

**SEC. 402. SPECIAL FUNDING RULES FOR CERTAIN PLANS
MAINTAINED BY COMMERCIAL AIRLINES.**

(a) **IN GENERAL.**—The plan sponsor of an eligible plan may elect to either—

(1) have the rules of subsection (b) apply, or

(2) have section 303 of the Employee Retirement Income Security Act of 1974 and section 430 of the Internal Revenue Code of 1986 applied to its first taxable year beginning in 2008 by amortizing the shortfall amortization base for such taxable year over a period of 10 plan years (rather than 7 plan years) beginning with such plan year and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve).¹

(b) **ALTERNATIVE FUNDING SCHEDULE.**—

(1) **IN GENERAL.**—If an election is made under subsection (a)(1) to have this subsection apply to an eligible plan and the requirements of paragraphs (2) and (3) are met with respect to the plan—

(A) in the case of any applicable plan year beginning before January 1, 2008, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (e) for the plan for the plan year, and

(B) in the case of any applicable plan year beginning on or after January 1, 2008, the minimum required contribution determined under sections 303 of such Act and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (e) for the plan for the plan year.

(2) **ACCRUAL RESTRICTIONS.**—

(A) **IN GENERAL.**—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act, of each participant are frozen at the amount of such benefit or supplement immediately before

¹ Change made by PL 110-28, Section 6615, signed into law on May 27, 2007. The amendment made by this section shall take effect as if included in the provisions of the Pension Protection Act of 2006 to which such amendment relates.

such first day, and

(ii) all other benefits under the plan are eliminated, but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

(B) INCREASES IN SECTION 415 LIMITS.— If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this section unless, effective as of the first day of the first applicable plan year (or, if later, the date of the enactment of this Act) and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

(B) APPLICABLE BENEFIT INCREASE.— For purposes of this paragraph, the term “applicable benefit increase” means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

(i) any increase in benefits,

(ii) any change in the accrual of benefits, or

(iii) any change in the rate at which benefits become nonforfeitable under the plan.

(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant’s disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) (or on or after July 26, 2005, in the case of the restrictions under paragraph (3)) if the participant—

(A) was receiving disability benefits as of such date, or

(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

(c) DEFINITIONS.—For purposes of this section—

(1) ELIGIBLE PLAN.—The term “eligible plan” means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act and 1412 of such Code applies which is sponsored by an employer—

(A) which is a commercial airline passenger airline, or

(B) the principal business of which is providing catering services to a commercial passenger airline.

(2) APPLICABLE PLAN YEAR.—The term “applicable plan year” means each plan year to which the election under subsection (a)(1) applies under subsection (d)(1)(A).

(d) ELECTIONS AND RELATED TERMS.—

(1) YEARS FOR WHICH ELECTION MADE.—

(A) ALTERNATIVE FUNDING SCHEDULE.— If an election under subsection (a)(1) was made with respect to an eligible plan, the plan sponsor may select either a plan year beginning in 2006 or a plan year beginning in 2007 as the first plan year to which such election applies. The election shall apply to such plan year and all subsequent years. The election shall be made—

(i) not later than December 31, 2006, in the case of an election for a plan year beginning in 2006, or

(ii) not later than December 31, 2007, in the case of an election for a plan year beginning in 2007.

(B) 10 YEAR AMORTIZATION.—An election under subsection (a)(2) shall be made not later than December 31, 2007.

(C) ELECTION OF NEW PLAN YEAR FOR ALTERNATIVE FUNDING SCHEDULE.—In the case of an election under subsection (a)(1), the plan sponsor may specify a new plan year in such election and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

(2) MANNER OF ELECTION.—A plan sponsor shall make any election under subsection (a) in such manner as the Secretary of the Treasury may prescribe. Such election, once made, may be revoked only with the consent of such Secretary.

(e) **MINIMUM REQUIRED CONTRIBUTION.**—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

(1) **IN GENERAL.**—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

(2) **YEARS AFTER AMORTIZATION PERIOD.**—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance and funding standard carryover balance as of the first day of the first of such years under section 303(f) of such Act and section 430(f) of such Code shall be zero.

(3) **DEFINITIONS.**—For purposes of this section—

(A) **UNFUNDED LIABILITY.**—The term “unfunded liability” means the unfunded accrued liability under the plan, determined under the unit credit funding method.

(B) **AMORTIZATION PERIOD.**—The term “amortization period” means the 17-plan year period beginning with the first applicable plan year.

(4) **OTHER RULES.**—In determining the minimum required contribution and amortization amount under this subsection—

(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section, shall apply,

(B) a rate of interest of 8.85 percent shall be used for all calculations requiring an interest rate, and

(C) the value of plan assets shall be equal to their fair market value.

(5) **SPECIAL RULE FOR CERTAIN PLAN SPINOFFS.**—For purposes of subsection (b), if, with respect to any eligible plan to which this subsection applies—

(A) any applicable plan year includes the date of the enactment of this Act,

(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment, the minimum required contribution under paragraph (1) for the eligible plan for such applicable plan year shall be an aggregate amount determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of such aggregate amount between such plans for the applicable plan year.

(f) SPECIAL RULES FOR CERTAIN BALANCES AND WAIVERS.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

(1) FUNDING STANDARD ACCOUNT AND CREDIT BALANCES.—Any charge or credit in the funding standard account under section 302 of such Act or section 412 of such Code, and any prefunding balance or funding standard carryover balance under section 303 of such Act or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

(2) WAIVED FUNDING DEFICIENCIES.—Any waived funding deficiency under sections 302 and 303 of such Act or section 412 of such Code, as in effect before the date of enactment of this section, shall be deemed satisfied as of the first day of the first applicable plan year and the amount of such waived funding deficiency shall be taken into account in determining the plan's unfunded liability under subsection (e)(3)(A). In the case of a plan amendment adopted to satisfy the requirements of subsection (b)(2), the plan shall not be deemed to violate section 304(b) of such Act or section 412(f) of such Code, as so in effect, by reason of such amendment or any increase in benefits provided to such plan's participants under a separate plan that is a defined contribution plan or a multiemployer plan.

(g) OTHER RULES FOR PLANS MAKING ELECTION UNDER THIS SECTION.—

(1) SUCCESSOR PLANS TO CERTAIN PLANS.— If—

(A) an election under paragraph (1) or (2) of subsection (a) is in effect with respect to any eligible plan, and

(B) the eligible plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees, the Secretary of the Treasury may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1986 unless all benefit obligations of the eligible plan have been satisfied. For purposes of this paragraph, the term "successor employee" means any employee who is or was covered by the eligible plan and any employees who perform substantially the same type of work with respect to the same business operations as an employee covered by such eligible plan.

(2) SPECIAL RULES FOR TERMINATIONS.—

(A) PBGC LIABILITY LIMITED.—Section 4022 of the Employee Retirement Income Security Act of 1974, as amended by this Act, is amended by adding at the end the following new subsection:

“(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN FUNDING REQUIREMENTS.—If any plan makes an election under section 402(a)(1) of the Pension Protection Act of 2006 and is terminated effective before the end of the 10-year period beginning on the first day of the first applicable plan year—

“(1) this section shall be applied—

“(A) by treating the first day of the first applicable plan year as the termination date of the plan, and

“(B) by determining the amount of guaranteed benefits on the basis of plan assets and liabilities as of such assumed termination date, and

“(2) notwithstanding section 4044(a), plan assets shall first be allocated to pay the amount, if any, by which—

“(A) the amount of guaranteed benefits under this section (determined without regard to paragraph (1) and on the basis of plan assets and liabilities as of the actual date of plan termination), exceeds “(B) the amount determined under paragraph (1).”.

(B) TERMINATION PREMIUM.—In applying section 4006(a)(7)(A) of the Employee Retirement Income Security Act of 1974 to an eligible plan during any period in which an election under subsection (a)(1) is in effect—

(i) “\$2,500” shall be substituted for “\$1,250” in such section if such plan terminates during the 5-year period beginning on the first day of the first applicable plan year with respect to such plan, and

(ii) such section shall be applied without regard to subparagraph (B) of section 8101(d)(2) of the Deficit Reduction Act of 2005 (relating to special rule for plans terminated in bankruptcy). The substitution described in clause (i) shall not apply with respect to any plan if the Secretary of Labor determines that such plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iv) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to any taxable year of a plan sponsor of an eligible plan if any applicable plan year with respect to such plan ends with or within such taxable year.

(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

(h) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—Section 410(b)(3) of such Code is amended by striking the last sentence and inserting the following: “For purposes of subparagraph (B), management pilots who are not represented in accordance with title II of the Railway Labor Act shall be treated as covered by a collective bargaining agreement described in such subparagraph if the management pilots manage the flight operations of air pilots who are so represented and the management pilots are, pursuant to the terms of the agreement, included in the group of employees benefitting under the trust described in such subparagraph. Subparagraph (B) shall not apply in the case of a plan which provides contributions or benefits for employees whose principal duties are not customarily performed aboard an aircraft in flight (other than management pilots described in the preceding sentence).”

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning before, on, or after the date of the enactment of this Act.

(i) EXTENSION OF SPECIAL RULE FOR ADDITIONAL FUNDING REQUIREMENTS.—In the case of an employer which is a commercial passenger airline, section 302(d)(12) of the Employee Retirement Income Security Act of 1974 and section 412(l)(12) of the Internal Revenue Code of 1986, as in effect before the date of the enactment of this Act, shall each be applied—

(1) by substituting "January 1, 2008"² “~~December 28, 2007~~” for “December 28, 2005” in subparagraph (D)(i) thereof, and

(2) without regard to subparagraph (D)(ii).

(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of and amendments made by this section shall apply to plan years ending after the date of the enactment of this Act.

² Change made by PL 110-28, Section 6614, sign into law on May 27, 2007. The amendment made by subsection (a) shall take effect as if included in Section 402 of the Pension Protection Act of 2006.