTION ACT")

In general

Under present law, underfunded defined benefit pension plans are subject to stricter funding requirements than other defined benefit plans. H.R. 3396 would make changes in four major areas: the special funding rules for underfunded single-employer defined benefit pension plans, Pension Benefit Guaranty Corporation (PBGC) premiums for underfunded plans, PBGC enforcement capabilities and the obligations of plan sponsors to the PBGC, and protections for plan participants and beneficiaries. The bill would also make a number of miscellaneous changes to the Internal Revenue Code (the Code) and the Employee Retirement Income Security Act of 1974 (ERISA).

Special funding rules

H.R. 3396 would change the special funding rules that apply to underfunded single-employer defined benefit pension plans. In general, the bill would require sponsors of underfunded plans to fund pension liabilities more rapidly than under the present-law rules. Specifically, the bill would (1) modify the calculation of the minimum required funding contribution applicable to underfunded plans, (2) change the permissible range of interest rates and require uniform mortality assumptions for the purpose of determining an underfunded plan's current liability for deficit reduction contribution purposes, and treat any increase in current liability due to the new interest and mortality assumptions as "unfunded old liability", (3) accelerate the funding of a plan's "unfunded new liability", (4) change the calculation of the additional funding contribution required on account of an unpredictable contingent event, (5) provide an elective transition rule for sponsors of underfunded plans to protect against possibly large increases in their minimum required contributions on account of the proposed changes in the special funding rules, and (6) change the manner in which the full funding limit is determined.

The bill would also require underfunded single employer defined benefit pension plans to satisfy a plan solvency requirement. In addition, the bill would waive the excise tax on nondeductible contributions in certain cases. This change would permit companies to fund fully an underfunded defined benefit pension plan while making other qualified plan contributions without incurring the excise tax.

PBGC premiums

Under present law, plans insured by the PBGC are

required to pay a per-participant premium of \$19. Underfunded plans are required to pay an additional premium of \$9 per \$1,000 of underfunding, up to a maximum per-participant additional premium of \$53. The bill would increase PBGC premiums for certain underfunded plans by phasing out the \$53 cap on the additional PBGC premium for underfunded plans over three years, beginning with plan years beginning on or after July 1, 1994.

PBGC enforcement and sponsor compliance

The bill would add to the list of events that must be reported to the PBGC by employers, authorize the PBGC to apply to district court for relief other than involuntary plan termination in certain circumstances, impose additional PBGC reporting obligations on plan sponsors, authorize the PBGC to bring suit to enforce the minimum funding standards if the amount of missed contributions exceeds \$1 million, and generally prohibit an employer in bankruptcy from adopting a plan amendment increasing benefits.

Participant protections

The bill would require plan administrators of underfunded defined benefit pension plans to disclose to their participants the plan's funded status and the limits on the PBGC's guarantee should the plan terminate while underfunded. The bill also would impose additional requirements on plan sponsors of terminating plans that would protect the pension benefits of participants who cannot be located.

Miscellaneous

The bill would also make a number of additional changes to the Code and ERISA. These changes would include modifications to the actuarial assumptions used to calculate lump-sum distributions, adjustments to the lien for missed contributions, adjustments to the rounding rules for cost-of-living adjustments, and a prohibition on cross testing of defined contribution plans under the Code's nondiscrimination rules.

II. DESCRIPTION OF PRESENT LAW AND H.R. 3396

A. Title I--Pension Plan Funding

1. Minimum funding requirements (secs. 101 and 121 of the bill, secs. 412(c), (l), and (m) of the Code, and secs. 204, 302(d), and (e) of ERISA)

Present Law

In general

ERISA and the Code impose both minimum and maximum defined benefit pension plan funding requirements. The minimum funding requirements are designed to provide at least a certain level of benefit security by requiring the employer to make certain minimum contributions to the plan. The requirements recognize that, in an on-going plan, pension liabilities are generally a long-term liability. Thus, benefits are not required to be immediately funded, but can be funded over a long period of time.

Minimum funding standard

Under the Code and ERISA, certain defined benefit pension plans are required to meet a minimum funding standard for each plan year. As an administrative aid in the application of the funding standard, each defined benefit pension plan is required to maintain a special account called a "funding standard account" to which specified charges and credits (including credits for contributions to the plan) are to be made for each plan year. If, as of the close of a plan year, the account reflects credits equal to or in excess of charges, the plan is treated as meeting the minimum funding standard for the year. Thus, as a general rule, the minimum contribution for a plan year is determined as the amount by which the charges to the account would exceed credits to the account if no contribution were made to the plan.

If, as of the close of any plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an "accumulated funding deficiency." Unless a minimum funding waiver is obtained, an employer who is responsible for contributing to a plan with an accumulated funding deficiency is subject to a 10-percent nondeductible excise tax on the amount of the deficiency (Code sec. 4971). If the deficiency is not corrected within the "taxable period", then an employer who is responsible for contributing to the plan is also subject to a nondeductible excise tax equal to 100 percent of the deficiency.

A defined benefit pension plan is required to use an acceptable actuarial cost method to determine the elements included in its funding standard account for a year. Generally, an actuarial cost method breaks up the cost of benefits under the plan into annual charges consisting of two elements for each plan year. These elements are referred to as (1) normal cost, and (2) supplemental cost.

Under the minimum funding standard, the portion of the cost of a plan that is required to be paid for a particular year depends upon the nature of the cost. For example, the normal cost for a year is generally required to be funded currently. On the other hand, costs with respect to past service (for example, the cost of retroactive benefit increases), experience losses, and changes in actuarial assumptions, are spread over a period of years.

A special funding rule applies to underfunded single-employer defined benefit pension plans (other than plans with no more than 100 participants on any day in the preceding plan year). This special funding rule was adopted in the Pension Protection Act of 1987 due to concerns about the solvency of the defined benefit pension plan system and concerns that the generally applicable funding rules were not in all cases sufficient to ensure that plans would be adequately funded.

With respect to plans subject to the special rule, the minimum required contribution is, in general, the greater of (1) the amount determined under the normal funding rules, or (2) the sum of (a) normal cost, (b) the amount necessary to amortize experience gains and losses over 5 years and gains and losses resulting from changes in actuarial assumptions over 10 years, and (c) the deficit reduction contribution, plus (d) the amount required with respect to benefits that are contingent on unpredictable events. In no event is the amount of the contribution to exceed the amount necessary to increase the funded ratio of the plan to 100 percent.

The deficit reduction contribution is the sum of (1) the unfunded old liability amount, and (2) the unfunded new liability amount. Calculation of these amounts is based on the plan's current liability.

The value of any unpredictable contingent event benefit is not considered until the event has occurred. If the event on which an unpredictable contingent event benefit is contingent occurs during the plan year and the assets of the plan are less than current liability (calculated after the event has occurred), then an additional funding contribution (over and above the minimum funding contribution otherwise due) is required.

Unpredictable contingent event benefits include benefits that depend on contingencies that, like facility shutdowns or reductions or contractions in workforce, are not reliably and reasonably predictable. The event on which an unpredictable contingent event benefit is contingent is generally not considered to have occurred until all events on which the benefit is contingent have occurred.

The amount of the additional contribution is generally equal to the greater of (1) the unfunded portion of the benefits paid during the plan year (regardless of the form in which paid), including (except as provided by the Secretary) any payment for the purchase of an annuity contract with respect to a participant with respect to unpredictable contingent event benefits, and (2) the amount that would be determined for the year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 years, beginning with the plan year in which the event occurs.

The rule relating to unpredictable contingent event benefits is phased in for plan years beginning in 1989 through 2001.

The special rules for underfunded plans do not apply to plans with 100 or fewer employees. In the case of a plan with more than 100 but no more than 150 participants during the preceding year, the amount of the additional deficit reduction and unpredictable contingent amount benefit contribution is determined by multiplying the otherwise required additional contribution by 2 percent for each participant in excess of 100.

Full funding limit

ERISA and the Code limit the amount of annual contributions that can be made to a defined benefit plan. One such limitation is the full funding limit, under which no contribution is required under the minimum funding rules to the extent the plan is at the full funding limit. Before 1988, the full funding limit was 100 percent of an employer's accrued liability, as determined under the plan's funding method. However, because of concerns that employers could manipulate the limit by changing actuarial assumptions, the Pension Protection Act of 1987 amended ERISA and the Code to create a new full funding limit. The new full funding limit is equal to the lesser of the old funding limit (accrued liability) or 150 percent of the employer's current liability. Current liability is all liabilities to participants and beneficiaries under the plan determined as if the plan terminated. It represents only benefits accrued to date, and is not dependent on the actuarial funding

method. As a result, the new full funding limit can be lower than the old full funding limit.

Time for making contributions

Under present law, the required minimum funding contribution for a plan year must be made within 8-1/2 months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year. In the case of single-employer defined benefit pension plans, 4 installments of estimated contributions are required for the plan year with the total contribution due within 8-1/2 months after the end of the plan year. The amount of each required installment is 25 percent of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year. If a plan sponsor fails to make a required installment, additional interest is charged to the funding standard account.

Description of Provision

Special funding rules for underfunded plans

In general

The bill would change the special funding rules that apply to underfunded single-employer defined benefit plans (other than plans with no more than 100 participants on any day in the preceding plan year) that were adopted in the Pension Protection Act of 1987. In general, the bill would amend ERISA and the Code to require sponsors of underfunded plans to pay off pension liabilities more rapidly than under present-law rules. Specifically, the bill would (1) modify the calculation of the minimum required contribution applicable to underfunded plans, (2) change the permissible range of interest rates and require uniform mortality assumptions for the purpose of determining an underfunded plan's current liability for purposes of the deficit reduction contribution, and treat any increase in current liability due to the new interest and mortality assumptions as "unfunded old liability", (3) accelerate the funding of a plan's "unfunded new liability", (4) change the calculation of the additional funding contribution required on account of an unpredictable contingent event, (5) provide an elective transition rule for sponsors of underfunded plans to protect against possibly large increases in their minimum required contributions on account of the proposed changes in the special funding rules, and (6) change the manner in which sponsors of defined benefit pension plans determine the full funding limit of their plans.

Calculation of minimum required contribution

The bill would change the manner in which underfunded plans calculate their minimum required contribution for a plan year. Under the bill, amounts necessary to amortize experience gains and losses and gains and losses resulting from changes of actuarial assumptions would no longer be considered in the calculation of the minimum required contribution for underfunded plans. According to the PBGC, one reason that the minimum required contribution for underfunded plans adopted in the Pension Protection Act of 1987 has not been effective in increasing contributions to underfunded plans is because experience gains or gains from changes in actuarial assumptions are counted twice under present law, i.e., to reduce the minimum required contribution for underfunded plans and as a credit to the funding standard account under the normal funding rules. Thus, under the bill, the minimum required contribution for underfunded plans would be, in general, the greater of (1) the amount determined under the normal funding rules, or (2) the deficit reduction contribution plus the amount required with respect to benefits that are contingent on unpredictable events.

Further, the bill would add a third component to the calculation of the deficit reduction contribution under present law. Under the bill, the deficit reduction contribution would be the sum of (1) the unfunded old liability amount, (2) the unfunded new liability amount, and (3) the expected increase in current liability due to benefits accruing during the plan year. The third component replaces the normal cost component of the calculation under present law.

In addition, the bill would provide that the amount of the minimum required contribution for underfunded plans could not exceed the amount necessary to increase the funded current liability percentage of the plan to 100 percent taking into account all charges and credits to the funding standard account and the expected increase in current liability attributable to benefits accruing during the plan year.

Changes in interest rates and mortality assumptions

Under present law, the calculation of the deficit reduction contribution for underfunded plans is based on the plan's current liabilities. Under the bill, a plan's current liability would be determined as under present law, except that the bill would (1) limit the permissible range of interest rates used to determine the current liability, and

(2) require all underfunded plans to use the same mortality table to determine current liability.

The bill would limit the interest rate to no more than 100 percent of and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year. Under the bill, the mortality table used to determine current liability would be the "prevailing commissioners' standard table" used to determine reserves for group annuity contracts issued on the date as of which current liability is determined.

Under the bill, increases in current liability attributable to changes in interest rates and mortality assumptions would be treated as an "additional unfunded old liability amount" and would be amortized in equal annual installments over 12 years beginning with the 1995 plan year.

Acceleration of unfunded new liability

Under present law, if a plan's funded current liability percentage is 35 percent or less, 30 percent of the plan's unfunded new liability for the plan year must be included in the calculation of the deficit reduction contribution for the plan year. Generally, this results in an amortization period of approximately five years. The bill would increase the 35 percent threshold under present law to 60 percent. Thus, under the bill, if a plan's funded current liability percentage is 60 percent or less, 30 percent of the plan's unfunded new liability for the plan year would be included in the calculation of the deficit reduction contribution for the plan year. Like present law, the 30 percent amount would decrease by .25 of one percentage point for each percentage point by which the plan's funded current liability percentage exceeds 60 percent, to a minimum of 20 percent (approximately an 8 to 10-year amortization period for better funded plans).

Unpredictable contingent event benefits

The bill would add a third component to the calculation of the additional funding contribution required on account of an unpredictable contingent event. Under the bill, the amount of the additional funding contribution would equal the greater of the amounts determined under present law or the additional contribution that would be required if the unpredictable contingent event benefit liabilities were included in the calculation of the plan's unfunded new liability for the plan year. Under present law, for purposes of calculating the unfunded new liability for a plan year, all unpredictable contingent event benefits are disregarded.

In addition; the bill would limit the present value of the additional funding contribution with respect to one event to the unpredictable contingent event benefit liabilities attributable to that event.

Transition rule

The bill would provide an elective transition rule for sponsors of underfunded plans to protect against possibly large increases in their minimum required contributions on account of the proposed changes in the special funding rules. Under the transition rule, the minimum required contribution for a plan year could not be less than the minimum required contribution determined under present law. In addition, relief under the transition rule would depend on the plan's funded current liability percentage.

If the plan's funded current liability percentage as of the first day of the 1995 plan year is equal to or less than 75 percent, the plan's minimum required contribution would be limited to an amount that would increase the plan's funded liability percentage by 3 percentage points for the 1995 through 1999 plan years, 4 percentage points for the 2000 plan year, and 5 percentage points for the 2001 plan year. If the plan's funded current liability percentage as of the first day of the 1995 plan year is equal to or greater than 85 percent, the plan's minimum required contribution would be limited to an amount which would increase the plan's funded liability percentage by 2 percentage points for the 1995 through 1999 plan years, 3 percentage points for the 2000 plan year, and 2 percentage points for the 2001 plan year. Further, if the plan's funded current liability percentage as of the first day of the 1995 or a later plan year is between 75 and 85 percent, a special formula would be used to determine the limitation, if any, on the plan's minimum required contribution.

Changes in full funding limit

The bill would change the manner in which sponsors of defined benefit pension plans determine the full funding limit to conform to IRS practice. The bill would retain the present-law rules relating to the determination of a defined benefit pension plan's full funding limit but would also provide that the expected increase in current liability due to benefits accruing during the plan year be included when determining 150 percent of the employer's current liability. In addition, the bill would provide that the full funding limit for underfunded defined benefit pension plans could not be less than the plan's unfunded current liability as determined under the minimum funding rules. Further, the bill would allow plans to determine their 150 percent of current

liability limit for full funding limit purposes without regard to the interest rate and mortality assumptions set forth in the bill. Thus, any interest rate within the present-law corridor could be used.

Plan solvency requirement

In general, the bill would require underfunded single employer defined benefit pension plans to make quarterly contributions sufficient to maintain liquid plan assets, i.e., cash and marketable securities, at an amount approximately equal to three years worth of trust disbursements (based on disbursements made in the prior year).

Under the bill, the plan solvency requirement would apply to underfunded single employer defined benefit pension plans that (1) are required to make quarterly installments of their estimated minimum funding contribution for the plan year and (2) have liquid assets as of the last day of the last month preceding the quarterly installment due date that are less than the base amount for the quarter. Liquid assets would mean cash, marketable securities and such other assets as specified by the Secretary of the Treasury. The base amount for the quarter would be an amount equal to the product of three times the adjusted disbursements from the plan for the 12 months ending on the last day of the last month preceding the quarterly installment due date.

Under the bill, the amount of the required quarterly installment for defined benefit pensions plans that do not have sufficient liquid assets for any quarter would be the greater of the quarterly installment as determined under present law or the quarterly solvency payment. The quarterly solvency payment would equal the difference between the plan's liquid assets and the base amount as of the last day of a quarter.

If a quarterly solvency payment is not made, then the plan sponsor would be subject to a nondeductible excise tax equal to 10 percent of the amount of the outstanding quarterly solvency payment. If the quarterly solvency payment remains outstanding after four quarters, the excise tax would increase to 100 percent.

The bill would amend ERISA to prohibit fiduciaries from making certain payments from defined benefit pension plans during the period in which the plan has outstanding quarterly solvency payments. The bill would also amend ERISA to provide that, if a fiduciary makes a prohibited distribution from the plan, he or she would be subject to a civil penalty for each

prohibited distribution equal to the lesser of the amount of the distribution or \$10,000.

Effective Date

The provision would apply to plan years beginning after December 31, 1994.

2. Limitation on changes in current liability assumptions (secs. 102 and 122 of the bill, sec. 412(c) of the Code, and sec. 302(c) of ERISA)

Present Law

Under present law, in determining plan funding under an actuarial cost method, a plan's actuary makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. A plan's actuary may revise these assumptions to reflect the actual experience of the plan. Actuarial assumptions must be reasonable, both individually and in the aggregate and reflect the actuary's best estimate of experience under the plan.

Description of Provision

The bill would prohibit certain underfunded plans from changing the actuarial assumptions used to determine current liability for a plan year (other than interest rate and mortality assumptions) unless the new assumptions are approved by the Secretary of the Treasury prior to the beginning of such plan year. Under the bill, pre-approval of changes in actuarial assumptions would apply to (1) an underfunded plan if the aggregated unfunded vested benefits of all underfunded plans maintained by the employer and members of the employer's controlled group exceed \$50 million, and (2) if the change in assumptions would decrease the plan's unfunded current liability for the current plan year by (a) at least \$50 million or (b) at least \$5 million and at least 5 percent of the current liability.

Effective Date

The provision would be effective with respect to changes in actuarial assumptions for plan years beginning after October 28, 1993. In addition, any changes in actuarial assumptions for plan years beginning after December 31, 1992, and before October 29, 1993, that would have been subject to the pre-approval requirements set forth in the bill would not be effective for the 1995 plan year unless approved by the Secretary of the Treasury.

3. Recognition of already bargained benefit increases (secs. 103 and 123 of the bill, sec. 412(c) of the Code, and sec. 302 of ERISA)

Present Law

Under final Treasury Regulations, a defined benefit plan's funding method is not considered reasonable if it anticipates changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective after the first day of, but during, a current plan year. However, the regulations contain an elective exception to this general rule for collectively bargained plans. Under the regulations, a collectively bargained plan's funding method is considered reasonable if the plan elects on a consistent basis to anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan (Treas. Reg. 1.412(c)(3)-1(d)).

Description of Provision

The bill would require sponsors of collectively bargained plans to recognize any negotiated benefit increases scheduled to take effect in a future plan year in the plan year in which the collective bargaining agreement is entered into for purposes of the normal funding rules but not the special rules for underfunded plans.

Effective Date

The provision would apply to plan years beginning after December 31, 1994, with respect to collective bargaining agreements in effect on or after January 1, 1995.

4. Modification of quarterly contribution requirement (secs. 104 and 124 of the bill, sec. 412(m) of the Code, and sec. 302(e) of ERISA)

Present Law

Under present law, the required minimum funding contribution for a plan year must be made within 8-1/2 months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year. In the case of single-employer defined benefit pension plans, 4 installments of estimated contributions are required for the plan year with the total contribution due within 8-1/2 months after the end of the plan year. The amount of each required installment is 25 percent of the lesser of (1) 90 percent of the amount

required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year. If a plan sponsor fails to make a required installment, additional interest is charged to the funding standard account.

Description of Provision

Under the bill, single-employer defined benefit plans with a 100 percent funded current liability percentage in the prior plan year would not be required to make quarterly estimated contributions during the current plan year.

Effective Date

The provision would be effective for plan years beginning after the date of enactment.

5. Exceptions to excise tax on nondeductible contributions (sec. 105 of the bill and new sec. 4972(c)(6) of the Code)

Present Law

The Code imposes a limit on the amount of deductible contributions that can be made annually to a defined benefit pension plan. Contributions necessary to pay normal costs (as defined under the funding rules) generally are fully deductible. Contributions necessary to fund supplemental costs generally are deductible only to the extent necessary to cover such costs amortized over 10 years. However, the amount of the deduction an employer can claim for the year cannot exceed the full funding limitation for that year, except that a special deduction rule applies to underfunded defined benefit pension plans. In the case of a single-employer defined benefit pension plan that has more than 100 participants during the plan year, the maximum amount deductible is not less than the plan's unfunded current liability as determined under the minimum funding rules.

The Code also imposes limits on the amount of deductible contributions that can be made annually if an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees. Under the combined plan deduction limits, the total deduction for all plans for a plan year is generally limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year. For underfunded single-employer defined benefit pension plans with more than 100 participants for the plan year, the maximum deductible contribution for the year is not less than

the plan's unfunded current liability as determined under the minimum funding rules.

There is a 10-percent nondeductible excise tax imposed on contributions in excess of the applicable deduction limit (Code sec. 4972).

Description of Provision

Under the bill, nondeductible contributions to a terminating single-employer defined benefit pension plan with less than 101 participants for the year would not be subject to the excise tax on nondeductible contributions to the extent such nondeductible contributions do not exceed the plan's unfunded current liability as determined under the minimum funding rules.

In addition, employer contributions to a cash or deferred arrangement or employer matching contributions to a defined contribution plan that are nondeductible because they exceed the combined plan deduction limits would not be subject to the 10-percent nondeductible excise tax to the extent such contributions do not exceed 6 percent of compensation. For purposes of this rule, the combined plan deduction limits would first be applied to contributions to the defined benefit pension plan. In addition, this provision would apply only if the defined benefit pension plan is a single-employer defined benefit pension plan that has more than 100 participants.

Effective Date

The provision eliminating the excise tax for nondeductible contributions to a terminating single-employer defined benefit pension plan would be effective for taxable years ending on or after the date of enactment. The provision eliminating the excise tax for nondeductible contributions to certain defined contribution plans would be effective for taxable years ending on or after December 31, 1992.

B. Title II--Amendments Relating to Title IV of ERISA

1. Reportable events (sec. 201 of the bill and sec. 4043 of ERISA)

Present Law

Under present law, the plan administrator is required to notify the PBGC of the occurrence of certain events, called reportable events, that may indicate possible risk to the financial status of the plan or the PBGC insurance program. The plan administrator is to notify the PBGC within 30 days

after the plan administrator knows or has reason to know that a reportable event has occurred. If an employer making contributions under a plan knows or has reason to know that a reportable event has occurred, the employer is to notify the plan administrator of the reportable event.

Description of Provision

The bill would provide that a contributing sponsor that knows or has reason to know that a reportable event has occurred (as well as the plan administrator) is responsible for reporting the event to the PBGC, and would repeal the requirement that an employer notify the plan administrator of reportable events.

The bill would add a number of new events to the list of reportable events. Under the bill, a reportable event would occur: (1) when a person ceases to be a member of the controlled group; (2) when a contributing sponsor or a member of a contributing sponsor's controlled group liquidates in a case under title XI, United States Code, or under any similar Federal law or law of a State or political subdivision of a State; (3) when a contributing sponsor or a member of a contributing sponsor's controlled group declares an extraordinary dividend or redeems, in any 12-month period, an aggregate of 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or an aggregate of 10 percent or more of the total value of shares of all classes of stock, of a contributing sponsor and all members of its controlled group; (4) when, in any 12-month period, an aggregate of 3 percent or more of the benefit liabilities of a plan covered by the PBGC insurance program are transferred to a person that is not a member of the contributing sponsor's controlled group or to a plan maintained by a person that is not a member of the contributing sponsor's controlled group.

Controlled groups with underfunded plans with more than \$50 million in unfunded vested benefits would be required to notify the PBGC of the new reportable events at least 30 days in advance of the effective date of the event.

Any information provided to the PBGC with respect to a reportable event generally would be exempt from public disclosure.

Effective Date

The provision would be effective for events occurring 60 days or more after the date of enactment.

2. Alternative to involuntary termination (sec. 202 of the bill and new sec. 4050 of ERISA)

Present Law

The PBGC is authorized to terminate a plan when the plan has not met the minimum funding requirements, the plan will be unable to pay benefits when due, certain distributions are made to substantial owners, or the possible long-run loss of the PBGC with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

Description of Provision

Under the bill, if the PBGC determines that the occurrence of one of the new reportable events (or any other event that the PBGC determines may warrant plan termination) would unreasonably increase the PBGC's possible long-run loss if the plan is not terminated, the PBGC would be authorized to apply to district court for relief other than involuntary termination. In the case of events involving the break up of a controlled group (or other events that the PBGC determines may warrant plan termination), the PBGC's new authority to seek court-ordered relief under the bill would be limited to situations in which total revenues, operating income, or assets of the controlled group (as it exists after the event) are less than 90 percent of the total revenues, operating income, or assets of the controlled group (as it existed before the event).

Effective Date

The provision would be effective for events occurring on or after 60 days after the date of enactment.

3. Certain information required to be furnished to the PBGC (sec. 203 of the bill and new sec. 4010 of ERISA)

Present Law

The PBGC receives certain financial information from plans pursuant to required filings with the Department of Labor and other governmental agencies.

Description of Provision

The bill would authorize the PBGC to require certain contributing sponsors and controlled group members to submit to the PBGC such information as the PBGC may specify by regulation. The required information may include information that the PBGC determines is necessary to determine plan assets and liabilities and copies of audited financial

statements. A contributing sponsor or controlled group member would be subject to these information requirements if: (1) the total unfunded vested benefits of all underfunded plans sponsored by the controlled group exceed \$50 million; (2) missed funding contributions exceed \$1 million and the conditions for imposing a lien for missed contributions have been met; or (3) there are outstanding minimum funding waivers in an amount exceeding \$1 million, any portion of which remains unpaid. Any information required to be provided to the PBGC under the provision would be exempt from public disclosure.

Effective Date

The provision would be effective on the date of enactment.

4. Liability upon liquidation of contributing sponsor or controlled group member where plan remains ongoing (sec. 204 of the bill and sec. 4062 of ERISA)

Present Law

Under present law, liability to the PBGC arises only when an underfunded plan is terminated. A plan is not considered terminated merely because the contributing sponsor or a member of the contributing sponsor's controlled group is liquidated. In such a case, the remaining controlled group members remain responsible for funding the plan.

Description of Provision

The bill would provide that, if one or more contributing sponsors or controlled group members liquidates all or substantially all of its assets in a Federal or state insolvency proceeding, they would be liable for plan underfunding as if the plan had terminated in a distress termination on the date on which the liquidation was initiated. The liability would be joint and several among the liquidating firms, would be owed to the plan, and could be collected either by the PBGC or the plan. The PBGC would be authorized to issue such regulations as may be necessary to implement the provision, including rules governing procedures pursuant to which a plan could assign its claim to other controlled group members as a means of collecting such payments.

Effective Date

The provision would be effective for liquidations initiated on or after the date of enactment.

5. Enforcement of minimum funding requirements (sec. 205 of the bill and sec. 4003(e) of ERISA)

Present Law

Under present law, the Secretary of the Treasury generally interprets and administers the minimum funding requirements. An excise tax applies with respect to the failure to satisfy the minimum funding requirements. In addition, plan participants and fiduciaries may bring suit under ERISA to enforce the minimum funding requirements. The Secretary of Labor may also bring suit to enforce the minimum funding requirements if requested to do so by a plan participant, fiduciary, or the Secretary of the Treasury. The PBGC enforces a lien that arises in favor of the plan if missed required contributions exceed \$1 million.

Description of Provision

The bill would give the PBGC the authority to bring suit to enforce the minimum funding standards if the amount of missed required contributions exceeds \$1 million. The bill would not change existing authority of the Department of the Treasury or the Department of Labor.

Effective Date

The provision would be effective for minimum funding contributions that become due on or after the date of enactment.

6. Remedies for noncompliance with requirements for standard termination (sec. 206 of the bill and sec. 4041(b) of ERISA)

Present Law

Under present law, a single-employer defined benefit pension plan can terminate in a standard termination only after the plan administrator notifies participants of the termination, issues individual benefit notices to participants, and files a notice with the PBGC that includes an enrolled actuary's certification of sufficiency. The PBGC has 60 days to review the proposed termination. If the PBGC does not issue a notice of noncompliance nullifying the proposed termination, the plan administrator may distribute plan assets.

If the plan administrator fails to give all participants advance notice of how their benefits were computed or fails to fully comply with other procedural requirements designed to protect participants, the PBGC generally is required to issue a notice of noncompliance and nullify the termination.

Description of Provision

The bill would provide that the PBGC is not required to issue a notice of noncompliance (and nullify a termination) in the case of failure to meet procedural requirements with respect to the termination if it determines that it would be inconsistent with the interests of participants and beneficiaries to issue the notice.

Effective Date

The provision would apply with respect to standard terminations for which the PBGC has not, as of the date of enactment, issued a notice of noncompliance that has become final, or otherwise issued a final determination that the plan termination is nullified.

7. Prohibition on benefit increases where plan sponsor is in bankruptcy (sec. 207 of the bill, sec. 401(a) of the Code, and sec. 204 of ERISA)

Present Law

Under present law, there is no restriction on the adoption of plan amendments that increase benefits when a plan is underfunded.

Description of Provision

The bill would amend the Code and ERISA to prohibit an employer in bankruptcy from adopting an amendment to an underfunded plan that increases benefits unless the benefit increase does not become effective until after the effective date of the employer's plan of reorganization. The prohibition would not apply to amendments that (1) provide reasonable, de minimis increases in liabilities for employees of the debtor, (2) repeal an amendment made within the first 2-1/2 months of a plan year that would reduce accruals for that plan year, as permitted under section 302(c)(8) of ERISA, or (3) are needed to meet the qualification requirements contained in the Code.

Effective Date

The provision would be effective with respect to plan amendments adopted on or after the date of enactment.

8. Substantial owner benefits (sec. 208 of the bill and sec. 4022(b)(5) of ERISA)

Present Law

Under present law, the PBGC guarantee is generally phased in over 5 years from the date of plan adoption or plan amendment. However, in the case of substantial owners, the guarantee is generally phased in over 30 years. Plan amendments are separately phased in over 30 years. The combined guarantee of benefits under the terms of the original plan and all amendments to the plan cannot exceed two times the guarantee of benefits under the terms of the original plan. In general, a substantial owner is a person who owns more than 10 percent of a business.

Description of Provision

Under the bill, the same 5-year phase in and asset allocation rules that apply to persons other than substantial owners would apply to substantial owners with less than a 50 percent ownership interest. For 50 percent or more substantial owners ("majority owners"), the bill would amend the phase-in rule so that the guarantee would depend on the number of years the plan has been in effect, not the number of years the owner has been a participant.

Effective Date

The provision would be effective for terminations for which a notice of intent to terminate is filed or for which the PBGC institutes termination proceedings on or after the date of enactment.

9. Phase out of variable rate premium cap (sec. 209 of the bill and sec. 4006(a)(3) of ERISA)

Present Law

Plans covered by the termination insurance program are required to pay a flat per-participant premium of \$19. In addition, underfunded plans are required to pay an additional premium based on the amount of underfunding. The additional premium is \$9 per \$1,000 of underfunding, and is capped at \$53 per participant. Thus, the maximum per-participant premium for an underfunded plan is \$72.

Description of Provision

The bill would phase out the cap on the additional premium for underfunded plans over three years, beginning with plan years beginning on or after July 1, 1994. For plan

years beginning on or after July 1, 1994, but before July 1, 1995, the maximum additional premium would be \$53 per participant, plus 20 percent of the amount of the total premium (determined without regard to the cap) in excess of \$53. For plan years beginning on or after July 1, 1995, but before July 1, 1996, the maximum additional premium would be \$53 per participant, plus 60 percent of the amount of the total premium (determined without regard to the cap) in excess of \$53.

Effective Date

The provision would be effective on the date of enactment.

C. Title III--Participant Services

1. Disclosure to participants (sec. 301 of the bill and new sec. 4011 of ERISA)

Present Law

ERISA requires that plan participants be provided with certain information. One of these requirements is that, if the plan is less than 70 percent funded, the annual report regarding the plan must include the funded percentage of the plan. Plan administrators must also provide participants with a summary plan description (SPD) that advises participants of their rights, obligations, and eligibility for benefits under the plan. If the benefits are guaranteed by the PBGC, the SPD must include a summary of ERISA's guarantee provisions and a statement that more information may be obtained from the PBGC or the plan administrator. Department of Labor regulations include a safe harbor statement that can be included in the SPD to satisfy the requirements regarding the PBGC guarantee.

Description of Provision

The bill would amend title IV of ERISA to require that the plan administrator of a plan that must pay the additional premium applicable to underfunded plans must notify plan participants of the plan's funded status and the limits on the PBGC's guarantee should the plan terminate while underfunded. The notice would have to be provided in the time and manner prescribed by the PBGC.

Effective Date

The provision would be effective for plan years beginning after the date of enactment.

2. Missing participants (sec. 302 of the bill and new sec. 4031 of ERISA)

Present Law

Under present law, one of the requirements of a standard termination is that the plan administrator distribute plan assets by purchasing irrevocable commitments from an insurer in satisfaction of all benefit liabilities that must be in annuity form and by otherwise providing all benefit liabilities that need not be provided in annuity form. Under PBGC rules, if the plan administrator has been unable to locate participants after having made a reasonable effort to do so, the administrator must either purchase irrevocable commitments to provide benefits for each participant who has not been located or, in certain circumstances, deposit the amounts in a bank.

Description of Provision

The bill would provide special rules for payment of benefits in the case of participants under a plan terminating in a standard termination whom the plan administrator cannot locate after a diligent search ("missing participants"). The plan administrator would be required to (1) transfer a participant's designated benefit to the PBGC or purchase an annuity from an insurer to satisfy the benefit liability to the participant, and (2) provide the PBGC with such information and certifications with respect to such benefits or annuity as the PBGC may specify. Any amounts transferred to the PBGC under the provision would be treated as assets under a plan trusted by the PBGC.

Effective Date

The provision would be effective with respect to distributions that occur in plan years beginning after final regulations implementing the provision are adopted by the PBGC.

3. Modification of maximum guarantee for disability benefits (sec. 303 of the bill and sec. 4022(b) of ERISA)

Present Law

The PBGC guarantee generally applies to a disability benefit if the benefit is in the form of an annuity payable because of permanent and total disability and the participant became disabled before the plan termination date. As is the case with other benefits, the PBGC guarantee is reduced if the benefit begins before age 65.

Description of Provision

Disability benefits would be exempted from the age reduction in the maximum PBGC insurance amount, if the participant meets the standards for social security benefits on account of permanent and total disability.

Effective Date

The provision would be effective for terminations for which a notice of intent to terminate is filed or for which the PBGC institutes termination proceedings on or after the date of enactment.

D. Title IV--Miscellaneous Amendments

1. ERISA citation for certain deduction rules (sec. 401 of the bill and sec. 404(g)(4) of the Code)

Present Law

Under present law, contributions to tax-qualified pension plans are deductible within limits. The Code provides that amounts paid by an employer or a member of its controlled group under the following provisions of ERISA are treated as plan contributions subject to the deduction rules of the Code (Code sec. 404(g)(1)): (1) section 4041(b) of ERISA (relating to standard terminations); (2) section 4062 of ERISA (relating to liability to the PBGC in the case of a distress termination); (3) section 4063 of ERISA (relating to liability of a substantial employer for withdrawal from single-employer plans under multiple controlled groups); (4) section 4064 of ERISA (relating to liability on termination of single-employer plans under multiple controlled groups; and (5) part I of subtitle E of title IV of ERISA (relating to liability upon withdrawal from a multiemployer plan). The Code provides that the references to these sections of ERISA are to these sections as in effect on the date of enactment of the Single Employer Pension Plan Amendments Act of 1986 (SEPPAA). The amounts referred to in such sections have generally been increased since the enactment of SEPPAA.

Description of Provision

The bill would provide that the references to ERISA in Code section 404(g) are to ERISA as in effect on the date of enactment of the bill.

Effective Date

The provision would be effective on the date of enactment.

2. Definition of contributing sponsor under title IV of ERISA (sec. 402 of the bill and sec. 4001(a)(13) of the Code)

Present Law

Under present law, for purposes of the PBGC termination insurance program, the contributing sponsor of a plan is defined as a person (1) who is responsible, in connection with such plan, for meeting the funding requirements under section 302 of ERISA or under section 412 of the Code, or (2) who is a member of the controlled group of a person described in (1), has been responsible for meeting such funding requirements, and has employed a significant number (as may be defined by the PBGC) of participants under such plan while such person was so responsible. Under the Pension Protection Act of 1987, all members of a contributing sponsor's controlled group are responsible for the minimum funding requirements.

Description of Provision

The bill would define contributing sponsor for purposes of title IV of ERISA to mean the person responsible for making minimum funding contributions to the plan under section 302 of ERISA or section 412 of the Code, without regard to the controlled group rules. All members of a contributing sponsor's controlled group would remain liable for making the minimum funding contribution.

Effective Date

The provision would be effective as if included in the Pension Protection Act of 1987.

3. Recovery ratio under ERISA (sec. 403 of the bill and sec. 4022(c) of ERISA)

Present Law

Under present law, the extent to which the PBGC pays benefits (in addition to guaranteed benefits) under a plan terminated in a distress termination depends on the applicable recovery ratio. If the unfunded nonguaranteed benefits exceed \$20 million, the applicable recovery ratio is based on the actual recovery by the PBGC from the employer (the "large plan" rule). In the case of other terminations, the applicable recovery ratio is based on the average

recovery from employers from prior terminations with respect to which the notice of intent to terminate is provided after December 17, 1987, and within the 5 fiscal years of the Federal Government ending before the year in which the date the notice of intent to terminate the plan for which the recovery ratio is being determined was provided (the "small plan" rule).

This rule was initially enacted as part of the Pension Protection Act of 1987, and applies to distress terminations for which notices of intent to terminate are provided after December 17, 1987, and terminations instituted by the PBGC after such date.

Description of Provision

The bill would retroactively repeal the small plan rule for determining the applicable recovery ratio. Thus, under the bill, the recovery ratio for all plans would be based on the actual recovery by the PBGC from the employer.

Effective Date

The provision would be effective as if included in the Pension Protection Act of 1987. Thus, it would apply with respect to distress terminations for which notices of intent to terminate are provided after December 17, 1987, and terminations instituted by the PBGC after such date.

4. Distress termination criteria for banking institutions (sec. 404 of the bill and sec. 4041(c) of ERISA)

Present Law

Under present law, a plan may terminate in a distress termination only if the contributing sponsor and each member of the controlled group of the contributing sponsor meet one of three financial distress standards. One of the standards of financial distress is that the entity is liquidating in bankruptcy or insolvency proceedings under title 11 of the United States Code or under any similar law of a State or political subdivision of a State.

Description of Provision

The bill would provide that a proceeding under title 11 of the United States Code or any similar Federal law would qualify as a standard for distress criteria. This standard would apply, for example, to bank insolvency receivership actions.

Effective Date

The provision would be effective as if included in the SEPPAA. Thus, it would be effective with respect to notices of intent to terminate filed with the PBGC on or after January 1, 1986.

5. Single sum distributions (sec. 405 of the bill, secs. 411(a)(11), 417(e), and 415(b) of the Code, and secs. 203(e) and 205(g) of ERISA)

a. Determination of present value

Present Law

Under the Code and ERISA, if the present value of a participant's vested accrued benefit exceeds \$3,500, the benefit cannot be immediately distributed (i.e., cashed out) without the consent of the participant. In addition, if the present value of a joint and survivor annuity exceeds \$3,500 it cannot be distributed without the consent of the participant and the participant's spouse. For purposes of these rules, present value is calculated by using an interest rate no greater than (1) the rate that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of a lump-sum distribution on plan termination if the vested accrued benefit (using such rate) is not in excess of \$25,000, or (2) 120 percent of such PBGC rate if the vested accrued benefit exceeds \$25,000.

Description of Provision

Under the bill, present value for purposes of the cash-out rules must be no less than the present value determined by using the mortality table used by the IRS to determine reserves for group annuity contracts issued on the date as of which present value is being determined and the rate of interest on a 30-year Treasury security (as of the date of distribution).

A plan would not violate the prohibition on reduction of accrued benefits (Code sec. 411(d)(6)) merely because it calculates benefits in accordance with the proposal.

Effective Date

The provision would generally be effective for plan years beginning after December 31, 1994, except that an employer could elect to treat the provision as being effective on or after the date of enactment.

Under a transition rule, until the earlier of (1) the first plan year beginning after 1999 or (2) the later of when a plan amendment applying the provision is (a) adopted or (b) made effective, the bill would require present value to be calculated as under present law, using the interest rate valuation methodology for lump-sum distributions under PBGC regulations in effect on September 1, 1993, the present-law Code and ERISA rules, and the current plan provisions (provided they are consistent with present law).

b. Limitation on maximum benefits

Present Law

The Code provides limits on contributions and benefits under tax-qualified pension plans. In the case of a defined benefit pension plan, the maximum annual benefit payable is generally the lesser of (1) 100 percent of average compensation or (2) \$118,800 for 1994. The dollar limit is adjusted annually for cost-of-living increases.

If the benefit under the plan is payable in a form other than a single life annuity, then the benefit must generally be converted to the actuarial equivalent of a single life annuity for purposes of applying the limit on benefits. If the benefit is payable before social security retirement age, the dollar limit on annual benefits is reduced so that the limit is actuarially equivalent to a benefit beginning at the social security retirement age. These adjustments are made using an assumed interest rate that is not less than the greater of 5 percent or the rate specified in the plan. Similarly, if the benefit is payable after social security retirement age, then the limit is actuarially increased. This adjustment is made using an assumed interest rate that is not greater than the lesser of 5 percent or the rate specified in the plan.

Description of Provision

The bill would provide that the mortality table required to be used for purposes of adjusting any benefit or limitation in applying the limit on maximum benefits would be the prevailing standard mortality table used by the IRS to determine reserves for group annuity contracts. In addition, in adjusting benefits that are payable in a form other than a single life annuity, if the benefit is subject to the joint and survivor annuity rules, the interest rate would be the same used to calculate benefits under those rules (as described above).

A plan would not be considered to violate the prohibition on reduction in accrued benefits (Code sec.

411(d)(6)) merely because it calculates benefits in accordance with the provision.

Effective Date

The provision would be effective for limitation years beginning after December 31, 1994, except that an employer could elect to treat the provision as being effective on or after the date of enactment. Benefits accrued as of the last day of the last plan year beginning before January 1, 1995, would not have to be reduced merely because of the provision. A plan would not have to be amended to comply with the provision until a date to be specified by the Secretary of the Treasury, provided the plan complies with the proposal in operation.

6. Adjustments to lien for missed minimum funding contributions (sec. 406 of the bill, sec. 412(n) of the Code, and sec. 302(f) of ERISA)

Present Law

Under present law, in the case of a single-employer defined benefit pension plan with a funded current liability percentage of less than 100 percent, a lien arises on all controlled group property in favor of the plan 60 days after the due date of an unpaid required contribution if the cumulative missed contributions exceed \$1 million. The amount of the lien is the amount of the cumulative missed contributions in excess of \$1 million.

Description of Provision

The bill would (1) eliminate the 60-day waiting period before the lien arises, (2) eliminate the \$1 million exclusion on amounts subject to the lien, and (3) provide that the lien applies only to plans covered by the PBGC termination insurance program. Thus, among other types of plans, the lien provision would not apply to plans maintained by a professional services employer that do not have more than 25 active participants or to plans maintained exclusively for substantial owners.²

² "Substantial owner" is defined generally as an individual who (1) owns the entire interest in an unincorporated trade or business, (2) in the case of a partnership, is a partner who owns more than 10 percent of the capital or profits interests in the partnership, or (3) in the case of a corporation, owns more than 10 percent in value of the voting stock of the corporation or all the stock of the corporation.

Effective Date

The provision would be effective for required contributions that become due on or after the date of enactment.

7. Rounding rules for cost-of-living adjustments (sec. 407 of the bill and secs. 401(a)(17), 415, 402(g) and 408(k) of the Code)

Present Law

Under present law, the dollar limit on benefits under a defined benefit pension plan (\$118,800 for 1994), the limit on elective deferrals under a qualified cash or deferred arrangement (\$9,240 for 1994), the compensation limit for qualified retirement plan purposes (\$150,000 for 1994), and the minimum compensation limit for determining eligibility for participation in a simplified employee pension (SEP) (\$396 for 1994) are adjusted annually for inflation. The dollar limit on annual additions to a defined contribution plan is the greater of \$30,000 or 1/4 of the dollar limit for benefits under defined benefit pension plans. Thus, the dollar limit will be \$30,000 until the defined benefit pension plan dollar limit exceeds \$120,000.

Description of Provision

The bill would provide that (1) the dollar limit on benefits under a defined benefit pension plan is indexed in \$5,000 increments, (2) the dollar limit on annual additions under a defined contribution plan is indexed in \$5,000 increments, (3) the limit on elective deferrals is indexed in \$500 increments, (4) the compensation limit is indexed in \$10,000 increments, and (5) the minimum compensation limit for SEP participation is indexed in \$50 increments. In addition, the bill would provide that the cost-of-living adjustment with respect to any calendar year is based on the increase in the applicable index as of the close of the calendar quarter ending September 30 of the preceding calendar year so that the adjusted dollar limits would be available before the beginning of the calendar year to which they apply.

Effective Date

The provision would be effective for years beginning after December 31, 1994.

8. Limitation on cross testing in defined contribution plans (sec. 408 of the bill and secs. 401(a)(4) and (5) of the Code)

Present Law

The Code provides that the contributions or benefits provided under a plan may not discriminate in favor of highly compensated employees. Treasury regulations provide that, in testing to determine whether a plan is discriminatory, a defined benefit pension plan may be tested on the basis of equivalent contributions and that a defined contribution plan may be tested on the basis of equivalent benefits. This is generally referred to as "cross-testing". In addition, two or more plans may be combined and treated as a single plan for purposes of determining whether the plans as a whole satisfy the nondiscrimination requirement. The same determination of benefits or contributions that is used for general nondiscrimination testing also applies for purposes of the average benefit percentage test under the coverage rules.

Description of Provision

The bill would provide that a defined contribution plan (other than a target benefit plan that satisfies regulations prescribed by the Secretary) would have to be tested for nondiscrimination on the basis of contributions. In addition, two or more plans of an employer, at least one of which is a defined contribution plan, would be considered as satisfying the nondiscrimination test as a single plan only if the contributions provided under the aggregated plans are nondiscriminatory.

The bill would also provide that in applying the average benefit percentage test, employee benefit percentages are to be determined on a basis consistent with regulations prescribed by the Secretary. Thus, the Secretary could limit the circumstances under which defined contribution plans are tested on a benefits basis under the average benefit percentage test.

Effective Date

The provision would be effective for plan years beginning after September 30, 1993, except that for defined contribution plans in existence on September 30, 1993, the provision would be effective for plan years beginning on or after January 1, 1995.

9. Funding of restored plans (sec. 409 of the bill)

Present Law

Under certain circumstances, the PBGC may restore the operation of a plan that has terminated to the sponsor of the plan. Treasury regulations set forth rules regarding the funding of plans that have been terminated and then restored by the PBGC.

Description of Provision

The bill would provide that any changes made by the bill to the funding rules of the Code or ERISA would not apply to a plan which, on the date of enactment, is subject to a restoration payment schedule order issued by the PBGC and that meets the requirements of Treasury regulations.

Effective Date

The provision would be effective on the date of enactment.

III. POSSIBLE CHAIRMAN'S AMENDMENT TO H.R. 3396

A. Modifications to the Calculation of the Deficit Reduction Contribution for Certain Plans (secs. 101(a)(4) and 121(a)(4) of the bill)

The provision in the bill that requires faster amortization of a plan's unfunded new liability would be modified for plans with a current funded liability percentage greater than 60 percent. Such plans would be permitted to amortize their unfunded new liability over approximately a 5 to 14-year period rather than the 5 to 10-year period that results under the bill.

In addition, plans that for any plan year have a current funded liability percentage of between 90 and 100 percent after application of the new interest and mortality assumptions contained in the bill would not be required to make a deficit reduction contribution for such plan year.

B. Modification to Disclosure Requirements (sec. 301 of the bill)

The provision in the bill that requires pension plan administrators of all underfunded plans to notify plan participants of the plan's funded status and the limits on the PBGC's guarantee should the plan terminate while underfunded would not apply to plans that are at least 90 percent funded.

C. Miscellaneous Technical Modifications

The Administration has proposed various technical modifications to the language in H.R. 3396. In addition to certain clerical and technical changes to the bill language, section 403 of the bill relating to the repeal of the small plan recovery ratio under section 4022(c) of ERISA would be deleted.

D. Deletion of Cross Testing in Defined Contribution Plans (sec. 408 of the bill)

The provision in the bill relating to cross testing in defined contribution plans would be deleted. The Committee Report would state that the Committee is concerned with reports of significant abuses in the use of the final nondiscrimination regulations promulgated under section 401(a)(4) of the Code that permit cross testing in defined contribution plans. The Committee believes that the Secretary of the Treasury should review its current nondiscrimination regulations in light of these abuses.