

AMENDMENT
OFFERED BY MR. BOEHNER OF OHIO

Page 131, after line 19, insert the following (and re-designate subsequent paragraphs accordingly):

1 “(7) SPECIAL RULES.—

2 “(A) AUTOMATIC EMPLOYER SUR-
3 CHARGE.—

4 “(i) 5 PERCENT AND 10 PERCENT
5 SURCHARGE.—For the first plan year in
6 which the plan is in critical status, each
7 employer otherwise obligated to make a
8 contribution for that plan year shall be ob-
9 ligated to pay to the plan a surcharge
10 equal to 5 percent of the contribution oth-
11 erwise required under the respective collec-
12 tive bargaining agreement (or other agree-
13 ment pursuant to which the employer con-
14 tributes). For each consecutive plan year
15 thereafter in which the plan is in critical
16 status, the surcharge shall be 10 percent of
17 the contribution otherwise required under
18 the respective collective bargaining agree-

1 ment (or other agreement pursuant to
2 which the employer contributes).

3 “(ii) ENFORCEMENT OF SUR-
4 CHARGE.—The surcharges under clause (i)
5 shall be due and payable on the same
6 schedule as the contributions on which
7 they are based. Any failure to make a sur-
8 charge payment shall be treated as a delin-
9 quent contribution under section 515 and
10 shall be enforceable as such.

11 “(iii) SURCHARGE TO TERMINATE
12 UPON CBA RENEGOTIATION.—The sur-
13 charge under this paragraph shall cease to
14 be effective with respect to employees cov-
15 ered by a collective bargaining agreement,
16 beginning on the date on which that agree-
17 ment is renegotiated to include—

18 “(I) a schedule of benefits and
19 contributions published by the trust-
20 ees pursuant to the plan’s rehabilita-
21 tion plan, or

22 “(II) otherwise collectively bar-
23 gained benefit changes.

24 “(iv) SURCHARGE NOT TO APPLY
25 UNTIL EMPLOYER RECEIVES 30-DAY NO-

1 TICE.—The surcharge under this subpara-
2 graph shall not apply to an employer until
3 30 days after the employer has been noti-
4 fied by the trustees that the plan is in crit-
5 ical status and that the surcharge is in ef-
6 fect.

7 “(v) SURCHARGE NOT TO GENERATE
8 INCREASED BENEFIT ACCRUALS.—Not-
9 withstanding any provision of a plan to the
10 contrary, the amount of any surcharge
11 shall not be the basis for any benefit ac-
12 cruals under the plan.

13 “(B) BENEFIT ADJUSTMENTS.—

14 “(i) IN GENERAL.—The trustees shall
15 make appropriate reductions, if any, to ad-
16 justable benefits based upon the outcome
17 of collective bargaining over the schedules
18 provided under paragraph (5).

19 “(ii) RETIREE PROTECTION.—Except
20 as provided in subparagraph (C), the trust-
21 ees of a plan in critical status may not re-
22 duce adjustable benefits of any participant
23 or beneficiary who was in pay status at
24 least one year before the first day of the

1 first plan year in which the plan enters
2 into critical status.

3 “(iii) TRUSTEE FLEXIBILITY.—The
4 trustees shall include in the schedules pro-
5 vided to the bargaining parties an allow-
6 ance for funding the benefits of partici-
7 pants with respect to whom contributions
8 are not currently required to be made, and
9 shall reduce their benefits to the extent
10 permitted under this title and considered
11 appropriate based on the plan’s then cur-
12 rent overall funding status and its future
13 prospects in light of the results of the par-
14 ties’ negotiations.

15 “(C) ADJUSTABLE BENEFIT DEFINED.—
16 For purposes of this paragraph, the term ‘ad-
17 justable benefit’ means—

18 “(i) benefits, rights, and features,
19 such as post-retirement death benefits, 60-
20 month guarantees, disability benefits not
21 yet in pay status, and similar benefits,

22 “(ii) retirement-type subsidies, early
23 retirement benefits, and benefit payment
24 options (other than the 50 percent quali-

1 fied joint-and-survivor benefit and single
2 life annuity), and

3 “(iii) benefit increases that would not
4 be eligible for a guarantee under section
5 4022A on the first day of the plan year in
6 which the plan enters into critical status
7 because they were adopted, or if later, took
8 effect less than 60 months before reorga-
9 nization.

10 “(D) NORMAL RETIREMENT BENEFITS
11 PROTECTED.—Nothing in this paragraph shall
12 be construed to permit a plan to reduce the
13 level of a participant’s accrued benefit payable
14 at normal retirement age, except as provided in
15 subsection (d)(3) of this section.

16 “(E) ADJUSTMENTS DISREGARDED IN
17 WITHDRAWAL LIABILITY DETERMINATION.—

18 “(i) BENEFIT REDUCTIONS.—Any
19 benefit reductions under this paragraph
20 shall be disregarded in determining a
21 plan’s unfunded vested benefits for pur-
22 poses of determining an employer’s with-
23 drawal liability under section 4201.

24 “(ii) SURCHARGES.—Any surcharges
25 under this paragraph shall be disregarded

1 in determining an employer's withdrawal
2 liability under section 4211, except for
3 purposes of determining the unfunded vest-
4 ed benefits attributable to an employer or
5 under a modified attributable method
6 adopted with the approval of the Pension
7 Benefit Guaranty Corporation under sub-
8 section (c)(5) of that section.”.