

Create Jobs and Save Benefits Act of 2010 (Introduced in Senate)

S 3157 IS

111th CONGRESS
2d Session
S. 3157

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow time for pensions to fund benefit obligations in light of economic circumstances in the financial markets of 2008, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 23, 2010

Mr. CASEY (for himself, Mr. BROWN of Ohio, Ms. STABENOW, and Mr. BURRIS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow time for pensions to fund benefit obligations in light of economic circumstances in the financial markets of 2008, and for other purposes.

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 'Create Jobs and Save Benefits Act of 2010'.

SEC. 2. MULTIEMPLOYER PLAN MERGERS AND ALLIANCES.

(a) Multiemployer Plan Alliances-

(1) AMENDMENTS TO ERISA-

(A) Section 4231 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

`(e) Multiemployer Plan Alliances-

`(1) IN GENERAL- The plan sponsor of a multiemployer plan into which another multiemployer plan (referred to in this subsection as the 'allied plan') has been merged in accordance with this section may designate the

merger as an alliance to which the rules of this subsection apply by amending such sponsor's plan--

`(A) to identify the allied plan, and

`(B) to delineate the terms of operation of the alliance, including the allocation of employer contributions and experience gains and losses between the merged plan and the frozen allied plan.

`(2) APPLICABLE PROVISIONS- Except to the extent otherwise provided in the plan amendment under paragraph (1), sections 302, 304, and 305, part 1 of subtitle E, sections 4244A and 4281, part 3 of subtitle E, and section 4261 shall apply to the frozen allied plan and the plan into which the allied plan was merged as if they were separate plans.

`(3) FROZEN ALLIED PLAN-

`(A) IN GENERAL- The term `frozen allied plan' means a plan--

`(i) which comprises the assets and liabilities of the allied plan as if it had been amended, effective immediately before the effective date of the merger, to cease all benefit accruals, and

`(ii) which is treated in part as a separate plan from the merged plan, as provided in subparagraphs (B) and (C) and paragraph (2).

`(B) EMPLOYERS MAINTAINING PLAN- The employers that were obligated to contribute to the allied plan immediately before the effective date of the merger, and any successors thereto whether by sale, reorganization, or otherwise, shall be considered to be the employers maintaining the frozen allied plan to the extent they continue to have an obligation to contribute with respect to participants or facilities covered by the allied plan before such effective date.

`(C) PARTICIPANTS AND BENEFICIARIES- The participants and beneficiaries of the allied plan immediately before the effective date of the merger shall be considered to be the participants and beneficiaries of the frozen allied plan on and after such date.

`(4) TREATMENT OF MERGED PLAN AS SINGLE PLAN- Except as provided in paragraphs (2) and (3), the allied plan and the plan into which it has been merged shall be treated as a single plan.

`(5) OTHER RULES-

`(A) ADOPTION OF INITIAL PLAN AMENDMENT- The plan amendment initially designating a merger as an alliance, identifying the allied plan, and delineating the terms of the alliance must be adopted by no later than the last day of the plan year in which the merger takes effect.

`(B) SUBSEQUENT AMENDMENTS- The initial plan amendment described in subparagraph (A) may subsequently be modified or repealed, except that the plan shall give notice of any such change to the employers and participants with respect to the

allied plan at least 15 days before such subsequent amendment takes effect.

`(C) DISCRETION TO TREAT MERGERS DIFFERENTLY- The plan sponsor of a multiemployer plan may, in its discretion, treat some mergers as alliances and others as full mergers, and may prescribe different terms of operation for different alliances, if the basis for such disparate treatment is not unreasonable.'

(B) Subsection (b) of section 4231 of such Act is amended by striking `and' at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting `; and', and by adding at the end the following new paragraph:

`(5) a merger that is designated as an alliance under subsection (e) shall not be treated as failing to meet any of the criteria of this subsection solely because benefits under the allied plan are, or are expected to be, reduced or eliminated pursuant to section 305 as a result of the endangered or critical status of the frozen allied plan.'

(C) Section 404(a) of such Act is amended by adding at the end the following new paragraph:

`(3) With respect to a merger of multiemployer plans, including a merger that is designated as an alliance under section 4231(e), the plan sponsors of a plan which is merging with another plan shall be considered to meet the requirements of paragraph (1)(A) if such plan sponsors determine that the merger is not reasonably likely to be adverse to the long-term interests of the participants and beneficiaries of the plan for which such plan sponsors are responsible prior to such merger.'

(D) Section 4231(c) of such Act is amended by striking `The merger of multiemployer plans or the transfer' and inserting `The merger of multiemployer plans, including a merger that is designated as an alliance, or the transfer'.

(2) AMENDMENT TO INTERNAL REVENUE CODE OF 1986- Section 412 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

`(f) Multiemployer Plan Alliances-

`(1) IN GENERAL- Except to the extent otherwise provided in the plan amendment under section 4231(e)(1) of the Employee Retirement Income Security Act of 1974 designating a multiemployer plan merger as an alliance, this section and sections 431 and 432 shall apply to the frozen allied plan and the plan into which the allied plan was merged as if they were separate plans.

`(2) EMPLOYERS MAINTAINING PLAN- The employers that were obligated to contribute to the allied plan immediately before the effective date of the merger, and any successors thereto whether by sale, reorganization, or otherwise, shall be considered to be the employers maintaining the frozen allied plan to the extent they continue to have an obligation to contribute with respect to participants or facilities covered by the allied plan before such effective date.

`(3) PARTICIPANTS AND BENEFICIARIES- The participants and beneficiaries of the allied plan immediately before the effective date of the merger shall be considered to be the participants and beneficiaries of the frozen allied plan on and after such date.

`(4) TREATMENT OF MERGED PLAN AS SINGLE PLAN- Except as provided in paragraphs (2) and (3) of section 4231(e) of the Employee Retirement Income Security Act of 1974, the allied plan and the plan into which it has been merged shall be treated as a single plan.

`(5) ALLIANCE; ALLIED PLAN; FROZEN ALLIED PLAN- For purposes of this subsection, the terms `alliance', `allied plan', and `frozen allied plan' shall have the same meanings as when used in section 4231(e) of the Employee Retirement Income Security Act of 1974.'

(b) PBGC Assistance for Multiemployer Plan Mergers- Section 4231 of the Employee Retirement Income Security Act of 1974, as amended by subsection (a), is amended by adding at the end the following new subsection:

`(f) Facilitated Mergers-

`(1) IN GENERAL- When requested to do so by the plan sponsors, the corporation shall take reasonable actions to promote and facilitate the merger of two or more multiemployer plans, including a merger that is designated as an alliance under subsection (e), if it determines that the transaction is in the interests of the participants and beneficiaries of at least one of the plans and is not reasonably expected to be adverse to the long-term interests of the participants and beneficiaries of the other plan or plans. Such facilitation may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies.

`(2) FINANCIAL ASSISTANCE- In order to facilitate a merger, including a merger designated as an alliance under subsection (e), which it determines is reasonably necessary to enable one or more of the plans involved to avoid or postpone insolvency, the corporation may provide financial assistance to the merged plan if it reasonably expects that such financial assistance will reduce the corporation's likely long-term loss with respect to the plans involved.'

(c) Effective Date- The amendments made by this section shall take effect as of the first day of the first plan year beginning on or after January 1, 2009.

SEC. 3. STRENGTHENING PARTICIPANTS' BENEFIT PROTECTIONS.

(a) Increase in Multiemployer Benefit Guarantee- Paragraph (1) of section 4022A(c) of the Employee Retirement Income Security Act of 1974 is amended to read as follows:

`(c)(1) Except as provided in subsection (g), the monthly benefit of a participant or a beneficiary which is guaranteed under this section by the corporation with respect to a plan is the product of the number of the participant's years of credited service multiplied by the sum of--

`(A) 100 percent of the accrual rate up to \$11, plus 75 percent of the lesser of--

`(i) \$33, or

`(ii) the accrual rate, if any, in excess of \$11, and

`(B) 50 percent of the lesser of--

`(i) \$40 or

`(ii) the accrual rate, if any, in excess of \$44.'

(b) Increase in Annual Premium Rate Payable- Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 is amended-

(1) by inserting `and before January 1, 2011,' after `December 31, 2005,' in clause (iv),

(2) by striking `or' at the end of clause (iii),

(3) by striking the period at the end of clause (iv) and inserting `, or', and

(4) by adding at the end the following new clause:

`(v) in the case of a multiemployer plan, for plan years beginning after December 31, 2010, \$16.00 for each individual who is a participant in such plan during the applicable plan year.'

(c) Certain Partitions of Eligible Multiemployer Plans-

(1) PARTITIONS- Section 4233 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

`(g) Interim Partition of Eligible Multiemployer Plans-

`(1) IN GENERAL- Notwithstanding the preceding subsections, if, within the 180-day period beginning on the first day of the first plan year beginning after the date of the enactment of the Create Jobs and Save Benefits Act of 2010, the plan sponsor of an eligible multiemployer plan provides to the corporation written notice that such plan elects a partition under this subsection, the corporation shall order a partition of such plan. A partition ordered under the preceding sentence shall be effective on the first day of the calendar month designated by the corporation which is after September 2011 and before March 2012. The written notice required by the first sentence of this paragraph shall include the certifications described in paragraph (2) and a list, certified by the plan sponsor, of eligible partition employers.

`(2) ELIGIBLE MULTIEMPLOYER PLAN- An eligible multiemployer plan is a multiemployer plan as to which--

`(A) the plan actuary has certified pursuant to section 305(b) that the plan is in critical status (within the meaning of section 305(b)(2)) for the plan year in which the notice described in paragraph (1) is provided to the corporation, and the plan sponsor has certified, consistent with projections provided by the plan actuary, that--

`(i) a substantial reduction in the amount of aggregate contributions under the plan has resulted or will result--

`(I) from cases or proceedings under title 11, United States Code, with respect to employers which were participating in the plan, or

`(II) from the complete withdrawal of employers from the plan without payment of the full amount of such employers' allocable amount of unfunded vested benefits under section 4211,

as compared to the amount of aggregate contributions that would have been made under the plan but for such cases or proceedings,

`(ii) the plan is likely to become insolvent,

`(iii) contributions under the plan will have to be significantly increased to prevent the plan from becoming insolvent,

`(iv) as of the last day of each of the 2 plan years immediately preceding the plan year in which the notice described in paragraph (1) is provided to the corporation--

`(I) the ratio of the number of retirees, beneficiaries of deceased participants, and terminated vested participants in the plan to the number of the active participants in the plan for each such year was not less than 2 to 1, and

`(II) the ratio of benefit payments made by the plan for each such year to contributions required to be made to the plan under section 304 or 305(e), whichever is applicable, for each such year was not less than 2 to 1, and

`(v) partition would significantly reduce the likelihood that the plan will become insolvent, or

`(B) the plan actuary has certified pursuant to section 305(b) that the plan is in endangered status (within the meaning of section 305(b)(1)) for the plan year in which the notice described in paragraph (1) is provided to the corporation, and the plan sponsor has certified, consistent with projections provided by the plan actuary, that--

`(i) clauses (i), (ii), (iii), and (v) of subparagraph (A) apply to the plan,

`(ii) as of the last day of each of the 2 plan years immediately preceding the plan year in which the notice described in paragraph (1) is provided to the corporation--

`(I) the ratio of the number of retirees, beneficiaries of deceased participants, and terminated vested participants in the plan to the number of the active participants in the plan for each such year was not less than 10 to 1, and

`(II) the ratio of benefit payments made by the plan for each such year to contributions required to be made to the plan under section 304 for each such year was not less than 2 to 1, and

`(iii) the plan suffered a substantial reduction in the amount of contribution base units under the plan as a result of declining employment within the industry of employers covered by the plan.

`(3) ELIGIBLE PARTITION EMPLOYER- For purposes of this subsection, the term `eligible partition employer' means an employer which, before the date the notice described in paragraph (1) is provided to the corporation with respect to an eligible multiemployer plan in which the employer participates--

`(A) ceased contributions to such eligible multiemployer plan as a result of a case or proceeding under title 11, United States Code, with respect to such employer, or

`(B) withdrew completely from such plan without paying the full amount of the employer's allocable amount of unfunded vested benefits determined under section 4211.

`(4) TRANSFERS UNDER PARTITION ORDER-

`(A) SCOPE OF PARTITION ORDER- The corporation's partition order issued under paragraph (1) shall provide for--

`(i) a transfer, as of the date of the partition, of the nonforfeitable benefits directly attributable to service with eligible partition employers, and

`(ii) a transfer of assets in an amount equal to the greater of--

`(I) the amount of assets attributable to any withdrawal liability payments by such employers, as adjusted by any gains or losses thereon and reduced by any benefit payments made with regard to service with such employers, or

`(II) the present value, as determined by the plan actuary of the eligible multiemployer plan, of all nonforfeitable benefits directly attributable to service with eligible partition employers which are expected to be paid within 60 months of the effective date of the partition order.

For purposes of clause (ii)(II), the corporation shall reduce the 60 month period described therein as necessary in order to allow an eligible multiemployer plan to satisfy the requirements of paragraph (2)(A)(v) (including the requirements of such subparagraph as applied to such plan by paragraph (2)(B)(i)).

`(B) ACTUARIAL ASSUMPTIONS- The present value of the nonforfeitable benefits described in subparagraph (A) shall be

determined by the plan actuary on the basis of the assumptions prescribed by the corporation for purposes of section 4044. In determining the benefits attributable to employment with eligible partition employers, a plan may elect to attribute all employment of a participant to the participant's most recent employer under the plan, prorate a participant's benefit among each of the participant's employers under the plan based on the participant's length of covered employment with each employer, or use any other reasonable method approved by the corporation.

`(C) FORM OF ASSET TRANSFER- Notwithstanding any other provision of this Act or the Internal Revenue Code of 1986--

`(i) the transfer of assets required under subparagraph (A)(ii) may, at the discretion of the plan sponsor of the plan created by the partition, be accomplished by means of the transfer of an undivided interest in assets of the remaining eligible multiemployer plan equal in value, on the day before the transfer, to the amount required to be transferred, and

`(ii) the combined assets of the remaining eligible multiemployer plan and of the plan created by the partition may, at the discretion of the plan sponsor of the plan created by the partition, continue to be managed and invested as a pooled fund under the eligible multiemployer plan's investment policies without taking the partition into account, provided that each plan's respective interest in the pooled investment fund is adjusted to reflect investment gains and losses of the fund as a whole and to reflect each plan's actual benefit payments and expenses of administration.

`(D) TRANSFER IN CASE OF DECLINE IN

CONTRIBUTIONS- As of the last day of each of the 3 plan years following the plan year of the effective date of the corporation's partition order under paragraph (1), the plan sponsor of the remaining eligible multiemployer plan shall determine whether, during such plan year, the total contributions under the plan declined by 10 percent or more after the date of such partition order as a result of events described in paragraph (2)(A)(i). If such decline has occurred during any such plan year, a transfer (in addition to the transfers required under subparagraph (A)) shall be made as of the last day of such plan year of--

`(i) the nonforfeitable benefits directly attributable to service with employers that become eligible partition employers (as determined as of the last day of such plan year) after the date of such partition order, and

`(ii) an amount equal to the greater of--

`(I) the amount of assets attributable to any withdrawal liability payments by such employers, as adjusted by any gains or losses thereon and reduced by any benefit payments made with regard to service with such employers, or
` (II) the present value, as determined by the plan actuary of the eligible multiemployer plan, of all nonforfeitable benefits directly attributable to service with eligible partition employers which are expected to be paid within 60 months of the last day of such plan year.

`(E) COORDINATED ADMINISTRATION AGREEMENT- The plan created by the partition and the remaining eligible multiemployer plan may enter into a coordinated administration agreement for the efficient processing of benefit payments and may remit benefit payments to participants and beneficiaries with a single, combined check or other combined means of transfer.

`(5) PLAN CREATED BY PARTITION- The plan created by the partition shall be--

`(A) a successor plan to which section 4022A applies, and
` (B) a terminated multiemployer plan to which section 4041A(d) applies, with respect to which no employer has withdrawal liability except as provided in paragraph (7).

`(6) ADMINISTRATION AND SPONSORSHIP OF PLAN CREATED BY PARTITION- The plan administrator and the plan sponsor of an eligible multiemployer plan before a partition under paragraph (1) shall be the plan administrator and the plan sponsor of the plan created by such partition, unless the corporation orders otherwise.

`(7) EMPLOYER WITHDRAWAL-

`(A) IN GENERAL- If an employer completely withdraws (within the meaning of section 4203) from the plan within 60 months of the corporation's partition order under paragraph (1), the employer's withdrawal liability to the plan shall be determined as if the partition had not occurred.

`(B) PAYMENT OF WITHDRAWAL LIABILITY- In the case of an employer that completely withdraws or partially withdraws (within the meaning of section 4205) from the plan after the effective date of the corporation's partition order under paragraph (1), and an employer that completely or partially withdraws before such date whose withdrawal liability to the plan remains outstanding as of such effective date, the withdrawal liability of such employer shall be payable to, and shall be collected by the plan sponsor of, the remaining eligible multiemployer plan.

`(8) LIMITATION ON BENEFIT INCREASES- In the case of a plan that elects a partition under this subsection, in addition to any other applicable restrictions on benefit increases, such plan may not adopt--

`(A) an amendment which increases the liabilities of the plan by reason of any increase in benefits,

`(B) any change which has the effect of increasing the accrual of benefits, or

`(C) any change in the rate at which benefits become nonforfeitable under the plan,

for a period of 5 plan years immediately following the plan year of the corporation's partition order under paragraph (1), unless such amendment or change is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law.'

(2) LIMITATION ON BENEFIT INCREASES FOLLOWING A PARTITION-

(A) AMENDMENT TO ERISA- Section 305 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

`(j) Limitation on Benefit Increases Following Certain Partitions- For limitations in the case of a plan that elects a partition under section 4233(g), see paragraph (8) thereof.'

(B) AMENDMENT TO INTERNAL REVENUE CODE OF 1986- Section 432 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

`(j) Limitation on Benefit Increases Following Certain Partitions- In the case of a plan that elects a partition under section 4233(g) of the Employee Retirement Income Security Act of 1974, in addition to any other applicable restrictions on benefit increases, such plan may not adopt--

`(1) an amendment which increases the liabilities of the plan by reason of any increase in benefits,

`(2) any change which has the effect of increasing the accrual of benefits, or

`(3) any change in the rate at which benefits become nonforfeitable under the plan,

for a period of 5 plan years immediately following the plan year of the partition order issued by the Pension Benefit Guarantee Corporation under paragraph (1) of such section, unless such amendment or change is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.'

(3) EFFECT OF PARTITION ON PREMIUMS-

(A) Clause (i) of section 4006(a)(3)(C) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following: `For purposes of this subparagraph, the value of assets held by the corporation and the basic benefits guaranteed for multiemployer plans shall not include assets and liabilities transferred pursuant to a partition order under section 4233(g)(1).'

(B) Section 4022A(f) of such Act is amended by adding at the end the following new paragraph:

`(5) Basic benefits guaranteed in connection with assets and liabilities transferred to the corporation pursuant to a partition order under section 4233(g)(1) shall be disregarded under paragraphs (1), (2), and (3).'

(4) PBGC GUARANTEE OF PARTITIONED BENEFITS-

(A) Section 4022A of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

`(i) The monthly benefit of a participant or a beneficiary whose benefit was transferred pursuant to a partition under section 4233(g) which is guaranteed under this section by the corporation with respect to a plan is equal to the nonforfeitable benefits of such participant or beneficiary transferred pursuant to the partition.'

(B) Section 4022A(c)(1) of such Act is amended by striking `subsection (g)' and inserting `subsections (g) and (i)'

(5) REPORT TO CONGRESS- Not later than December 31, 2011, the Secretary of the Treasury and the Secretary of Labor shall submit a joint report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives regarding the funding status of those plans that have received a partition order under section 4233(g)(1) of the Employee Retirement Income Security Act of 1974, the amount of assets utilized in connection with any such partitions, and any recommendations to extend such partitions or to further improve current law with respect to such partitions.

(6) REHABILITATION PLAN REQUIREMENTS-

(A) AMENDMENTS TO ERISA-

(i) Section 305(e)(3) of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subparagraph:

`(D) CERTAIN PARTITIONS- Notwithstanding any other provision of this section, in the case of an eligible multiemployer plan whose plan sponsor elects a partition under section 4233(g), the requirements of subparagraph (A) shall not be applied to require any action, option, or measure to be included in the plan's rehabilitation plan to the extent such action, option, or measure would, in the reasonable determination of the plan sponsor, adversely affect the future level of covered employment under the plan.'

(ii) Section 305(e)(4) of such Act is amended by adding at the end the following new subparagraph:

`(C) COORDINATION WITH SECTION 4233(G)- The modification of a rehabilitation plan by the plan sponsor of a plan that elects a partition under section 4233(g) shall not affect the

rehabilitation period of such plan, and any change to the rehabilitation plan to reflect the effect of such partition shall constitute an update of the rehabilitation plan as in effect on the day before such partition.'

(B) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986-

(i) Section 432(e)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

`(D) CERTAIN PARTITIONS- Notwithstanding any other provision of this section, in the case of an eligible multiemployer plan whose plan sponsor elects a partition under section 4233(g) of the Employee Retirement Income Security Act of 1974, the requirements of subparagraph (A) shall not be applied to require any action, option, or measure to be included in the plan's rehabilitation plan to the extent such action, option, or measure would, in the reasonable determination of the plan sponsor, adversely affect the future level of covered employment under the plan.'

(ii) Section 432(e)(4) of such Code is amended by adding at the end the following new subparagraph:

`(C) COORDINATION WITH SECTION 4233(G) OF ERISA- The modification of a rehabilitation plan by the plan sponsor of a plan that elects a partition under section 4233(g) of the Employee Retirement Income Security Act of 1974 shall not affect the rehabilitation period of such plan, and any change to the rehabilitation plan to reflect the effect of such partition shall constitute an update of the rehabilitation plan as in effect on the day before such partition.'

(7) ENFORCEMENT- Section 4003(f)(1) of the Employee Retirement Income Security Act of 1974 is amended--

(A) by inserting `(A)' after `(f)(1)', and

(B) by adding at the end the following:

`(B) The plan sponsor of an eligible multiemployer plan that is adversely affected by the corporation's failure to issue a partition order as required under section 4233(g)(1) may bring an action against the corporation for appropriate equitable relief in the appropriate court. In any such action, the court may order the partition upon finding that the requirements of section 4233(g)(1) have been satisfied.'

(d) Financing for Partitions and Other Special Matters-

(1) OBLIGATIONS OF THE CORPORATION- The second sentence of section 4002(g)(2) of the Employee Retirement Income Security Act of 1974 is amended to read as follows: `The United States Government is not liable for any obligation or liability incurred by the corporation, except with respect to liabilities transferred pursuant to a partition of a multiemployer plan under section 4233(g).'

(2) PBGC FUND ESTABLISHED- Section 4005 of such Act is amended by striking subsections (d) and (e), by redesignating subsections (f) through (h) as subsections (e) through (g), respectively, and by inserting after subsection (c) the following new subsection:

`(d) Establishment of Fifth Fund; Purpose; Availability, etc-

`(1) IN GENERAL- A fifth fund shall be established for the purposes described in paragraph (2).

`(2) USE OF FUND- The fund established by this subsection shall be used to finance obligations undertaken by the corporation under section 4233.

`(3) CREDITS TO FUND- The fund established under this subsection shall be credited with funds made available to the corporation that are designated for special matters and the earnings thereon, including any amounts received in connection with a partition under section 4233(g), and shall not include premiums paid under section 4007, employer liability or withdrawal liability payments, the assets of terminated plans or repayments of financial assistance under section 4261, or other amounts received in connection with terminated or insolvent plans.

`(4) TRANSACTIONS WITH OTHER FUNDS- Notwithstanding paragraph (3), this fund may engage in transactions with the other funds established under this section to the extent reasonable and necessary to meet liquidity demands and to maximize the ability of the corporation to accomplish its mission under section 4002(a) without increasing the premiums payable under section 4006.

`(5) INVESTMENTS- The corporation may invest amounts of the fund in such obligations as the corporation considers appropriate.

`(6) OBLIGATIONS OF UNITED STATES- Notwithstanding any other provision of this title, obligations of the corporation which are financed by the fund created by this subsection shall be obligations of the United States.'

(3) CONFORMING AMENDMENTS-

(A) Section 4022A(g) of such Act is amended by striking paragraph (2).

(B) Part 1 of subtitle E of title IV of such Act is amended by striking section 4222, and the table of contents for such Act is amended by striking the item relating to section 4222.

(e) Effective Dates-

(1) The amendments made by subsection (a) shall apply with respect to plans that first apply for financial assistance from the Pension Benefit Guarantee Corporation after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2010.

(3) The amendments made by subsections (c) and (d) shall take effect on the date of the enactment of this Act.