AMERICAN BENEFITS COUNCIL'S POSITIONS ON LEADING SINGLE-EMPLOYER PENSION FUNDING REFORM PROPOSALS

[Note: A shaded cell indicates that the version of H.R. 2830 that passed the House on December 15, 2005 (the "Managers' Amendment") included material changes to the bill originally reported by the Ways & Means Committee and the Education & Workforce Committee.]

ISSUE	CURRENT LAW	ADMINISTRATION[1]	HOUSE (H.R. 2830)[2]	SENATE (S. 1783)[3]	COUNCIL'S POSITION
APPLICABILITY	Single employer plans, multiple employer plans, and multiemployer plans are subject to minimum funding standards.	The Administration proposal would change the funding rules for single employer plans and multiple employer plans.	H.R. 2830 would change the funding rules for single employer plans, multiple employer plans and multiemployer plans.	Same as H.R 2830.	
OVERVIEW	In general, a sponsor of a plan which has over 100 participants must make minimum contributions equal to the greater of (a) the contributions required under the deficit reduction contribution ("DRC") rules, or (b) the contributions required under the plan's funding standard account (the "ERISA funding rules").	The current law two-tiered system would be replaced with a single approach modeled closely on the DRC rules. Subject to special effective dates, the proposal would generally be effective for plan years beginning after 2005.	Same as Administration proposal. Subject to special effective dates, the proposal would generally be effective for plan years beginning after 2006.	Same as H.R. 2830.	In light of the significant effects of the proposals and the large amount of regulatory guidance needed, the general effective date should be 2008 or, at a minimum, a good faith compliance standard should apply during 2007.
MEASUREMENT OF LIABILITY					
BENEFITS TAKEN INTO ACCOUNT IN MEASURING LIABILITY	Liability under the DRC rules ("current liability") is equal to benefits accrued to date. Future accruals are disregarded (including expected pay increases in final pay plans and expected increases in flat dollar plans).	Same as current liability.	Same as current liability.	Same as current liability.	
INTEREST RATE	Prior to 2004, the interest rate used to determine current liability was based on the 30-year Treasury bond. For plan years beginning in 2004 and	The interest rate used to determine liability would be based on AA rated corporate bonds of varying maturities.	The interest rate used to determine liability would be based on "investment grade corporate bonds" of varying maturities.	Same as H.R. 2830.	The Council supports the use of all quality levels of investment grade corporate bonds including AAA, AA, A and BBB. Bonds at the AAA

[1] In February, 2005, the Administration released its proposal for reform of current pension funding rules.

[2] H.R. 2830, The Pension Protection Act of 2005, was approved by the full House on December 15, 2005. The final House-passed language was a managers' amendment that merged and amended versions of the bill previously reported by the Education & Workforce Committee in June, 2005 and the Ways & Means Committee in November, 2005.

[3] S. 1783, The Pension Security and Transparency Act of 2005, was approved by the full Senate on November 16, 2005.

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	2005, the interest rate is based on a mix of long-term corporate bonds that are AAA, AA and A rated. After 2005, the interest rate is scheduled to revert to the rate on the 30-year Treasury bond.				level should be weighted less heavily due to the thinness of the market for such bonds.
YIELD CURVE	Not applicable. Liabilities of all durations are valued using a single interest rate.	The particular interest rate used to value a liability under the Administration proposal would be selected from a yield curve based on the expected duration of the liability. The yield curve would be developed and published by the Treasury Department.	Instead of a different interest rate for each duration, there would be a separate rate for each of three duration "segments" derived from a yield curve developed and published by the Treasury Department. The three segments would be for liabilities with durations under 5 years, between 5 and 20 years, and longer than 20 years.	Same as H.R. 2830.	The Council supports the use of the long-term corporate bond rate, not the three-segment yield curve. If the three-segment yield curve is used, it should be clarified that the rate for each segment is the average of all rates in the segment. Without such a clarification, it is possible that a segment rate could be set at the lowest interest rate within the segment..
INTEREST RATE SMOOTHING	The interest rate used to value liabilities is the weighted average of the interest rate for the 4 years preceding the valuation date. The weighting used is 40%, 30%, 20% and 10% starting with the most recent year in the four-year period.	The interest rates that comprise the yield curve would be averaged over the 90 business days preceding the valuation date.	The interest rates that comprise the yield curve would be the weighted average of interest rates over the 3 years preceding the valuation date. The weighting used would be 50%, 35%, and 15% starting with the most recent year in the three-year period.	The interest rates that comprise the yield curve would be averaged over the 12 months preceding the valuation date.	The Council supports the House bill, but with less weight given to the most recent year. Giving more weight to the second and third preceding years preserves needed predictability.
MORTALITY TABLE	The Secretary of Treasury prescribes the mortality tables used in determining a plan's current liability. Currently, the 1983 Group Annuity Mortality Table ("GAM 1983") is used.	Same as current law.	*In General.* Updates GAM 1983 with the RP-2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of enactment, and projected as of the plan's valuation date. *Substitute Mortality Table.* Allows a plan to use a substitute mortality table if the Secretary of Treasury determines that (i) the table reflects the actual experience of the plan and projected	Same as H.R. 2830, but adds additional requirements for use of a substitute mortality table, including a requirement that all plans maintained by the employer and its affiliates use the substitute mortality table, unless the Secretary of Treasury provides otherwise.	The Council supports the House bill provision permitting separate substitute mortality tables for separate plans. The Senate bill would require that mortality tables for one plan be based partially on mortality experience with respect to other plans, which may have very different experience.

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			trends in experience and (ii) the table is significantly different than RP-2000.		
OPTIONAL FORMS OF DISTRIBUTION	An assumption regarding the probability that lump sums and other optional forms of distribution will be paid is not required (or permitted) under the DRC rules.	Probability that lump sums and other optional forms of distribution will be paid would be taken into account, and any difference in value would need to be reflected in liability.	Same as Administration proposal.	Same as Administration proposal.	A transition rule is needed with respect to this change in assumptions. Otherwise, some plans will experience a sharp increase in liabilities.
AT RISK PLANS	Not applicable	Would distinguish between at risk plans and other plans. Defines at risk plans as plans sponsored by employers that have debt rated below investment grade (*i.e.*, junk bond status) by all of the major credit rating agencies that rate the sponsor. For at risk plans, the plan's actuary would have to (i) assume that all participants will retire upon reaching the earliest retirement age; (ii) assume that benefits will be paid in lump sums (or in whatever form results in the largest liability for the plan); and (ii) apply a "loading factor" equal to $700 per participant plus 4% of current liability for the plan year (collectively termed "At-Risk Liability"). *Unrated Sponsors.* The PBGC would develop a matrix for sponsors that do not have debt that is rated to determine whether their plans are at risk plans. *Small Plans.* Plans that have fewer than 500 participants cannot be considered at risk.	Same as the Administration's proposal but defines at risk plans differently. Does not use credit ratings to define at risk plans. Instead, defines plans as at risk based on whether they are funded at less than 60% for the preceding plan year. For at risk plans, the plan's actuary would have to assume that (i) all participants will elect benefits at times and in forms that will result in the highest present value of liabilities and (ii) apply the same loading factor under the Administration proposal. *Small Plans.* No exception. *Phase-In.* At risk liability would be phased in 20% per year. For a plan that becomes 60% or more funded, at risk liability would cease. However, shortfall amortization schedules established while the plan was considered at risk would continue to be applicable.	Same as the Administration proposal but defines at-risk plans differently. Defines at-risk plans based on a mix of credit ratings and funded status. Specifically, as of any valuation date, a plan is an at risk plan if (i) it is maintained by a financially-weak employer and (ii) the plan is less than 93% funded. An employer is financially weak if (i) for the current and 2 preceding plan years, the employer has senior unsecured debt that is rated below investment grade by all of the nationally recognized statistical rating organizations ("NRSRO") that rate the sponsor's debt and (ii) at least 2 of the years are "deterioration years." Deterioration years are any years during which each of the NRSROs issues a lower rating than the prior year or issues the lowest rating the NRSRO uses. Note: An employer is not treated as financially weak if a significant member of the controlled group is not considered financially weak. For at-risk plans, the plan's	The Council opposes basing any funding-related rule (including, for example, disclosure rules) on the credit rating of the plan sponsor. If a plan is treated as at-risk, the assumption should be that employees terminate employment during the current year. That is an accurate simulation of the plan sponsor going out of business; the assumptions in both bills are "worse than worst case". A plan sponsor cannot go out of business at different times with respect to different employees. The Council does not believe that the load factors in the House bill should be included.

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		Phase-In. At risk liability would be phased in 20% per year so long as the sponsor's debt remained in junk bond status but would disappear immediately once the debt was rated investment grade by a major credit rating agency.		actuary would have to assume that participants who would be eligible to elect benefits during the plan year and the succeeding 7 plan years make such elections at such times and in such forms that will result in the highest present value. *Unrated Sponsors.* The Secretary of Treasury is to issue regulations for determining whether an employer that is not rated by an NRSRO is financially weak. *Small Plans.* Same as Administration proposal. *Phase-In.* Same phase-in as H.R. 2830. However, any year in which an NRSRO issues a better credit rating for the sponsor than the year before (an "improvement year") would cause the phase-in to be suspended. *Effective Date.* Technically would be effective in 2007 but plan years before 2007 would not be taken into account in determining whether a sponsor is financially weak.	
PLANS OTHER THAN AT RISK PLANS	Except for the prescribed interest rate and mortality table, the actuary determines the applicable assumptions, including when participants will retire and whether participants are likely to take a lump sum. Each assumption must be reasonable and offer the actuary's best estimate of	For plans other than at risk plans, the plan's actuary would prescribe the relevant assumptions (other than interest rate and mortality), subject to current law standards.	Same as Administration proposal.	Same as Administration proposal.	The Council supports the provision in both bills.

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	anticipated experience.				
PHASE-IN FOR LIABILITY CHANGES	Not applicable	The change in liability attributable to the new interest rate, yield curve, and interest rate smoothing rules would be phased in during 2006 and 2007. During 2006, liability would be one-third new liability and two-thirds liability under the rules in effect immediately before the new legislation. Those ratios would be flipped during 2007.	During 2006, liability would be based on the funding rules in effect during 2004 and 2005. Same phase in of new interest rate, yield curve, and interest rate smoothing rules as Administration proposal but during 2007 and 2008. The change in liability attributable to the new mortality table would be phased in ratably over the 5-year period beginning in 2007.	Same as H.R. 2830.	The Council supports at least this level of transition relief.
MEASUREMENT OF ASSETS					
ASSET VALUATION	Under current law, a plan can use the actual fair market value on the valuation date or the prescribed average value. Treasury regulations allow for the actuarial smoothing of asset values over a period of time within a prescribed corridor (generally no less than 80% and no more than 120% of fair market value).	Current law actuarial smoothing of asset values would be repealed. Asset valuations would have to be done on a fair market value basis as of the valuation date.	Actuarial smoothing of asset values would be permitted. However, the prescribed corridor for actuarial valuations would be narrowed to 90% to 110% of fair market value. In addition, any actuarial method of asset smoothing would be impermissible to the extent it provides for the averaging of asset values over the 3 preceding plan years.	Actuarial smoothing of asset values would be permitted. There would be no prescribed corridor for valuations. However, any actuarial method of asset smoothing would be impermissible to the extent it provides for the averaging of asset values over more than the 12 month period preceding the valuation date.	The House provision preserves the minimum amount of smoothing that is needed.
VALUATION DATE					
	The valuation date for assets and liabilities generally must be during the plan year.	The valuation date would be the first day of the plan year. However, plans with 100 or fewer participants on each day of the preceding plan year could choose any day during the plan year.	Same as Administration proposal but the exception for small plans is for plans with 500 or fewer participants.	Same as Administration proposal.	
MINIMUM REQUIRED CONTRIBUTION					
TRIGGER	DRC contributions are required if a plan falls below 90% funded on a current liability basis, or 80% for plans that have been 90% funded in	Contributions would be required for a plan year if the sum of (i) the plan's normal cost for the year and (ii) the plan's liability on the valuation	Same as Administration proposal but, for plans that are <u>not</u> subject to the DRC rules for the plan year beginning in 2006, a special rule would	Same as Administration proposal but the 100% funding target would be phased in over 3 years as follows: 2007 – 93%; 2008 – 96%; 2009 --	Neither bill provides enough transition relief. The Senate bill provides a 3-year transition. The House bill provides a 5-year transition for plans funded

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	two consecutive years out of the last three years.	date are more than the value of the plan's assets.	apply. In general, an eligible plan would be entitled to instead elect to fund up to the following levels (without any amortization): 2007 – 92%; 2008 – 94%; 2009 – 96%; 2010 – 98%; and 100% thereafter.	100%. A 5-year transition applies in the case of plans with 100 or fewer participants (*i.e.*, 2007 – 92%; 2008 – 94%, etc.). A 10-year delayed effective date applies to plans of certain cooperatives so that the funding changes made by the bill do not apply until 2017.	at the specific levels, but no transition relief for any plan funded below that level. All plans need a transition period of 7 to 10 years.
MINIMUM REQUIRED CONTRIBUTION	Very generally, if the DRC rules apply, sponsors must contribute normal cost plus a specified percentage of the plan's unfunded liabilities.	In general, the minimum contribution would be the sum of (i) the plan's normal cost for the plan year and (ii) the required shortfall amortization charge.	Same as Administration proposal.	Same as Administration proposal.	
NORMAL COST	The present value of the expected increase in current liability due to benefits accruing during the plan year.	The present value of all benefits that the plan expects to pay in the future that accrue during the year (including benefit increases earned in prior years attributable to compensation increases).	Same as Administration proposal.	Same as Administration proposal.	Transition relief is needed with respect to the new normal cost rules. Some plans' normal cost could be more than triple under the new rules.
SHORTFALL AMORTIZATION CHARGE	DRC contribution percentages currently range from 30% (for plans that are funded at or below a 60% level) to just over 18% (for plans just below 90% funded) of the difference between plan assets and 100% of liabilities. *Early Termination of Amortization.* DRC contributions are no longer required once a plan is at least 90% funded.	Contributions required equal to the difference between assets and 100% of liabilities amortized on a level basis over 7 years. *Treatment of remaining amortization payments.* Payments due under an amortization schedule are included in plan assets based on their present value (in effect, as a note). *Early Termination of Amortization.* Contributions made in excess of the minimum would <u>not</u> reduce payments due under an amortization schedule. Amortization payments would terminate early only if the	Same as Administration proposal, but the present value of the amortization payments would be valued using the segment rates.	Generally the same as H.R. 2830. *60% Rule.* Provides that if a plan's funded percentage for the prior plan year is less than 60%, the employer must contribute an amount immediately sufficient to bring the plan to a funded level equal to at least 60%.	The Council supports 10-year amortization; the Administration proposed 7 to 10-year amortization. Both bills require immediate amortization of experience losses, but delay any recognition of experience gains until the plan is 100% funded. This can have the harsh effect of resulting in an effective amortization period of less than 3 years. Experience gains should be amortized immediately, just like experience losses.

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		assets exceed the liabilities.			
CREDIT BALANCES					
IN GENERAL	Under current law, if a sponsor makes a contribution in excess of the minimum required contribution in any year, the excess plus interest is maintained as a "credit balance" that can be credited against future required contributions.	Contributions in excess of the minimum required contribution would not receive any special treatment, *i.e.*, there would be no credit balances. The Administration proposal would apply to existing credit balances, which would be eliminated.	Except as discussed below, the same as current law.	Except as discussed below, the same as current law.	
ADJUSTMENT FOR GAINS AND LOSSES	Credit balances are adjusted at the rate of return assumed by the actuary for ERISA funding purposes. Credit balances do not adjust immediately if the underlying value of the assets increases or decreases or does not increase at the plan's assumed rate of return.	Not applicable	Credit balances would be adjusted to reflect the actual rate of return experienced by all plan assets. The adjustment would apply prospectively (*i.e.*, the credit balance immediately before the first plan year in 2007 would be the opening balance).	Same as H.R. 2830.	
MINIMUM CONTRIBUTION TRIGGER	Credit balances are not subtracted from assets for purposes of determining whether the DRC rules apply to a plan, *i.e.*, for purposes of the 80%/90% DRC threshold.	Not applicable	In general, the same as current law. Credit balances are not subtracted from assets for purposes of determining whether the shortfall contribution rules apply. Accordingly, credit balances are not subtracted for this purpose if the plan is funded to following levels: 2007 – 92%; 2008 – 94%; 2009 – 96%; 2010 – 98%; and 100% thereafter.	Unlike current law and H.R. 2830, S. 1783 would subtract credit balances from assets for purposes of determining whether the shortfall contribution rules apply.	The Council supports the House provision, which preserves an important incentive to be fully funded. The House provision also avoids a change in the rules with respect to existing credit balances that were created in good faith reliance on the law in effect at the time.
AMOUNT OF MINIMUM CONTRIBUTION	If a DRC contribution is required, credit balances are subtracted from assets for purposes of determining the amount of underfunding.	Not applicable	Same as current law but provides that credit balances that are not available to satisfy a minimum contribution obligation because of an agreement with the PBGC would not be subtracted from assets for purposes of determining the amount of underfunding, but would be subtracted for purposes of applying the at risk rules and	Same as current law.	The Council supports the House provision, except that it needs to be broadened to provide for no subtraction of credit balances for any purpose, in the case of plans with such agreements with the PBGC.

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			benefit restrictions.		
RESTRICTIONS ON USE	None	Not applicable	H.R. 2830 would prohibit plans from using credit balances to satisfy a contribution obligation if a plan was below 80% funded in the preceding year. For purposes of the 80% trigger, credit balance created after 2006 ("New Credit Balances") would be subtracted from assets. *Other contributions*. Under H.R. 2830, credit balances could be used to satisfy minimum funding obligations, but not other obligations, including those triggered by restrictions on benefit increases.	Would require a plan that was below 80% funded (without regard to the at risk rules) to contribute an amount equal to the greater of (i) target normal cost or (ii) 25% of the minimum required contribution (*i.e.*, credit balances could not be used until these minimum contributions had been made). Credit balances are not subtracted from assets for purposes of the 80% trigger.	These types of restrictions on the use of credit balances will lead to less advance funding, which will create lower funding levels. Plans funded below 80% generally would be discouraged from doing any advance funding. And, for example, a plan funded at 85% might be well advised not to do any advance funding because of the very real possibility of falling below 80% and losing the ability to use some or all of its credit balance.
IMPACT ON BENEFIT RESTRICTIONS	Credit balances are not subtracted from assets for purposes of determining whether the 60% restriction, discussed below, applies.	Not applicable	In general, all credit balances are subtracted from assets for purposes of determining whether a benefit restriction applies. *100% Funded Exception*: There is an exception for plans that are 100% funded without subtracting credit balances. For this purpose, a phase-in of the 100% target applies. The phase-in is as follows: 2007 – 92%; 2008 – 94%; 2009 – 96%; 2010 – 98%; and 100% thereafter. For purposes of applying certain benefit restriction presumptions in 2007, the funded status in 2006 is relevant. For this purpose, credit balances are subtracted from assets if a plan is less than 100% funded in 2006.	Credit balances are <u>not</u> subtracted from assets for purposes of determining whether any of the restrictions on benefits, discussed below, are triggered.	The Council opposes subtraction of credit balances for any purpose other than determining an underfunded plan's shortfall amortization base. If the House bill provision applies, the phase-in should be modified so that it starts at 90% in 2006, rather than starting at 100% and then going to 92% in 2007.

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IMPACT ON AT RISK TRIGGER	Not applicable	Not applicable	Credit balances are subtracted from assets for purposes of determining whether a plan is at risk.	Credit balances are <u>not</u> subtracted from assets for purposes of determining whether a plan is at risk.	The Council opposes any subtraction of credit balances for any purpose other than determining an underfunded plan's shortfall amortization base. The Council supports the Senate provision.
REDUCTIONS IN CREDIT BALANCES	None	Not applicable	A plan may elect to reduce a credit balance, in which case it would not be subtracted from assets for any purposes. Once reduced, however, the credit balance would be gone forever. *Union plans*. A collectively-bargained plan must reduce its credit balance to the extent necessary to avoid imposition of any of the benefit restrictions. It is unclear if these reductions apply even if, for example, no benefit increase has been adopted or the plan does not provide for any benefit accruals.	Not applicable	Under the Senate provision, which the Council supports, this issue is not applicable. If the House bill provision applies, it should be clarified that the union plan rule only applies if, for example, a benefit increase has been adopted or the plan provides for benefit accruals.
TIMING OF CONTRIBUTIONS					
QUARTERLY CONTRIBUTION REQUIREMENT	Plans that have a current liability percentage of less than 100%, including plans that are subject to the DRC rules, must make quarterly contributions, due on the 15th day following the end of each quarter in the plan year, the amount of which is a specified percentage of the plan's required annual payment (the "RAP"). Generally, the RAP is the lesser of 90% of the plan's current year minimum funding requirement or 100% of the plan's minimum funding requirement for the preceding year.	Same as current law.	Same as current law, except that the prior year safe harbor does not apply in 2007.	Same as H.R. 2830.	Two issues need to be addressed in the bills. First, the prior year safe harbor - - permitting quarterly contributions to be based on 100% of the prior year's minimum contribution - - should be applicable in 2007. If it is not applicable in 2007, many employers will not, as a practical matter, have the information needed to satisfy the requirements for the first two quarterly contributions. Second, it should be provided that for this purpose, the law in effect in 2006 applies for determining the prior year

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					minimum contribution in 2007.
8½ MONTH GRACE PERIOD	A sponsor has a grace period of 8½ months after the end of the plan year to make contributions necessary to avoid a funding deficiency and a penalty.	Contributions after the valuation date for the year are credited against the minimum required contribution for the year based on their present value as of the valuation date.	Same as Administration proposal.	Same as Administration proposal.	
CONSEQUENCES OF FAILURE TO MAKE REQUIRED CONTRIBUTIONS					
AUTOMATIC EXCISE TAX	Failure to fund results in an excise tax equal to 10% of the funding deficiency. A 100% excise tax applies if not corrected.	Same as current law.	Same as current law.	Same as current law.	
PBGC LIEN	If a sponsor fails to make required contributions and the late payments plus interest exceeds $1 million, a lien arises.	Same as current law.	Same as current law.	Same as current law.	
RESTRICTIONS ON PLAN BENEFITS TIED TO PLAN FUNDING					
LIMITATIONS ON BENEFIT INCREASES	Under current law, if a pension plan (with more than 100 participants) has a funding ratio below 60 percent of current liability, the company generally may not provide a benefit increase greater than $10 million unless the increase is immediately funded or security is provided to fully fund the improvement.	For a plan that is not more than 80% funded, benefit increases (*i.e.*, amendments that increase benefits) would be prohibited (unless immediately paid for).	Amendments that increase benefits would be prohibited. for a plan that (i) is less than 80% funded as of the valuation date or (ii) would be less than 80% funded as of the valuation date taking into account the amendment. An exception applies if the benefit increase is either immediately paid for or paid for to the extent necessary to bring the plan to at least 80% funded.	Same as H.R. 2830. Also contains an exception for increases under a flat-dollar plan that are not in excess of the rate at which participant wages have increased.	If the House bill credit balance rule applies, it should be clarified that credit balances can be used to pay for a plan amendment if the plan is at least 80% funded prior to subtraction of credit balances. Otherwise, credit balances are subtracted from assets, but are not usable to satisfy contribution obligations. The Council supports the flat-dollar plan exception in the Senate bill.
LIMITATIONS ON LUMP SUMS	If a quarterly installment is less than the amount required to cover the plan's liquidity shortfall, limits apply to the benefits that can be paid from a plan during the period of underpayment. During that period, a plan many not make: (1) any payment in excess of	Restrictions on lump sums would vary depending on the plan's funded status and the plan sponsor's credit rating. *Without Investment Grade Rating.* A plan of a sponsor that does not have an investment grade rating from at least one of the	Imposes limitations on lump sums based on a plan's funded status (not credit rating). For a plan that is less than 80% funded as of the valuation date, lump sums (and other accelerated forms of payment) would be prohibited thereafter.	Imposes limitations on lump sums and other prohibited forms of payment based on a plan's funded status (not credit rating). Lump sums and other payments restricted under the current law liquidity	The House provision will in many cases trigger a "rush to retire" by employees who anticipate its application. This rush to retire will have adverse effects on the plan and the plan sponsor.

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	the monthly amount paid under a single life annuity (plus any social security supplement) in the case of a participant or beneficiary whose annuity starting date occurs during that period; (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits (*e.g.*, an annuity contract); or (3) any other payment specified in Treasury regulations.	major credit rating agencies (or, in the case of a private sponsor, is considered to be in junk bond status under the PBGC matrix) could not pay lump sums if the plan is 80% or less well funded, apparently for the duration of both the sponsor's junk bond status and its funding condition. *With Investment Grade Rating.* Lump sums could not be paid if the plan is 60% or less well funded.	Lump sums may be resumed once a plan is at least 80% funded but a plan amendment resuming lump sum payouts is required. An exception applies for plans that were frozen as of June 29, 2005 and continue to be frozen after such date.	restrictions would not be permitted (i) if the plan had a funded percentage of less than 60% for the preceding plan year, (ii) while the sponsor is in bankruptcy (unless the plan is 100% funded), or (iii) if the plan has a liquidity shortfall. In the case of a restriction triggered by a less than 60% funded percentage, restricted payments could not be resumed until the plan has at least a 60% funded percentage for 2 consecutive years. *Exception.* An otherwise restricted payment is permissible pursuant to a one-time election so long as the payment does not exceed the lesser of (i) 50% of the amount payable absent the prohibition, or (ii) the present value of the maximum amount of the PBGC guarantee.	
LIMITATIONS ON ACCRUALS	None	*Plan Sponsor Without Investment Grade Rating.* A plan of a sponsor that does not have an investment grade rating from at least one of the major credit rating agencies (or, in the case of a private sponsor, is considered to be in junk bond status under the PBGC matrix) would have to be frozen if it is 60% or less well funded. *Plan Sponsor With Investment Grade Rating.* No mandatory freeze regardless of funded status.	H.R. 2830 requires plan freezes based on a plan's funded status (not credit rating). For a plan that is less than 60% funded as of a valuation date, the plan generally would have to be frozen (including compensation upticks). Accruals may be resumed once the plan is at least 60% funded but a plan amendment resuming accruals is required.	S. 1783 requires plan freezes based on funded status (not credit rating). For a plan that is less than 60% funded for the prior plan year, the plan generally would have to be frozen until the plan was at least 60% funded. A plan amendment generally would not be required to resume accruals.	
EFFECTIVE DATE FOR BENEFIT	Not applicable	Restrictions would apply to plan years beginning in 2007, subject to a delayed effective	Same as Administration proposal but the restrictions on benefit increases apply	Same as H.R. 2830 (subject to differences in delayed effective date for collectively bargained	The Council has concerns about the special rule for union plans. The special rule is very

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RESTRICTIONS		date for collectively bargained plans.	beginning in 2007 (subject to a delayed effective date for collectively bargained plans).	plans). *Special Rule for Union Plans*. The benefit restrictions do not apply to collectively bargained plans. Instead, the employer is required to contribute an amount sufficient to bring the plan to a funded percentage that is adequate to avoid the limitations. Credit balances may not be used for this purpose.	likely to have a chilling effect on companies' willingness to provide benefit increases, for example. And where the special rule requires company contributions, the amounts could be very burdensome.
PBGC PREMIUMS					
FLAT RATE PREMIUMS	All single-employer defined benefit pension plans pay a basic flat-rate premium of $19 per participant per year.	Flat rate premiums would be increased from $19 to $30 with no phase-in and would be indexed for wage growth on a prospective basis.	Same as the Administration proposal, but the increase would be phased in from 2006 to 2009. For pension plans that are less than 80% funded (after subtracting credit balances), the increase would be phased in from 2006 to 2008. H.R. 2830 would impose a special premium of $1,250 per year per participant for plans that are terminated by the PBGC or in a distress termination by reason of bankruptcy (or other similar inability to pay debts). The premium would be based on the number of participants as of the date of plan termination and would apply for 3 years following plan termination or, for a plan in bankruptcy, 3 years following a plan's exit from bankruptcy proceedings.	Same as the Administration proposal, including lack of a phase-in. Special rules apply for small and new plans. No special premium for involuntary and distress terminations.	The Council opposes indexing the flat-rate premium. Increases in the premium should only apply if and to the extent needed.

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VARIABLE RATE PREMIUMS	Very generally, certain underfunded single-employer pension plans pay an additional variable-rate premium of $9 per $l,000 of unfunded vested benefits.	The PBGC board would have authority to increase or decrease the amount of the variable rate premium.	The rate would stay at $9 per $1,000, although new rules for calculating premiums would be provided (see below). These rules would be effective for plan years beginning in 2007.	Same as H.R. 2830.	
EXCEPTIONS TO THE VARIABLE RATE PREMIUM	A plan is not required to pay the variable-rate premium if it meets an exception. A number of exceptions apply, including an exception for plans at the full funding limit.	Variable rate premiums would be charged based on the extent to which a plan is less than 100% funded (considering only vested benefits). The full funding limit exception would be repealed.	Same as the Administration proposal.	Same as the Administration proposal.	Transition relief is needed with respect to repeal of the full funding limit exception, since it is so widely relied on.
CALCULATING THE VARIABLE RATE PREMIUM	Unfunded vested benefits refers to the excess of the plan's vested benefits amount over the actuarial value of assets. Liability is determined using the applicable mortality table and 85% of the interest rate used for purposes of the funding rules but without smoothing.	Liability for purposes of the variable rate premium would be the same as liability for purposes of the funding rules.	Liability for purposes of the variable rate premium would be the same as liability for purposes of the funding rules except that only vested benefits would be taken into account in determining liability, the interest rate would be a spot rate (*i.e.*, not smoothed over 3 years), and assets would be valued at fair market value.	Same as H.R. 2830 but non-vested benefits would be taken into account in determining liability.	It should be clarified in the House bill that credit balances are not subtracted in applying the variable rate premium.
SPECIAL RULES					
MULTIPLE EMPLOYER COOPERATIVE PLANS	For certain purposes under the Code and ERISA, there are special rules that recognize the unique nature of multiple employer plans maintained for certain rural cooperatives.	No provision.	No provision.	In general, the new funding rules and PBGC premium rules would not apply to multiple employer plans maintained for rural electric cooperatives, rural telephone cooperatives, and agricultural cooperatives until plan years beginning on or after January 1, 2017. In addition, the at-risk rules would not apply to such plans.	The Council supports the Senate provision.
LUMP SUMS					
INTEREST RATE	Statutory assumptions must be used in determining the minimum value of certain optional forms of payments, including lump sums. The applicable interest rate is the	The minimum value (*i.e.*, the amount) of lump sums and certain other optional forms of payments would have to be calculated using interest rates derived from the	Same as the Administration proposal but using H.R. 2830's modified yield curve. *Note*: The interest rate used for the minimum value of lump	Same as the Administration proposal but the interest rate used for the minimum value of lump sums would be averaged over 3 months, not the 12-month smoothed rate used to	Unless the whipsaw problem is corrected with respect to distributions from cash balance plans after the effective date, this interest rate provision will force all cash balance plans

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	annual interest rate on 30-year Treasury securities.	Administration's yield curve.	sums would be a spot rate, not the smoothed rate used to measure liability.	measure liability.	into having a whipsaw problem with respect to their older participants' existing benefits. This should be addressed.
MORTALITY TABLE	The applicable mortality table for valuing lump sums is a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1994 Group Annuity Reserving Table.	Same as current law.	RP-2000 Combined Mortality Table, as published by the Society of Actuaries.	Same as current law.	Since the substitute mortality table applies for lump sum purposes, plans will need anti-cutback relief in order to adopt a substitute mortality table.
SPECIAL EFFECTIVE DATE	Not applicable	During 2007, liability for lump sums would be one-third new liability and two-thirds liability under the rules in effect immediately before the new legislation. Those ratios would flip during 2008.	The changes with respect to the use of the modified yield curve and RP-2000 Combined Mortality Table would be phased in 20% annually over 5 years beginning in 2007.	Phases in the use of the yield curve method at a level rate of 25% over 4 years beginning in 2007.	
DISCLOSURE					
PLAN FUNDING NOTICE	Multiemployer defined benefit plans, but not single employer plans, must provide an annual plan funding notice to each plan participant and beneficiary, each labor organization representing participants and beneficiaries, to each contributing employer, and to the PBGC.	No change	For plan years beginning in 2006, an annual notice of plan funding for a plan year would be required within 90 days after the end of the year. The notice would include the value of the plan's assets as of the end of the plan year, the projected liabilities of the plan as of the end of the plan year, and the ratio of the assets to liabilities.	Same general notice requirement and due date as H.R. 2830 but the information disclosed is somewhat different. Asset values would have to be disclosed as of the last day of the plan year on a fair market value basis and liabilities would have to be valued as of the last day of the plan using yield curve rates smoothed over 3 months, not the 12-month smoothed interest rate used for funding purposes.	The Senate bill requires year-end funding information within 90 days; as a practical matter, the information cannot be assembled within that period.
ANNUAL REPORT (FORM 5500)	Pension plan are generally required to file an annual report on Form 5500. Defined benefit plans subject to the minimum funding rules are required to file an actuarial statement (Schedule B) each year with the Form 5500. The Form 5500 is due 7	For plans with more than 100 participants and assets less than the funding target as of the prior valuation date, the Schedule B would be due no later than the 15th day of the second month following the close of the plan year (February 15 for a calendar year plan). An amended	The due date for the Schedule B would not be accelerated. Automatic 2½ month extensions would no longer be available, however plans would still be permitted to file a Form 5500 up to 285 days after the end of the plan year.	Same as H.R. 2830.	

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	months after the end of the plan year, but a 2½ month extension is available (to October 15) for a calendar year plan).	Schedule B would be required for contributions for a plan year made after the due date but before the end of the grace period.			
PBGC 4010 INFORMATION	Section 4010 of ERISA generally requires companies sponsoring defined benefit plans with more than $50 million of underfunding to provide the PBGC with confidential corporate information and a statement of the plan's funded status (*i.e.*, termination liability calculated using PBGC specified assumptions, which generally result in a substantially greater liability than under current liability).	The requirements for reporting under section 4010 of ERISA would be revised to be consistent with other elements of the pension reform proposal.	Companies would be required to provide the PBGC with the information currently required under section 4010 if (i) the aggregate funding percentage of all of the company's plans (including affiliate's plans) was less than 60% for the preceding year or (ii) was less than 75% for the preceding year and the company is in a troubled industry (determined by the PBGC). For purposes of determining the funded percentage, only vested benefits are taken into account.	Companies would be required to provide the PBGC with the information currently required under section 4010 if: 1. The plan is (i) underfunded by more than $50 million and (ii) either less than 90% funded or sponsored by an employer with a below investment grade debt rating; 2. All of an employer's plans have an aggregate funding percentage of less than 60%, or 3. All of an employer's plans have an aggregate funding percentage of less than 75% funded and the employer is in a troubled industry (determined by the PBGC).	The Council opposes the use of credit rating for any purposes. The Council also has concerns about the bills' use of an industry's financial condition as part of the reporting trigger; plan reporting should be based on a plan's condition.
NOTICE TO PARTICIPANTS OF PBGC 4010 FILING	Employers are not required to provide notice to participants of a 4010 filing. Section 4010(c) also provides that information submitted to the PBGC is exempt from disclosure.	All information filed with the PBGC pursuant to section 4010 would be subject to disclosure, except for confidential "trade secrets and commercial or financial information."	Employers that provide PBGC 4010 information would have to provide a notice to participants of the submission no later than 90 days after submission. The notice would include information on the funded status of the plan using the assumptions applicable for funding generally (not PBGC termination liability assumptions).	Not required.	
DEDUCTION LIMITS					
GENERALLY	Under current law, an employer may generally deduct plan contributions that increase the plan's funding level to 100% of current liability. This limit does not allow plans to create a funding	Under the Administration proposal, the defined benefit plan deduction limit would be based on the following three rules. First, contributions to reach a plan's at risk liability would always be deductible.	Employers would be permitted to make contributions equal to the difference between (i) a plan's at-risk normal cost plus total at-risk liability, or 150% of the plan's normal liability plus normal cost, and (ii) the	For 2006, maximum deductible contributions would increase to the excess of 180% of current liability over plan assets. Thereafter, employers could generally make deductible contributions equal	The Council supports the Senate provision.

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	cushion to help satisfy future liabilities. If a sponsor makes contributions in excess of the deduction limits, the contributions are nondeductible and subject to a 10% excise tax.	Second, contributions to pre-fund expected compensation upticks in a final average pay plan and expected increases in a flat-dollar plan would be permitted. Third, it would always be permissible to fund up to 130% of the plan's funding target.	value of plan assets. This change would be effective for plan years beginning after 2006.	to the excess of target liability, target normal cost, and the "cushion amount" over the value of plan assets. In any event, however, employers could make deductible contributions to bring the plan to full funding using at risk liability assumptions (even if the plan is not considered at risk). *Cushion Amount*. The cushion amount is the sum of (1) 80% of target liability and (2) the amount target liability would increase if projected compensation increases were taken into account or, if the plan does not base benefits on compensation, benefit increases expected in succeeding plan years.	
COMBINED PLAN LIMIT	An employer that maintains both a defined contribution plan and a defined benefit plan may only make deductible contributions to the two plans up to the greatest of the following: (i) 25% of participants' compensation; (ii) the minimum funding requirement with respect to the defined benefit plan; or (iii) if the DRC rules apply, the amount needed to bring the plan to 100% of current liability. In general, elective contributions are disregarded for this purpose.	No proposal	Employer contributions to a defined contribution plan would be disregarded for purposes of the combined plan limit to the extent those contributions did not exceed 6% of participants' compensation. This change would be effective for plan years beginning after 2006.	For 2006, the combined plan limit applies only to the extent that contributions by an employer to one or more defined contribution plans exceed six percent of compensation paid or accrued to the beneficiaries under the plan. For plan years beginning after 2006, the combined plan limit would no longer apply to single employer plans covered by the PBGC insurance program. Special rules apply to plans not covered by the PBGC insurance program.	The Council supports the Senate provision.
MISCELLANEOUS					
COMMERCIAL AIRLINES	Very generally, during 2004 and 2005, a commercial passenger airline may elect an	None	None	Provides special funding rules for commercial passenger airlines. Subject to a special	The Council supports the Senate provision.

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	alternate DRC contribution. The alternate DRC contribution is equal to the greater of (i) 20% of the amount that would otherwise be required and (ii) the expected increase in liability due to benefits accruing during the plan year. Restrictions on benefit increases apply if the alternate DRC election is made.			exception, in order to elect the special rule for a plan, the plan must be frozen and may not be subsequently amended to (i) increase benefits, (ii) change the rate of accrual; or (iii) change the vesting schedule. Under the special rule, the required contribution for a year is the amount necessary to amortize the unfunded liability for that year over 20 years (or the remainder of the 20-year period). The plan's actuary determines the interest rate used to measure liability. If the plan terminates while the special funding rule applies, the PBGC guarantee is frozen as of the first date the rule applied.	
ALTERNATE FUNDING AGREEMENTS WITH PBGC	None	None	None	Provides that the Treasury Department in consultation with the PBGC would have authority to enter into alternative funding agreements with plans in certain circumstances where the plan is likely to experience a distress or involuntary termination. An alternative funding agreement must be in the best interest of participants and must meet certain requirements (*e.g.*, additional amortization schedule must not exceed 10 years).	
NQDC RESTRICTIONS	There are no specific restrictions on the establishment or funding of executive compensation under the DRC Rules or ERISA Rules.	For a company that sponsors an "at risk" plan, the company would not be permitted to fund an executive's nonqualified deferred compensation arrangements	Provides that if a sponsor's plan is in "at-risk status," any assets set aside in a trust (or other arrangement as determined by the Secretary of Treasury) for purposes of	A company cannot reserve assets in a trust or other arrangement for the purposes of paying nonqualified deferred compensation for "covered employees" (i) during any	The Council opposes the subtraction of credit balances for this purpose. The Council opposes the use of credit rating under this provision. The Council also has concerns that

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		through a rabbi trust, insurance policy or other funding mechanism that limits immediate access to such resources by the company or by creditors. The rules would apply to any top executive in any company in the controlled group (or former employee who was a top executive at time of termination from employment). The proposal would prohibit any funding of executive compensation occurring less than 6 months before or 6 months after the termination of a plan whose assets are insufficient to provide all the benefits due under the plan.	paying nonqualified deferred compensation ("NQDC") are deemed transferred to the executive under section 83 and are includible in income (if vested), regardless of whether or not such assets are available to satisfy the claims of general creditors. Any subsequent increases in the value of the trust are deemed taxable to the executive under section 83. This change would apply to transfers made after 2006. For this purpose, during 2007, at risk liability would be triggered based on funded status applied using current liability for the 2006 lookback year, except that credit balances would be subtracted from plan assets regardless of the plan's funded status.	period beginning in the plan year after the sponsor has a plan that is less than 60% funded and ending after the plan has been at least 60% funded for 2 consecutive years, or (ii) for a 12-month period beginning on the date which is 6 months before the termination date if the plan was underfunded for PBGC purposes as of such termination. For a plan that is in at risk status, the trigger depends on an 80% threshold, rather than a 60% threshold. A "covered employee" includes the CEO and the four highest compensated officers of the plan sponsor and any affiliate. Also includes a former employee if he was a covered employee at termination of employment. Provides that any assets set aside in violation of the rule are taxable to the covered employee and subject to a 20% penalty tax. Creates a right of action by DOL or a fiduciary to recover assets set aside in violation of the rule.	the references to "other arrangements" not apply too broadly beyond their intended purpose.
CONTINGENT EVENT BENEFITS	A plan may provide for benefits which are payable upon the occurrence of a plant shutdown or another unpredictable contingent event. Under current rules, a plan need not pre-fund these benefits. Within certain limits, the PBGC guarantees vested	Prohibits the payment of shutdown benefits and other unpredictable contingent event benefits. Requires the elimination of plan provisions providing for such benefits and provides that such elimination would not violate anti-cutback rules.	Restricts the payment of unpredictable contingent event benefits to plans that are at least 80% funded (taking into account the benefits) under rules similar to the restrictions applicable to benefit increases. For purposes of the 80% funding trigger, credit balances would be subtracted from assets. It is unclear if the	Does not prohibit the payment of unpredictable contingent event benefits. Provides that PBGC guarantee provisions and the current law phase-in (*i.e.*, 20% of the guaranteed benefit a year) apply to such benefits as of the date of the shutdown.	If the House bill provision applies, it should be clarified that, for purposes of the subtraction of credit balances, the exception for plans at the phased-in funding target applies.

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	retirement benefits on the date of plan termination. The guarantee is phased in 20 percent a year for a plan amendment that has been in effect for less than 5 years.		subtraction would apply to plans at the phased-in funding target. *Union plans*. A plan would be required to waive any credit balances to the extent necessary to permit payment of any plant shutdown or other unpredictable contingent event benefit.		
TRANSFERS OF EXCESS PENSION ASSETS FOR RETIREE HEALTH	Defined benefit plan assets generally may not revert to an employer prior to termination of the plan. However, a plan may make a qualified transfer of excess assets to a separate account that is part of the plan to provide medical benefits to current retired employees. In order to be a qualified transfer, the transfer must meet certain requirements, including a requirement that the retiree medical plan meet certain minimum cost requirements. Excess assets generally means the excess, if any, of the value of plan assets over 125% of the plan's current liability.	None	None	Would permit a qualified transfer of excess amounts to a separate account in a pension plan to provide medical benefits to future retired employees. For this purpose, excess assets generally would mean the excess, if any, of the value of plan assets over 115% of the plan's liability. If the plan's funded status subsequently fell below 115%, the assets in the qualified future transfer account would be transferred back to the general assets of the plan. Special minimum cost requirements would apply.	The Council supports the Senate provision.