

106TH CONGRESS
1ST SESSION

H. R. 2047

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 1999

Mr. TALENT (for himself and Mr. DOOLEY of California) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Access
5 and Choice for Entrepreneurs Act of 1999”.

1 **SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.**

2 (a) IN GENERAL.—Subtitle B of title I of the Em-
3 ployee Retirement Income Security Act of 1974 is amend-
4 ed by adding after part 7 the following new part:

5 “PART 8—RULES GOVERNING ASSOCIATION HEALTH
6 PLANS

7 **“SEC. 801. ASSOCIATION HEALTH PLANS.**

8 “(a) IN GENERAL.—For purposes of this part, the
9 term ‘association health plan’ means a group health
10 plan—

11 “(1) whose sponsor is (or is deemed under this
12 part to be) described in subsection (b); and

13 “(2) under which at least one option of health
14 insurance coverage offered by a health insurance
15 issuer (which may include, among other options,
16 managed care options, point of service options, and
17 preferred provider options) is provided to partici-
18 pants and beneficiaries, unless, for any plan year,
19 such coverage remains unavailable to the plan de-
20 spite good faith efforts exercised by the plan to se-
21 cure such coverage.

22 “(b) SPONSORSHIP.—The sponsor of a group health
23 plan is described in this subsection if such sponsor—

24 “(1) is organized and maintained in good faith,
25 with a constitution and bylaws specifically stating its
26 purpose and providing for periodic meetings on at

1 least an annual basis, as a bona fide trade associa-
2 tion, a bona fide industry association (including a
3 rural electric cooperative association or a rural tele-
4 phone cooperative association), a bona fide profes-
5 sional association, or a bona fide chamber of com-
6 merce (or similar bona fide business association, in-
7 cluding a corporation or similar organization that
8 operates on a cooperative basis (within the meaning
9 of section 1381 of the Internal Revenue Code of
10 1986)), for substantial purposes other than that of
11 obtaining or providing medical care;

12 “(2) is established as a permanent entity which
13 receives the active support of its members and col-
14 lects from its members on a periodic basis dues or
15 payments necessary to maintain eligibility for mem-
16 bership in the sponsor; and

17 “(3) does not condition membership, such dues
18 or payments, or coverage under the plan on the
19 basis of health status-related factors with respect to
20 the employees of its members (or affiliated mem-
21 bers), or the dependents of such employees, and does
22 not condition such dues or payments on the basis of
23 group health plan participation.

24 Any sponsor consisting of an association of entities which
25 meet the requirements of paragraphs (1), (2), and (3)

1 shall be deemed to be a sponsor described in this sub-
2 section.

3 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
4 **PLANS.**

5 “(a) IN GENERAL.—The applicable authority shall
6 prescribe by regulation, through negotiated rulemaking, a
7 procedure under which, subject to subsection (b), the ap-
8 plicable authority shall certify association health plans
9 which apply for certification as meeting the requirements
10 of this part.

11 “(b) STANDARDS.—Under the procedure prescribed
12 pursuant to subsection (a), in the case of an association
13 health plan that provides at least one benefit option which
14 does not consist of health insurance coverage, the applica-
15 ble authority shall certify such plan as meeting the re-
16 quirements of this part only if the applicable authority is
17 satisfied that—

18 “(1) such certification—

19 “(A) is administratively feasible;

20 “(B) is not adverse to the interests of the
21 individuals covered under the plan; and

22 “(C) is protective of the rights and benefits
23 of the individuals covered under the plan; and

24 “(2) the applicable requirements of this part
25 are met (or, upon the date on which the plan is to

1 commence operations, will be met) with respect to
2 the plan.

3 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
4 PLANS.—An association health plan with respect to which
5 certification under this part is in effect shall meet the ap-
6 plicable requirements of this part, effective on the date
7 of certification (or, if later, on the date on which the plan
8 is to commence operations).

9 “(d) REQUIREMENTS FOR CONTINUED CERTIFI-
10 CATION.—The applicable authority may provide by regula-
11 tion, through negotiated rulemaking, for continued certifi-
12 cation of association health plans under this part.

13 “(e) CLASS CERTIFICATION FOR FULLY INSURED
14 PLANS.—The applicable authority shall establish a class
15 certification procedure for association health plans under
16 which all benefits consist of health insurance coverage.
17 Under such procedure, the applicable authority shall pro-
18 vide for the granting of certification under this part to
19 the plans in each class of such association health plans
20 upon appropriate filing under such procedure in connec-
21 tion with plans in such class and payment of the pre-
22 scribed fee under section 807(a).

23 “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION
24 HEALTH PLANS.—An association health plan which offers
25 one or more benefit options which do not consist of health

1 insurance coverage may be certified under this part only
2 if such plan consists of any of the following:

3 “(1) a plan which offered such coverage on the
4 date of the enactment of the Small Business Access
5 and Choice for Entrepreneurs Act of 1999,

6 “(2) a plan under which the sponsor does not
7 restrict membership to one or more trades and busi-
8 nesses or industries and whose eligible participating
9 employers represent a broad cross-section of trades
10 and businesses or industries, or

11 “(3) a plan whose eligible participating employ-
12 ers represent one or more trades or businesses, or
13 one or more industries, which have been indicated as
14 having average or above-average health insurance
15 risk or health claims experience by reason of State
16 rate filings, denials of coverage, proposed premium
17 rate levels, and other means demonstrated by such
18 plan in accordance with regulations which the Sec-
19 retary shall prescribe through negotiated rule-
20 making, including (but not limited to) the following:
21 agriculture; automobile dealerships; barbering and
22 cosmetology; child care; construction; dance, theat-
23 rical, and orchestra productions; disinfecting and
24 pest control; eating and drinking establishments;
25 fishing; hospitals; labor organizations; logging; man-

1 ufacturing (metals); mining; medical and dental
2 practices; medical laboratories; sanitary services;
3 transportation (local and freight); and warehousing.

4 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
5 **BOARDS OF TRUSTEES.**

6 “(a) SPONSOR.—The requirements of this subsection
7 are met with respect to an association health plan if the
8 sponsor has met (or is deemed under this part to have
9 met) the requirements of section 801(b) for a continuous
10 period of not less than 3 years ending with the date of
11 the application for certification under this part.

12 “(b) BOARD OF TRUSTEES.—The requirements of
13 this subsection are met with respect to an association
14 health plan if the following requirements are met:

15 “(1) FISCAL CONTROL.—The plan is operated,
16 pursuant to a trust agreement, by a board of trust-
17 ees which has complete fiscal control over the plan
18 and which is responsible for all operations of the
19 plan.

20 “(2) RULES OF OPERATION AND FINANCIAL
21 CONTROLS.—The board of trustees has in effect
22 rules of operation and financial controls, based on a
23 3-year plan of operation, adequate to carry out the
24 terms of the plan and to meet all requirements of
25 this title applicable to the plan.

1 “(3) RULES GOVERNING RELATIONSHIP TO
2 PARTICIPATING EMPLOYERS AND TO CONTRAC-
3 TORS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraphs (B) and (C), the members of the
6 board of trustees are individuals selected from
7 individuals who are the owners, officers, direc-
8 tors, or employees of the participating employ-
9 ers or who are partners in the participating em-
10 ployers and actively participate in the business.

11 “(B) LIMITATION.—

12 “(i) GENERAL RULE.—Except as pro-
13 vided in clauses (ii) and (iii), no such
14 member is an owner, officer, director, or
15 employee of, or partner in, a contract ad-
16 ministrator or other service provider to the
17 plan.

18 “(ii) LIMITED EXCEPTION FOR PRO-
19 VIDERS OF SERVICES SOLELY ON BEHALF
20 OF THE SPONSOR.—Officers or employees
21 of a sponsor which is a service provider
22 (other than a contract administrator) to
23 the plan may be members of the board if
24 they constitute not more than 25 percent
25 of the membership of the board and they

1 do not provide services to the plan other
2 than on behalf of the sponsor.

3 “(iii) TREATMENT OF PROVIDERS OF
4 MEDICAL CARE.—In the case of a sponsor
5 which is an association whose membership
6 consists primarily of providers of medical
7 care, clause (i) shall not apply in the case
8 of any service provider described in sub-
9 paragraph (A) who is a provider of medical
10 care under the plan.

11 “(C) CERTAIN PLANS EXCLUDED.—Sub-
12 paragraph (A) shall not apply to an association
13 health plan which is in existence on the date of
14 the enactment of the Small Business Access
15 and Choice for Entrepreneurs Act of 1999.

16 “(D) SOLE AUTHORITY.—The board has
17 sole authority under the plan to approve appli-
18 cations for participation in the plan and to con-
19 tract with a service provider to administer the
20 day-to-day affairs of the plan.

21 “(e) TREATMENT OF FRANCHISE NETWORKS.—In
22 the case of a group health plan which is established and
23 maintained by a franchiser for a franchise network con-
24 sisting of its franchisees—

1 “(1) the requirements of subsection (a) and sec-
2 tion 801(a)(1) shall be deemed met if such require-
3 ments would otherwise be met if the franchiser were
4 deemed to be the sponsor referred to in section
5 801(b), such network were deemed to be an associa-
6 tion described in section 801(b), and each franchisee
7 were deemed to be a member (of the association and
8 the sponsor) referred to in section 801(b); and

9 “(2) the requirements of section 804(a)(1) shall
10 be deemed met.

11 The Secretary may by regulation, through negotiated rule-
12 making, define for purposes of this subsection the terms
13 ‘franchiser’, ‘franchise network’, and ‘franchisee’.

14 “(d) CERTAIN COLLECTIVELY BARGAINED PLANS.—

15 “(1) IN GENERAL.—In the case of a group
16 health plan described in paragraph (2)—

17 “(A) the requirements of subsection (a)
18 and section 801(a)(1) shall be deemed met;

19 “(B) the joint board of trustees shall be
20 deemed a board of trustees with respect to
21 which the requirements of subsection (b) are
22 met; and

23 “(C) the requirements of section 804 shall
24 be deemed met.

1 “(2) REQUIREMENTS.—A group health plan is
2 described in this paragraph if—

3 “(A) the plan is a multiemployer plan; or

4 “(B) the plan is in existence on April 1,
5 1997, and would be described in section
6 3(40)(A)(i) but solely for the failure to meet
7 the requirements of section 3(40)(C)(ii).

8 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
9 **MENTS.**

10 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
11 requirements of this subsection are met with respect to
12 an association health plan if, under the terms of the
13 plan—

14 “(1) each participating employer must be—

15 “(A) a member of the sponsor,

16 “(B) the sponsor, or

17 “(C) an affiliated member of the sponsor
18 with respect to which the requirements of sub-
19 section (b) are met,

20 except that, in the case of a sponsor which is a pro-
21 fessional association or other individual-based asso-
22 ciation, if at least one of the officers, directors, or
23 employees of an employer, or at least one of the in-
24 dividuals who are partners in an employer and who
25 actively participates in the business, is a member or

1 such an affiliated member of the sponsor, partici-
2 pating employers may also include such employer;
3 and

4 “(2) all individuals commencing coverage under
5 the plan after certification under this part must
6 be—

7 “(A) active or retired owners (including
8 self-employed individuals), officers, directors, or
9 employees of, or partners in, participating em-
10 ployers; or

11 “(B) the beneficiaries of individuals de-
12 scribed in subparagraph (A).

13 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
14 PLOYEES.—In the case of an association health plan in
15 existence on the date of the enactment of the Small Busi-
16 ness Access and Choice for Entrepreneurs Act of 1999,
17 an affiliated member of the sponsor of the plan may be
18 offered coverage under the plan as a participating em-
19 ployer only if—

20 “(1) the affiliated member was an affiliated
21 member on the date of certification under this part;
22 or

23 “(2) during the 12-month period preceding the
24 date of the offering of such coverage, the affiliated
25 member has not maintained or contributed to a

1 group health plan with respect to any of its employ-
2 ees who would otherwise be eligible to participate in
3 such association health plan.

4 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
5 quirements of this subsection are met with respect to an
6 association health plan if, under the terms of the plan,
7 no participating employer may provide health insurance
8 coverage in the individual market for any employee not
9 covered under the plan which is similar to the coverage
10 contemporaneously provided to employees of the employer
11 under the plan, if such exclusion of the employee from cov-
12 erage under the plan is based on a health status-related
13 factor with respect to the employee and such employee
14 would, but for such exclusion on such basis, be eligible
15 for coverage under the plan.

16 “(d) PROHIBITION OF DISCRIMINATION AGAINST
17 EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICI-
18 PATE.—The requirements of this subsection are met with
19 respect to an association health plan if—

20 “(1) under the terms of the plan, all employers
21 meeting the preceding requirements of this section
22 are eligible to qualify as participating employers for
23 all geographically available coverage options, unless,
24 in the case of any such employer, participation or
25 contribution requirements of the type referred to in

1 section 2711 of the Public Health Service Act are
2 not met;

3 “(2) upon request, any employer eligible to par-
4 ticipate is furnished information regarding all cov-
5 erage options available under the plan; and

6 “(3) the applicable requirements of sections
7 701, 702, and 703 are met with respect to the plan.

8 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
9 **DOCUMENTS, CONTRIBUTION RATES, AND**
10 **BENEFIT OPTIONS.**

11 “(a) IN GENERAL.—The requirements of this section
12 are met with respect to an association health plan if the
13 following requirements are met:

14 “(1) CONTENTS OF GOVERNING INSTRU-
15 MENTS.—The instruments governing the plan in-
16 clude a written instrument, meeting the require-
17 ments of an instrument required under section
18 402(a)(1), which—

19 “(A) provides that the board of trustees
20 serves as the named fiduciary required for plans
21 under section 402(a)(1) and serves in the ca-
22 pacity of a plan administrator (referred to in
23 section 3(16)(A));

1 “(B) provides that the sponsor of the plan
2 is to serve as plan sponsor (referred to in sec-
3 tion 3(16)(B)); and

4 “(C) incorporates the requirements of sec-
5 tion 806.

6 “(2) CONTRIBUTION RATES MUST BE NON-
7 DISCRIMINATORY.—

8 “(A) The contribution rates for any par-
9 ticipating small employer do not vary on the
10 basis of the claims experience of such employer
11 and do not vary on the basis of the type of
12 business or industry in which such employer is
13 engaged.

14 “(B) Nothing in this title or any other pro-
15 vision of law shall be construed to preclude an
16 association health plan, or a health insurance
17 issuer offering health insurance coverage in
18 connection with an association health plan,
19 from—

20 “(i) setting contribution rates based
21 on the claims experience of the plan; or

22 “(ii) varying contribution rates for
23 small employers in a State to the extent
24 that such rates could vary using the same
25 methodology employed in such State for

1 regulating premium rates in the small
2 group market with respect to health insur-
3 ance coverage offered in connection with
4 bona fide associations (within the meaning
5 of section 2791(d)(3) of the Public Health
6 Service Act),

7 subject to the requirements of section 702(b)
8 relating to contribution rates.

9 “(3) FLOOR FOR NUMBER OF COVERED INDI-
10 VIDUALS WITH RESPECT TO CERTAIN PLANS.—If
11 any benefit option under the plan does not consist
12 of health insurance coverage, the plan has as of the
13 beginning of the plan year not fewer than 1,000 par-
14 ticipants and beneficiaries.

15 “(4) MARKETING REQUIREMENTS.—

16 “(A) IN GENERAL.—If a benefit option
17 which consists of health insurance coverage is
18 offered under the plan, State-licensed insurance
19 agents shall be used to distribute to small em-
20 ployers coverage which does not consist of
21 health insurance coverage in a manner com-
22 parable to the manner in which such agents are
23 used to distribute health insurance coverage.

24 “(B) STATE-LICENSED INSURANCE
25 AGENTS.—For purposes of subparagraph (A),

1 the term ‘State-licensed insurance agents’
2 means one or more agents who are licensed in
3 a State and are subject to the laws of such
4 State relating to licensure, qualification, test-
5 ing, examination, and continuing education of
6 persons authorized to offer, sell, or solicit
7 health insurance coverage in such State.

8 “(5) REGULATORY REQUIREMENTS.—Such
9 other requirements as the applicable authority deter-
10 mines are necessary to carry out the purposes of this
11 part, which shall be prescribed by the applicable au-
12 thority by regulation through negotiated rulemaking.

13 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
14 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),
15 nothing in this part or any provision of State law (as de-
16 fined in section 514(e)(1)) shall be construed to preclude
17 an association health plan, or a health insurance issuer
18 offering health insurance coverage in connection with an
19 association health plan, from exercising its sole discretion
20 in selecting the specific items and services consisting of
21 medical care to be included as benefits under such plan
22 or coverage, except (subject to section 514) in the case
23 of any law to the extent that it (1) prohibits an exclusion
24 of a specific disease from such coverage, or (2) is not pre-

1 emptied under section 731(a)(1) with respect to matters
2 governed by section 711 or 712.

3 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
4 **FOR SOLVENCY FOR PLANS PROVIDING**
5 **HEALTH BENEFITS IN ADDITION TO HEALTH**
6 **INSURANCE COVERAGE.**

7 “(a) IN GENERAL.—The requirements of this section
8 are met with respect to an association health plan if—

9 “(1) the benefits under the plan consist solely
10 of health insurance coverage; or

11 “(2) if the plan provides any additional benefit
12 options which do not consist of health insurance cov-
13 erage, the plan—

14 “(A) establishes and maintains reserves
15 with respect to such additional benefit options,
16 in amounts recommended by the qualified actu-
17 ary, consisting of—

18 “(i) a reserve sufficient for unearned
19 contributions;

20 “(ii) a reserve sufficient for benefit li-
21 abilities which have been incurred, which
22 have not been satisfied, and for which risk
23 of loss has not yet been transferred, and
24 for expected administrative costs with re-
25 spect to such benefit liabilities;

1 “(iii) a reserve sufficient for any other
2 obligations of the plan; and

3 “(iv) a reserve sufficient for a margin
4 of error and other fluctuations, taking into
5 account the specific circumstances of the
6 plan; and

7 “(B) establishes and maintains aggregate
8 and specific excess/stop loss insurance and sol-
9 vency indemnification, with respect to such ad-
10 ditional benefit options for which risk of loss
11 has not yet been transferred, as follows:

12 “(i) The plan shall secure aggregate
13 excess/stop loss insurance for the plan
14 with an attachment point which is not
15 greater than 125 percent of expected gross
16 annual claims. The applicable authority
17 may by regulation, through negotiated
18 rulemaking, provide for upward adjust-
19 ments in the amount of such percentage in
20 specified circumstances in which the plan
21 specifically provides for and maintains re-
22 serves in excess of the amounts required
23 under subparagraph (A).

24 “(ii) The plan shall secure specific ex-
25 cess/stop loss insurance for the plan with

1 an attachment point which is at least equal
2 to an amount recommended by the plan's
3 qualified actuary (but not more than
4 \$175,000). The applicable authority may
5 by regulation, through negotiated rule-
6 making, provide for adjustments in the
7 amount of such insurance in specified cir-
8 cumstances in which the plan specifically
9 provides for and maintains reserves in ex-
10 cess of the amounts required under sub-
11 paragraph (A).

12 “(iii) The plan shall secure indem-
13 nification insurance for any claims which
14 the plan is unable to satisfy by reason of
15 a plan termination.

16 Any regulations prescribed by the applicable authority
17 pursuant to clause (i) or (ii) of subparagraph (B) may
18 allow for such adjustments in the required levels of excess/
19 stop loss insurance as the qualified actuary may rec-
20 ommend, taking into account the specific circumstances
21 of the plan.

22 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS
23 RESERVES.—In the case of any association health plan de-
24 scribed in subsection (a)(2), the requirements of this sub-

1 section are met if the plan establishes and maintains sur-
2 plus in an amount at least equal to—

3 “(1) \$500,000, or

4 “(2) such greater amount (but not greater than
5 \$2,000,000) as may be set forth in regulations pre-
6 scribed by the applicable authority through nego-
7 tiated rulemaking, based on the level of aggregate
8 and specific excess/stop loss insurance provided with
9 respect to such plan.

10 “(c) ADDITIONAL REQUIREMENTS.—In the case of
11 any association health plan described in subsection (a)(2),
12 the applicable authority may provide such additional re-
13 quirements relating to reserves and excess/stop loss insur-
14 ance as the applicable authority considers appropriate.
15 Such requirements may be provided by regulation, through
16 negotiated rulemaking, with respect to any such plan or
17 any class of such plans.

18 “(d) ADJUSTMENTS FOR EXCESS/STOP LOSS INSUR-
19 ANCE.—The applicable authority may provide for adjust-
20 ments to the levels of reserves otherwise required under
21 subsections (a) and (b) with respect to any plan or class
22 of plans to take into account excess/stop loss insurance
23 provided with respect to such plan or plans.

24 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The
25 applicable authority may permit an association health plan

1 described in subsection (a)(2) to substitute, for all or part
2 of the requirements of this section (except subsection
3 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-
4 rangement, or other financial arrangement as the applica-
5 ble authority determines to be adequate to enable the plan
6 to fully meet all its financial obligations on a timely basis
7 and is otherwise no less protective of the interests of par-
8 ticipants and beneficiaries than the requirements for
9 which it is substituted. The applicable authority may take
10 into account, for purposes of this subsection, evidence pro-
11 vided by the plan or sponsor which demonstrates an as-
12 sumption of liability with respect to the plan. Such evi-
13 dence may be in the form of a contract of indemnification,
14 lien, bonding, insurance, letter of credit, recourse under
15 applicable terms of the plan in the form of assessments
16 of participating employers, security, or other financial ar-
17 rangement.

18 “(f) MEASURES TO ENSURE CONTINUED PAYMENT
19 OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

20 “(1) PAYMENTS BY CERTAIN PLANS TO ASSO-
21 CIATION HEALTH PLAN FUND.—

22 “(A) IN GENERAL.—In the case of an as-
23 sociation health plan described in subsection
24 (a)(2), the requirements of this subsection are
25 met if the plan makes payments into the Asso-

1 ciation Health Plan Fund under this subpara-
2 graph when they are due. Such payments shall
3 consist of annual payments in the amount of
4 \$5,000, and, in addition to such annual pay-
5 ments, such supplemental payments as the Sec-
6 retary may determine to be necessary under
7 paragraph (2). Payments under this paragraph
8 are payable to the Fund at the time determined
9 by the Secretary. Initial payments are due in
10 advance of certification under this part. Pay-
11 ments shall continue to accrue until a plan's as-
12 sets are distributed pursuant to a termination
13 procedure.

14 “(B) PENALTIES FOR FAILURE TO MAKE
15 PAYMENTS.—If any payment is not made by a
16 plan when it is due, a late payment charge of
17 not more than 100 percent of the payment
18 which was not timely paid shall be payable by
19 the plan to the Fund.

20 “(C) CONTINUED DUTY OF THE SEC-
21 RETARY.—The Secretary shall not cease to
22 carry out the provisions of paragraph (2) on ac-
23 count of the failure of a plan to pay any pay-
24 ment when due.

1 “(2) PAYMENTS BY SECRETARY TO CONTINUE
2 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-
3 DEMNIFICATION INSURANCE COVERAGE FOR CER-
4 TAIN PLANS.—In any case in which the applicable
5 authority determines that there is, or that there is
6 reason to believe that there will be: (A) a failure to
7 take necessary corrective actions under section
8 809(a) with respect to an association health plan de-
9 scribed in subsection (a)(2); or (B) a termination of
10 such a plan under section 809(b) or 810(b)(8) (and,
11 if the applicable authority is not the Secretary, cer-
12 tifies such determination to the Secretary), the Sec-
13 retary shall determine the amounts necessary to
14 make payments to an insurer (designated by the
15 Secretary) to maintain in force excess/stop loss in-
16 surance coverage or indemnification insurance cov-
17 erage for such plan, if the Secretary determines that
18 there is a reasonable expectation that, without such
19 payments, claims would not be satisfied by reason of
20 termination of such coverage. The Secretary shall, to
21 the extent provided in advance in appropriation
22 Acts, pay such amounts so determined to the insurer
23 designated by the Secretary.

24 “(3) ASSOCIATION HEALTH PLAN FUND.—

1 “(A) IN GENERAL.—There is established
2 on the books of the Treasury a fund to be
3 known as the ‘Association Health Plan Fund’.
4 The Fund shall be available for making pay-
5 ments pursuant to paragraph (2). The Fund
6 shall be credited with payments received pursu-
7 ant to paragraph (1)(A), penalties received pur-
8 suant to paragraph (1)(B); and earnings on in-
9 vestments of amounts of the Fund under sub-
10 paragraph (B).

11 “(B) INVESTMENT.—Whenever the Sec-
12 retary determines that the moneys of the fund
13 are in excess of current needs, the Secretary
14 may request the investment of such amounts as
15 the Secretary determines advisable by the Sec-
16 retary of the Treasury in obligations issued or
17 guaranteed by the United States.

18 “(g) EXCESS/STOP LOSS INSURANCE.—For pur-
19 poses of this section—

20 “(1) AGGREGATE EXCESS/STOP LOSS INSUR-
21 ANCE.—The term ‘aggregate excess/stop loss insur-
22 ance’ means, in connection with an association
23 health plan, a contract—

24 “(A) under which an insurer (meeting such
25 minimum standards as the applicable authority may

1 prescribe by regulation through negotiated rule-
2 making) provides for payment to the plan with re-
3 spect to aggregate claims under the plan in excess
4 of an amount or amounts specified in such contract;

5 “(B) which is guaranteed renewable; and

6 “(C) which allows for payment of premiums by
7 any third party on behalf of the insured plan.

8 “(2) SPECIFIC EXCESS/STOP LOSS INSUR-
9 ANCE.—The term ‘specific excess/stop loss insur-
10 ance’ means, in connection with an association
11 health plan, a contract—

12 “(A) under which an insurer (meeting such
13 minimum standards as the applicable authority
14 may prescribe by regulation through negotiated
15 rulemaking) provides for payment to the plan
16 with respect to claims under the plan in connec-
17 tion with a covered individual in excess of an
18 amount or amounts specified in such contract
19 in connection with such covered individual;

20 “(B) which is guaranteed renewable; and

21 “(C) which allows for payment of pre-
22 miums by any third party on behalf of the in-
23 sured plan.

24 “(h) INDEMNIFICATION INSURANCE.—For purposes
25 of this section, the term ‘indemnification insurance’

1 means, in connection with an association health plan, a
2 contract—

3 “(1) under which an insurer (meeting such min-
4 imum standards as the applicable authority may pre-
5 scribe through negotiated rulemaking) provides for
6 payment to the plan with respect to claims under the
7 plan which the plan is unable to satisfy by reason
8 of a termination pursuant to section 809(b) (relating
9 to mandatory termination);

10 “(2) which is guaranteed renewable and
11 noncancellable for any reason (except as the applica-
12 ble authority may prescribe by regulation through
13 negotiated rulemaking); and

14 “(3) which allows for payment of premiums by
15 any third party on behalf of the insured plan.

16 “(i) RESERVES.—For purposes of this section, the
17 term ‘reserves’ means, in connection with an association
18 health plan, plan assets which meet the fiduciary stand-
19 ards under part 4 and such additional requirements re-
20 garding liquidity as the applicable authority may prescribe
21 through negotiated rulemaking.

22 “(j) SOLVENCY STANDARDS WORKING GROUP.—

23 “(1) IN GENERAL.—Within 90 days after the
24 date of the enactment of the Small Business Access
25 and Choice for Entrepreneurs Act of 1999, the ap-

1 applicable authority shall establish a Solvency Stand-
2 ards Working Group. In prescribing the initial regu-
3 lations under this section, the applicable authority
4 shall take into account the recommendations of such
5 Working Group.

6 “(2) MEMBERSHIP.—The Working Group shall
7 consist of not more than 15 members appointed by
8 the applicable authority. The applicable authority
9 shall include among persons invited to membership
10 on the Working Group at least one of each of the
11 following:

12 “(A) a representative of the National Asso-
13 ciation of Insurance Commissioners;

14 “(B) a representative of the American
15 Academy of Actuaries;

16 “(C) a representative of the State govern-
17 ments, or their interests;

18 “(D) a representative of existing self-in-
19 sured arrangements, or their interests;

20 “(E) a representative of associations of the
21 type referred to in section 801(b)(1), or their
22 interests; and

23 “(F) a representative of multiemployer
24 plans that are group health plans, or their in-
25 terests.

1 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
2 **LATED REQUIREMENTS.**

3 “(a) **FILING FEE.**—Under the procedure prescribed
4 pursuant to section 802(a), an association health plan
5 shall pay to the applicable authority at the time of filing
6 an application for certification under this part a filing fee
7 in the amount of \$5,000, which shall be available in the
8 case of the Secretary, to the extent provided in appropria-
9 tion Acts, for the sole purpose of administering the certifi-
10 cation procedures applicable with respect to association
11 health plans.

12 “(b) **INFORMATION TO BE INCLUDED IN APPLICA-**
13 **TION FOR CERTIFICATION.**—An application for certifi-
14 cation under this part meets the requirements of this sec-
15 tion only if it includes, in a manner and form which shall
16 be prescribed by the applicable authority through nego-
17 tiated rulemaking, at least the following information:

18 “(1) **IDENTIFYING INFORMATION.**—The names
19 and addresses of—

20 “(A) the sponsor; and

21 “(B) the members of the board of trustees
22 of the plan.

23 “(2) **STATES IN WHICH PLAN INTENDS TO DO**
24 **BUSINESS.**—The States in which participants and
25 beneficiaries under the plan are to be located and

1 the number of them expected to be located in each
2 such State.

3 “(3) BONDING REQUIREMENTS.—Evidence pro-
4 vided by the board of trustees that the bonding re-
5 quirements of section 412 will be met as of the date
6 of the application or (if later) commencement of op-
7 erations.

8 “(4) PLAN DOCUMENTS.—A copy of the docu-
9 ments governing the plan (including any bylaws and
10 trust agreements), the summary plan description,
11 and other material describing the benefits that will
12 be provided to participants and beneficiaries under
13 the plan.

14 “(5) AGREEMENTS WITH SERVICE PRO-
15 VIDERS.—A copy of any agreements between the
16 plan and contract administrators and other service
17 providers.

18 “(6) FUNDING REPORT.—In the case of asso-
19 ciation health plans providing benefits options in ad-
20 dition to health insurance coverage, a report setting
21 forth information with respect to such additional
22 benefit options determined as of a date within the
23 120-day period ending with the date of the applica-
24 tion, including the following:

1 “(A) RESERVES.—A statement, certified
2 by the board of trustees of the plan, and a
3 statement of actuarial opinion, signed by a
4 qualified actuary, that all applicable require-
5 ments of section 806 are or will be met in ac-
6 cordance with regulations which the applicable
7 authority shall prescribe through negotiated
8 rulemaking.

9 “(B) ADEQUACY OF CONTRIBUTION
10 RATES.—A statement of actuarial opinion,
11 signed by a qualified actuary, which sets forth
12 a description of the extent to which contribution
13 rates are adequate to provide for the payment
14 of all obligations and the maintenance of re-
15 quired reserves under the plan for the 12-
16 month period beginning with such date within
17 such 120-day period, taking into account the
18 expected coverage and experience of the plan. If
19 the contribution rates are not fully adequate,
20 the statement of actuarial opinion shall indicate
21 the extent to which the rates are inadequate
22 and the changes needed to ensure adequacy.

23 “(C) CURRENT AND PROJECTED VALUE OF
24 ASSETS AND LIABILITIES.—A statement of ac-
25 tuarial opinion signed by a qualified actuary,

1 which sets forth the current value of the assets
2 and liabilities accumulated under the plan and
3 a projection of the assets, liabilities, income,
4 and expenses of the plan for the 12-month pe-
5 riod referred to in subparagraph (B). The in-
6 come statement shall identify separately the
7 plan’s administrative expenses and claims.

8 “(D) COSTS OF COVERAGE TO BE
9 CHARGED AND OTHER EXPENSES.—A state-
10 ment of the costs of coverage to be charged, in-
11 cluding an itemization of amounts for adminis-
12 tration, reserves, and other expenses associated
13 with the operation of the plan.

14 “(E) OTHER INFORMATION.—Any other
15 information as may be determined by the appli-
16 cable authority, by regulation through nego-
17 tiated rulemaking, as necessary to carry out the
18 purposes of this part.

19 “(c) FILING NOTICE OF CERTIFICATION WITH
20 STATES.—A certification granted under this part to an
21 association health plan shall not be effective unless written
22 notice of such certification is filed with the applicable
23 State authority of each State in which at least 25 percent
24 of the participants and beneficiaries under the plan are
25 located. For purposes of this subsection, an individual

1 shall be considered to be located in the State in which a
2 known address of such individual is located or in which
3 such individual is employed.

4 “(d) NOTICE OF MATERIAL CHANGES.—In the case
5 of any association health plan certified under this part,
6 descriptions of material changes in any information which
7 was required to be submitted with the application for the
8 certification under this part shall be filed in such form
9 and manner as shall be prescribed by the applicable au-
10 thority by regulation through negotiated rulemaking. The
11 applicable authority may require by regulation, through
12 negotiated rulemaking, prior notice of material changes
13 with respect to specified matters which might serve as the
14 basis for suspension or revocation of the certification.

15 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
16 SOCIATION HEALTH PLANS.—An association health plan
17 certified under this part which provides benefit options in
18 addition to health insurance coverage for such plan year
19 shall meet the requirements of section 103 by filing an
20 annual report under such section which shall include infor-
21 mation described in subsection (b)(6) with respect to the
22 plan year and, notwithstanding section 104(a)(1)(A), shall
23 be filed with the applicable authority not later than 90
24 days after the close of the plan year (or on such later date
25 as may be prescribed by the applicable authority). The ap-

1 plicable authority may require by regulation through nego-
2 tiated rulemaking such interim reports as it considers ap-
3 propriate.

4 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The
5 board of trustees of each association health plan which
6 provides benefits options in addition to health insurance
7 coverage and which is applying for certification under this
8 part or is certified under this part shall engage, on behalf
9 of all participants and beneficiaries, a qualified actuary
10 who shall be responsible for the preparation of the mate-
11 rials comprising information necessary to be submitted by
12 a qualified actuary under this part. The qualified actuary
13 shall utilize such assumptions and techniques as are nec-
14 essary to enable such actuary to form an opinion as to
15 whether the contents of the matters reported under this
16 part—

17 “(1) are in the aggregate reasonably related to
18 the experience of the plan and to reasonable expecta-
19 tions; and

20 “(2) represent such actuary’s best estimate of
21 anticipated experience under the plan.

22 The opinion by the qualified actuary shall be made with
23 respect to, and shall be made a part of, the annual report.

1 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
2 **MINATION.**

3 “Except as provided in section 809(b), an association
4 health plan which is or has been certified under this part
5 may terminate (upon or at any time after cessation of ac-
6 cruals in benefit liabilities) only if the board of trustees—

7 “(1) not less than 60 days before the proposed
8 termination date, provides to the participants and
9 beneficiaries a written notice of intent to terminate
10 stating that such termination is intended and the
11 proposed termination date;

12 “(2) develops a plan for winding up the affairs
13 of the plan in connection with such termination in
14 a manner which will result in timely payment of all
15 benefits for which the plan is obligated; and

16 “(3) submits such plan in writing to the appli-
17 cable authority.

18 Actions required under this section shall be taken in such
19 form and manner as may be prescribed by the applicable
20 authority by regulation through negotiated rulemaking.

21 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
22 **NATION.**

23 “(a) **ACTIONS TO AVOID DEPLETION OF RE-**
24 **SERVES.**—An association health plan which is certified
25 under this part and which provides benefits other than
26 health insurance coverage shall continue to meet the re-

1 requirements of section 806, irrespective of whether such
2 certification continues in effect. The board of trustees of
3 such plan shall determine quarterly whether the require-
4 ments of section 806 are met. In any case in which the
5 board determines that there is reason to believe that there
6 is or will be a failure to meet such requirements, or the
7 applicable authority makes such a determination and so
8 notifies the board, the board shall immediately notify the
9 qualified actuary engaged by the plan, and such actuary
10 shall, not later than the end of the next following month,
11 make such recommendations to the board for corrective
12 action as the actuary determines necessary to ensure com-
13 pliance with section 806. Not later than 30 days after re-
14 ceiving from the actuary recommendations for corrective
15 actions, the board shall notify the applicable authority (in
16 such form and manner as the applicable authority may
17 prescribe by regulation through negotiated rulemaking) of
18 such recommendations of the actuary for corrective action,
19 together with a description of the actions (if any) that the
20 board has taken or plans to take in response to such rec-
21 ommendations. The board shall thereafter report to the
22 applicable authority, in such form and frequency as the
23 applicable authority may specify to the board, regarding
24 corrective action taken by the board until the requirements
25 of section 806 are met.

1 “(b) MANDATORY TERMINATION.—In any case in
2 which—

3 “(1) the applicable authority has been notified
4 under subsection (a) of a failure of an association
5 health plan which is or has been certified under this
6 part and is described in section 806(a)(2) to meet
7 the requirements of section 806 and has not been
8 notified by the board of trustees of the plan that
9 corrective action has restored compliance with such
10 requirements; and

11 “(2) the applicable authority determines that
12 there is a reasonable expectation that the plan will
13 continue to fail to meet the requirements of section
14 806,

15 the board of trustees of the plan shall, at the direction
16 of the applicable authority, terminate the plan and, in the
17 course of the termination, take such actions as the appli-
18 cable authority may require, including satisfying any
19 claims referred to in section 806(a)(2)(B)(iii) and recov-
20 ering for the plan any liability under subsection
21 (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure
22 that the affairs of the plan will be, to the maximum extent
23 possible, wound up in a manner which will result in timely
24 provision of all benefits for which the plan is obligated.

1 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
2 **VENT ASSOCIATION HEALTH PLANS PRO-**
3 **VIDING HEALTH BENEFITS IN ADDITION TO**
4 **HEALTH INSURANCE COVERAGE.**

5 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR
6 INSOLVENT PLANS.—Whenever the Secretary determines
7 that an association health plan which is or has been cer-
8 tified under this part and which is described in section
9 806(a)(2) will be unable to provide benefits when due or
10 is otherwise in a financially hazardous condition, as shall
11 be defined by the Secretary by regulation through nego-
12 tiated rulemaking, the Secretary shall, upon notice to the
13 plan, apply to the appropriate United States district court
14 for appointment of the Secretary as trustee to administer
15 the plan for the duration of the insolvency. The plan may
16 appear as a party and other interested persons may inter-
17 vene in the proceedings at the discretion of the court. The
18 court shall appoint such Secretary trustee if the court de-
19 termines that the trusteeship is necessary to protect the
20 interests of the participants and beneficiaries or providers
21 of medical care or to avoid any unreasonable deterioration
22 of the financial condition of the plan. The trusteeship of
23 such Secretary shall continue until the conditions de-
24 scribed in the first sentence of this subsection are rem-
25 edied or the plan is terminated.

1 “(b) POWERS AS TRUSTEE.—The Secretary, upon
2 appointment as trustee under subsection (a), shall have
3 the power—

4 “(1) to do any act authorized by the plan, this
5 title, or other applicable provisions of law to be done
6 by the plan administrator or any trustee of the plan;

7 “(2) to require the transfer of all (or any part)
8 of the assets and records of the plan to the Sec-
9 retary as trustee;

10 “(3) to invest any assets of the plan which the
11 Secretary holds in accordance with the provisions of
12 the plan, regulations prescribed by the Secretary
13 through negotiated rulemaking, and applicable provi-
14 sions of law;

15 “(4) to require the sponsor, the plan adminis-
16 trator, any participating employer, and any employee
17 organization representing plan participants to fur-
18 nish any information with respect to the plan which
19 the Secretary as trustee may reasonably need in
20 order to administer the plan;

21 “(5) to collect for the plan any amounts due the
22 plan and to recover reasonable expenses of the trust-
23 eeship;

1 “(6) to commence, prosecute, or defend on be-
2 half of the plan any suit or proceeding involving the
3 plan;

4 “(7) to issue, publish, or file such notices, state-
5 ments, and reports as may be required by the Sec-
6 retary by regulation through negotiated rulemaking
7 or required by any order of the court;

8 “(8) to terminate the plan (or provide for its
9 termination accordance with section 809(b)) and liq-
10 uidate the plan assets, to restore the plan to the re-
11 sponsibility of the sponsor, or to continue the trust-
12 eeship;

13 “(9) to provide for the enrollment of plan par-
14 ticipants and beneficiaries under appropriate cov-
15 erage options; and

16 “(10) to do such other acts as may be nec-
17 essary to comply with this title or any order of the
18 court and to protect the interests of plan partici-
19 pants and beneficiaries and providers of medical
20 care.

21 “(c) NOTICE OF APPOINTMENT.—As soon as prac-
22 ticable after the Secretary’s appointment as trustee, the
23 Secretary shall give notice of such appointment to—

24 “(1) the sponsor and plan administrator;

25 “(2) each participant;

1 “(3) each participating employer; and

2 “(4) if applicable, each employee organization
3 which, for purposes of collective bargaining, rep-
4 resents plan participants.

5 “(d) ADDITIONAL DUTIES.—Except to the extent in-
6 consistent with the provisions of this title, or as may be
7 otherwise ordered by the court, the Secretary, upon ap-
8 pointment as trustee under this section, shall be subject
9 to the same duties as those of a trustee under section 704
10 of title 11, United States Code, and shall have the duties
11 of a fiduciary for purposes of this title.

12 “(e) OTHER PROCEEDINGS.—An application by the
13 Secretary under this subsection may be filed notwith-
14 standing the pendency in the same or any other court of
15 any bankruptcy, mortgage foreclosure, or equity receiver-
16 ship proceeding, or any proceeding to reorganize, conserve,
17 or liquidate such plan or its property, or any proceeding
18 to enforce a lien against property of the plan.

19 “(f) JURISDICTION OF COURT.—

20 “(1) IN GENERAL.—Upon the filing of an appli-
21 cation for the appointment as trustee or the issuance
22 of a decree under this section, the court to which the
23 application is made shall have exclusive jurisdiction
24 of the plan involved and its property wherever lo-
25 cated with the powers, to the extent consistent with

1 the purposes of this section, of a court of the United
2 States having jurisdiction over cases under chapter
3 11 of title 11, United States Code. Pending an adju-
4 dication under this section such court shall stay, and
5 upon appointment by it of the Secretary as trustee,
6 such court shall continue the stay of, any pending
7 mortgage foreclosure, equity receivership, or other
8 proceeding to reorganize, conserve, or liquidate the
9 plan, the sponsor, or property of such plan or spon-
10 sor, and any other suit against any receiver, conser-
11 vator, or trustee of the plan, the sponsor, or prop-
12 erty of the plan or sponsor. Pending such adjudica-
13 tion and upon the appointment by it of the Sec-
14 retary as trustee, the court may stay any proceeding
15 to enforce a lien against property of the plan or the
16 sponsor or any other suit against the plan or the
17 sponsor.

18 “(2) VENUE.—An action under this section
19 may be brought in the judicial district where the
20 sponsor or the plan administrator resides or does
21 business or where any asset of the plan is situated.
22 A district court in which such action is brought may
23 issue process with respect to such action in any
24 other judicial district.

1 “(g) PERSONNEL.—In accordance with regulations
2 which shall be prescribed by the Secretary through nego-
3 tiated rulemaking, the Secretary shall appoint, retain, and
4 compensate accountants, actuaries, and other professional
5 service personnel as may be necessary in connection with
6 the Secretary’s service as trustee under this section.

7 **“SEC. 811. STATE ASSESSMENT AUTHORITY.**

8 “(a) IN GENERAL.—Notwithstanding section 514, a
9 State may impose by law a contribution tax on an associa-
10 tion health plan described in section 806(a)(2), if the plan
11 commenced operations in such State after the date of the
12 enactment of the Small Business Access and Choice for
13 Entrepreneurs Act of 1999.

14 “(b) CONTRIBUTION TAX.—For purposes of this sec-
15 tion, the term ‘contribution tax’ imposed by a State on
16 an association health plan means any tax imposed by such
17 State if—

18 “(1) such tax is computed by applying a rate to
19 the amount of premiums or contributions, with re-
20 spect to individuals covered under the plan who are
21 residents of such State, which are received by the
22 plan from participating employers located in such
23 State or from such individuals;

24 “(2) the rate of such tax does not exceed the
25 rate of any tax imposed by such State on premiums

1 or contributions received by insurers or health main-
2 tenance organizations for health insurance coverage
3 offered in such State in connection with a group
4 health plan;

5 “(3) such tax is otherwise nondiscriminatory;
6 and

7 “(4) the amount of any such tax assessed on
8 the plan is reduced by the amount of any tax or as-
9 sessment otherwise imposed by the State on pre-
10 miums, contributions, or both received by insurers or
11 health maintenance organizations for health insur-
12 ance coverage, aggregate excess/stop loss insurance
13 (as defined in section 806(g)(1)), specific excess/
14 stop loss insurance (as defined in section 806(g)(2)),
15 other insurance related to the provision of medical
16 care under the plan, or any combination thereof pro-
17 vided by such insurers or health maintenance organi-
18 zations in such State in connection with such plan.

19 **“SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.**

20 “(a) DEFINITIONS.—For purposes of this part—

21 “(1) GROUP HEALTH PLAN.—The term ‘group
22 health plan’ has the meaning provided in section
23 733(a)(1) (after applying subsection (b) of this sec-
24 tion).

1 “(2) MEDICAL CARE.—The term ‘medical care’
2 has the meaning provided in section 733(a)(2).

3 “(3) HEALTH INSURANCE COVERAGE.—The
4 term ‘health insurance coverage’ has the meaning
5 provided in section 733(b)(1).

6 “(4) HEALTH INSURANCE ISSUER.—The term
7 ‘health insurance issuer’ has the meaning provided
8 in section 733(b)(2).

9 “(5) APPLICABLE AUTHORITY.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the term ‘applicable author-
12 ity’ means, in connection with an association
13 health plan—

14 “(i) the State recognized pursuant to
15 subsection (c) of section 506 as the State
16 to which authority has been delegated in
17 connection with such plan; or

18 “(ii) if there if no State referred to in
19 clause (i), the Secretary.

20 “(B) EXCEPTIONS.—

21 “(i) JOINT AUTHORITIES.—Where
22 such term appears in section 808(3), sec-
23 tion 807(e) (in the first instance), section
24 809(a) (in the second instance), section
25 809(a) (in the fourth instance), and sec-

1 tion 809(b)(1), such term means, in con-
2 nection with an association health plan, the
3 Secretary and the State referred to in sub-
4 paragraph (A)(i) (if any) in connection
5 with such plan.

6 “(ii) REGULATORY AUTHORITIES.—

7 Where such term appears in section 802(a)
8 (in the first instance), section 802(d), sec-
9 tion 802(e), section 803(d), section
10 805(a)(5), section 806(a)(2), section
11 806(b), section 806(c), section 806(d),
12 paragraphs (1)(A) and (2)(A) of section
13 806(g), section 806(h), section 806(i), sec-
14 tion 806(j), section 807(a) (in the second
15 instance), section 807(b), section 807(d),
16 section 807(e) (in the second instance),
17 section 808 (in the matter after paragraph
18 (3)), and section 809(a) (in the third in-
19 stance), such term means, in connection
20 with an association health plan, the Sec-
21 retary.

22 “(6) HEALTH STATUS-RELATED FACTOR.—The
23 term ‘health status-related factor’ has the meaning
24 provided in section 733(d)(2).

25 “(7) INDIVIDUAL MARKET.—

1 “(A) IN GENERAL.—The term ‘individual
2 market’ means the market for health insurance
3 coverage offered to individuals other than in
4 connection with a group health plan.

5 “(B) TREATMENT OF VERY SMALL
6 GROUPS.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), such term includes coverage offered in
9 connection with a group health plan that
10 has fewer than 2 participants as current
11 employees or participants described in sec-
12 tion 732(d)(3) on the first day of the plan
13 year.

14 “(ii) STATE EXCEPTION.—Clause (i)
15 shall not apply in the case of health insur-
16 ance coverage offered in a State if such
17 State regulates the coverage described in
18 such clause in the same manner and to the
19 same extent as coverage in the small group
20 market (as defined in section 2791(e)(5) of
21 the Public Health Service Act) is regulated
22 by such State.

23 “(8) PARTICIPATING EMPLOYER.—The term
24 ‘participating employer’ means, in connection with
25 an association health plan, any employer, if any indi-

1 vidual who is an employee of such employer, a part-
2 ner in such employer, or a self-employed individual
3 who is such employer (or any dependent, as defined
4 under the terms of the plan, of such individual) is
5 or was covered under such plan in connection with
6 the status of such individual as such an employee,
7 partner, or self-employed individual in relation to the
8 plan.

9 “(9) APPLICABLE STATE AUTHORITY.—The
10 term ‘applicable State authority’ means, with respect
11 to a health insurance issuer in a State, the State in-
12 surance commissioner or official or officials des-
13 ignated by the State to enforce the requirements of
14 title XXVII of the Public Health Service Act for the
15 State involved with respect to such issuer.

16 “(10) QUALIFIED ACTUARY.—The term ‘quali-
17 fied actuary’ means an individual who is a member
18 of the American Academy of Actuaries or meets
19 such reasonable standards and qualifications as the
20 Secretary may provide by regulation through nego-
21 tiated rulemaking.

22 “(11) AFFILIATED MEMBER.—The term ‘affili-
23 ated member’ means, in connection with a sponsor—

1 “(A) a person who is otherwise eligible to
2 be a member of the sponsor but who elects an
3 affiliated status with the sponsor,

4 “(B) in the case of a sponsor with mem-
5 bers which consist of associations, a person who
6 is a member of any such association and elects
7 an affiliated status with the sponsor, or

8 “(C) in the case of an association health
9 plan in existence on the date of the enactment
10 of the Small Business Access and Choice for
11 Entrepreneurs Act of 1999, a person eligible to
12 be a member of the sponsor or one of its mem-
13 ber associations.

14 “(12) LARGE EMPLOYER.—The term ‘large em-
15 ployer’ means, in connection with a group health
16 plan with respect to a plan year, an employer who
17 employed an average of at least 51 employees on
18 business days during the preceding calendar year
19 and who employs at least 2 employees on the first
20 day of the plan year.

21 “(13) SMALL EMPLOYER.—The term ‘small em-
22 ployer’ means, in connection with a group health
23 plan with respect to a plan year, an employer who
24 is not a large employer.

25 “(b) RULES OF CONSTRUCTION.—

1 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
2 poses of determining whether a plan, fund, or pro-
3 gram is an employee welfare benefit plan which is an
4 association health plan, and for purposes of applying
5 this title in connection with such plan, fund, or pro-
6 gram so determined to be such an employee welfare
7 benefit plan—

8 “(A) in the case of a partnership, the term
9 ‘employer’ (as defined in section (3)(5)) in-
10 cludes the partnership in relation to the part-
11 ners, and the term ‘employee’ (as defined in
12 section (3)(6)) includes any partner in relation
13 to the partnership; and

14 “(B) in the case of a self-employed indi-
15 vidual, the term ‘employer’ (as defined in sec-
16 tion 3(5)) and the term ‘employee’ (as defined
17 in section 3(6)) shall include such individual.

18 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
19 AS EMPLOYEE WELFARE BENEFIT PLANS.—In the
20 case of any plan, fund, or program which was estab-
21 lished or is maintained for the purpose of providing
22 medical care (through the purchase of insurance or
23 otherwise) for employees (or their dependents) cov-
24 ered thereunder and which demonstrates to the Sec-
25 retary that all requirements for certification under

1 this part would be met with respect to such plan,
2 fund, or program if such plan, fund, or program
3 were a group health plan, such plan, fund, or pro-
4 gram shall be treated for purposes of this title as an
5 employee welfare benefit plan on and after the date
6 of such demonstration.”.

7 (b) CONFORMING AMENDMENTS TO PREEMPTION
8 RULES.—

9 (1) Section 514(b)(6) of such Act (29 U.S.C.
10 1144(b)(6)) is amended by adding at the end the
11 following new subparagraph:

12 “(E) The preceding subparagraphs of this paragraph
13 do not apply with respect to any State law in the case
14 of an association health plan which is certified under part
15 8.”.

16 (2) Section 514 of such Act (29 U.S.C. 1144)
17 is amended—

18 (A) in subsection (b)(4), by striking “Sub-
19 section (a)” and inserting “Subsections (a) and
20 (d)”;

21 (B) in subsection (b)(5), by striking “sub-
22 section (a)” in subparagraph (A) and inserting
23 “subsection (a) of this section and subsections
24 (a)(2)(B) and (b) of section 805”, and by strik-
25 ing “subsection (a)” in subparagraph (B) and

1 inserting “subsection (a) of this section or sub-
2 section (a)(2)(B) or (b) of section 805”;

3 (C) by redesignating subsection (d) as sub-
4 section (e); and

5 (D) by inserting after subsection (c) the
6 following new subsection:

7 “(d)(1) Except as provided in subsection (b)(4), the
8 provisions of this title shall supersede any and all State
9 laws insofar as they may now or hereafter preclude, or
10 have the effect of precluding, a health insurance issuer
11 from offering health insurance coverage in connection with
12 an association health plan which is certified under part
13 8.

14 “(2) Except as provided in paragraphs (4) and (5)
15 of subsection (b) of this section—

16 “(A) In any case in which health insurance cov-
17 erage of any policy type is offered under an associa-
18 tion health plan certified under part 8 to a partici-
19 pating employer operating in such State, the provi-
20 sions of this title shall supersede any and all laws
21 of such State insofar as they may preclude a health
22 insurance issuer from offering health insurance cov-
23 erage of the same policy type to other employers op-
24 erating in the State which are eligible for coverage
25 under such association health plan, whether or not

1 such other employers are participating employers in
2 such plan.

3 “(B) In any case in which health insurance cov-
4 erage of any policy type is offered under an associa-
5 tion health plan in a State and the filing, with the
6 applicable State authority, of the policy form in con-
7 nection with such policy type is approved by such
8 State authority, the provisions of this title shall su-
9 persede any and all laws of any other State in which
10 health insurance coverage of such type is offered, in-
11 sofar as they may preclude, upon the filing in the
12 same form and manner of such policy form with the
13 applicable State authority in such other State, the
14 approval of the filing in such other State.

15 “(3) For additional provisions relating to association
16 health plans, see subsections (a)(2)(B) and (b) of section
17 805.

18 “(4) For purposes of this subsection, the term ‘asso-
19 ciation health plan’ has the meaning provided in section
20 801(a), and the terms ‘health insurance coverage’, ‘par-
21 ticipating employer’, and ‘health insurance issuer’ have
22 the meanings provided such terms in section 811, respec-
23 tively.”.

24 (3) Section 514(b)(6)(A) of such Act (29
25 U.S.C. 1144(b)(6)(A)) is amended—

1 (A) in clause (i)(II), by striking “and” at
2 the end;

3 (B) in clause (ii), by inserting “and which
4 does not provide medical care (within the mean-
5 ing of section 733(a)(2)),” after “arrange-
6 ment,”, and by striking “title.” and inserting
7 “title, and”; and

8 (C) by adding at the end the following new
9 clause:

10 “(iii) subject to subparagraph (E), in the case
11 of any other employee welfare benefit plan which is
12 a multiple employer welfare arrangement and which
13 provides medical care (within the meaning of section
14 733(a)(2)), any law of any State which regulates in-
15 surance may apply.”.

16 (4) Section 514(e) of such Act (as redesignated
17 by paragraph (2)(C)) is amended—

18 (A) by striking “Nothing” and inserting
19 “(1) Except as provided in paragraph (2), noth-
20 ing”; and

21 (B) by adding at the end the following new
22 paragraph:

23 “(2) Nothing in any other provision of law enacted
24 on or after the date of the enactment of the Small Busi-
25 ness Access and Choice for Entrepreneurs Act of 1999

1 shall be construed to alter, amend, modify, invalidate, im-
2 pair, or supersede any provision of this title, except by
3 specific cross-reference to the affected section.”.

4 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act
5 (29 U.S.C. 102(16)(B)) is amended by adding at the end
6 the following new sentence: “Such term also includes a
7 person serving as the sponsor of an association health plan
8 under part 8.”.

9 (d) DISCLOSURE OF SOLVENCY PROTECTIONS RE-
10 LATED TO SELF-INSURED AND FULLY INSURED OPTIONS
11 UNDER ASSOCIATION HEALTH PLANS.—Section 102(b)
12 of such Act (29 U.S.C. 102(b)) is amended by adding at
13 the end the following: “An association health plan shall
14 include in its summary plan description, in connection
15 with each benefit option, a description of the form of sol-
16 vency or guarantee fund protection secured pursuant to
17 this Act or applicable State law, if any.”.

18 (e) SAVINGS CLAUSE.—Section 731(c) of such Act is
19 amended by inserting “or part 8” after “this part”.

20 (f) REPORT TO THE CONGRESS REGARDING CERTIFI-
21 CATION OF SELF-INSURED ASSOCIATION HEALTH
22 PLANS.—Not later than January 1, 2004, the Secretary
23 of Labor shall report to the Committee on Education and
24 the Workforce of the House of Representatives and the
25 Committee on Health, Education, Labor, and Pensions of

1 the Senate the effect association health plans have had,
 2 if any, on reducing the number of uninsured individuals.

3 (g) CLERICAL AMENDMENT.—The table of contents
 4 in section 1 of the Employee Retirement Income Security
 5 Act of 1974 is amended by inserting after the item relat-
 6 ing to section 734 the following new items:

“PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

- “Sec. 801. Association health plans.
- “Sec. 802. Certification of association health plans.
- “Sec. 803. Requirements relating to sponsors and boards of trustees.
- “Sec. 804. Participation and coverage requirements.
- “Sec. 805. Other requirements relating to plan documents, contribution rates,
and benefit options.
- “Sec. 806. Maintenance of reserves and provisions for solvency for plans pro-
viding health benefits in addition to health insurance coverage.
- “Sec. 807. Requirements for application and related requirements.
- “Sec. 808. Notice requirements for voluntary termination.
- “Sec. 809. Corrective actions and mandatory termination.
- “Sec. 810. Trusteeship by the Secretary of insolvent association health plans
providing health benefits in addition to health insurance cov-
erage.
- “Sec. 811. State assessment authority.
- “Sec. 812. Definitions and rules of construction.”.

7 **SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-**
 8 **PLOYER ARRANGEMENTS.**

9 Section 3(40)(B) of the Employee Retirement Income
 10 Security Act of 1974 (29 U.S.C. 1002(40)(B)) is
 11 amended—

12 (1) in clause (i), by inserting “for any plan year
 13 of any such plan, or any fiscal year of any such
 14 other arrangement;” after “single employer”, and by
 15 inserting “during such year or at any time during
 16 the preceding 1-year period” after “control group”;

17 (2) in clause (iii)—

1 (A) by striking “common control shall not
2 be based on an interest of less than 25 percent”
3 and inserting “an interest of greater than 25
4 percent may not be required as the minimum
5 interest necessary for common control”; and

6 (B) by striking “similar to” and inserting
7 “consistent and coextensive with”;

8 (3) by redesignating clauses (iv) and (v) as
9 clauses (v) and (vi), respectively; and

10 (4) by inserting after clause (iii) the following
11 new clause:

12 “(iv) in determining, after the application of
13 clause (i), whether benefits are provided to employ-
14 ees of two or more employers, the arrangement shall
15 be treated as having only one participating employer
16 if, after the application of clause (i), the number of
17 individuals who are employees and former employees
18 of any one participating employer and who are cov-
19 ered under the arrangement is greater than 75 per-
20 cent of the aggregate number of all individuals who
21 are employees or former employees of participating
22 employers and who are covered under the arrange-
23 ment;”.

1 **SEC. 4. CLARIFICATION OF TREATMENT OF CERTAIN COL-**
2 **LECTIVELY BARGAINED ARRANGEMENTS.**

3 (a) IN GENERAL.—Section 3(40)(A)(i) of the Em-
4 ployee Retirement Income Security Act of 1974 (29
5 U.S.C. 1002(40)(A)(i)) is amended to read as follows:

6 “(i)(I) under or pursuant to one or more collec-
7 tive bargaining agreements which are reached pursu-
8 ant to collective bargaining described in section 8(d)
9 of the National Labor Relations Act (29 U.S.C.
10 158(d)) or paragraph Fourth of section 2 of the
11 Railway Labor Act (45 U.S.C. 152, paragraph
12 Fourth) or which are reached pursuant to labor-
13 management negotiations under similar provisions of
14 State public employee relations laws, and (II) in ac-
15 cordance with subparagraphs (C), (D), and (E);”.

16 (b) LIMITATIONS.—Section 3(40) of such Act (29
17 U.S.C. 1002(40)) is amended by adding at the end the
18 following new subparagraphs:

19 “(C) For purposes of subparagraph (A)(i)(II), a plan
20 or other arrangement shall be treated as established or
21 maintained in accordance with this subparagraph only if
22 the following requirements are met:

23 “(i) The plan or other arrangement, and the
24 employee organization or any other entity sponsoring
25 the plan or other arrangement, do not—

1 “(I) utilize the services of any licensed in-
2 surance agent or broker for soliciting or enroll-
3 ing employers or individuals as participating
4 employers or covered individuals under the plan
5 or other arrangement; or

6 “(II) pay any type of compensation to a
7 person, other than a full time employee of the
8 employee organization (or a member of the or-
9 ganization to the extent provided in regulations
10 prescribed by the Secretary through negotiated
11 rulemaking), that is related either to the volume
12 or number of employers or individuals solicited
13 or enrolled as participating employers or cov-
14 ered individuals under the plan or other ar-
15 rangement, or to the dollar amount or size of
16 the contributions made by participating employ-
17 ers or covered individuals to the plan or other
18 arrangement;

19 except to the extent that the services used by the
20 plan, arrangement, organization, or other entity con-
21 sist solely of preparation of documents necessary for
22 compliance with the reporting and disclosure re-
23 quirements of part 1 or administrative, investment,
24 or consulting services unrelated to solicitation or en-
25 rollment of covered individuals.

1 “(ii) As of the end of the preceding plan year,
2 the number of covered individuals under the plan or
3 other arrangement who are neither—

4 “(I) employed within a bargaining unit
5 covered by any of the collective bargaining
6 agreements with a participating employer (nor
7 covered on the basis of an individual’s employ-
8 ment in such a bargaining unit); nor

9 “(II) present employees (or former employ-
10 ees who were covered while employed) of the
11 sponsoring employee organization, of an em-
12 ployer who is or was a party to any of the col-
13 lective bargaining agreements, or of the plan or
14 other arrangement or a related plan or arrange-
15 ment (nor covered on the basis of such present
16 or former employment);

17 does not exceed 15 percent of the total number of
18 individuals who are covered under the plan or ar-
19 rangement and who are present or former employees
20 who are or were covered under the plan or arrange-
21 ment pursuant to a collective bargaining agreement
22 with a participating employer. The requirements of
23 the preceding provisions of this clause shall be treat-
24 ed as satisfied if, as of the end of the preceding plan
25 year, such covered individuals are comprised solely

1 of individuals who were covered individuals under
2 the plan or other arrangement as of the date of the
3 enactment of the Small Business Access and Choice
4 for Entrepreneurs Act of 1999 and, as of the end of
5 the preceding plan year, the number of such covered
6 individuals does not exceed 25 percent of the total
7 number of present and former employees enrolled
8 under the plan or other arrangement.

9 “(iii) The employee organization or other entity
10 sponsoring the plan or other arrangement certifies
11 to the Secretary each year, in a form and manner
12 which shall be prescribed by the Secretary through
13 negotiated rulemaking that the plan or other ar-
14 rangement meets the requirements of clauses (i) and
15 (ii).

16 “(D) For purposes of subparagraph (A)(i)(II), a plan
17 or arrangement shall be treated as established or main-
18 tained in accordance with this subparagraph only if—

19 “(i) all of the benefits provided under the plan
20 or arrangement consist of health insurance coverage;
21 or

22 “(ii)(I) the plan or arrangement is a multiem-
23 ployer plan; and

24 “(II) the requirements of clause (B) of the pro-
25 viso to clause (5) of section 302(c) of the Labor

1 Management Relations Act, 1947 (29 U.S.C.
2 186(c)) are met with respect to such plan or other
3 arrangement.

4 “(E) For purposes of subparagraph (A)(i)(II), a plan
5 or arrangement shall be treated as established or main-
6 tained in accordance with this subparagraph only if—

7 “(i) the plan or arrangement is in effect as of
8 the date of the enactment of the Small Business Ac-
9 cess and Choice for Entrepreneurs Act of 1999; or

10 “(ii) the employee organization or other entity
11 sponsoring the plan or arrangement—

12 “(I) has been in existence for at least 3
13 years; or

14 “(II) demonstrates to the satisfaction of
15 the Secretary that the requirements of subpara-
16 graphs (C) and (D) are met with respect to the
17 plan or other arrangement.”.

18 (c) CONFORMING AMENDMENTS TO DEFINITIONS OF
19 PARTICIPANT AND BENEFICIARY.—Section 3(7) of such
20 Act (29 U.S.C. 1002(7)) is amended by adding at the end
21 the following new sentence: “Such term includes an indi-
22 vidual who is a covered individual described in paragraph
23 (40)(C)(ii).”.

1 **SEC. 5. ENFORCEMENT PROVISIONS RELATING TO ASSO-**
2 **CIATION HEALTH PLANS.**

3 (a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL
4 MISREPRESENTATIONS.—Section 501 of the Employee
5 Retirement Income Security Act of 1974 (29 U.S.C. 1131)
6 is amended—

7 (1) by inserting “(a)” after “SEC. 501.”; and

8 (2) by adding at the end the following new sub-
9 section:

10 “(b) Any person who willfully falsely represents, to
11 any employee, any employee’s beneficiary, any employer,
12 the Secretary, or any State, a plan or other arrangement
13 established or maintained for the purpose of offering or
14 providing any benefit described in section 3(1) to employ-
15 ees or their beneficiaries as—

16 “(1) being an association health plan which has
17 been certified under part 8;

18 “(2) having been established or maintained
19 under or pursuant to one or more collective bar-
20 gaining agreements which are reached pursuant to
21 collective bargaining described in section 8(d) of the
22 National Labor Relations Act (29 U.S.C. 158(d)) or
23 paragraph Fourth of section 2 of the Railway Labor
24 Act (45 U.S.C. 152, paragraph Fourth) or which are
25 reached pursuant to labor-management negotiations

1 under similar provisions of State public employee re-
2 lations laws; or

3 “(3) being a plan or arrangement with respect
4 to which the requirements of subparagraph (C), (D),
5 or (E) of section 3(40) are met;

6 shall, upon conviction, be imprisoned not more than 5
7 years, be fined under title 18, United States Code, or
8 both.”.

9 (b) CEASE ACTIVITIES ORDERS.—Section 502 of
10 such Act (29 U.S.C. 1132) is amended by adding at the
11 end the following new subsection:

12 “(n)(1) Subject to paragraph (2), upon application
13 by the Secretary showing the operation, promotion, or
14 marketing of an association health plan (or similar ar-
15 rangement providing benefits consisting of medical care
16 (as defined in section 733(a)(2))) that—

17 “(A) is not certified under part 8, is subject
18 under section 514(b)(6) to the insurance laws of any
19 State in which the plan or arrangement offers or
20 provides benefits, and is not licensed, registered, or
21 otherwise approved under the insurance laws of such
22 State; or

23 “(B) is an association health plan certified
24 under part 8 and is not operating in accordance with
25 the requirements under part 8 for such certification,

1 a district court of the United States shall enter an order
2 requiring that the plan or arrangement cease activities.

3 “(2) Paragraph (1) shall not apply in the case of an
4 association health plan or other arrangement if the plan
5 or arrangement shows that—

6 “(A) all benefits under it referred to in para-
7 graph (1) consist of health insurance coverage; and

8 “(B) with respect to each State in which the
9 plan or arrangement offers or provides benefits, the
10 plan or arrangement is operating in accordance with
11 applicable State laws that are not superseded under
12 section 514.

13 “(3) The court may grant such additional equitable
14 relief, including any relief available under this title, as it
15 deems necessary to protect the interests of the public and
16 of persons having claims for benefits against the plan.”.

17 (c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—
18 Section 503 of such Act (29 U.S.C. 1133) (as amended
19 by title I) is amended by adding at the end the following
20 new subsection:

21 “(c) ASSOCIATION HEALTH PLANS.—The terms of
22 each association health plan which is or has been certified
23 under part 8 shall require the board of trustees or the
24 named fiduciary (as applicable) to ensure that the require-

1 ments of this section are met in connection with claims
2 filed under the plan.”.

3 **SEC. 6. COOPERATION BETWEEN FEDERAL AND STATE AU-**
4 **THORITIES.**

5 Section 506 of the Employee Retirement Income Se-
6 curity Act of 1974 (29 U.S.C. 1136) is amended by adding
7 at the end the following new subsection:

8 “(c) RESPONSIBILITY OF STATES WITH RESPECT TO
9 ASSOCIATION HEALTH PLANS.—

10 “(1) AGREEMENTS WITH STATES.—A State
11 may enter into an agreement with the Secretary for
12 delegation to the State of some or all of—

13 “(A) the Secretary’s authority under sec-
14 tions 502 and 504 to enforce the requirements
15 for certification under part 8;

16 “(B) the Secretary’s authority to certify
17 association health plans under part 8 in accord-
18 ance with regulations of the Secretary applica-
19 ble to certification under part 8; or

20 “(C) any combination of the Secretary’s
21 authority authorized to be delegated under sub-
22 paragraphs (A) and (B).

23 “(2) DELEGATIONS.—Any department, agency,
24 or instrumentality of a State to which authority is
25 delegated pursuant to an agreement entered into

1 under this paragraph may, if authorized under State
2 law and to the extent consistent with such agree-
3 ment, exercise the powers of the Secretary under
4 this title which relate to such authority.

5 “(3) RECOGNITION OF PRIMARY DOMICILE
6 STATE.—In entering into any agreement with a
7 State under subparagraph (A), the Secretary shall
8 ensure that, as a result of such agreement and all
9 other agreements entered into under subparagraph
10 (A), only one State will be recognized, with respect
11 to any particular association health plan, as the
12 State to which all authority has been delegated pur-
13 suant to such agreements in connection with such
14 plan. In carrying out this paragraph, the Secretary
15 shall take into account the places of residence of the
16 participants and beneficiaries under the plan and the
17 State in which the trust is maintained.”.

18 **SEC. 7. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**
19 **RULES.**

20 (a) **EFFECTIVE DATE.**—The amendments made by
21 sections 2, 5, and 6 shall take effect on January 1, 2001.
22 The amendments made by sections 3 and 4 shall take ef-
23 fect on the date of the enactment of this Act. The Sec-
24 retary of Labor shall first issue all regulations necessary
25 to carry out the amendments made by this subtitle before

1 January 1, 2001. Such regulations shall be issued through
2 negotiated rulemaking.

3 (b) EXCEPTION.—Section 801(a)(2) of the Employee
4 Retirement Income Security Act of 1974 (added by section
5 2) does not apply in connection with an association health
6 plan (certified under part 8 of subtitle B of title I of such
7 Act) existing on the date of the enactment of this Act,
8 if no benefits provided thereunder as of the date of the
9 enactment of this Act consist of health insurance coverage
10 (as defined in section 733(b)(1) of such Act).

11 (c) TREATMENT OF CERTAIN EXISTING HEALTH
12 BENEFITS PROGRAMS.—

13 (1) IN GENERAL.—In any case in which, as of
14 the date of the enactment of this Act, an arrange-
15 ment is maintained in a State for the purpose of
16 providing benefits consisting of medical care for the
17 employees and beneficiaries of its participating em-
18 ployers, at least 200 participating employers make
19 contributions to such arrangement, such arrange-
20 ment has been in existence for at least 10 years, and
21 such arrangement is licensed under the laws of one
22 or more States to provide such benefits to its par-
23 ticipating employers, upon the filing with the appli-
24 cable authority (as defined in section 812(a)(5) of
25 the Employee Retirement Income Security Act of

1 1974 (as amended by this Act)) by the arrangement
2 of an application for certification of the arrangement
3 under part 8 of subtitle B of title I of such Act—

4 (A) such arrangement shall be deemed to
5 be a group health plan for purposes of title I
6 of such Act;

7 (B) the requirements of sections 801(a)(1)
8 and 803(a)(1) of the Employee Retirement In-
9 come Security Act of 1974 shall be deemed met
10 with respect to such arrangement;

11 (C) the requirements of section 803(b) of
12 such Act shall be deemed met, if the arrange-
13 ment is operated by a board of directors
14 which—

15 (i) is elected by the participating em-
16 ployers, with each employer having one
17 vote; and

18 (ii) has complete fiscal control over
19 the arrangement and which is responsible
20 for all operations of the arrangement;

21 (D) the requirements of section 804(a) of
22 such Act shall be deemed met with respect to
23 such arrangement; and

24 (E) the arrangement may be certified by
25 any applicable authority with respect to its op-

1 erations in any State only if it operates in such
2 State on the date of certification.

3 The provisions of this subsection shall cease to apply
4 with respect to any such arrangement at such time
5 after the date of the enactment of this Act as the
6 applicable requirements of this subsection are not
7 met with respect to such arrangement.

8 (2) DEFINITIONS.—For purposes of this sub-
9 section, the terms “group health plan”, “medical
10 care”, and “participating employer” shall have the
11 meanings provided in section 812 of the Employee
12 Retirement Income Security Act of 1974, except
13 that the reference in paragraph (7) of such section
14 to an “association health plan” shall be deemed a
15 reference to an arrangement referred to in this sub-
16 section.

○