A BILL

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 Representatives of the United States of America in Congress assembled,
SECTION 1. SUBSTANTIAL CESSATION OF OPERATIONS.

(a) In General.—Subsection (c) of section 4062 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1362) is amended—

(1) by striking "OPERATIONS.—If an employer" and inserting "OPERATIONS.—"

"(1) In general.—If an employer"; and

(2) by adding at the end the following:

"(2) SUBSTANTIAL CESSATION OF OPERATIONS.—An employer shall not be treated as having a cessation described in paragraph (1) unless—

"(A) all operations at a facility in a location are ceased, and—

"(i) such cessation is reasonably expected to be permanent;

"(ii) no portion of such operations is moved to another facility at a different location;

"(iii) no portion of such operations is assumed by or otherwise transferred to another employer; and

"(iv) no other operations are reasonably expected to be maintained at such facility; and

"(B) as a result of the cessation described in subparagraph (A), more than 20 percent of
the employees of the employer have a termination of employment that is reasonably expected to be permanent.

For purposes of subparagraph (B), all employees treated as employed by a single employer under sections 210 (e) and (d) shall be treated as employees of the employer.”.

(b) DIRECTION TO THE CORPORATION.—The Pension Benefit Guaranty Corporation shall not take any enforcement, administrative, or other action pursuant to section 4062(e) of the Employee Retirement Income Security Act of 1974 that is inconsistent with subparagraph (A) of section 4062(e)(2) of such Act, as added by subsection (a), without regard to whether the action relates to a cessation or other event that occurs before or after the date of enactment of this Act, unless such action is in connection with a settlement agreement in place before June 1, 2014.

SECTION 1. SUBSTANTIAL CESSION OF OPERATIONS.

(a) IN GENERAL.—Subsection (e) of section 4062 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1362) is amended to read as follows:

“(e) TREATMENT OF SUBSTANTIAL CESSATION OF OPERATIONS.—
“(1) GENERAL RULE.—Except as provided in paragraphs (3) and (4), if there is a substantial cessation of operations at a facility in any location, the employer shall be treated with respect to any single employer plan established and maintained by the employer covering participants at such facility as if the employer were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 4063, 4064, and 4065 shall apply.

“(2) SUBSTANTIAL CESSATION OF OPERATIONS.—For purposes of this subsection:

“(A) IN GENERAL.—The term ‘substantial cessation of operations’ means a permanent cessation of operations at a facility which results in a workforce reduction of a number of eligible employees at the facility equivalent to more than 15 percent of the number of all eligible employees of the employer, determined immediately before the earlier of—

“(i) the date of the employer’s decision to implement such cessation, or

“(ii) in the case of a workforce reduction which includes 1 or more eligible employees described in paragraph (6)(B), the
earliest date on which any such eligible employee was separated from employment.

“(B) WORKFORCE REDUCTION.—Subject to subparagraphs (C) and (D), the term ‘workforce reduction’ means the number of eligible employees at a facility who are separated from employment by reason of the permanent cessation of operations of the employer at the facility.

“(C) RELOCATION OF WORKFORCE.—An eligible employee separated from employment at a facility shall not be taken into account in computing a workforce reduction if, within a reasonable period of time, the employee is replaced by the employer, at the same or another facility located in the United States, by an employee who is a citizen or resident of the United States.

“(D) DISPOSITIONS.—If, whether by reason of a sale or other disposition of the assets or stock of a contributing sponsor (or any member of the same controlled group as such a sponsor) of the plan relating to operations at a facility or otherwise, an employer (the ‘transferee employer’) other than the employer which experiences the substantial cessation of operations (the
‘transferor employer’) conducts any portion of
such operations, then—

“(i) an eligible employee separated
from employment with the transferor em-
ployer at the facility shall not be taken into
account in computing a workforce reduction
if—

“(I) within a reasonable period of
time, the employee is replaced by the
transferee employer by an employee
who is a citizen or resident of the
United States; and

“(II) in the case of an eligible em-
ployee who is a participant in a single
employer plan maintained by the
transferor employer, the transferee em-
ployer, within a reasonable period of
time, maintains a single employer
plan which includes the assets and li-
abilities attributable to the accrued
benefit of the eligible employee at the
time of separation from employment
with the transferor employer; and

“(ii) an eligible employee who con-
tinues to be employed at the facility by the
transferee employer shall not be taken into
account in computing a workforce reduction
if—

“(I) the eligible employee is not a participant in a single employer plan
maintained by the transferor employer,
or

“(II) in any other case, the transferee employer, within a reasonable pe-
period of time, maintains a single em-
ployer plan which includes the assets
and liabilities attributable to the ac-
crued benefit of the eligible employee at
the time of separation from employ-
ment with the transferor employer.

“(3) EXEMPTION FOR PLANS WITH LIMITED
UNDERFUNDING.—Paragraph (1) shall not apply
with respect to a single employer plan if, for the plan
year preceding the plan year in which the cessation
occurred—

“(A) there were fewer than 100 participants
with accrued benefits under the plan as of the
valuation date of the plan for the plan year (as
determined under section 303(g)(2)); or
“(B) the ratio of the market value of the assets of the plan to the funding target of the plan for the plan year was 90 percent or greater.

“(4) Election to Make Additional Contributions to Satisfy Liability.—

“(A) In General.—An employer may elect to satisfy the employer’s liability with respect to a plan by reason of paragraph (1) by making additional contributions to the plan in the amount determined under subparagraph (B) for each plan year in the 7-plan-year period beginning with the plan year in which the cessation occurred. Any such additional contribution for a plan year shall be in addition to any minimum required contribution under section 303 for such plan year and shall be paid not later than the earlier of—

“(i) the due date for the minimum required contribution for such year under section 303(j); or

“(ii) in the case of the first such contribution, the date that is 1 year after the date on which the employer notifies the Corporation of the substantial cessation of operations or the date the Corporation deter-
mines a substantial cessation of operations has occurred, and in the case of subsequent contributions, the same date in each succeeding year.

“(B) AMOUNT DETERMINED.—

“(i) IN GENERAL.—Except as provided in clause (iii), the amount determined under this subparagraph with respect to each plan year in the 7-plan-year period is the product of—

“(I) 1/7 of the unfunded vested benefits determined under section 4006(a)(3)(E) as of the valuation date of the plan (as determined under section 303(g)(2)) for the plan year preceding the plan year in which the cessation occurred; and

“(II) the reduction fraction.

“(ii) REDUCTION FRACTION.—For purposes of clause (i), the reduction fraction of a single employer plan is equal to—

“(I) the number of participants with accrued benefits in the plan who were included in computing the workforce reduction under paragraph
(2)(B) as a result of the cessation of operations at the facility; divided by

“(II) the number of eligible employees of the employer who are participants with accrued benefits in the plan, determined as of the same date the determination under paragraph (2)(A) is made.

“(iii) LIMITATION.—The additional contribution under this subparagraph for any plan year shall not exceed the excess, if any, of—

“(I) 25 percent of the difference between the market value of the assets of the plan and the funding target of the plan for the preceding plan year; over

“(II) the minimum required contribution under section 303 for the plan year.

“(C) PERMITTED CESSATION OF ANNUAL INSTALMENTS WHEN PLAN BECOMES SUFFICIENTLY FUNDED.—An employer’s obligation to make additional contributions under this paragraph shall not apply to—
“(i) the first plan year (beginning on or after the first day of the plan year in which the cessation occurs) for which the ratio of the market value of the assets of the plan to the funding target of the plan for the plan year is 90 percent or greater, or
“(ii) any plan year following such first plan year.
“(D) COORDINATION WITH FUNDING WAIVERS.—
“(i) IN GENERAL.—If the Secretary of the Treasury issues a funding waiver under section 302(c) with respect to the plan for a plan year in the 7-plan-year period under subparagraph (A), the additional contribution with respect to such plan year shall be permanently waived.
“(ii) NOTICE.—An employer maintaining a plan with respect to which such a funding waiver has been issued or a request for such a funding waiver is pending shall provide notice to the Secretary of the Treasury, in such form and at such time as the Secretary of the Treasury shall provide, of
a cessation of operations to which paragraph (1) applies.

“(E) ENFORCEMENT.—

“(i) NOTICE.—An employer making

the election under this paragraph shall pro-

vide notice to the Corporation, in accord-

ance with rules prescribed by the Corpora-

tion, of—

“(I) such election, not later than

30 days after the earlier of the date the

employer notifies the Corporation of

the substantial cessation of operations

or the date the Corporation determines

a substantial cessation of operations

has occurred;

“(II) the payment of each addi-
tional contribution, not later than 10
days after such payment;

“(III) any failure to pay the add-
ditional contribution in the full
amount for any year in the 7-plan-
year period, not later than 10 days
after the due date for such payment;

“(IV) the waiver under subpara-
graph (D)(i) of the obligation to make
an additional contribution for any
year, not later than 30 days after the
funding waiver described in such sub-
paragraph is granted; and

“(V) the cessation of any obliga-
tion to make additional contributions
under subparagraph (C), not later
than 10 days after the due date for
payment of the additional contribution
for the first plan year to which such
cessation applies.

“(ii) ACCELERATION OF LIABILITY TO
THE PLAN FOR FAILURE TO PAY.—If an em-
ployer fails to pay the additional contribu-
tion in the full amount for any year in the
7-plan-year period by the due date for such
payment, the employer shall, as of such
date, be liable to the plan in an amount
equal to the balance which remains unpaid
as of such date of the aggregate amount of
additional contributions required to be paid
by the employer during such 7-year-plan
period. The Corporation may waive or settle
the liability described in the preceding sen-
tence, at the discretion of the Corporation.
“(iii) CIVIL ACTION.—The Corporation may bring a civil action in the district courts of the United States in accordance with section 4003(e) to compel an employer making such election to pay the additional contributions required under this paragraph.

“(5) DEFINITIONS.—For purposes of this subsection:

“(A) ELIGIBLE EMPLOYEE.—The term ‘eligible employee’ means an employee who is eligible to participate in an employee pension benefit plan (as defined in section 3(2)) established and maintained by the employer.

“(B) FUNDING TARGET.—The term ‘funding target’ means, with respect to any plan year, the funding target as determined under section 4006(a)(3)(E)(iii)(I) for purposes of determining the premium paid to the Corporation under section 4007 for the plan year.

“(C) MARKET VALUE.—The market value of the assets of a plan shall be determined in the same manner as for purposes of section 4006(a)(3)(E).

“(6) SPECIAL RULES.—
“(A) CHANGE IN OPERATION OF CERTAIN FACILITIES AND PROPERTY.—For purposes of paragraphs (1) and (2), an employer shall not be treated as ceasing operations at a qualified lodging facility (as defined in section 856(d)(9)(D) of the Internal Revenue Code of 1986) if such operations are continued by an eligible independent contractor (as defined in section 856(d)(9)(A) of such Code) pursuant to an agreement with the employer.

“(B) AGGREGATION OF PRIOR SEPARATIONS.—The workforce reduction under paragraph (2) with respect to any cessation of operations shall be determined by taking into account any separation from employment of any eligible employee at the facility (other than a separation which is not taken into account as workforce reduction by reason of subparagraph (C) or (D) of paragraph (2)) which—

“(i) is related to the permanent cessation of operations of the employer at the facility, and

“(ii) occurs during the 3-year period preceding such cessation.
“(C) NO ADDITION TO PREFUNDING BALANCE.—For purposes of section 303(f)(6)(B) and section 430(f)(6)(B) of the Internal Revenue Code of 1986, any additional contribution made under paragraph (4) shall be treated in the same manner as a contribution an employer is required to make in order to avoid a benefit reduction under paragraph (1), (2), or (4) of section 206(g) or subsection (b), (c), or (e) of section 436 of the Internal Revenue Code of 1986 for the plan year.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to a cessation of operations or other event at a facility occurring on or after the date of enactment of this Act.

(2) TRANSITION RULE.—An employer that had a cessation of operations before the date of enactment of this Act (as determined under subsection 4062(e) of the Employee Retirement Income Security Act of 1974 as in effect before the amendment made by this section), but did not enter into an arrangement with the Pension Benefit Guaranty Corporation to satisfy the requirements of such subsection (as so in effect) before such date of enactment, shall be permitted to
make the election under section 4062(e)(4) of such Act (as in effect after the amendment made by this section) as if such cessation had occurred on such date of enactment. Such election shall be made not later than 30 days after such Corporation issues, on or after such date of the enactment, a final administrative determination that a substantial cessation of operations has occurred.

(c) DIRECTION TO THE CORPORATION.—The Pension Benefit Guaranty Corporation shall not take any enforcement, administrative, or other action pursuant to section 4062(e) of the Employee Retirement Income Security Act of 1974, or in connection with an agreement settling liability arising under such section, that is inconsistent with the amendment made by this section, without regard to whether the action relates to a cessation or other event that occurs before, on, or after the date of the enactment of this Act, unless such action is in connection with a settlement agreement that is in place before June 1, 2014. The Pension Benefit Guaranty Corporation shall not initiate a new enforcement action with respect to section 4062(e) of such Act that is inconsistent with its enforcement policy in effect on June 1, 2014.