

107TH CONGRESS
1ST SESSION

H. R. 1774

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

MAY 9, 2001

Mr. FLETCHER (for himself, Mr. DOOLEY of California, Mr. HASTERT, Mr. ARMEY, Ms. VELÁZQUEZ, Mr. FROST, Mr. BAKER, Mr. BALLENGER, Mr. BRYANT, Mr. CALVERT, Mr. CANTOR, Mr. COLLINS, Mr. COOKSEY, Mr. CUNNINGHAM, Mr. DEAL of Georgia, Mr. EHLERS, Mrs. EMERSON, Mr. GONZALEZ, Mr. GOSS, Mr. GREENWOOD, Ms. HART, Mr. HERGER, Mr. HILLEARY, Mrs. KELLY, Mr. KOLBE, Mr. LIPINSKI, Mr. LUCAS of Kentucky, Mr. MCHUGH, Mr. MALONEY of Connecticut, Mr. MANZULLO, Mr. GARY G. MILLER of California, Mr. MORAN of Virginia, Mrs. NORTHUP, Mr. OSE, Mr. PENCE, Mr. PETRI, Ms. PRYCE of Ohio, Mr. REHBERG, Ms. SANCHEZ, Mr. SCHAFER, Mr. SESSIONS, Mr. SHAYS, Mr. SMITH of Washington, Mr. UPTON, Mr. WAMP, Mr. WATKINS, Mr. WELDON of Florida, and Mr. WYNN) 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,*

4 SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.

8 “PART 8—RULES GOVERNING ASSOCIATION HEALTH
9 PLANS

11 “(a) IN GENERAL.—For purposes of this part, the
12 term ‘association health plan’ means a group health plan
13 whose sponsor is (or is deemed under this part to be) de-
14 scribed in subsection (b).

“(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that

1 operates on a cooperative basis (within the meaning
2 of section 1381 of the Internal Revenue Code of
3 1986)), for substantial purposes other than that of
4 obtaining or providing medical care;

5 “(2) is established as a permanent entity which
6 receives the active support of its members and col-
7 lects from its members on a periodic basis dues or
8 payments necessary to maintain eligibility for mem-
9 bership in the sponsor; and

10 “(3) does not condition membership, such dues
11 or payments, or coverage under the plan on the
12 basis of health status-related factors with respect to
13 the employees of its members (or affiliated mem-
14 bers), or the dependents of such employees, and does
15 not condition such dues or payments on the basis of
16 group health plan participation.

17 Any sponsor consisting of an association of entities which
18 meet the requirements of paragraphs (1), (2), and (3)
19 shall be deemed to be a sponsor described in this sub-
20 section.

21 **“SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH**
22 **PLANS.**

23 “(a) IN GENERAL.—The applicable authority shall
24 prescribe by regulation, through negotiated rulemaking, a
25 procedure under which, subject to subsection (b), the ap-

1 plicable authority shall certify association health plans
2 which apply for certification as meeting the requirements
3 of this part.

4 “(b) STANDARDS.—Under the procedure prescribed
5 pursuant to subsection (a), in the case of an association
6 health plan that provides at least one benefit option which
7 does not consist of health insurance coverage, the applica-
8 ble authority shall certify such plan as meeting the re-
9 quirements of this part only if the applicable authority is
10 satisfied that the applicable requirements of this part are
11 met (or, upon the date on which the plan is to commence
12 operations, will be met) with respect to the plan.

13 “(c) REQUIREMENTS APPLICABLE TO CERTIFIED
14 PLANS.—An association health plan with respect to which
15 certification under this part is in effect shall meet the ap-
16 plicable requirements of this part, effective on the date
17 of certification (or, if later, on the date on which the plan
18 is to commence operations).

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

23 “(e) CLASS CERTIFICATION FOR FULLY INSURED
24 PLANS.—The applicable authority shall establish a class
25 certification procedure for association health plans under

1 which all benefits consist of health insurance coverage.
2 Under such procedure, the applicable authority shall pro-
3 vide for the granting of certification under this part to
4 the plans in each class of such association health plans
5 upon appropriate filing under such procedure in connec-
6 tion with plans in such class and payment of the pre-
7 scribed fee under section 807(a).

8 “(f) CERTIFICATION OF SELF-INSURED ASSOCIATION
9 HEALTH PLANS.—An association health plan which offers
10 one or more benefit options which do not consist of health
11 insurance coverage may be certified under this part only
12 if such plan consists of any of the following:

13 “(1) a plan which offered such coverage on the
14 date of the enactment of the Small Business Access
15 and Choice for Entrepreneurs Act of 2001,

16 “(2) a plan under which the sponsor does not
17 restrict membership to one or more trades and busi-
18 nesses or industries and whose eligible participating
19 employers represent a broad cross-section of trades
20 and businesses or industries, or

21 “(3) a plan whose eligible participating employ-
22 ers represent one or more trades or businesses, or
23 one or more industries, which have been indicated as
24 having average or above-average health insurance
25 risk or health claims experience by reason of State

1 rate filings, denials of coverage, proposed premium
2 rate levels, and other means demonstrated by such
3 plan in accordance with regulations which the Sec-
4 retary shall prescribe through negotiated rule-
5 making, including (but not limited to) the following:
6 agriculture; equipment and automobile dealerships;
7 barbering and cosmetology; beverage wholesaling/dis-
8 tributing; certified public accounting practices; child
9 care; construction; dance, theatrical, and orchestra
10 productions; disinfecting and pest control; eating
11 and drinking establishments; fishing; hospitals; labor
12 organizations; logging; manufacturing (metals); min-
13 ing; medical and dental practices; medical labora-
14 tories; sanitary services; transportation (local and
15 freight); and warehousing.

16 **“SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND**
17 **BOARDS OF TRUSTEES.**

18 “(a) SPONSOR.—The requirements of this subsection
19 are met with respect to an association health plan if the
20 sponsor has met (or is deemed under this part to have
21 met) the requirements of section 801(b) for a continuous
22 period of not less than 3 years ending with the date of
23 the application for certification under this part.

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

4 “(1) FISCAL CONTROL.—The plan is operated,
5 pursuant to a trust agreement, by a board of trust-
6 ees which has complete fiscal control over the plan
7 and which is responsible for all operations of the
8 plan.

9 “(2) RULES OF OPERATION AND FINANCIAL
10 CONTROLS.—The board of trustees has in effect
11 rules of operation and financial controls, based on a
12 3-year plan of operation, adequate to carry out the
13 terms of the plan and to meet all requirements of
14 this title applicable to the plan.

15 “(3) RULES GOVERNING RELATIONSHIP TO
16 PARTICIPATING EMPLOYERS AND TO CONTRAC-
17 TORS.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraphs (B) and (C), the members of the
20 board of trustees are individuals selected from
21 individuals who are the owners, officers, direc-
22 tors, or employees of the participating employ-
23 ers or who are partners in the participating em-
24 ployers and actively participate in the business.

25 “(B) LIMITATION.—

1 “(i) GENERAL RULE.—Except as pro-
2 vided in clauses (ii) and (iii), no such
3 member is an owner, officer, director, or
4 employee of, or partner in, a contract ad-
5 ministrator or other service provider to the
6 plan.

7 “(ii) LIMITED EXCEPTION FOR PRO-
8 VIDERS OF SERVICES SOLELY ON BEHALF
9 OF THE SPONSOR.—Officers or employees
10 of a sponsor which is a service provider
11 (other than a contract administrator) to
12 the plan may be members of the board if
13 they constitute not more than 25 percent
14 of the membership of the board and they
15 do not provide services to the plan other
16 than on behalf of the sponsor.

17 “(iii) TREATMENT OF PROVIDERS OF
18 MEDICAL CARE.—In the case of a sponsor
19 which is an association whose membership
20 consists primarily of providers of medical
21 care, clause (i) shall not apply in the case
22 of any service provider described in sub-
23 paragraph (A) who is a provider of medical
24 care under the plan.

1 “(C) CERTAIN PLANS EXCLUDED.—Sub-
2 paragraph (A) shall not apply to an association
3 health plan which is in existence on the date of
4 the enactment of the Small Business Access
5 and Choice for Entrepreneurs Act of 2001.

6 “(D) SOLE AUTHORITY.—The board has
7 sole authority under the plan to approve appli-
8 cations for participation in the plan and to con-
9 tract with a service provider to administer the
10 day-to-day affairs of the plan.

11 “(c) TREATMENT OF FRANCHISE NETWORKS.—In
12 the case of a group health plan which is established and
13 maintained by a franchiser for a franchise network con-
14 sisting of its franchisees—

15 “(1) the requirements of subsection (a) and sec-
16 tion 801(a)(1) shall be deemed met if such require-
17 ments would otherwise be met if the franchiser were
18 deemed to be the sponsor referred to in section
19 801(b), such network were deemed to be an associa-
20 tion described in section 801(b), and each franchisee
21 were deemed to be a member (of the association and
22 the sponsor) referred to in section 801(b); and

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

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

4 “(d) CERTAIN COLLECTIVELY BARGAINED PLANS.—

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

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

9 “(B) the joint board of trustees shall be
 10 deemed a board of trustees with respect to
 11 which the requirements of subsection (b) are
 12 met; and

13 “(C) the requirements of section 804 shall
 14 be deemed met.

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

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

18 “(B) the plan is in existence on April 1,
 19 2001, and would be described in section
 20 3(40)(A)(i) but solely for the failure to meet
 21 the requirements of section 3(40)(C)(ii).

22 **“SEC. 804. PARTICIPATION AND COVERAGE REQUIRE-**
 23 **MENTS.**

24 “(a) COVERED EMPLOYERS AND INDIVIDUALS.—The
 25 requirements of this subsection are met with respect to

1 an association health plan if, under the terms of the
2 plan—

3 “(1) each participating employer must be—

4 “(A) a member of the sponsor,

5 “(B) the sponsor, or

6 “(C) an affiliated member of the sponsor
7 with respect to which the requirements of sub-
8 section (b) are met,

9 except that, in the case of a sponsor which is a pro-
10 fessional association or other individual-based asso-
11 ciation, if at least one of the officers, directors, or
12 employees of an employer, or at least one of the in-
13 dividuals who are partners in an employer and who
14 actively participates in the business, is a member or
15 such an affiliated member of the sponsor, partici-
16 pating employers may also include such employer;
17 and

18 “(2) all individuals commencing coverage under
19 the plan after certification under this part must
20 be—

21 “(A) active or retired owners (including
22 self-employed individuals), officers, directors, or
23 employees of, or partners in, participating em-
24 ployers; or

1 “(B) the beneficiaries of individuals de-
2 scribed in subparagraph (A).

3 “(b) COVERAGE OF PREVIOUSLY UNINSURED EM-
4 PLOYEES.—In the case of an association health plan in
5 existence on the date of the enactment of the Small Busi-
6 ness Access and Choice for Entrepreneurs Act of 2001,
7 an affiliated member of the sponsor of the plan may be
8 offered coverage under the plan as a participating em-
9 ployer only if—

10 “(1) the affiliated member was an affiliated
11 member on the date of certification under this part;
12 or

13 “(2) during the 12-month period preceding the
14 date of the offering of such coverage, the affiliated
15 member has not maintained or contributed to a
16 group health plan with respect to any of its employ-
17 ees who would otherwise be eligible to participate in
18 such association health plan.

19 “(c) INDIVIDUAL MARKET UNAFFECTED.—The re-
20 quirements of this subsection are met with respect to an
21 association health plan if, under the terms of the plan,
22 no participating employer may provide health insurance
23 coverage in the individual market for any employee not
24 covered under the plan which is similar to the coverage
25 contemporaneously provided to employees of the employer

1 under the plan, if such exclusion of the employee from cov-
2 erage under the plan is based on a health status-related
3 factor with respect to the employee and such employee
4 would, but for such exclusion on such basis, be eligible
5 for coverage under the plan.

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

10 “(1) under the terms of the plan, all employers
11 meeting the preceding requirements of this section
12 are eligible to qualify as participating employers for
13 all geographically available coverage options, unless,
14 in the case of any such employer, participation or
15 contribution requirements of the type referred to in
16 section 2711 of the Public Health Service Act are
17 not met;

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

21 “(3) the applicable requirements of sections
22 701, 702, and 703 are met with respect to the plan.

1 **“SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN**
2 **DOCUMENTS, CONTRIBUTION RATES, AND**
3 **BENEFIT OPTIONS.**

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

7 “(1) CONTENTS OF GOVERNING INSTRU-
8 MENTS.—The instruments governing the plan in-
9 clude a written instrument, meeting the require-
10 ments of an instrument required under section
11 402(a)(1), which—

12 “(A) provides that the board of trustees
13 serves as the named fiduciary required for plans
14 under section 402(a)(1) and serves in the ca-
15 pacity of a plan administrator (referred to in
16 section 3(16)(A));

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

20 “(C) incorporates the requirements of sec-
21 tion 806.

22 “(2) CONTRIBUTION RATES MUST BE NON-
23 DISCRIMINATORY.—

24 “(A) The contribution rates for any par-
25 ticipating small employer do not vary on the
26 basis of the claims experience of such employer

1 and do not vary on the basis of the type of
2 business or industry in which such employer is
3 engaged.

4 “(B) Nothing in this title or any other pro-
5 vision of law shall be construed to preclude an
6 association health plan, or a health insurance
7 issuer offering health insurance coverage in
8 connection with an association health plan,
9 from—

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

12 “(ii) varying contribution rates for
13 small employers in a State to the extent
14 that such rates could vary using the same
15 methodology employed in such State for
16 regulating premium rates in the small
17 group market with respect to health insur-
18 ance coverage offered in connection with
19 bona fide associations (within the meaning
20 of section 2791(d)(3) of the Public Health
21 Service Act),

22 subject to the requirements of section 702(b)
23 relating to contribution rates.

24 “(3) FLOOR FOR NUMBER OF COVERED INDIV-
25 IDUALS WITH RESPECT TO CERTAIN PLANS.—If

1 any benefit option under the plan does not consist
2 of health insurance coverage, the plan has as of the
3 beginning of the plan year not fewer than 1,000 par-
4 ticipants and beneficiaries.

5 “(4) MARKETING REQUIREMENTS.—

6 “(A) IN GENERAL.—If a benefit option
7 which consists of health insurance coverage is
8 offered under the plan, State-licensed insurance
9 agents shall be used to distribute to small em-
10 ployers coverage which does not consist of
11 health insurance coverage in a manner com-
12 parable to the manner in which such agents are
13 used to distribute health insurance coverage.

14 “(B) STATE-LICENSED INSURANCE
15 AGENTS.—For purposes of subparagraph (A),
16 the term ‘State-licensed insurance agents’
17 means one or more agents who are licensed in
18 a State and are subject to the laws of such
19 State relating to licensure, qualification, test-
20 ing, examination, and continuing education of
21 persons authorized to offer, sell, or solicit
22 health insurance coverage in such State.

23 “(5) REGULATORY REQUIREMENTS.—Such
24 other requirements as the applicable authority deter-
25 mines are necessary to carry out the purposes of this

1 part, which shall be prescribed by the applicable au-
 2 thority by regulation through negotiated rulemaking.

3 “(b) ABILITY OF ASSOCIATION HEALTH PLANS TO
 4 DESIGN BENEFIT OPTIONS.—Subject to section 514(d),
 5 nothing in this part or any provision of State law (as de-
 6 fined in section 514(c)(1)) shall be construed to preclude
 7 an association health plan, or a health insurance issuer
 8 offering health insurance coverage in connection with an
 9 association health plan, from exercising its sole discretion
 10 in selecting the specific items and services consisting of
 11 medical care to be included as benefits under such plan
 12 or coverage, except (subject to section 514) in the case
 13 of any law to the extent that it (1) prohibits an exclusion
 14 of a specific disease from such coverage, or (2) is not pre-
 15 empted under section 731(a)(1) with respect to matters
 16 governed by section 711 or 712.

17 **“SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS**
 18 **FOR SOLVENCY FOR PLANS PROVIDING**
 19 **HEALTH BENEFITS IN ADDITION TO HEALTH**
 20 **INSURANCE COVERAGE.**

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

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

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

4 “(A) establishes and maintains reserves
5 with respect to such additional benefit options,
6 in amounts recommended by the qualified actu-
7 ary, consisting of—

8 “(i) a reserve sufficient for unearned
9 contributions;

10 “(ii) a reserve sufficient for benefit li-
11 abilities which have been incurred, which
12 have not been satisfied, and for which risk
13 of loss has not yet been transferred, and
14 for expected administrative costs with re-
15 spect to such benefit liabilities;

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

18 “(iv) a reserve sufficient for a margin
19 of error and other fluctuations, taking into
20 account the specific circumstances of the
21 plan; and

22 “(B) establishes and maintains aggregate
23 and specific excess/stop loss insurance and sol-
24 vency indemnification, with respect to such ad-

ditional benefit options for which risk of loss
has not yet been transferred, as follows:

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

“(ii) The plan shall secure specific ex-
cess/stop loss insurance for the plan with
an attachment point which is at least equal
to an amount recommended by the plan’s
qualified actuary. The applicable authority
may by regulation, through negotiated
rulemaking, provide for adjustments in the
amount of such insurance in specified cir-
cumstances in which the plan specifically
provides for and maintains reserves in ex-

1 cess of the amounts required under sub-
2 paragraph (A).

3 “(iii) The plan shall secure indem-
4 nification insurance for any claims which
5 the plan is unable to satisfy by reason of
6 a plan termination.

7 Any regulations prescribed by the applicable authority
8 pursuant to clause (i) or (ii) of subparagraph (B) may
9 allow for such adjustments in the required levels of excess/
10 stop loss insurance as the qualified actuary may rec-
11 ommend, taking into account the specific circumstances
12 of the plan.

13 “(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS
14 RESERVES.—In the case of any association health plan de-
15 scribed in subsection (a)(2), the requirements of this sub-
16 section are met if the plan establishes and maintains sur-
17 plus in an amount at least equal to—

18 “(1) \$500,000, or

19 “(2) such greater amount (but not greater than
20 \$2,000,000) as may be set forth in regulations pre-
21 scribed by the applicable authority through nego-
22 tiated rulemaking, based on the level of aggregate
23 and specific excess/stop loss insurance provided with
24 respect to such plan.

1 “(c) ADDITIONAL REQUIREMENTS.—In the case of
2 any association health plan described in subsection (a)(2),
3 the applicable authority may provide such additional re-
4 quirements relating to reserves and excess/stop loss insur-
5 ance as the applicable authority considers appropriate.
6 Such requirements may be provided by regulation, through
7 negotiated rulemaking, with respect to any such plan or
8 any class of such plans.

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

15 “(e) ALTERNATIVE MEANS OF COMPLIANCE.—The
16 applicable authority may permit an association health plan
17 described in subsection (a)(2) to substitute, for all or part
18 of the requirements of this section (except subsection
19 (a)(2)(B)(iii)), such security, guarantee, hold-harmless ar-
20 rangement, or other financial arrangement as the applica-
21 ble authority determines to be adequate to enable the plan
22 to fully meet all its financial obligations on a timely basis
23 and is otherwise no less protective of the interests of par-
24 ticipants and beneficiaries than the requirements for
25 which it is substituted. The applicable authority may take

1 into account, for purposes of this subsection, evidence pro-
2 vided by the plan or sponsor which demonstrates an as-
3 sumption of liability with respect to the plan. Such evi-
4 dence may be in the form of a contract of indemnification,
5 lien, bonding, insurance, letter of credit, recourse under
6 applicable terms of the plan in the form of assessments
7 of participating employers, security, or other financial ar-
8 rangement.

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

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

13 “(A) IN GENERAL.—In the case of an as-
14 sociation health plan described in subsection
15 (a)(2), the requirements of this subsection are
16 met if the plan makes payments into the Asso-
17 ciation Health Plan Fund under this subpara-
18 graph when they are due. Such payments shall
19 consist of annual payments in the amount of
20 \$5,000, and, in addition to such annual pay-
21 ments, such supplemental payments as the Sec-
22 retary may determine to be necessary under
23 paragraph (2). Payments under this paragraph
24 are payable to the Fund at the time determined
25 by the Secretary. Initial payments are due in

1 advance of certification under this part. Pay-
2 ments shall continue to accrue until a plan's as-
3 sets are distributed pursuant to a termination
4 procedure.

5 “(B) PENALTIES FOR FAILURE TO MAKE
6 PAYMENTS.—If any payment is not made by a
7 plan when it is due, a late payment charge of
8 not more than 100 percent of the payment
9 which was not timely paid shall be payable by
10 the plan to the Fund.

11 “(C) CONTINUED DUTY OF THE SEC-
12 RETARY.—The Secretary shall not cease to
13 carry out the provisions of paragraph (2) on ac-
14 count of the failure of a plan to pay any pay-
15 ment when due.

16 “(2) PAYMENTS BY SECRETARY TO CONTINUE
17 EXCESS/STOP LOSS INSURANCE COVERAGE AND IN-
18 DEMNIFICATION INSURANCE COVERAGE FOR CER-
19 TAIN PLANS.—In any case in which the applicable
20 authority determines that there is, or that there is
21 reason to believe that there will be: (A) a failure to
22 take necessary corrective actions under section
23 809(a) with respect to an association health plan de-
24 scribed in subsection (a)(2); or (B) a termination of
25 such a plan under section 809(b) or 810(b)(8) (and,

1 if the applicable authority is not the Secretary, cer-
2 tifies such determination to the Secretary), the Sec-
3 retary shall determine the amounts necessary to
4 make payments to an insurer (designated by the
5 Secretary) to maintain in force excess/stop loss in-
6 surance coverage or indemnification insurance cov-
7 erage for such plan, if the Secretary determines that
8 there is a reasonable expectation that, without such
9 payments, claims would not be satisfied by reason of
10 termination of such coverage. The Secretary shall, to
11 the extent provided in advance in appropriation
12 Acts, pay such amounts so determined to the insurer
13 designated by the Secretary.

14 “(3) ASSOCIATION HEALTH PLAN FUND.—

15 “(A) IN GENERAL.—There is established
16 on the books of the Treasury a fund to be
17 known as the ‘Association Health Plan Fund’.
18 The Fund shall be available for making pay-
19 ments pursuant to paragraph (2). The Fund
20 shall be credited with payments received pursu-
21 ant to paragraph (1)(A), penalties received pur-
22 suant to paragraph (1)(B); and earnings on in-
23 vestments of amounts of the Fund under sub-
24 paragraph (B).

1 “(B) INVESTMENT.—Whenever the Sec-
2 retary determines that the moneys of the fund
3 are in excess of current needs, the Secretary
4 may request the investment of such amounts as
5 the Secretary determines advisable by the Sec-
6 retary of the Treasury in obligations issued or
7 guaranteed by the United States.

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

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

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

21 “(B) which is guaranteed renewable; and

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

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

5 “(A) under which an insurer (meeting such
6 minimum standards as the applicable authority
7 may prescribe by regulation through negotiated
8 rulemaking) provides for payment to the plan
9 with respect to claims under the plan in connec-
10 tion with a covered individual in excess of an
11 amount or amounts specified in such contract
12 in connection with such covered individual;

13 “(B) which is guaranteed renewable; and

14 “(C) which allows for payment of pre-
15 miums by any third party on behalf of the in-
16 sured plan.

17 “(h) INDEMNIFICATION INSURANCE.—For purposes
18 of this section, the term ‘indemnification insurance’
19 means, in connection with an association health plan, a
20 contract—

21 “(1) under which an insurer (meeting such min-
22 imum standards as the applicable authority may pre-
23 scribe through negotiated rulemaking) provides for
24 payment to the plan with respect to claims under the
25 plan which the plan is unable to satisfy by reason

1 of a termination pursuant to section 809(b) (relating
2 to mandatory termination);

3 “(2) which is guaranteed renewable and
4 noncancellable for any reason (except as the applica-
5 ble authority may prescribe by regulation through
6 negotiated rulemaking); and

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

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

15 “(j) SOLVENCY STANDARDS WORKING GROUP.—

16 “(1) IN GENERAL.—Within 90 days after the
17 date of the enactment of the Small Business Access
18 and Choice for Entrepreneurs Act of 2001, the ap-
19 plicable authority shall establish a Solvency Stand-
20 ards Working Group. In prescribing the initial regu-
21 lations under this section, the applicable authority
22 shall take into account the recommendations of such
23 Working Group.

24 “(2) MEMBERSHIP.—The Working Group shall
25 consist of not more than 15 members appointed by

1 the applicable authority. The applicable authority
2 shall include among persons invited to membership
3 on the Working Group at least one of each of the
4 following:

5 “(A) a representative of the National Asso-
6 ciation of Insurance Commissioners;

7 “(B) a representative of the American
8 Academy of Actuaries;

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

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

13 “(E) a representative of associations of the
14 type referred to in section 801(b)(1), or their
15 interests; and

16 “(F) a representative of multiemployer
17 plans that are group health plans, or their in-
18 terests.

19 **“SEC. 807. REQUIREMENTS FOR APPLICATION AND RE-**
20 **LATED REQUIREMENTS.**

21 “(a) FILING FEE.—Under the procedure prescribed
22 pursuant to section 802(a), an association health plan
23 shall pay to the applicable authority at the time of filing
24 an application for certification under this part a filing fee
25 in the amount of \$5,000, which shall be available in the

1 case of the Secretary, to the extent provided in appropria-
2 tion Acts, for the sole purpose of administering the certifi-
3 cation procedures applicable with respect to association
4 health plans.

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

11 “(1) IDENTIFYING INFORMATION.—The names
12 and addresses of—

13 “(A) the sponsor; and

14 “(B) the members of the board of trustees
15 of the plan.

16 “(2) STATES IN WHICH PLAN INTENDS TO DO
17 BUSINESS.—The States in which participants and
18 beneficiaries under the plan are to be located and
19 the number of them expected to be located in each
20 such State.

21 “(3) BONDING REQUIREMENTS.—Evidence pro-
22 vided by the board of trustees that the bonding re-
23 quirements of section 412 will be met as of the date
24 of the application or (if later) commencement of op-
25 erations.

1 “(4) PLAN DOCUMENTS.—A copy of the docu-
2 ments governing the plan (including any bylaws and
3 trust agreements), the summary plan description,
4 and other material describing the benefits that will
5 be provided to participants and beneficiaries under
6 the plan.

7 “(5) AGREEMENTS WITH SERVICE PRO-
8 VIDERS.—A copy of any agreements between the
9 plan and contract administrators and other service
10 providers.

11 “(6) FUNDING REPORT.—In the case of asso-
12 ciation health plans providing benefits options in ad-
13 dition to health insurance coverage, a report setting
14 forth information with respect to such additional
15 benefit options determined as of a date within the
16 120-day period ending with the date of the applica-
17 tion, including the following:

18 “(A) RESERVES.—A statement, certified
19 by the board of trustees of the plan, and a
20 statement of actuarial opinion, signed by a
21 qualified actuary, that all applicable require-
22 ments of section 806 are or will be met in ac-
23 cordance with regulations which the applicable
24 authority shall prescribe through negotiated
25 rulemaking.

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

15 “(C) CURRENT AND PROJECTED VALUE OF
16 ASSETS AND LIABILITIES.—A statement of ac-
17 tuarial opinion signed by a qualified actuary,
18 which sets forth the current value of the assets
19 and liabilities accumulated under the plan and
20 a projection of the assets, liabilities, income,
21 and expenses of the plan for the 12-month pe-
22 riod referred to in subparagraph (B). The in-
23 come statement shall identify separately the
24 plan’s administrative expenses and claims.

1 “(D) COSTS OF COVERAGE TO BE
2 CHARGED AND OTHER EXPENSES.—A state-
3 ment of the costs of coverage to be charged, in-
4 cluding an itemization of amounts for adminis-
5 tration, reserves, and other expenses associated
6 with the operation of the plan.

7 “(E) OTHER INFORMATION.—Any other
8 information as may be determined by the appli-
9 cable authority, by regulation through nego-
10 tiated rulemaking, as necessary to carry out the
11 purposes of this part.

12 “(c) FILING NOTICE OF CERTIFICATION WITH
13 STATES.—A certification granted under this part to an
14 association health plan shall not be effective unless written
15 notice of such certification is filed with the applicable
16 State authority of each State in which at least 25 percent
17 of the participants and beneficiaries under the plan are
18 located. For purposes of this subsection, an individual
19 shall be considered to be located in the State in which a
20 known address of such individual is located or in which
21 such individual is employed.

22 “(d) NOTICE OF MATERIAL CHANGES.—In the case
23 of any association health plan certified under this part,
24 descriptions of material changes in any information which
25 was required to be submitted with the application for the

1 certification under this part shall be filed in such form
2 and manner as shall be prescribed by the applicable au-
3 thority by regulation through negotiated rulemaking. The
4 applicable authority may require by regulation, through
5 negotiated rulemaking, prior notice of material changes
6 with respect to specified matters which might serve as the
7 basis for suspension or revocation of the certification.

8 “(e) REPORTING REQUIREMENTS FOR CERTAIN AS-
9 SOCIATION HEALTH PLANS.—An association health plan
10 certified under this part which provides benefit options in
11 addition to health insurance coverage for such plan year
12 shall meet the requirements of section 103 by filing an
13 annual report under such section which shall include infor-
14 mation described in subsection (b)(6) with respect to the
15 plan year and, notwithstanding section 104(a)(1)(A), shall
16 be filed with the applicable authority not later than 90
17 days after the close of the plan year (or on such later date
18 as may be prescribed by the applicable authority). The ap-
19 plicable authority may require by regulation through nego-
20 tiated rulemaking such interim reports as it considers ap-
21 propriate.

22 “(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The
23 board of trustees of each association health plan which
24 provides benefits options in addition to health insurance
25 coverage and which is applying for certification under this

1 part or is certified under this part shall engage, on behalf
 2 of all participants and beneficiaries, a qualified actuary
 3 who shall be responsible for the preparation of the mate-
 4 rials comprising information necessary to be submitted by
 5 a qualified actuary under this part. The qualified actuary
 6 shall utilize such assumptions and techniques as are nec-
 7 essary to enable such actuary to form an opinion as to
 8 whether the contents of the matters reported under this
 9 part—

10 “(1) are in the aggregate reasonably related to
 11 the experience of the plan and to reasonable expecta-
 12 tions; and

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

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

17 **“SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TER-**
 18 **MINATION.**

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

23 “(1) not less than 60 days before the proposed
 24 termination date, provides to the participants and
 25 beneficiaries a written notice of intent to terminate

1 stating that such termination is intended and the
2 proposed termination date;

3 “(2) develops a plan for winding up the affairs
4 of the plan in connection with such termination in
5 a manner which will result in timely payment of all
6 benefits for which the plan is obligated; and

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

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

12 **“SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMI-**
13 **NATION.**

14 “(a) ACTIONS TO AVOID DEPLETION OF RE-
15 SERVES.—An association health plan which is certified
16 under this part and which provides benefits other than
17 health insurance coverage shall continue to meet the re-
18 quirements of section 806, irrespective of whether such
19 certification continues in effect. The board of trustees of
20 such plan shall determine quarterly whether the require-
21 ments of section 806 are met. In any case in which the
22 board determines that there is reason to believe that there
23 is or will be a failure to meet such requirements, or the
24 applicable authority makes such a determination and so
25 notifies the board, the board shall immediately notify the

1 qualified actuary engaged by the plan, and such actuary
2 shall, not later than the end of the next following month,
3 make such recommendations to the board for corrective
4 action as the actuary determines necessary to ensure com-
5 pliance with section 806. Not later than 30 days after re-
6 ceiving from the actuary recommendations for corrective
7 actions, the board shall notify the applicable authority (in
8 such form and manner as the applicable authority may
9 prescribe by regulation through negotiated rulemaking) of
10 such recommendations of the actuary for corrective action,
11 together with a description of the actions (if any) that the
12 board has taken or plans to take in response to such rec-
13 ommendations. The board shall thereafter report to the
14 applicable authority, in such form and frequency as the
15 applicable authority may specify to the board, regarding
16 corrective action taken by the board until the requirements
17 of section 806 are met.

18 “(b) MANDATORY TERMINATION.—In any case in
19 which—

20 “(1) the applicable authority has been notified
21 under subsection (a) of a failure of an association
22 health plan which is or has been certified under this
23 part and is described in section 806(a)(2) to meet
24 the requirements of section 806 and has not been
25 notified by the board of trustees of the plan that

1 corrective action has restored compliance with such
2 requirements; and

3 “(2) the applicable authority determines that
4 there is a reasonable expectation that the plan will
5 continue to fail to meet the requirements of section
6 806,

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

17 **“SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOL-**
18 **VENT ASSOCIATION HEALTH PLANS PRO-**
19 **VIDING HEALTH BENEFITS IN ADDITION TO**
20 **HEALTH INSURANCE COVERAGE.**

21 “(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR
22 INSOLVENT PLANS.—Whenever the Secretary determines
23 that an association health plan which is or has been cer-
24 tified under this part and which is described in section
25 806(a)(2) will be unable to provide benefits when due or

1 is otherwise in a financially hazardous condition, as shall
2 be defined by the Secretary by regulation through nego-
3 tiated rulemaking, the Secretary shall, upon notice to the
4 plan, apply to the appropriate United States district court
5 for appointment of the Secretary as trustee to administer
6 the plan for the duration of the insolvency. The plan may
7 appear as a party and other interested persons may inter-
8 vene in the proceedings at the discretion of the court. The
9 court shall appoint such Secretary trustee if the court de-
10 termines that the trusteeship is necessary to protect the
11 interests of the participants and beneficiaries or providers
12 of medical care or to avoid any unreasonable deterioration
13 of the financial condition of the plan. The trusteeship of
14 such Secretary shall continue until the conditions de-
15 scribed in the first sentence of this subsection are rem-
16 edied or the plan is terminated.

17 “(b) POWERS AS TRUSTEE.—The Secretary, upon
18 appointment as trustee under subsection (a), shall have
19 the power—

20 “(1) to do any act authorized by the plan, this
21 title, or other applicable provisions of law to be done
22 by the plan administrator or any trustee of the plan;
23 “(2) to require the transfer of all (or any part)
24 of the assets and records of the plan to the Sec-
25 retary as trustee;

1 “(3) to invest any assets of the plan which the
2 Secretary holds in accordance with the provisions of
3 the plan, regulations prescribed by the Secretary
4 through negotiated rulemaking, and applicable provi-
5 sions of law;

6 “(4) to require the sponsor, the plan adminis-
7 trator, any participating employer, and any employee
8 organization representing plan participants to fur-
9 nish any information with respect to the plan which
10 the Secretary as trustee may reasonably need in
11 order to administer the plan;

12 “(5) to collect for the plan any amounts due the
13 plan and to recover reasonable expenses of the trust-
14 eeship;

15 “(6) to commence, prosecute, or defend on be-
16 half of the plan any suit or proceeding involving the
17 plan;

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

22 “(8) to terminate the plan (or provide for its
23 termination in accordance with section 809(b)) and
24 liquidate the plan assets, to restore the plan to the

1 responsibility of the sponsor, or to continue the
2 trusteeship;

3 “(9) to provide for the enrollment of plan par-
4 ticipants and beneficiaries under appropriate cov-
5 erage options; and

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

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

14 “(1) the sponsor and plan administrator;

15 “(2) each participant;

16 “(3) each participating employer; and

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

20 “(d) ADDITIONAL DUTIES.—Except to the extent in-
21 consistent with the provisions of this title, or as may be
22 otherwise ordered by the court, the Secretary, upon ap-
23 pointment as trustee under this section, shall be subject
24 to the same duties as those of a trustee under section 704

1 of title 11, United States Code, and shall have the duties
2 of a fiduciary for purposes of this title.

3 “(e) OTHER PROCEEDINGS.—An application by the
4 Secretary under this subsection may be filed notwith-
5 standing the pendency in the same or any other court of
6 any bankruptcy, mortgage foreclosure, or equity receiver-
7 ship proceeding, or any proceeding to reorganize, conserve,
8 or liquidate such plan or its property, or any proceeding
9 to enforce a lien against property of the plan.

10 “(f) JURISDICTION OF COURT.—

11 “(1) IN GENERAL.—Upon the filing of an appli-
12 cation for the appointment as trustee or the issuance
13 of a decree under this section, the court to which the
14 application is made shall have exclusive jurisdiction
15 of the plan involved and its property wherever lo-
16 cated with the powers, to the extent consistent with
17 the purposes of this section, of a court of the United
18 States having jurisdiction over cases under chapter
19 11 of title 11, United States Code. Pending an adju-
20 dication under this section such court shall stay, and
21 upon appointment by it of the Secretary as trustee,
22 such court shall continue the stay of, any pending
23 mortgage foreclosure, equity receivership, or other
24 proceeding to reorganize, conserve, or liquidate the
25 plan, the sponsor, or property of such plan or spon-

1 sor, and any other suit against any receiver, conser-
 2 vator, or trustee of the plan, the sponsor, or prop-
 3 erty of the plan or sponsor. Pending such adjudica-
 4 tion and upon the appointment by it of the Sec-
 5 retary as trustee, the court may stay any proceeding
 6 to enforce a lien against property of the plan or the
 7 sponsor or any other suit against the plan or the
 8 sponsor.

9 “(2) VENUE.—An action under this section
 10 may be brought in the judicial district where the
 11 sponsor or the plan administrator resides or does
 12 business or where any asset of the plan is situated.
 13 A district court in which such action is brought may
 14 issue process with respect to such action in any
 15 other judicial district.

16 “(g) PERSONNEL.—In accordance with regulations
 17 which shall be prescribed by the Secretary through nego-
 18 tiated rulemaking, the Secretary shall appoint, retain, and
 19 compensate accountants, actuaries, and other professional
 20 service personnel as may be necessary in connection with
 21 the Secretary’s service as trustee under this section.

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

23 “(a) IN GENERAL.—Notwithstanding section 514, a
 24 State may impose by law a contribution tax on an associa-
 25 tion health plan described in section 806(a)(2), if the plan

1 commenced operations in such State after the date of the
2 enactment of the Small Business Access and Choice for
3 Entrepreneurs Act of 2001.

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

8 “(1) such tax is computed by applying a rate to
9 the amount of premiums or contributions, with re-
10 spect to individuals covered under the plan who are
11 residents of such State, which are received by the
12 plan from participating employers located in such
13 State or from such individuals;

14 “(2) the rate of such tax does not exceed the
15 rate of any tax imposed by such State on premiums
16 or contributions received by insurers or health main-
17 tenance organizations for health insurance coverage
18 offered in such State in connection with a group
19 health plan;

20 “(3) such tax is otherwise nondiscriminatory;
21 and

22 “(4) the amount of any such tax assessed on
23 the plan is reduced by the amount of any tax or as-
24 sessment otherwise imposed by the State on pre-
25 miums, contributions, or both received by insurers or

1 health maintenance organizations for health insur-
 2 ance coverage, aggregate excess/stop loss insurance
 3 (as defined in section 806(g)(1)), specific excess/
 4 stop loss insurance (as defined in section 806(g)(2)),
 5 other insurance related to the provision of medical
 6 care under the plan, or any combination thereof pro-
 7 vided by such insurers or health maintenance organi-
 8 zations in such State in connection with such plan.

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

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

11 “(1) GROUP HEALTH PLAN.—The term ‘group
 12 health plan’ has the meaning provided in section
 13 733(a)(1) (after applying subsection (b) of this sec-
 14 tion).

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

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

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

23 “(5) APPLICABLE AUTHORITY.—

24 “(A) IN GENERAL.—Except as provided in
 25 subparagraph (B), the term ‘applicable author-

ity’ means, in connection with an association health plan—

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

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

“(B) EXCEPTIONS.—

“(i) JOINT AUTHORITIES.—Where such term appears in section 808(3), section 807(e) (in the first instance), section 809(a) (in the second instance), section 809(a) (in the fourth instance), and section 809(b)(1), such term means, in connection with an association health plan, the Secretary and the State referred to in subparagraph (A)(i) (if any) in connection with such plan.

“(ii) REGULATORY AUTHORITIES.—Where such term appears in section 802(a) (in the first instance), section 802(d), section 802(e), section 803(d), section 805(a)(5), section 806(a)(2), section 806(b), section 806(c), section 806(d),

1 paragraphs (1)(A) and (2)(A) of section
2 806(g), section 806(h), section 806(i), sec-
3 tion 806(j), section 807(a) (in the second
4 instance), section 807(b), section 807(d),
5 section 807(e) (in the second instance),
6 section 808 (in the matter after paragraph
7 (3)), and section 809(a) (in the third in-
8 stance), such term means, in connection
9 with an association health plan, the Sec-
10 retary.

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

14 “(7) INDIVIDUAL MARKET.—

15 “(A) IN GENERAL.—The term ‘individual
16 market’ means the market for health insurance
17 coverage offered to individuals other than in
18 connection with a group health plan.

19 “(B) TREATMENT OF VERY SMALL
20 GROUPS.—

21 “(i) IN GENERAL.—Subject to clause
22 (ii), such term includes coverage offered in
23 connection with a group health plan that
24 has fewer than 2 participants as current
25 employees or participants described in sec-

1 tion 732(d)(3) on the first day of the plan
2 year.

3 “(ii) STATE EXCEPTION.—Clause (i)
4 shall not apply in the case of health insur-
5 ance coverage offered in a State if such
6 State regulates the coverage described in
7 such clause in the same manner and to the
8 same extent as coverage in the small group
9 market (as defined in section 2791(e)(5) of
10 the Public Health Service Act) is regulated
11 by such State.

12 “(8) PARTICIPATING EMPLOYER.—The term
13 ‘participating employer’ means, in connection with
14 an association health plan, any employer, if any indi-
15 vidual who is an employee of such employer, a part-
16 ner in such employer, or a self-employed individual
17 who is such employer (or any dependent, as defined
18 under the terms of the plan, of such individual) is
19 or was covered under such plan in connection with
20 the status of such individual as such an employee,
21 partner, or self-employed individual in relation to the
22 plan.

23 “(9) APPLICABLE STATE AUTHORITY.—The
24 term ‘applicable State authority’ means, with respect
25 to a health insurance issuer in a State, the State in-

1 surance commissioner or official or officials des-
2 ignated by the State to enforce the requirements of
3 title XXVII of the Public Health Service Act for the
4 State involved with respect to such issuer.

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

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

13 “(A) a person who is otherwise eligible to
14 be a member of the sponsor but who elects an
15 affiliated status with the sponsor,

16 “(B) in the case of a sponsor with mem-
17 bers which consist of associations, a person who
18 is a member of any such association and elects
19 an affiliated status with the sponsor, or

20 “(C) in the case of an association health
21 plan in existence on the date of the enactment
22 of the Small Business Access and Choice for
23 Entrepreneurs Act of 2001, a person eligible to
24 be a member of the sponsor or one of its mem-
25 ber associations.

1 “(12) LARGE EMPLOYER.—The term ‘large em-
2 ployer’ means, in connection with a group health
3 plan with respect to a plan year, an employer who
4 employed an average of at least 51 employees on
5 business days during the preceding calendar year
6 and who employs at least 2 employees on the first
7 day of the plan year.

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

12 “(b) RULES OF CONSTRUCTION.—

13 “(1) EMPLOYERS AND EMPLOYEES.—For pur-
14 poses of determining whether a plan, fund, or pro-
15 gram is an employee welfare benefit plan which is an
16 association health plan, and for purposes of applying
17 this title in connection with such plan, fund, or pro-
18 gram so determined to be such an employee welfare
19 benefit plan—

20 “(A) in the case of a partnership, the term
21 ‘employer’ (as defined in section (3)(5)) in-
22 cludes the partnership in relation to the part-
23 ners, and the term ‘employee’ (as defined in
24 section (3)(6)) includes any partner in relation
25 to the partnership; and

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

5 “(2) PLANS, FUNDS, AND PROGRAMS TREATED
 6 AS EMPLOYEE WELFARE BENEFIT PLANS.—In the
 7 case of any plan, fund, or program which was estab-
 8 lished or is maintained for the purpose of providing
 9 medical care (through the purchase of insurance or
 10 otherwise) for employees (or their dependents) cov-
 11 ered thereunder and which demonstrates to the Sec-
 12 retary that all requirements for certification under
 13 this part would be met with respect to such plan,
 14 fund, or program if such plan, fund, or program
 15 were a group health plan, such plan, fund, or pro-
 16 gram shall be treated for purposes of this title as an
 17 employee welfare benefit plan on and after the date
 18 of such demonstration.”.

19 (b) CONFORMING AMENDMENTS TO PREEMPTION
 20 RULES.—

21 (1) Section 514(b)(6) of such Act (29 U.S.C.
 22 1144(b)(6)) is amended by adding at the end the
 23 following new subparagraph:

24 “(E) The preceding subparagraphs of this paragraph
 25 do not apply with respect to any State law in the case

1 of an association health plan which is certified under part
2 8.”.

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

5 (A) in subsection (b)(4), by striking “Sub-
6 section (a)” and inserting “Subsections (a) and
7 (d)”;

8 (B) in subsection (b)(5), by striking “sub-
9 section (a)” in subparagraph (A) and inserting
10 “subsection (a) of this section and subsections
11 (a)(2)(B) and (b) of section 805”, and by strik-
12 ing “subsection (a)” in subparagraph (B) and
13 inserting “subsection (a) of this section or sub-
14 section (a)(2)(B) or (b) of section 805”;

15 (C) by redesignating subsection (d) as sub-
16 section (e); and

17 (D) by inserting after subsection (c) the
18 following new subsection:

19 “(d)(1) Except as provided in subsection (b)(4), the
20 provisions of this title shall supersede any and all State
21 laws insofar as they may now or hereafter preclude, or
22 have the effect of precluding, a health insurance issuer
23 from offering health insurance coverage in connection with
24 an association health plan which is certified under part
25 8.

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

3 “(A) In any case in which health insurance cov-
4 erage of any policy type is offered under an associa-
5 tion health plan certified under part 8 to a partici-
6 pating employer operating in such State, the provi-
7 sions of this title shall supersede any and all laws
8 of such State insofar as they may preclude a health
9 insurance issuer from offering health insurance cov-
10 erage of the same policy type to other employers op-
11 erating in the State which are eligible for coverage
12 under such association health plan, whether or not
13 such other employers are participating employers in
14 such plan.

15 “(B) In any case in which health insurance cov-
16 erage of any policy type is offered under an associa-
17 tion health plan in a State and the filing, with the
18 applicable State authority, of the policy form in con-
19 nection with such policy type is approved by such
20 State authority, the provisions of this title shall su-
21 persede any and all laws of any other State in which
22 health insurance coverage of such type is offered, in-
23 sofar as they may preclude, upon the filing in the
24 same form and manner of such policy form with the

1 applicable State authority in such other State, the
2 approval of the filing in such other State.

3 “(3) For additional provisions relating to association
4 health plans, see subsections (a)(2)(B) and (b) of section
5 805.

6 “(4) For purposes of this subsection, the term ‘asso-
7 ciation health plan’ has the meaning provided in section
8 801(a), and the terms ‘health insurance coverage’, ‘par-
9 ticipating employer’, and ‘health insurance issuer’ have
10 the meanings provided such terms in section 811, respec-
11 tively.”.

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

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

16 (B) in clause (ii), by inserting “and which
17 does not provide medical care (within the mean-
18 ing of section 733(a)(2)),” after “arrange-
19 ment,”, and by striking “title.” and inserting
20 “title, and”; and

21 (C) by adding at the end the following new
22 clause:

23 “(iii) subject to subparagraph (E), in the case
24 of any other employee welfare benefit plan which is
25 a multiple employer welfare arrangement and which

1 provides medical care (within the meaning of section
 2 733(a)(2)), any law of any State which regulates in-
 3 surance may apply.”.

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

6 (A) by striking “Nothing” and inserting
 7 “(1) Except as provided in paragraph (2), noth-
 8 ing”; and

9 (B) by adding at the end the following new
 10 paragraph:

11 “(2) Nothing in any other provision of law enacted
 12 on or after the date of the enactment of the Small Busi-
 13 ness Access and Choice for Entrepreneurs Act of 2001
 14 shall be construed to alter, amend, modify, invalidate, im-
 15 pair, or supersede any provision of this title, except by
 16 specific cross-reference to the affected section.”.

17 (c) PLAN SPONSOR.—Section 3(16)(B) of such Act
 18 (29 U.S.C. 102(16)(B)) is amended by adding at the end
 19 the following new sentence: “Such term also includes a
 20 person serving as the sponsor of an association health plan
 21 under part 8.”.

22 (d) DISCLOSURE OF SOLVENCY PROTECTIONS RE-
 23 LATED TO SELF-INSURED AND FULLY INSURED OPTIONS
 24 UNDER ASSOCIATION HEALTH PLANS.—Section 102(b)
 25 of such Act (29 U.S.C. 102(b)) is amended by adding at

1 the end the following: “An association health plan shall
 2 include in its summary plan description, in connection
 3 with each benefit option, a description of the form of sol-
 4 vency or guarantee fund protection secured pursuant to
 5 this Act or applicable State law, if any.”.

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

8 (f) REPORT TO THE CONGRESS REGARDING CERTIFI-
 9 CATION OF SELF-INSURED ASSOCIATION HEALTH
 10 PLANS.—Not later than January 1, 2006, the Secretary
 11 of Labor shall report to the Committee on Education and
 12 the Workforce of the House of Representatives and the
 13 Committee on Health, Education, Labor, and Pensions of
 14 the Senate the effect association health plans have had,
 15 if any, on reducing the number of uninsured individuals.

16 (g) CLERICAL AMENDMENT.—The table of contents
 17 in section 1 of the Employee Retirement Income Security
 18 Act of 1974 is amended by inserting after the item relat-
 19 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 coverage.

“Sec. 811. State assessment authority.

“Sec. 812. Definitions and rules of construction.”.

1 SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EM-
2 PLOYER ARRANGEMENTS.

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

6 (1) in clause (i), by inserting “for any plan year
 7 of any such plan, or any fiscal year of any such
 8 other arrangement;” after “single employer”, and by
 9 inserting “during such year or at any time during
 10 the preceding 1-year period” after “control group”;

11 (2) in clause (iii)—

12 (A) by striking “common control shall not
 13 be based on an interest of less than 25 percent”
 14 and inserting “an interest of greater than 25
 15 percent may not be required as the minimum
 16 interest necessary for common control”; and

17 (B) by striking “similar to” and inserting
 18 “consistent and coextensive with”;

19 (3) by redesignating clauses (iv) and (v) as
 20 clauses (v) and (vi), respectively; and

21 (4) by inserting after clause (iii) the following
 22 new clause:

1 “(iv) in determining, after the application of
 2 clause (i), whether benefits are provided to employ-
 3 ees of two or more employers, the arrangement shall
 4 be treated as having only one participating employer
 5 if, after the application of clause (i), the number of
 6 individuals who are employees and former employees
 7 of any one participating employer and who are cov-
 8 ered under the arrangement is greater than 75 per-
 9 cent of the aggregate number of all individuals who
 10 are employees or former employees of participating
 11 employers and who are covered under the arrange-
 12 ment;”.

13 **SEC. 4. CLARIFICATION OF TREATMENT OF CERTAIN COL-**
 14 **LECTIVELY BARGAINED ARRANGEMENTS.**

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

18 “(i)(I) under or pursuant to one or more collec-
 19 tive bargaining agreements which are reached pursu-
 20 ant to collective bargaining described in section 8(d)
 21 of the National Labor Relations Act (29 U.S.C.
 22 158(d)) or paragraph Fourth of section 2 of the
 23 Railway Labor Act (45 U.S.C. 152, paragraph
 24 Fourth) or which are reached pursuant to labor-
 25 management negotiations under similar provisions of

1 State public employee relations laws, and (II) in ac-
2 cordance with subparagraphs (C), (D), and (E);”.

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

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

10 “(i) The plan or other arrangement, and the
11 employee organization or any other entity sponsoring
12 the plan or other arrangement, do not—

13 “(I) utilize the services of any licensed in-
14 surance agent or broker for soliciting or enroll-
15 ing employers or individuals as participating
16 employers or covered individuals under the plan
17 or other arrangement; or

18 “(II) pay any type of compensation to a
19 person, other than a full time employee of the
20 employee organization (or a member of the or-
21 ganization to the extent provided in regulations
22 prescribed by the Secretary through negotiated
23 rulemaking), that is related either to the volume
24 or number of employers or individuals solicited
25 or enrolled as participating employers or cov-

1 ered individuals under the plan or other ar-
2 rangement, or to the dollar amount or size of
3 the contributions made by participating employ-
4 ers or covered individuals to the plan or other
5 arrangement;

6 except to the extent that the services used by the
7 plan, arrangement, organization, or other entity con-
8 sist solely of preparation of documents necessary for
9 compliance with the reporting and disclosure re-
10 quirements of part 1 or administrative, investment,
11 or consulting services unrelated to solicitation or en-
12 rollment of covered individuals.

13 “(ii) As of the end of the preceding plan year,
14 the number of covered individuals under the plan or
15 other arrangement who are neither—

16 “(I) employed within a bargaining unit
17 covered by any of the collective bargaining
18 agreements with a participating employer (nor
19 covered on the basis of an individual’s employ-
20 ment in such a bargaining unit); nor

21 “(II) present employees (or former employ-
22 ees who were covered while employed) of the
23 sponsoring employee organization, of an em-
24 ployer who is or was a party to any of the col-
25 lective bargaining agreements, or of the plan or

1 other arrangement or a related plan or arrange-
2 ment (nor covered on the basis of such present
3 or former employment);
4 does not exceed 15 percent of the total number of
5 individuals who are covered under the plan or ar-
6 rangement and who are present or former employees
7 who are or were covered under the plan or arrange-
8 ment pursuant to a collective bargaining agreement
9 with a participating employer. The requirements of
10 the preceding provisions of this clause shall be treat-
11 ed as satisfied if, as of the end of the preceding plan
12 year, such covered individuals are comprised solely
13 of individuals who were covered individuals under
14 the plan or other arrangement as of the date of the
15 enactment of the Small Business Access and Choice
16 for Entrepreneurs Act of 2001 and, as of the end of
17 the preceding plan year, the number of such covered
18 individuals does not exceed 25 percent of the total
19 number of present and former employees enrolled
20 under the plan or other arrangement.

21 “(iii) The employee organization or other entity
22 sponsoring the plan or other arrangement certifies
23 to the Secretary each year, in a form and manner
24 which shall be prescribed by the Secretary through
25 negotiated rulemaking that the plan or other ar-

1 rangement meets the requirements of clauses (i) and
2 (ii).

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

6 “(i) all of the benefits provided under the plan
7 or arrangement consist of health insurance coverage;
8 or

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

11 “(II) the requirements of clause (B) of the pro-
12 viso to clause (5) of section 302(c) of the Labor
13 Management Relations Act, 1947 (29 U.S.C.
14 186(c)) are met with respect to such plan or other
15 arrangement.

16 “(E) 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) the plan or arrangement is in effect as of
20 the date of the enactment of the Small Business Ac-
21 cess and Choice for Entrepreneurs Act of 2001; or

22 “(ii) the employee organization or other entity
23 sponsoring the plan or arrangement—

24 “(I) has been in existence for at least 3
25 years; or

1 “(II) demonstrates to the satisfaction of
 2 the Secretary that the requirements of subpara-
 3 graphs (C) and (D) are met with respect to the
 4 plan or other arrangement.”.

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

11 **SEC. 5. ENFORCEMENT PROVISIONS RELATING TO ASSO-**
 12 **CIATION HEALTH PLANS.**

13 (a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL
 14 MISREPRESENTATIONS.—Section 501 of the Employee
 15 Retirement Income Security Act of 1974 (29 U.S.C. 1131)
 16 is amended—

17 (1) by inserting “(a)” after “SEC. 501.”; and
 18 (2) by adding at the end the following new sub-
 19 section:

20 “(b) Any person who willfully falsely represents, to
 21 any employee, any employee’s beneficiary, any employer,
 22 the Secretary, or any State, a plan or other arrangement
 23 established or maintained for the purpose of offering or
 24 providing any benefit described in section 3(1) to employ-
 25 ees or their beneficiaries as—

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

3 “(2) having been established or maintained
4 under or pursuant to one or more collective bar-
5 gaining agreements which are reached pursuant to
6 collective bargaining described in section 8(d) of the
7 National Labor Relations Act (29 U.S.C. 158(d)) or
8 paragraph Fourth of section 2 of the Railway Labor
9 Act (45 U.S.C. 152, paragraph Fourth) or which are
10 reached pursuant to labor-management negotiations
11 under similar provisions of State public employee re-
12 lations laws; or

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

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

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

22 “(n)(1) Subject to paragraph (2), upon application
23 by the Secretary showing the operation, promotion, or
24 marketing of an association health plan (or similar ar-

1 rangement providing benefits consisting of medical care
2 (as defined in section 733(a)(2))) that—

3 “(A) is not certified under part 8, is subject
4 under section 514(b)(6) to the insurance laws of any
5 State in which the plan or arrangement offers or
6 provides benefits, and is not licensed, registered, or
7 otherwise approved under the insurance laws of such
8 State; or

9 “(B) is an association health plan certified
10 under part 8 and is not operating in accordance with
11 the requirements under part 8 for such certification,
12 a district court of the United States shall enter an order
13 requiring that the plan or arrangement cease activities.

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

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

19 “(B) with respect to each State in which the
20 plan or arrangement offers or provides benefits, the
21 plan or arrangement is operating in accordance with
22 applicable State laws that are not superseded under
23 section 514.

24 “(3) The court may grant such additional equitable
25 relief, including any relief available under this title, as it

1 deems necessary to protect the interests of the public and
 2 of persons having claims for benefits against the plan.”.

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

7 “(c) ASSOCIATION HEALTH PLANS.—The terms of
 8 each association health plan which is or has been certified
 9 under part 8 shall require the board of trustees or the
 10 named fiduciary (as applicable) to ensure that the require-
 11 ments of this section are met in connection with claims
 12 filed under the plan.”.

13 **SEC. 6. COOPERATION BETWEEN FEDERAL AND STATE AU-**
 14 **THORITIES.**

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

18 “(c) RESPONSIBILITY OF STATES WITH RESPECT TO
 19 ASSOCIATION HEALTH PLANS.—

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

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

1 “(B) the Secretary’s authority to certify
2 association health plans under part 8 in accord-
3 ance with regulations of the Secretary applica-
4 ble to certification under part 8; or

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

8 “(2) DELEGATIONS.—Any department, agency,
9 or instrumentality of a State to which authority is
10 delegated pursuant to an agreement entered into
11 under this paragraph may, if authorized under State
12 law and to the extent consistent with such agree-
13 ment, exercise the powers of the Secretary under
14 this title which relate to such authority.

15 “(3) RECOGNITION OF PRIMARY DOMICILE
16 STATE.—In entering into any agreement with a
17 State under subparagraph (A), the Secretary shall
18 ensure that, as a result of such agreement and all
19 other agreements entered into under subparagraph
20 (A), only one State will be recognized, with respect
21 to any particular association health plan, as the
22 State to which all authority has been delegated pur-
23 suant to such agreements in connection with such
24 plan. In carrying out this paragraph, the Secretary
25 shall take into account the places of residence of the

1 participants and beneficiaries under the plan and the
2 State in which the trust is maintained.”.

3 **SEC. 7. EFFECTIVE DATE AND TRANSITIONAL AND OTHER**
4 **RULES.**

5 (a) **EFFECTIVE DATE.**—The amendments made by
6 sections 2, 5, and 6 shall take effect one year from the
7 date of enactment. The amendments made by sections 3
8 and 4 shall take effect on the date of the enactment of
9 this Act. The Secretary of Labor shall first issue all regu-
10 lations necessary to carry out the amendments made by
11 this subtitle within one year from the date of enactment.
12 Such regulations shall be issued through negotiated rule-
13 making.

14 (b) **EXCEPTION.**—Section 801(a)(2) of the Employee
15 Retirement Income Security Act of 1974 (added by section
16 2) does not apply in connection with an association health
17 plan (certified under part 8 of subtitle B of title I of such
18 Act) existing on the date of the enactment of this Act,
19 if no benefits provided thereunder as of the date of the
20 enactment of this Act consist of health insurance coverage
21 (as defined in section 733(b)(1) of such Act).

22 (c) **TREATMENT OF CERTAIN EXISTING HEALTH**
23 **BENEFITS PROGRAMS.**—

24 (1) **IN GENERAL.**—In any case in which, as of
25 the date of the enactment of this Act, an arrange-

1 ment is maintained in a State for the purpose of
2 providing benefits consisting of medical care for the
3 employees and beneficiaries of its participating em-
4 ployers, at least 200 participating employers make
5 contributions to such arrangement, such arrange-
6 ment has been in existence for at least 10 years, and
7 such arrangement is licensed under the laws of one
8 or more States to provide such benefits to its par-
9 ticipating employers, upon the filing with the appli-
10 cable authority (as defined in section 812(a)(5) of
11 the Employee Retirement Income Security Act of
12 1974 (as amended by this Act)) by the arrangement
13 of an application for certification of the arrangement
14 under part 8 of subtitle B of title I of such Act—

15 (A) such arrangement shall be deemed to
16 be a group health plan for purposes of title I
17 of such Act;

18 (B) the requirements of sections 801(a)(1)
19 and 803(a)(1) of the Employee Retirement In-
20 come Security Act of 1974 shall be deemed met
21 with respect to such arrangement;

22 (C) the requirements of section 803(b) of
23 such Act shall be deemed met, if the arrange-
24 ment is operated by a board of directors
25 which—

1 (i) is elected by the participating em-
2 ployers, with each employer having one
3 vote; and

4 (ii) has complete fiscal control over
5 the arrangement and which is responsible
6 for all operations of the arrangement;

7 (D) the requirements of section 804(a) of
8 such Act shall be deemed met with respect to
9 such arrangement; and

10 (E) the arrangement may be certified by
11 any applicable authority with respect to its op-
12 erations in any State only if it operates in such
13 State on the date of certification.

14 The provisions of this subsection shall cease to apply
15 with respect to any such arrangement at such time
16 after the date of the enactment of this Act as the
17 applicable requirements of this subsection are not
18 met with respect to such arrangement.

19 (2) DEFINITIONS.—For purposes of this sub-
20 section, the terms “group health plan”, “medical
21 care”, and “participating employer” shall have the
22 meanings provided in section 812 of the Employee
23 Retirement Income Security Act of 1974, except
24 that the reference in paragraph (7) of such section
25 to an “association health plan” shall be deemed a

- 1 reference to an arrangement referred to in this sub-
- 2 section.

