

AMENDMENT NO. _____ Calendar No. _____

Purpose: To modify pension funding rules related to airlines, and for other purposes.

IN THE SENATE OF THE UNITED STATES—109th Cong., 1st Sess.

S. 1783

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____ to the amendment (No. _____) proposed by _____

Viz:

1 On page 362 of the amendment, strike lines 12
2 through 14 and insert the following:

3 (2) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply to terminations on or
5 after the date of enactment of this Act.

6 (3) SPECIAL RULE FOR PLANS TERMINATED IN
7 BANKRUPTCY.—The amendments made by this sub-
8 section shall not apply to a termination of a single-

1 employer plan that is terminated during the pend-
2 ency of any bankruptcy reorganization proceeding
3 under chapter 11 of title 11, United States Code (or
4 under any similar law of a State or political subdivi-
5 sion of a State), if the proceeding is pursuant to a
6 bankruptcy filing occurring before October 18, 2005.

7 Strike section 403 of the amendment and insert the
8 following:

9 **SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAIN-**
10 **TAINED BY COMMERCIAL AIRLINES THAT**
11 **ARE AMENDED TO CEASE FUTURE BENEFIT**
12 **ACCRUALS.**

13 (a) IN GENERAL.—If an election is made to have this
14 section apply to an eligible plan—

15 (1) in the case of any applicable plan year be-
16 ginning before January 1, 2007, the plan shall not
17 have an accumulated funding deficiency for purposes
18 of section 302 of the Employee Retirement Income
19 Security Act of 1974 and sections 412 and 4971 of
20 the Internal Revenue Code of 1986 if contributions
21 to the plan for the plan year are not less than the
22 minimum required contribution determined under
23 subsection (d) for the plan for the plan year, and

1 (2) in the case of any applicable plan year be-
2 ginning on or after January 1, 2007, the minimum
3 required contribution determined under sections 303
4 of such Act and 430 of such Code shall, for purposes
5 of sections 302 and 303 of such Act and sections
6 412, 430, and 4971 of such Code, be equal to the
7 minimum required contribution determined under
8 subsection (d) for the plan for the plan year.

9 (b) ELIGIBLE PLAN.—For purposes of this section—

10 (1) IN GENERAL.—The term “eligible plan”
11 means a defined benefit plan (other than a multiem-
12 ployer plan) to which sections 302 of such Act and
13 412 of such Code applies—

14 (A) which is sponsored by an employer—

15 (i) which is a commercial airline pas-
16 senger airline, or

17 (ii) the principal business of which is
18 providing catering services to a commercial
19 passenger airline, and

20 (B) with respect to which the requirements
21 of paragraphs (2) and (3) are met.

22 (2) ACCRUAL RESTRICTIONS.—

23 (A) IN GENERAL.—The requirements of
24 this paragraph are met if, effective as of the
25 first day of the first applicable plan year and at

1 all times thereafter while an election under this
2 section is in effect, the plan provides that—

3 (i) the accrued benefit, any death or
4 disability benefit, and any social security
5 supplement described in the last sentence
6 of section 411(a)(9) of such Code and sec-
7 tion 204(b)(1)(G) of such Act, of each par-
8 ticipant are frozen at the amount of such
9 benefit or supplement immediately before
10 such first day, and

11 (ii) all other benefits under the plan
12 are eliminated,

13 but only to the extent the freezing or elimi-
14 nation of such benefits would have been per-
15 mitted under section 411(d)(6) of such Code
16 and section 204(g) of such Act if they had been
17 implemented by a plan amendment adopted im-
18 mediately before such first day.

19 (B) INCREASES IN SECTION 415 LIMITS
20 DISREGARDED.—If a plan provides that an ac-
21 crued benefit of a participant which has been
22 subject to any limitation under section 415 of
23 such Code will be increased if such limitation is
24 increased, the plan shall not be treated as meet-
25 ing the requirements of this paragraph unless,

1 effective as of the first day of the first applica-
2 ble plan year and at all times thereafter while
3 an election under this section is in effect, the
4 plan provides that any such increase shall not
5 take effect. A plan shall not fail to meet the re-
6 quirements of section 411(d)(6) of such Code
7 and section 204(g) of such Act solely because
8 the plan is amended to meet the requirements
9 of this subparagraph.

10 (3) RESTRICTION ON APPLICABLE BENEFIT IN-
11 CREASES.—

12 (A) IN GENERAL.—The requirements of
13 this paragraph are met if no applicable benefit
14 increase takes effect at any time during the pe-
15 riod beginning on July 26, 2005, and ending on
16 the day before the first day of the first applica-
17 ble plan year.

18 (B) APPLICABLE BENEFIT INCREASE.—
19 For purposes of this paragraph, the term “ap-
20 plicable benefit increase” means, with respect to
21 any plan year, any increase in liabilities of the
22 plan by plan amendment (or otherwise provided
23 in regulations provided by the Secretary) which,
24 but for this paragraph, would occur during the
25 plan year by reason of—

- 1 (i) any increase in benefits,
2 (ii) any change in the accrual of bene-
3 fits, or
4 (iii) any change in the rate at which
5 benefits become nonforfeitable under the
6 plan.

7 (4) EXCEPTION FOR IMPUTED DISABILITY
8 SERVICE.—Paragraphs (2) and (3) shall not apply
9 to any accrual or increase with respect to imputed
10 service provided to a participant during any period
11 of the participant’s disability occurring on or after
12 the effective date of the plan amendment providing
13 the restrictions under paragraph (2) if the partici-
14 pant—

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

17 (B) was receiving sick pay and subse-
18 quently determined to be eligible for disability
19 benefits as of such date.

20 (c) ELECTIONS AND RELATED TERMS.—

21 (1) IN GENERAL.—A plan sponsor shall make
22 the election under subsection (a) at such time and
23 in such manner as the Secretary of the Treasury
24 may prescribe. Except as provided in subsection

1 (h)(5), such election, once made, may be revoked
2 only with the consent of such Secretary.

3 (2) YEARS FOR WHICH ELECTION MADE.—

4 (A) IN GENERAL.—The plan sponsor may
5 select the first plan year to which the election
6 under subsection (a) applies from among plan
7 years ending after the date of the election. The
8 election shall apply to such plan year and all
9 subsequent years.

10 (B) ELECTION OF NEW PLAN YEAR.—The
11 plan sponsor may specify a new plan year in the
12 election under subsection (a) and the plan year
13 of the plan may be changed to such new plan
14 year without the approval of the Secretary of
15 the Treasury.

16 (3) APPLICABLE PLAN YEAR.—The term “ap-
17 plicable plan year” means each plan year to which
18 the election under subsection (a) applies under para-
19 graph (1).

20 (d) MINIMUM REQUIRED CONTRIBUTION.—

21 (1) IN GENERAL.—In the case of any applicable
22 plan year during the amortization period, the min-
23 imum required contribution shall be the amount nec-
24 essary to amortize the unfunded liability of the plan,
25 determined as of the first day of the plan year, in

1 equal annual installments (until fully amortized)
2 over the remainder of the amortization period. Such
3 amount shall be separately determined for each ap-
4 plicable plan year.

5 (2) YEARS AFTER AMORTIZATION PERIOD.—In
6 the case of any plan year beginning after the end of
7 the amortization period, section 302(a)(2)(A) of
8 such Act and section 412(a)(2)(A) of such Code
9 shall apply to such plan, but the prefunding balance
10 as of the first day of the first of such years under
11 section 303(f) of such Act and section 430(f) of such
12 Code shall be zero.

13 (3) DEFINITIONS.—For purposes of this sec-
14 tion—

15 (A) UNFUNDED LIABILITY.—The term
16 “unfunded liability” means the unfunded ac-
17 crued liability under the plan, determined under
18 the unit credit funding method.

19 (B) AMORTIZATION PERIOD.—The term
20 “amortization period” means the 20-plan year
21 period beginning with the first applicable plan
22 year.

23 (4) OTHER RULES.—In determining the min-
24 imum required contribution and amortization
25 amount under this subsection—

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

5 (B) the rate of interest under section
6 302(b) of such Act and section 412(b) of such
7 Code, as so in effect, shall be used for all cal-
8 culations requiring an interest rate, and

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

11 (5) SPECIAL RULE FOR CERTAIN PLAN SPIN-
12 OFFS.—For purposes of subsection (a), if, with re-
13 spect to any eligible plan to which this subsection
14 applies—

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

17 (B) a plan was spun off from the eligible
18 plan during the plan year but before such date
19 of enactment,

20 the minimum required contribution under subsection
21 (a)(1) for the eligible plan for such applicable plan
22 year shall be determined as if the plans were a sin-
23 gle plan for that plan year (based on the full 12-
24 month plan year in effect prior to the spin-off). The
25 employer shall designate the allocation of the min-

1 imum required contribution between such plans for
2 the applicable plan year and direct the appropriate
3 reallocation between the plans of any contributions
4 for the applicable plan year.

5 (e) FUNDING STANDARD ACCOUNT AND
6 PREFUNDING BALANCE.—Any charge or credit in the
7 funding standard account under section 302 of such Act
8 or section 412 of such Code, and any prefunding balance
9 under section 303 of such Act or section 430 of such Code,
10 as of the day before the first day of the first applicable
11 plan year, shall be reduced to zero.

12 (f) AMENDMENTS TO OTHER PROVISIONS.—

13 (1) QUALIFICATION REQUIREMENT.—Section
14 401(a)(36) of the Internal Revenue Code of 1986, as
15 added by section 402 of this Act, is amended by
16 adding at the end the following: “This paragraph
17 shall also apply to any plan during any period dur-
18 ing which an amortization schedule under section
19 403 of the Pension Security and Transparency Act
20 of 2005 is in effect.”

21 (2) PBGC LIABILITY LIMITED.—Section 4022
22 of the Employee Retirement Income Security Act of
23 1974, as amended by this Act, is amended by adding
24 at the end the following new subsection:

1 “(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN
2 FUNDING REQUIREMENTS.—During any period in which
3 an election by a plan under section 403 of the Pension
4 Security and Transparency Act of 2005 is in effect, then
5 this section and section 4044(a)(3) shall be applied by
6 treating the first day of the first applicable plan year as
7 the termination date of the plan. This subsection shall not
8 apply to any plan for which an election under section
9 403(h) of such Act is in effect.”.

10 (3) LIMITATION ON DEDUCTIONS UNDER CER-
11 TAIN PLANS.—Section 404(a)(7)(C)(iii) of the Inter-
12 nal Revenue Code of 1986, as added by this Act, is
13 amended by adding at the end the following new
14 sentence: “This clause shall also apply to any plan
15 for a plan year if an election under section 403 of
16 the Pension Security and Transparency Act of 2005
17 is in effect for such year.”

18 (4) NOTICE.—In the case of a plan amendment
19 adopted in order to comply with this section, any no-
20 tice required under section 204(h) of such Act or
21 section 4980F(e) of such Code shall be provided
22 within 15 days of the effective date of such plan
23 amendment. This subsection shall not apply to any
24 plan unless such plan is maintained pursuant to one

1 or more collective bargaining agreements between
2 employee representatives and 1 or more employers.

3 (g) SPECIAL RULES FOR TERMINATION OF ELIGIBLE
4 PLANS.—During any period an election is in effect under
5 this section with respect to an eligible plan, the Pension
6 Benefit Guaranty Corporation shall, before it seeks or ap-
7 proves a termination of such plan under section 4041(c)
8 or 4042 of the Employee Retirement Income Security Act
9 of 1974—

10 (1) make a determination under section
11 4041(c)(4) or 4042(i) of such Act whether the ter-
12 mination would be necessary if the Secretary of the
13 Treasury were to enter into an agreement under sec-
14 tion 4047(a) of such Act which provides an alter-
15 native funding agreement to replace the amortiza-
16 tion schedule under this section, and

17 (2) if the Corporation determines such an
18 agreement would make such termination unneces-
19 sary, take all necessary actions to ensure the agree-
20 ment is entered into.

21 The Pension Benefit Guaranty Corporation shall make the
22 determination under paragraph (1) within 90 days of re-
23 ceiving all information needed in connection with a request
24 for a termination (or if no such request is made, within

1 90 days of consideration of the termination by the Cor-
2 poration).

3 (h) CERTAIN BENEFIT ACCRUALS AND INCREASES
4 ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO
5 COVER COSTS.—

6 (1) IN GENERAL.—If an employer elects the ap-
7 plication of this subsection—

8 (A) the requirements of paragraphs (2)
9 and (3) of subsection (b) shall not apply with
10 respect to any eligible plan maintained by the
11 employer and specified in the election, and

12 (B) the minimum required contribution
13 under subsection (d) for any plan year with re-
14 spect to the plan shall be increased by the
15 amounts described in paragraphs (2) and (3).

16 Any liabilities and assets taken into account under
17 this subsection shall not be taken into account in de-
18 termining the unfunded liability of the plan for pur-
19 poses of subsection (d).

20 (2) CURRENT FUNDING OF ACCRUALS AND IN-
21 CREASES.—The amount determined under this para-
22 graph for any plan year is the target normal cost
23 which would occur under section 303(b) of such Act
24 and 430(b) of such Code if—

1 (A) any benefit accrual, or benefit increase
2 taking effect, during the plan year by reason of
3 this subsection were treated as having been ac-
4 crued or earned during the plan year, and

5 (B) the plan were treated as if it were in
6 at-risk status.

7 (3) FUNDING MUST BE MAINTAINED.—The
8 amount determined under this paragraph for any
9 plan year is the amount of any increase in the short-
10 fall amortization charge which would occur under
11 section 303(c) of such Act and 430(c) of such Code
12 if—

13 (A) the funding target were determined by
14 only taking into account benefits to which para-
15 graph (2) applied for preceding plan years,

16 (B) the only assets taken into account
17 were the contributions required under this para-
18 graph and paragraph (2) for preceding plan
19 years (and any earnings thereon),

20 (C) the amortization period included only
21 the plan year,

22 (D) the transition rule under section
23 303(c)(4)(B) of such Act and section
24 430(c)(4)(B) of such Code did not apply, and

1 (E) the plan were treated as if it were in
2 at-risk status.

3 (4) SPECIAL RULES FOR YEARS BEFORE 2007.—
4 Notwithstanding any other provision of this Act, in
5 the case of an applicable plan year of an eligible
6 plan to which this subsection applies which begins
7 before January 1, 2007, in determining the amounts
8 described in paragraphs (2) and (3) for such plan
9 year—

10 (A) the provisions of, and amendments
11 made by, sections 101, 102, 111, and 112 shall
12 apply to such plan year, except that

13 (B) the interest rate used under section
14 303 of such Act and section 430 of such Code
15 for purposes of applying paragraphs (2) and (3)
16 to such plan year shall be the interest rate de-
17 termined under section 302(b)(5) of such Act
18 and section 412(b)(5) of such Code, as in effect
19 for plan years beginning in 2005.

20 (5) ELECTION OUT OF SECTION.—An employer
21 maintaining an eligible plan to which this subsection
22 applies may make a one-time election with respect to
23 any applicable plan year not to have this section
24 apply to such plan year and all subsequent plan
25 years. Subject to subsection (d)(2), the minimum re-

1 quired contribution under section 303 of such Act
2 and 430 of such Code for all such plan years shall
3 be determined without regard to this section.

4 (i) EXCLUSION OF CERTAIN EMPLOYEES FROM MIN-
5 IMUM COVERAGE REQUIREMENTS.—

6 (1) IN GENERAL.—Section 410(b)(3) of such
7 Code is amended by striking the last sentence and
8 inserting the following: “For purposes of subpara-
9 graph (B), management pilots who are not rep-
10 resented in accordance with title II of the Railway
11 Labor Act shall be treated as covered by a collective
12 bargaining agreement described in such subpara-
13 graph if the management pilots manage the flight
14 operations of air pilots who are so represented and
15 the management pilots are, pursuant to the terms of
16 the agreement, included in the group of employees
17 benefitting under the trust described in such sub-
18 paragraph. Subparagraph (B) shall not apply in the
19 case of a plan which provides contributions or bene-
20 fits for employees whose principal duties are not cus-
21 tomarily performed aboard an aircraft in flight
22 (other than management pilots described in the pre-
23 ceding sentence).”

24 (2) EFFECTIVE DATE.—The amendment made
25 by this subsection shall apply to years beginning be-

1 fore, on, or after the date of the enactment of this
2 Act.

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