To amend the Employee Retirement Income Security Act of 1974 and title 11, United State Code, to provide necessary reforms for employee pension benefit plans.

IN THE HOUSE OF REPRESENTATIVES
APRIL 9, 2008

Mr. VISCOLOSKY introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL
To amend the Employee Retirement Income Security Act of 1974 and title 11, United State Code, to provide necessary reforms for employee pension benefit plans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Employees’ Pension Security Act of 2008”.
TITLE I—TRUSTEESHIP OF SINGLE-EMPLOYER PLANS

SEC. 101. REQUIREMENTS RELATING TO TRUSTEESHIP OF SINGLE-EMPLOYER PLANS.

(a) In General.—Section 403(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1103(a)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting “(1)” after “(a)”; and

(3) by adding at the end the following new paragraph:

“(2)(A) The assets of a pension plan which is a single-employer plan shall be held in trust by a joint board of trustees, which shall consist of two or more trustees representing on an equal basis the interests of the employer or employers maintaining the plan and the interests of the participants and their beneficiaries.

“(B)(i) Except as provided in clause (ii), in any case in which the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and one or more employers, the trustees representing the interests of the participants and their beneficiaries pursuant to subparagraph (A) shall be designated by such employee organizations.
“(ii) Clause (i) shall not apply with respect to a plan described in such clause if the employee organization (or all employee organizations, if more than one) referred to in such clause file with the Secretary, in such form and manner as shall be prescribed in regulations of the Secretary, a written waiver of their rights under clause (i).

“(iii) In any case in which clause (i) does not apply with respect to a pension plan which is a single-employer plan because the plan is not described in clause (i) or because of a waiver filed pursuant to clause (ii), the trustee or trustees representing the interests of the participants and their beneficiaries shall consist of one or more participants under the plan elected to serve as such in accordance with this clause. The Secretary shall provide by regulation for a secret ballot of the participants under the plan for purposes of such election, and for certification of the results thereof to the participants (and any employee organization referred to in clause (ii)) and to the employer.”.

(b) CONFORMING AMENDMENTS.—Section 403(a)(1) of such Act (as redesignated under subsection (a)) is amended—

(1) by striking “Such trustee or trustees” and inserting “Except as provided in paragraph (2), such trustee or trustees”;
(2) by striking “fiduciary, and upon accept-
ance” and inserting “fiduciary. Upon acceptance”;
and

(3) in subparagraph (A) (as so redesignated),
by striking “the plan” the first place it appears and
inserting “in the case of a plan other than a pension
plan which is a single-employer plan, the plan”.

SEC. 102. EFFECTIVE DATE.

The amendments made by this title shall apply with
respect to plan years beginning after 180 days after the
date of the enactment of this Act. The Secretary of Labor
shall prescribe the initial regulations necessary to carry
out the provisions of such amendments not later than 90
days after the date of the enactment of this Act.

TITLE II—INVESTMENT
INFORMATION

SEC. 201. PROVISION TO PARTICIPANTS AND BENEFICIARIES OF MATERIAL INVESTMENT IN-
FORMATION IN ACCURATE FORM.

(a) In General.—Section 404(c) of the Employee
1104(c)) is amended by adding at the end the following
new paragraph:

“(6) Provision of accurate material in-
vestment advice.—The plan sponsor and plan ad-
ministrator of a pension plan described in paragraph (1) shall have a fiduciary duty to ensure that each participant and beneficiary under the plan, in connection with the investment by the participant or beneficiary of plan assets in the exercise of his or her control over assets in his account, is provided with all material investment information regarding investment of such assets to the extent that the provision of such information is generally required to be disclosed by the plan sponsor to investors in connection with such an investment under applicable securities laws. The provision by the plan sponsor or plan administrator of any misleading investment information shall be treated as a violation of this paragraph.”.

(b) ENFORCEMENT.—

(1) IN GENERAL.—Section 502(c) of such Act (29 U.S.C. 1132(c)) is amended—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

“(9) The Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person’s failure or refusal to comply with the requirements
of section 404(c)(6) until such failure or refusal is cor-
rected.”.

(2) CONFORMING AMENDMENT.—Section 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) is amended by striking “(7), or (8)” and inserting “(7), (8), or (9)”.

SEC. 202. EFFECTIVE DATE OF TITLE.
The amendments made by this title shall apply with respect to investments made on or after the date of the enactment of this Act.

TITLE III—STRENGTHENED PROTECTIONS AGAINST ABUSE OF THE BANKRUPTCY AND TERMINATION PROCESS

SEC. 301. ADDITIONAL REQUIREMENTS FOR TERMINATION.
(a) ADDITIONAL REQUIREMENTS FOR DISTRESS TERMINATION.—Section 4041(c)(2) of the Employee Ret-
tirement Income Security Act of 1974 (29 U.S.C. 1341(c)(2)) is amended by adding at the end the fol-
lowing:

“(E) ADDITIONAL REQUIREMENTS.—Not-
withstanding any other provision of this section,
unless the corporation or the court, in the case of a distress termination pursuant to subpara-
graph (B)(ii), has determined that reasonable
efforts to consider available alternatives to termination (including, but not limited to, alternatives described in section 4042(c)(4)) have been undertaken by such person (and, in the case of a plan maintained pursuant to a collective bargaining agreement, have been undertaken by the bargaining parties in good faith bargaining), the plan may not be terminated. A participant or beneficiary of the plan or an employee organization representing such participants or beneficiaries may bring an action in the appropriate court to challenge such determination by the corporation and seek equitable relief or must be afforded an opportunity to be heard by the appropriate court if a court is making such determination.”.

(b) ADDITIONAL REQUIREMENTS FOR COURT DECREES.—Section 4042(c)(1) of such Act (29 U.S.C. 1342(c)(1)) is amended—

(1) by inserting after the first sentence the following new sentences: “The court may not enter such a decree unless that court has found that reasonable efforts to consider available alternatives to termination (including, but not limited to, alternatives described in paragraph (4) have been under-
taken by the plan sponsor (and, in the case of a plan
maintained pursuant to a collective bargaining
agreement, have been undertaken by the bargaining
parties in good faith bargaining). There is a pre-
assumption that a plan need not be terminated if the
plan sponsor can continue in business, outside a case
under title 11, United States Code (or under any
similar law of a State or a political subdivision of a
State) in which reorganization is sought, without
terminating the plan.”; and

(2) in the sentence following the sentences in-
serted by paragraph (1), by striking “the preceding
sentence” and inserting “the first sentence of this
paragraph,.”.

(c) RIGHT TO INTERVENE TO CHALLENGE COURT
DECREES.—Section 4042(c) of such Act (as amended by
subsection (b)) is further amended by inserting after the
fourth sentence the following new sentence: “If any party
consisting of the plan sponsor, a plan participant, or (in
the case of a plan maintained pursuant to a collective bar-
gaining agreement) the employee organization rep-
resenting plan participants for purposes of collective bar-
gaining disagrees with any such determination by the cor-
poration, such party may intervene in the proceeding to
challenge the determinations of the corporation.”.
(d) Consideration of Alternatives by Corporation and Plan Sponsor.—Section 4042(e) of such Act (as amended by the preceding provisions of this section) is further amended by adding after the seventh sentence the following: "The corporation and the plan administrator may proceed with such an agreement only if they have made reasonable efforts to consider available alternatives to termination (including, but not limited to, alternatives described in paragraph (4) of this subsection) and the plan participants and beneficiaries have been provided with at least 60 days notice before such agreement is given effect. During such 60-day period, a participant or beneficiary of the plan or an employee organization representing such participants or beneficiaries may bring an action in the appropriate court to seek appropriate equitable relief if such reasonable efforts have not been made."

(e) Efforts by the Corporation at Consultation With Parties.—Section 4042(e) of such Act is amended by adding at the end the following new paragraph:

"(4) Consultation regarding reasonable available alternatives to termination.—

"(A) In general.—Prior to making any determination referred to in the preceding pro-"
visions of this subsection, the corporation shall consult with the plan participants and (in the case of a plan maintained pursuant to a collective bargaining agreement) the employee organization representing plan participants for purposes of collective bargaining to determine whether there are any reasonable available alternatives to termination (including, but not limited to, alternatives described subparagraph (B).

“(B) Reasonable alternatives to termination.—The reasonable alternatives to termination referred to in subparagraph (A) consist of measures which are in the best interest of plan participants and which include (but are not limited to) the following:

“(i) Financing or loans sought by any member of the plan sponsor’s controlled group, with or without assistance from the corporation, in order to obtain plan financing, including back-up guarantees to any such financing which the corporation is hereby authorized to provide for such purpose.
“(ii) New plan structures agreed to by the parties, such as transfer of plan liabilities to multiemployer plans, new benefit formulas for new hires or non-vested participants, or other plan restructuring alternatives agreed to by the parties.

“(iii) Reinsurance which the corporation is hereby authorized to obtain for the plan.

“(iv) An agreement by the parties authorizing alternative funding schedules, approved by the corporation, which would modify plan funding, subject to the minimum funding requirements for the plan under part 3 of subtitle B of title I.

“(v) Purchase by the plan sponsor of an annuity contract to cover liabilities of the plan, which the corporation is hereby authorized to guarantee as necessary to secure such a contract.”.

(f) NOTICE OF RIGHT TO CHALLENGE DETERMINATIONS RELATING TO PLAN TERMINATION.—

(1) Procedure for standard terminations.—Section 4041(b)(2)(B) of such Act (29 U.S.C. 1341(b)(2)(B)) is amended in clause (i) by
striking “and” at the end, in clause (ii)(V) by strik-
ing “require.” and inserting “require, and”, and by
inserting after clause (ii) the following new clause:
“(iii) the right of participants and
beneficiaries to challenge determinations
under this section.”.

(2) TERMINATION PROCEEDINGS FOR DISTRESS
TERMINATIONS AND TERMINATIONS COMMENCED BY
THE PBGC.—Section 4042(a) of such Act (29 U.S.C.
1342(a)) is amended by adding at the end the fol-
lowing new sentence: “Prior to commencing pro-
ceedings under this section with respect to any plan,
the corporation shall provide notice to plan partici-
pants and beneficiaries of the right to challenge de-
terminations under this section, written in a manner
likely to be understood by the participant or bene-
ficiary.”.

SEC. 302. EFFECTIVE DATE OF TITLE.
The amendments made by this title shall apply with
respect to any plans undergoing termination proceedings
pursuant to section 4041 or 4042 of the Employee Retire-
ment Income Security Act of 1974 which are pending on
or after the date of the enactment of this Act.
TITLE IV—RECOVERY OF BENEFIT LIABILITIES WHICH ARE NOT GUARANTEED

SEC. 401. AMENDMENT TO TITLE 11 OF THE UNITED STATES CODE.

Section 507(a)(1) of title 11, United States Code, is amended by adding at the end the following:

“(D) Subject to subparagraphs (A), (B), and (C), allowed unsecured claims for benefit liabilities to participants and beneficiaries under a single-employer plan (as defined in section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) in connection with the termination of the plan, in excess of the benefits payable to the participants and beneficiaries by the Pension Benefit Guaranty Corporation under section 4022 of the Employee Retirement Income Security Act of 1974 in connection with such termination.”.

SEC. 402. EFFECTIVE DATE; APPLICATION OF AMENDMENT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), section 401 and the amendment made by such section shall take effect on the date of the enactment of this Act.
(b) APPLICATION OF AMENDMENT.—The amendment made by section 401 shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.