

***In the Senate of the United States,***

*March 3, 2006.*

*Resolved*, That the bill from the House of Representatives (H.R. 2830) entitled “An Act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.***

2       (a) *SHORT TITLE.*—*This Act may be cited as the*

3 *“Pension Security and Transparency Act of 2005”.*

1        *(b) TABLE OF CONTENTS.—The table of contents for*  
 2   *this Act is as follows:*

*Sec. 1. Short title and table of contents.*

***TITLE I—FUNDING AND DEDUCTION RULES FOR SINGLE-  
EMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS***

*Subtitle A—Amendments to Employee Retirement Income Security Act of 1974*

- Sec. 101. Minimum funding standards.*
- Sec. 102. Funding rules for single-employer defined benefit pension plans.*
- Sec. 103. Benefit limitations under single-employer plans.*
- Sec. 104. Technical and conforming amendments.*
- Sec. 105. Special rules for multiple employer plans of certain cooperatives.*
- Sec. 106. Temporary relief for certain rescued plans.*

*Subtitle B—Amendments to Internal Revenue Code of 1986*

- Sec. 111. Modifications of the minimum funding standards.*
- Sec. 112. Funding rules applicable to single-employer pension plans.*
- Sec. 113. Benefit limitations under single-employer plans.*
- Sec. 114. Increase in deduction limit for single-employer plans.*
- Sec. 115. Technical and conforming amendments.*

*Subtitle C—Interest Rate Assumptions and Deductible Amounts for 2006*

- Sec. 121. Extension of replacement of 30-year Treasury rates.*
- Sec. 122. Deduction limits for plan contributions.*
- Sec. 123. Updating deduction rules for combination of plans.*

***TITLE II—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER  
DEFINED BENEFIT PLANS AND RELATED PROVISIONS***

*Subtitle A—Funding Rules*

***PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF  
1974***

- Sec. 201. Funding rules for multiemployer defined benefit plans.*
- Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.*
- Sec. 203. Measures to forestall insolvency of multiemployer plans.*
- Sec. 204. Special rule for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation.*
- Sec. 205. Withdrawal liability reforms.*

***PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986***

- Sec. 211. Funding rules for multiemployer defined benefit plans.*
- Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status.*

***PART III—SUNSET OF FUNDING RULES***

- Sec. 216. Sunset of funding rules.*

*Subtitle B—Deduction and Related Provisions**Sec. 221. Deduction limits for multiemployer plans.**Sec. 222. Transfer of excess pension assets to multiemployer health plan.**TITLE III—INTEREST RATE ASSUMPTIONS**Sec. 301. Interest rate assumption for determination of lump sum distributions.**Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.**Sec. 303. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.**Sec. 304. Modification of pension funding requirements for plans subject to current transition rule.**TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS**Sec. 401. Increases in PBGC premiums.**Sec. 402. Authority to enter alternative funding agreements to prevent plan terminations.**Sec. 403. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.**Sec. 404. Limitation on PBGC guarantee of shutdown and other benefits.**Sec. 405. Rules relating to bankruptcy of employer.**Sec. 406. PBGC premiums for new plans of small employers.**Sec. 407. PBGC premiums for small and new plans.**Sec. 408. Authorization for PBGC to pay interest on premium overpayment refunds.**Sec. 409. Rules for substantial owner benefits in terminated plans.**Sec. 410. Acceleration of PBGC computation of benefits attributable to recoveries from employers.**Sec. 411. Treatment of certain plans where cessation or change in membership of a controlled group.**Sec. 412. Effect of title.**Sec. 413. Age requirement for employers.**TITLE V—DISCLOSURE**Sec. 501. Defined benefit plan funding notice.**Sec. 502. Access to multiemployer pension plan information.**Sec. 503. Additional annual reporting requirements.**Sec. 504. Timing of annual reporting requirements.**Sec. 505. Section 4010 filings with the PBGC.**Sec. 506. Disclosure of termination information to plan participants.**Sec. 507. Benefit suspension notice.**Sec. 508. Study and report by Government Accountability Office.**TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HYBRID  
DEFINED BENEFIT PENSION PLANS**Sec. 601. Prospective application of age discrimination, conversion, and present value assumption rules.**Sec. 602. Regulations relating to mergers and acquisitions.*

*TITLE VII—DIVERSIFICATION RIGHTS AND OTHER PARTICIPANT  
PROTECTIONS UNDER DEFINED CONTRIBUTION PLANS*

- Sec. 701. Defined contribution plans required to provide employees with freedom to invest their plan assets.*
- Sec. 702. Notice of freedom to divest employer securities or real property.*
- Sec. 703. Periodic pension benefit statements.*
- Sec. 704. Notice to participants or beneficiaries of blackout periods.*
- Sec. 705. Allowance of, and credit for, additional IRA payments in certain bankruptcy cases.*
- Sec. 706. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.*
- Sec. 707. Increase in maximum bond amount.*

*TITLE VIII—INFORMATION TO ASSIST PENSION PLAN  
PARTICIPANTS*

- Sec. 801. Defined contribution plans required to provide adequate investment education to participants.*
- Sec. 802. Independent investment advice provided to plan participants.*
- Sec. 803. Treatment of qualified retirement planning services.*
- Sec. 804. Increase in penalties for coercive interference with exercise of ERISA rights.*
- Sec. 805. Administrative provision.*

*TITLE IX—PROVISIONS RELATING TO SPOUSAL PENSION  
PROTECTION*

- Sec. 901. Regulations on time and order of issuance of domestic relations orders.*
- Sec. 902. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.*
- Sec. 903. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.*
- Sec. 904. Requirement for additional survivor annuity option.*

*TITLE X—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION  
RULES*

- Sec. 1001. Clarifications regarding purchase of permissive service credit.*
- Sec. 1002. Allow rollover of after-tax amounts in annuity contracts.*
- Sec. 1003. Clarification of minimum distribution rules for governmental plans.*
- Sec. 1004. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.*
- Sec. 1005. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.*
- Sec. 1006. Faster vesting of employer nonelective contributions.*
- Sec. 1007. Allow direct rollovers from retirement plans to Roth IRAs.*
- Sec. 1008. Elimination of higher penalty on certain simple plan distributions.*
- Sec. 1009. Simple plan portability.*
- Sec. 1010. Eligibility for participation in retirement plans.*
- Sec. 1011. Transfers to the PBGC.*
- Sec. 1012. Missing participants.*
- Sec. 1013. Modifications of rules governing hardships and unforeseen financial emergencies.*

## TITLE XI—ADMINISTRATIVE PROVISIONS

- Sec. 1101. Employee plans compliance resolution system.*
- Sec. 1102. Notice and consent period regarding distributions.*
- Sec. 1103. Reporting simplification.*
- Sec. 1104. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.*
- Sec. 1105. No reduction in unemployment compensation as a result of pension rollovers.*
- Sec. 1106. Withholding on distributions from governmental section 457 plans.*
- Sec. 1107. Treatment of defined benefit plan as governmental plan.*
- Sec. 1108. Increasing participation in cash or deferred plans through automatic contribution arrangements.*
- Sec. 1109. Treatment of investment of assets by plan where participant fails to exercise investment election.*
- Sec. 1110. Clarification of fiduciary rules.*

## TITLE XII—UNITED STATES TAX COURT MODERNIZATION

- Sec. 1200. Amendment of 1986 Code.*
- Sec. 1201. Annuities for survivors of Tax Court judges who are assassinated.*
- Sec. 1202. Cost-of-living adjustments for Tax Court judicial survivor annuities.*
- Sec. 1203. Life insurance coverage for Tax Court judges.*
- Sec. 1204. Cost of life insurance coverage for Tax Court judges age 65 or over.*
- Sec. 1205. Modification of timing of lump-sum payment of judges' accrued annual leave.*
- Sec. 1206. Participation of Tax Court judges in the Thrift Savings Plan.*
- Sec. 1207. Exemption of teaching compensation of retired judges from limitation on outside earned income.*
- Sec. 1208. General provisions relating to Magistrate Judges of the Tax Court.*
- Sec. 1209. Annuities to surviving spouses and dependent children of Magistrate Judges of the Tax Court.*
- Sec. 1210. Retirement and annuity program.*
- Sec. 1211. Incumbent Magistrate Judges of the Tax Court.*
- Sec. 1212. Provisions for recall.*
- Sec. 1213. Effective date.*

## TITLE XIII—OTHER PROVISIONS

### Subtitle A—Administrative Provision

- Sec. 1301. Provisions relating to plan amendments.*
- Sec. 1302. Authority to the Secretary of Labor, Secretary of the Treasury, and the Pension Benefit Guaranty Corporation to postpone certain deadlines.*

### Subtitle B—Governmental Pension Plan Equalization

- Sec. 1311. Definition of governmental plan.*
- Sec. 1312. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local plans.*
- Sec. 1313. Clarification that tribal governments are subject to the same defined benefit plan rules and regulations applied to State and other local governments, their police and firefighters.*
- Sec. 1314. Effective date.*

*Subtitle C—Miscellaneous Provisions*

*Sec. 1321. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.*

*Sec. 1322. Treatment of death benefits from corporate-owned life insurance.*

*Subtitle D—Other Related Pension Provisions*

*PART I—HEALTH AND MEDICAL BENEFITS*

*Sec. 1331. Use of excess pension assets for future retiree health benefits.*

*Sec. 1332. Special rules for funding of collectively bargained retiree health benefits.*

*Sec. 1333. Allowance of reserve for medical benefits of plans sponsored by bona fide associations.*

*PART II—CASH OR DEFERRED ARRANGEMENTS*

*Sec. 1336. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.*

*Sec. 1337. State and local governments eligible to maintain section 401(k) plans.*

*PART III—EXCESS CONTRIBUTIONS*

*Sec. 1339. Excess contributions.*

*PART IV—OTHER PROVISIONS*

*Sec. 1341. Amendments relating to prohibited transactions.*

*Sec. 1342. Federal Task Force on Older Workers.*

*Sec. 1343. Technical corrections to Saver Act.*

**1 TITLE I—FUNDING AND DEDUC-**  
**2 TION RULES FOR SINGLE-EM-**  
**3 PLOYER DEFINED BENEFIT**  
**4 PLANS AND RELATED PROVI-**  
**5 SIONS**

**6 Subtitle A—Amendments to Em-**  
**7 ployee Retirement Income Secu-**  
**8 rity Act of 1974**

**9 SEC. 101. MINIMUM FUNDING STANDARDS.**

**10 (a) REPEAL OF EXISTING FUNDING RULES.**—Sections  
**11 302 through 308 of the Employee Retirement Income Secu-**

1 *urity Act of 1974 (29 U.S.C. 1082 through 1086) are re-*  
 2 *pealed.*

3 *(b) NEW MINIMUM FUNDING STANDARDS.—Part 3 of*  
 4 *subtitle B of title I of such Act (as amended by subsection*  
 5 *(a)) is amended by inserting after section 301 the following*  
 6 *new section:*

7 *“MINIMUM FUNDING STANDARDS*

8 *“SEC. 302. (a) REQUIREMENT TO MEET MINIMUM*  
 9 *FUNDING STANDARD.—*

10 *“(1) IN GENERAL.—A plan to which this part*  
 11 *applies shall satisfy the minimum funding standard*  
 12 *applicable to the plan for any plan year.*

13 *“(2) MINIMUM FUNDING STANDARD.—For pur-*  
 14 *poses of paragraph (1), a plan shall be treated as sat-*  
 15 *isfying the minimum funding standard for a plan*  
 16 *year if—*

17 *“(A) in the case of a defined benefit plan*  
 18 *which is a single-employer plan, the employer*  
 19 *makes contributions to or under the plan for the*  
 20 *plan year which, in the aggregate, are not less*  
 21 *than the minimum required contribution deter-*  
 22 *mined under section 303 for the plan for the*  
 23 *plan year,*

24 *“(B) in the case of a money purchase plan*  
 25 *which is a single-employer plan, the employer*  
 26 *makes contributions to or under the plan for the*

1           *plan year which are required under the terms of*  
 2           *the plan, and*

3           “(C) *in the case of a multiemployer plan,*  
 4           *the employers make contributions to or under the*  
 5           *plan for any plan year which, in the aggregate,*  
 6           *are sufficient to ensure that the plan does not*  
 7           *have an accumulated funding deficiency under*  
 8           *section 304 as of the end of the plan year.*

9           “(b) *LIABILITY FOR CONTRIBUTIONS.—*

10           “(1) *IN GENERAL.—Except as provided in para-*  
 11           *graph (2), the amount of any contribution required*  
 12           *by this section (including any required installments*  
 13           *under section 303(j)) shall be paid by the employer*  
 14           *responsible for making contributions to or under the*  
 15           *plan.*

16           “(2) *JOINT AND SEVERAL LIABILITY WHERE EM-*  
 17           *PLOYER MEMBER OF CONTROLLED GROUP.—If the*  
 18           *employer referred to in paragraph (1) is a member of*  
 19           *a controlled group, each member of such group shall*  
 20           *be jointly and severally liable for payment of such*  
 21           *contributions.*

22           “(c) *VARIANCE FROM MINIMUM FUNDING STAND-*  
 23           *ARDS.—*

24           “(1) *WAIVER IN CASE OF BUSINESS HARD-*  
 25           *SHIP.—*



1 “(A) *IN GENERAL.*—If—

2 “(i) *an employer is (or in the case of*  
 3 *a multiemployer plan, 10 percent or more*  
 4 *of the number of employers contributing to*  
 5 *or under the plan are) unable to satisfy the*  
 6 *minimum funding standard for a plan year*  
 7 *without temporary substantial business*  
 8 *hardship (substantial business hardship in*  
 9 *the case of a multiemployer plan), and*

10 “(ii) *application of the standard would*  
 11 *be adverse to the interests of plan partici-*  
 12 *pants in the aggregate,*

13 *the Secretary of the Treasury may, subject to*  
 14 *subparagraph (C), waive the requirements of*  
 15 *subsection (a) for such year with respect to all*  
 16 *or any portion of the minimum funding stand-*  
 17 *ard. The Secretary of the Treasury shall not*  
 18 *waive the minimum funding standard with re-*  
 19 *spect to a plan for more than 3 of any 15 (5 of*  
 20 *any 15 in the case of a multiemployer plan) con-*  
 21 *secutive plan years.*

22 “(B) *EFFECTS OF WAIVER.*—If a waiver is  
 23 granted under subparagraph (A) for any plan  
 24 year—

1           “(i) in the case of a single-employer  
 2           plan, the minimum required contribution  
 3           under section 303 for the plan year shall be  
 4           reduced by the amount of the waived fund-  
 5           ing deficiency and such amount shall be  
 6           amortized as required under section 303(e),  
 7           and

8           “(ii) in the case of a multiemployer  
 9           plan, the funding standard account shall be  
 10          credited under section 304(b)(3)(C) with the  
 11          amount of the waived funding deficiency  
 12          and such amount shall be amortized as re-  
 13          quired under section 304(b)(2)(C).

14          “(C) *WAIVER OF AMORTIZED PORTION NOT*  
 15          *ALLOWED.*—The Secretary of the Treasury may  
 16          not waive under subparagraph (A) any portion  
 17          of the minimum funding standard under sub-  
 18          section (a) for a plan year which is attributable  
 19          to any waived funding deficiency for any pre-  
 20          ceding plan year.

21          “(2) *DETERMINATION OF BUSINESS HARD-*  
 22          *SHIP.*—For purposes of this subsection, the factors  
 23          taken into account in determining temporary sub-  
 24          stantial business hardship (substantial business hard-

1       *ship in the case of a multiemployer plan) shall in-*  
 2       *clude (but shall not be limited to) whether or not—*

3               “(A) *the employer is operating at an eco-*  
 4               *nomie loss,*

5               “(B) *there is substantial unemployment or*  
 6               *underemployment in the trade or business and*  
 7               *in the industry concerned,*

8               “(C) *the sales and profits of the industry*  
 9               *concerned are depressed or declining, and*

10              “(D) *it is reasonable to expect that the plan*  
 11              *will be continued only if the waiver is granted.*

12              “(3) *WAIVED FUNDING DEFICIENCY.—For pur-*  
 13              *poses of this part, the term ‘waived funding defi-*  
 14              *ciency’ means the portion of the minimum funding*  
 15              *standard under subsection (a) (determined without*  
 16              *regard to the waiver) for a plan year waived by the*  
 17              *Secretary of the Treasury and not satisfied by em-*  
 18              *ployer contributions.*

19              “(4) *SECURITY FOR WAIVERS FOR SINGLE-EM-*  
 20              *PLOYER PLANS, CONSULTATIONS.—*

21              “(A) *SECURITY MAY BE REQUIRED.—*

22                      “(i) *IN GENERAL.—Except as provided*  
 23                      *in subparagraph (C), the Secretary of the*  
 24                      *Treasury may require an employer main-*  
 25                      *taining a defined benefit plan which is a*

1           *single-employer plan (within the meaning*  
 2           *of section 4001(a)(15)) to provide security*  
 3           *to such plan as a condition for granting or*  
 4           *modifying a waiver under paragraph (1).*

5           “(ii) *SPECIAL RULES.—Any security*  
 6           *provided under clause (i) may be perfected*  
 7           *and enforced only by the Pension Benefit*  
 8           *Guaranty Corporation, or, at the direction*  
 9           *of the Corporation, by a contributing spon-*  
 10          *sor (within the meaning of section*  
 11          *4001(a)(13)) or a member of such sponsor’s*  
 12          *controlled group (within the meaning of sec-*  
 13          *tion 4001(a)(14)).*

14          “(B) *CONSULTATION WITH THE PENSION*  
 15          *BENEFIT GUARANTY CORPORATION.—Except as*  
 16          *provided in subparagraph (C), the Secretary of*  
 17          *the Treasury shall, before granting or modifying*  
 18          *a waiver under this subsection with respect to a*  
 19          *plan described in subparagraph (A)(i)—*

20                 “(i) *provide the Pension Benefit Guar-*  
 21                 *anty Corporation with—*

22                         “(I) *notice of the completed appli-*  
 23                         *cation for any waiver or modification,*  
 24                         *and*

1                   “(II) an opportunity to comment  
 2                   on such application within 30 days  
 3                   after receipt of such notice, and  
 4                   “(ii) consider—

5                   “(I) any comments of the Cor-  
 6                   poration under clause (i)(II), and

7                   “(II) any views of any employee  
 8                   organization (within the meaning of  
 9                   section 3(4)) representing participants  
 10                  in the plan which are submitted in  
 11                  writing to the Secretary of the Treas-  
 12                  ury in connection with such applica-  
 13                  tion.

14                Information provided to the Corporation under  
 15                this subparagraph shall be considered tax return  
 16                information and subject to the safeguarding and  
 17                reporting requirements of section 6103(p) of the  
 18                Internal Revenue Code of 1986.

19                “(C) EXCEPTION FOR CERTAIN WAIVERS.—

20                “(i) IN GENERAL.—The preceding pro-  
 21                visions of this paragraph shall not apply to  
 22                any plan with respect to which the sum  
 23                of—

24                “(I) the aggregate unpaid min-  
 25                imum required contributions for the

1            *plan year and all preceding plan*  
 2            *years, and*

3            “(II) *the present value of all*  
 4            *waiver amortization installments de-*  
 5            *termined for the plan year and suc-*  
 6            *ceeding plan years under section*  
 7            *303(e)(2),*

8            *is less than \$1,000,000.*

9            “(ii) *TREATMENT OF WAIVERS FOR*  
 10           *WHICH APPLICATIONS ARE PENDING.—The*  
 11           *amount described in clause (i)(I) shall in-*  
 12           *clude any increase in such amount which*  
 13           *would result if all applications for waivers*  
 14           *of the minimum funding standard under*  
 15           *this subsection which are pending with re-*  
 16           *spect to such plan were denied.*

17           “(iii) *UNPAID MINIMUM REQUIRED*  
 18           *CONTRIBUTION.—For purposes of this*  
 19           *subparagraph—*

20           “(I) *IN GENERAL.—The term ‘un-*  
 21           *paid minimum required contribution’*  
 22           *means, with respect to any plan year,*  
 23           *any minimum required contribution*  
 24           *under section 303 for the plan year*  
 25           *which is not paid on or before the due*

1                   date (as determined under section  
2                   303(j)(1)) for the plan year.

3                   “(II) ORDERING RULE.—For pur-  
4                   poses of subclause (I), any payment to  
5                   or under a plan for any plan year  
6                   shall be allocated first to unpaid min-  
7                   imum required contributions for all  
8                   preceding plan years on a first-in,  
9                   first-out basis and then to the min-  
10                  imum required contribution under sec-  
11                  tion 303 for the plan year.

12                  “(5) SPECIAL RULES FOR SINGLE-EMPLOYER  
13                  PLANS.—

14                  “(A) APPLICATION MUST BE SUBMITTED  
15                  BEFORE DATE 2½ MONTHS AFTER CLOSE OF  
16                  YEAR.—In the case of a single-employer plan, no  
17                  waiver may be granted under this subsection  
18                  with respect to any plan for any plan year un-  
19                  less an application therefor is submitted to the  
20                  Secretary of the Treasury not later than the 15th  
21                  day of the 3rd month beginning after the close of  
22                  such plan year.

23                  “(B) SPECIAL RULE IF EMPLOYER IS MEM-  
24                  BER OF CONTROLLED GROUP.—In the case of a  
25                  single-employer plan, if an employer is a mem-

ber of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

“(i) with respect to such employer, and

“(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

“(6) ADVANCE NOTICE.—

“(A) IN GENERAL.—The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21)) other than the Pension Benefit Guaranty Corporation



1        *and in the case of a multiemployer plan, to each*  
 2        *employer required to contribute to the plan*  
 3        *under subsection (b)(1). Such notice shall include*  
 4        *a description of the extent to which the plan is*  
 5        *funded for benefits which are guaranteed under*  
 6        *title IV and for benefit liabilities.*

7                *“(B) CONSIDERATION OF RELEVANT INFOR-*  
 8        *MATION.—The Secretary of the Treasury shall*  
 9        *consider any relevant information provided by a*  
 10        *person to whom notice was given under subpara-*  
 11        *graph (A).*

12                *“(7) RESTRICTION ON PLAN AMENDMENTS.—*

13                *“(A) IN GENERAL.—No amendment of a*  
 14        *plan which increases the liabilities of the plan by*  
 15        *reason of any increase in benefits, any change in*  
 16        *the accrual of benefits, or any change in the rate*  
 17        *at which benefits become nonforfeitable under the*  
 18        *plan shall be adopted if a waiver under this sub-*  
 19        *section or an extension of time under section*  
 20        *304(d) is in effect with respect to the plan, or if*  
 21        *a plan amendment described in subsection (d)(2)*  
 22        *has been made at any time in the preceding 24*  
 23        *months. If a plan is amended in violation of the*  
 24        *preceding sentence, any such waiver, or extension*  
 25        *of time, shall not apply to any plan year ending*

1           *on or after the date on which such amendment*  
 2           *is adopted.*

3           “(B) *EXCEPTION.*—*Subparagraph (A) shall*  
 4           *not apply to any plan amendment which—*

5                     “(i) *the Secretary of the Treasury de-*  
 6                     *termines to be reasonable and which pro-*  
 7                     *vides for only de minimis increases in the*  
 8                     *liabilities of the plan,*

9                     “(ii) *only repeals an amendment de-*  
 10                    *scribed in subsection (d)(2), or*

11                    “(iii) *is required as a condition of*  
 12                    *qualification under part I of subchapter D,*  
 13                    *of chapter 1 of the Internal Revenue Code of*  
 14                    *1986.*

15           “(8) *CROSS REFERENCE.*—*For corresponding*  
 16           *duties of the Secretary of the Treasury with regard to*  
 17           *implementation of the Internal Revenue Code of 1986,*  
 18           *see section 412(d) of such Code.*

19           “(d) *MISCELLANEOUS RULES.*—

20                    “(1) *CHANGE IN METHOD OR YEAR.*—*If the fund-*  
 21                    *ing method, the valuation date, or a plan year for a*  
 22                    *plan is changed, the change shall take effect only if*  
 23                    *approved by the Secretary of the Treasury.*

1           “(2) CERTAIN RETROACTIVE PLAN AMEND-  
2           MENTS.—For purposes of this section, any amend-  
3           ment applying to a plan year which—

4                   “(A) is adopted after the close of such plan  
5                   year but no later than 2½ months after the close  
6                   of the plan year (or, in the case of a multiem-  
7                   ployer plan, no later than 2 years after the close  
8                   of such plan year),

9                   “(B) does not reduce the accrued benefit of  
10                  any participant determined as of the beginning  
11                  of the first plan year to which the amendment  
12                  applies, and

13                  “(C) does not reduce the accrued benefit of  
14                  any participant determined as of the time of  
15                  adoption except to the extent required by the cir-  
16                  cumstances,

17           shall, at the election of the plan administrator, be  
18           deemed to have been made on the first day of such  
19           plan year. No amendment described in this para-  
20           graph which reduces the accrued benefits of any par-  
21           ticipant shall take effect unless the plan adminis-  
22           trator files a notice with the Secretary of the Treas-  
23           ury notifying him of such amendment and such Sec-  
24           retary has approved such amendment, or within 90  
25           days after the date on which such notice was filed,

1     *failed to disapprove such amendment. No amendment*  
 2     *described in this subsection shall be approved by the*  
 3     *Secretary of the Treasury unless such Secretary deter-*  
 4     *mines that such amendment is necessary because of a*  
 5     *temporary substantial business hardship (as deter-*  
 6     *mined under subsection (c)(2)) or a substantial busi-*  
 7     *ness hardship (as so determined) in the case of a mul-*  
 8     *tiemployer plan and that a waiver under subsection*  
 9     *(c) (or, in the case of a multiemployer plan, any ex-*  
 10    *tension of the amortization period under section*  
 11    *304(d)) is unavailable or inadequate.*

12           “(3) *CONTROLLED GROUP.*—*For purposes of this*  
 13    *section, the term ‘controlled group’ means any group*  
 14    *treated as a single employer under subsection (b), (c),*  
 15    *(m), or (o) of section 414 of the Internal Revenue*  
 16    *Code of 1986.”.*

17    (c) *CLERICAL AMENDMENT.*—*The table of contents in*  
 18    *section 1 of such Act is amended by striking the items relat-*  
 19    *ing to sections 302 through 308 and inserting the following*  
 20    *new item:*

*“Sec. 302. Minimum funding standards.”.*

21    (d) *EFFECTIVE DATE.*—*The amendments made by this*  
 22    *section shall apply to plan years beginning after 2006.*

1 **SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DE-**  
 2 **FINED BENEFIT PENSION PLANS.**

3 (a) *IN GENERAL.*—Part 3 of subtitle B of title I of  
 4 the Employee Retirement Income Security Act of 1974 (as  
 5 amended by section 101 of this Act) is amended by inserting  
 6 after section 302 the following new section:

7 “MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER  
 8 DEFINED BENEFIT PENSION PLANS

9 “SEC. 303. (a) *MINIMUM REQUIRED CONTRIBUTION.*—  
 10 For purposes of this section and section 302(a)(2)(A), except  
 11 as provided in subsection (f), the term ‘minimum required  
 12 contribution’ means, with respect to any plan year of a de-  
 13 fined benefit plan which is a single employer plan—

14 “(1) in any case in which the value of plan as-  
 15 sets of the plan (as reduced under subsection (f)(4))  
 16 is less than the funding target of the plan for the plan  
 17 year, the sum of—

18 “(A) the target normal cost of the plan for  
 19 the plan year,

20 “(B) the shortfall amortization charge (if  
 21 any) for the plan for the plan year determined  
 22 under subsection (c), and

23 “(C) the waiver amortization charge (if  
 24 any) for the plan for the plan year as deter-  
 25 mined under subsection (e); or

1           “(2) in any case in which the value of plan as-  
 2       sets of the plan (as reduced under subsection (f)(4))  
 3       equals or exceeds the funding target of the plan for the  
 4       plan year, the target normal cost of the plan for the  
 5       plan year reduced (but not below zero) by any such  
 6       excess.

7           “(b) *TARGET NORMAL COST.*—For purposes of this  
 8       section, except as provided in subsection (i)(2) with respect  
 9       to plans in at-risk status, the term ‘target normal cost’  
 10      means, for any plan year, the present value of all benefits  
 11      which are expected to accrue or to be earned under the plan  
 12      during the plan year. For purposes of this subsection, if  
 13      any benefit attributable to services performed in a preceding  
 14      plan year is increased by reason of any increase in com-  
 15      pensation during the current plan year, the increase in such  
 16      benefit shall be treated as having accrued during the current  
 17      plan year.

18          “(c) *SHORTFALL AMORTIZATION CHARGE.*—

19               “(1) *IN GENERAL.*—For purposes of this section,  
 20      the shortfall amortization charge for a plan for any  
 21      plan year is the aggregate total of the shortfall amor-  
 22      tization installments for such plan year with respect  
 23      to the shortfall amortization bases for such plan year  
 24      and each of the 6 preceding plan years.

1           “(2)   *SHORTFALL   AMORTIZATION   INSTALL-*  
 2           *MENT.—For purposes of paragraph (1)—*

3                   “(A) *DETERMINATION.—The shortfall amor-*  
 4                   *tization installments are the amounts necessary*  
 5                   *to amortize the shortfall amortization base of the*  
 6                   *plan for any plan year in level annual install-*  
 7                   *ments over the 7-plan-year period beginning*  
 8                   *with such plan year.*

9                   “(B)   *SHORTFALL   INSTALLMENT.—The*  
 10                   *shortfall amortization installment for any plan*  
 11                   *year in the 7-plan-year period under subpara-*  
 12                   *graph (A) with respect to any shortfall amortiza-*  
 13                   *tion base is the annual installment determined*  
 14                   *under subparagraph (A) for that year for that*  
 15                   *base.*

16                   “(C)   *SEGMENT   RATES.—In determining*  
 17                   *any shortfall amortization installment under*  
 18                   *this paragraph, the plan sponsor shall use the*  
 19                   *segment rates determined under subparagraph*  
 20                   *(C) of subsection (h)(2), applied under rules*  
 21                   *similar to the rules of subparagraph (B) of sub-*  
 22                   *section (h)(2).*

23           “(3)   *SHORTFALL   AMORTIZATION   BASE.—For*  
 24           *purposes of this section, the shortfall amortization*

1       *base of a plan for a plan year is the excess (if any)*  
 2       *of—*

3               “(A) *the funding shortfall of such plan for*  
 4       *such plan year, over*

5               “(B) *the present value (determined using*  
 6       *the segment rates determined under subpara-*  
 7       *graph (C) of subsection (h)(2), applied under*  
 8       *rules similar to the rules of subparagraph (B) of*  
 9       *subsection (h)(2)) of the aggregate total of the*  
 10       *shortfall amortization installments and waiver*  
 11       *amortization installments which have been deter-*  
 12       *mined for such plan year and any succeeding*  
 13       *plan year with respect to the shortfall amortiza-*  
 14       *tion bases and waiver amortization bases of the*  
 15       *plan for any plan year preceding such plan*  
 16       *year.*

17       “(4) *FUNDING SHORTFALL.—*

18               “(A) *IN GENERAL.—For purposes of this*  
 19       *section, except as provided in subparagraph (B),*  
 20       *the funding shortfall of a plan for any plan year*  
 21       *is the excess (if any) of—*

22               “(i) *the funding target of the plan for*  
 23       *the plan year, over*

24               “(ii) *the value of plan assets of the*  
 25       *plan (as reduced under subsection (f)(4)) for*



1           the plan year which are held by the plan on  
2           the valuation date.

3           “(B) *TRANSITION RULE FOR AMORTIZATION*  
4           *OF FUNDING SHORTFALL.*—

5                   “(i) *IN GENERAL.*—Solely for purposes  
6                   of applying paragraph (3) in the case of  
7                   plan years beginning after 2006 and before  
8                   2011, only the applicable percentage of the  
9                   funding target shall be taken into account  
10                  under paragraph (3)(A) in determining the  
11                  funding shortfall for the plan year.

12                  “(ii) *APPLICABLE PERCENTAGE.*—For  
13                  purposes of subparagraph (A)—

14                          “(I) *IN GENERAL.*—Except as pro-  
15                          vided in subclause (II), the applicable  
16                          percentage shall be 93 percent for plan  
17                          years beginning in 2007, 96 percent  
18                          for plan years beginning in 2008, and  
19                          100 percent for any succeeding plan  
20                          year.

21                          “(II) *SMALL PLANS.*—In the case  
22                          of a plan described in subsection  
23                          (g)(2)(B), the applicable percentage  
24                          shall be determined in accordance with  
25                          the following table:

<b><i>“In the case of a plan year beginning in calendar year:</i></b>	<b><i>The applicable percentage is—</i></b>
2007 .....	92
2008 .....	94
2009 .....	96
2010 .....	98.

1           “(5) *EARLY DEEMED AMORTIZATION UPON AT-*  
2           *TAINMENT OF FUNDING TARGET.—In any case in*  
3           *which the funding shortfall of a plan for a plan year*  
4           *is zero, for purposes of determining the shortfall am-*  
5           *ortization charge for such plan year and succeeding*  
6           *plan years, the shortfall amortization bases for all*  
7           *preceding plan years (and all shortfall amortization*  
8           *installments determined with respect to such bases)*  
9           *shall be reduced to zero.*

10          “(d) *RULES RELATING TO FUNDING TARGET.—For*  
11          *purposes of this section—*

12               “(1) *FUNDING TARGET.—Except as provided in*  
13               *subsection (i)(1) with respect to plans in at-risk sta-*  
14               *tus, the funding target of a plan for a plan year is*  
15               *the present value of all benefits accrued or earned*  
16               *under the plan as of the beginning of the plan year.*

17               “(2) *FUNDING TARGET ATTAINMENT PERCENT-*  
18               *AGE.—The ‘funding target attainment percentage’ of*  
19               *a plan for a plan year is the ratio (expressed as a*  
20               *percentage) which—*

21                       “(A) *the value of plan assets for the plan*  
22                       *year, bears to*

1           “(B) the funding target of the plan for the  
2           plan year (determined without regard to sub-  
3           section (i)(1)).

4           “(e) WAIVER AMORTIZATION CHARGE.—

5           “(1) DETERMINATION OF WAIVER AMORTIZATION  
6           CHARGE.—The waiver amortization charge (if any)  
7           for a plan for any plan year is the aggregate total  
8           of the waiver amortization installments for such plan  
9           year with respect to the waiver amortization bases for  
10          each of the 5 preceding plan years.

11          “(2) WAIVER AMORTIZATION INSTALLMENT.—For  
12          purposes of paragraph (1)—

13               “(A) DETERMINATION.—The waiver amorti-  
14               zation installments are the amounts necessary to  
15               amortize the waiver amortization base of the  
16               plan for any plan year in level annual install-  
17               ments over a period of 5 plan years beginning  
18               with the succeeding plan year.

19               “(B) WAIVER INSTALLMENT.—The waiver  
20               amortization installment for any plan year in  
21               the 5-year period under subparagraph (A) with  
22               respect to any waiver amortization base is the  
23               annual installment determined under subpara-  
24               graph (A) for that year for that base.

1           “(3) *INTEREST RATE.*—*In determining any*  
 2           *waiver amortization installment under this sub-*  
 3           *section, the plan sponsor shall use the segment rates*  
 4           *determined under subparagraph (C) of subsection*  
 5           *(h)(2), applied under rules similar to the rules of sub-*  
 6           *paragraph (B) of subsection (h)(2).*

7           “(4) *WAIVER AMORTIZATION BASE.*—*The waiver*  
 8           *amortization base of a plan for a plan year is the*  
 9           *amount of the waived funding deficiency (if any) for*  
 10          *such plan year under section 302(c).*

11          “(5) *EARLY DEEMED AMORTIZATION UPON AT-*  
 12          *TAINMENT OF FUNDING TARGET.*—*In any case in*  
 13          *which the funding shortfall of a plan for a plan year*  
 14          *is zero, for purposes of determining the waiver amor-*  
 15          *tization charge for such plan year and succeeding*  
 16          *plan years, the waiver amortization bases for all pre-*  
 17          *ceding plan years (and all waiver amortization in-*  
 18          *stallments with respect to such bases) shall be reduced*  
 19          *to zero.*

20          “(f) *USE OF PREFUNDING BALANCES TO SATISFY*  
 21          *MINIMUM REQUIRED CONTRIBUTIONS.*—

22          “(1) *IN GENERAL.*—*A plan sponsor may credit*  
 23          *any amount of a plan’s prefunding balance for a*  
 24          *plan year against the minimum required contribution*  
 25          *for the plan year and the amount of the contributions*

1     *an employer is required to make under section 302(b)*  
 2     *for the plan year shall be reduced by the amount so*  
 3     *credited. Any such amount shall be credited on the*  
 4     *first day of the plan year.*

5             “(2) *PREFUNDING BALANCE.*—

6                 “(A) *BEGINNING BALANCE.*—*The beginning*  
 7             *balance of a prefunding balance maintained by*  
 8             *a plan shall be zero, except that if a plan was*  
 9             *in effect for a plan year beginning in 2006 and*  
 10            *had a positive balance in the funding standard*  
 11            *account under section 302(b) (as in effect for*  
 12            *such plan year) as of the end of such plan year,*  
 13            *the beginning balance for the plan for its first*  
 14            *plan year beginning after 2006 shall be such*  
 15            *positive balance.*

16            “(B) *INCREASES.*—

17                 “(i) *IN GENERAL.*—*As of the first day*  
 18             *of each plan year beginning after 2007, the*  
 19             *prefunding balance of a plan shall be in-*  
 20             *creased by the excess (if any) of—*

21                     “(I) *the aggregate amount of em-*  
 22                     *ployer contributions to the plan for the*  
 23                     *preceding plan year, over*

24                     “(II) *the minimum required con-*  
 25                     *tribution for the preceding plan year.*

1 “(ii) *ADJUSTMENTS FOR INTEREST.*—

2 *Any excess contributions under clause (i)*  
 3 *shall be properly adjusted for interest accru-*  
 4 *ing for the periods between the first day of*  
 5 *the current plan year and the dates on*  
 6 *which the excess contributions were made,*  
 7 *determined by using the effective interest*  
 8 *rate for the preceding plan year and by*  
 9 *treating contributions as being first used to*  
 10 *satisfy the minimum required contribution.*

11 “(iii) *CERTAIN CONTRIBUTIONS DIS-*  
 12 *REGARDED.*—*Any contribution which is re-*  
 13 *quired to be made under section 206(g) in*  
 14 *addition to any contribution required under*  
 15 *this section shall not be taken into account*  
 16 *for purposes of clause (i).*

17 “(C) *DECREASES.*—*As of the first day of*  
 18 *each plan year after 2007, the prefunding bal-*  
 19 *ance of a plan shall be decreased (but not below*  
 20 *zero) by the amount of the balance credited*  
 21 *under paragraph (1) against the minimum re-*  
 22 *quired contribution of the plan for the preceding*  
 23 *plan year.*

24 “(D) *ADJUSTMENTS FOR INVESTMENT EX-*  
 25 *PERIENCE.*—*In determining the prefunding bal-*

ance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary of the Treasury, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

“(3) *LIMITATION FOR UNDERFUNDED PLANS.*—

“(A) *IN GENERAL.*—If the ratio (expressed as a percentage) for any plan year which—

“(i) the value of plan assets for the preceding plan year, bears to

“(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent, the preceding provisions of this subsection shall not apply unless employers liable for contributions to the plan under section 302(b) make contributions to the plan for the plan year in an aggregate amount not less than the amount determined under subpara-

1           *graph (B). Any contribution required by this*  
 2           *subparagraph may not be reduced by any credit*  
 3           *otherwise allowable under paragraph (1).*

4           “(B) *APPLICABLE AMOUNT.*—*The amount*  
 5           *determined under this subparagraph for any*  
 6           *plan year is the greater of—*

7                     “(i) *the target normal cost of the plan*  
 8                     *for the plan year, or*

9                     “(ii) *25 percent of the minimum re-*  
 10                    *quired contribution under subsection (a) for*  
 11                    *the plan year without regard to this sub-*  
 12                    *section.*

13           “(4) *REDUCTION IN VALUE OF ASSETS.*—*Solely*  
 14           *for purposes of applying subsections (a) and*  
 15           *(c)(4)(A)(ii) in determining the minimum required*  
 16           *contribution under this section, the value of the plan*  
 17           *assets otherwise determined without regard to this*  
 18           *paragraph shall be reduced by the amount of the*  
 19           *prefunding balance under this subsection.*

20           “(g) *VALUATION OF PLAN ASSETS AND LIABILITIES.*—

21                     “(1) *TIMING OF DETERMINATIONS.*—*Except as*  
 22                    *otherwise provided under this subsection, all deter-*  
 23                    *minations under this section for a plan year shall be*  
 24                    *made as of the valuation date of the plan for such*  
 25                    *plan year.*



1           “(2) *VALUATION DATE.*—*For purposes of this*  
 2       *section—*

3           “(A) *IN GENERAL.*—*Except as provided in*  
 4       *subparagraph (B), the valuation date of a plan*  
 5       *for any plan year shall be the first day of the*  
 6       *plan year.*

7           “(B) *EXCEPTION FOR SMALL PLANS.*—*If, on*  
 8       *each day during the preceding plan year, a plan*  
 9       *had 100 or fewer participants, the plan may des-*  
 10      *ignate any day during the plan year as its valu-*  
 11      *ation date for such plan year and succeeding*  
 12      *plan years. For purposes of this subparagraph,*  
 13      *all defined benefit plans (other than multiem-*  
 14      *ployer plans) maintained by the same employer*  
 15      *(or any member of such employer’s controlled*  
 16      *group) shall be treated as 1 plan, but only em-*  
 17      *ployees of such employer or member shall be*  
 18      *taken into account.*

19          “(C) *APPLICATION OF CERTAIN RULES IN*  
 20      *DETERMINATION OF PLAN SIZE.*—*For purposes of*  
 21      *this paragraph—*

22          “(i) *PLANS NOT IN EXISTENCE IN PRE-*  
 23      *CEDING YEAR.*—*In the case of the first plan*  
 24      *year of any plan, subparagraph (B) shall*  
 25      *apply to such plan by taking into account*

1           *the number of participants that the plan is*  
 2           *reasonably expected to have on days during*  
 3           *such first plan year.*

4           “(ii) *PREDECESSORS.*—Any reference  
 5           *in subparagraph (B) to an employer shall*  
 6           *include a reference to any predecessor of*  
 7           *such employer.*

8           “(3) *DETERMINATION OF VALUE OF PLAN AS-*  
 9           *SETS.*—For purposes of this section—

10           “(A) *IN GENERAL.*—Except as provided in  
 11           *subparagraph (B), the value of plan assets shall*  
 12           *be the fair market value of the assets.*

13           “(B) *AVERAGING ALLOWED.*—A plan may  
 14           *determine the value of plan assets on the basis*  
 15           *of any reasonable actuarial method of valuation*  
 16           *providing for the averaging of fair market val-*  
 17           *ues, but only if such method—*

18           “(i) *is permitted under regulations*  
 19           *prescribed by the Secretary of the Treasury,*  
 20           *and*

21           “(ii) *does not provide for averaging of*  
 22           *such values over more than the period be-*  
 23           *ginning on the last day of the 12th month*  
 24           *preceding the valuation date and ending on*  
 25           *the valuation date (or a similar period in*

1                   the case of a valuation date which is not the  
2                   1st day of a month).

3                   “(4) ACCOUNTING FOR CONTRIBUTION RE-  
4                   CEIPTS.—For purposes of determining the value of as-  
5                   sets under paragraph (3)—

6                   “(A) PRIOR YEAR CONTRIBUTIONS.—If—

7                   “(i) an employer makes any contribu-  
8                   tion to the plan after the valuation date for  
9                   the plan year in which the contribution is  
10                  made, and

11                  “(ii) the contribution is for a pre-  
12                  ceding plan year,

13                  the contribution shall be taken into account as  
14                  an asset of the plan as of the valuation date, ex-  
15                  cept that in the case of any plan year beginning  
16                  after 2007, only the present value (determined as  
17                  of the valuation date) of such contribution may  
18                  be taken into account. For purposes of the pre-  
19                  ceding sentence, present value shall be deter-  
20                  mined using the effective interest rate for the  
21                  preceding plan year to which the contribution is  
22                  properly allocable.

23                  “(B) SPECIAL RULE FOR CURRENT YEAR  
24                  CONTRIBUTIONS MADE BEFORE VALUATION  
25                  DATE.—If any contributions for any plan year

are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

“(i) such contributions, and

“(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

“(h) *ACTUARIAL ASSUMPTIONS AND METHODS.*—

“(1) *IN GENERAL.*—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

“(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

“(B) which, in combination, offer the actuary’s best estimate of anticipated experience under the plan.

“(2) *INTEREST RATES.*—

“(A) *EFFECTIVE INTEREST RATE.*—For purposes of this section, the term ‘effective interest rate’ means, with respect to any plan for any

1        *plan year, the single rate of interest which, if*  
 2        *used to determine the present value of the plan’s*  
 3        *accrued or earned benefits referred to in sub-*  
 4        *section (d)(1), would result in an amount equal*  
 5        *to the funding target of the plan for such plan*  
 6        *year.*

7                *“(B) INTEREST RATES FOR DETERMINING*  
 8        *FUNDING TARGET.—For purposes of determining*  
 9        *the funding target of a plan for any plan year,*  
 10        *the interest rate used in determining the present*  
 11        *value of the benefits of the plan shall be—*

12                *“(i) in the case of benefits reasonably*  
 13        *determined to be payable during the 5-year*  
 14        *period beginning on the first day of the*  
 15        *plan year, the first segment rate with re-*  
 16        *spect to the applicable month,*

17                *“(ii) in the case of benefits reasonably*  
 18        *determined to be payable during the 15-year*  
 19        *period beginning at the end of the period*  
 20        *described in clause (i), the second segment*  
 21        *rate with respect to the applicable month,*  
 22        *and*

23                *“(iii) in the case of benefits reasonably*  
 24        *determined to be payable after the period*

1           *described in clause (ii), the third segment*  
 2           *rate with respect to the applicable month.*

3           “(C) *SEGMENT RATES.*—*For purposes of*  
 4           *this paragraph—*

5                   “(i) *FIRST SEGMENT RATE.*—*The term*  
 6                   *‘first segment rate’ means, with respect to*  
 7                   *any month, the single rate of interest which*  
 8                   *shall be determined by the Secretary of the*  
 9                   *Treasury for such month on the basis of the*  
 10                  *corporate bond yield curve for such month,*  
 11                  *taking into account only that portion of*  
 12                  *such yield curve which is based on bonds*  
 13                  *maturing during the 5-year period com-*  
 14                  *mencing with such month.*

15                  “(ii) *SECOND SEGMENT RATE.*—*The*  
 16                  *term ‘second segment rate’ means, with re-*  
 17                  *spect to any month, the single rate of inter-*  
 18                  *est which shall be determined by the Sec-*  
 19                  *retary of the Treasury for such month on*  
 20                  *the basis of the corporate bond yield curve*  
 21                  *for such month, taking into account only*  
 22                  *that portion of such yield curve which is*  
 23                  *based on bonds maturing during each of the*  
 24                  *years in the 15-year period beginning at the*  
 25                  *end of the period described in clause (i).*

1                   “(iii) *THIRD SEGMENT RATE.*—The  
 2                   term ‘third segment rate’ means, with re-  
 3                   spect to any month, the single rate of inter-  
 4                   est which shall be determined by the Sec-  
 5                   retary of the Treasury for such month on  
 6                   the basis of the corporate bond yield curve  
 7                   for such month, taking into account only  
 8                   that portion of such yield curve which is  
 9                   based on bonds maturing during periods be-  
 10                  ginning after the period described in clause  
 11                  (ii).

12                  “(D) *CORPORATE BOND YIELD CURVE.*—The  
 13                  term ‘corporate bond yield curve’ means, with re-  
 14                  spect to any month, a yield curve which is pre-  
 15                  scribed by the Secretary of the Treasury for such  
 16                  month and which reflects the average, for the 12-  
 17                  month period ending with the month preceding  
 18                  such month, of yields on investment grade cor-  
 19                  porate bonds with varying maturities.

20                  “(E) *APPLICABLE MONTH.*—For purposes of  
 21                  this paragraph, the term ‘applicable month’  
 22                  means, with respect to any plan for any plan  
 23                  year, the month which includes the valuation  
 24                  date of such plan for such plan year or, at the  
 25                  election of the plan administrator, any of the 4

1        *months which precede such month. Any election*  
2        *made under this subparagraph shall apply to the*  
3        *plan year for which the election is made and all*  
4        *succeeding plan years, unless the election is re-*  
5        *voked with the consent of the Secretary of the*  
6        *Treasury.*

7                “(F) *PUBLICATION REQUIREMENTS.*—*The*  
8        *Secretary of the Treasury shall publish for each*  
9        *month the corporate bond yield curve for such*  
10       *month and each of the rates determined under*  
11       *this paragraph for such month. The Secretary of*  
12       *the Treasury shall also publish a description of*  
13       *the methodology used to determine such yield*  
14       *curve and such rates which is sufficiently de-*  
15       *tailed to enable plans to make reasonable projec-*  
16       *tions regarding the yield curve and such rates*  
17       *for future months based on the plan’s projection*  
18       *of future interest rates.*

19                “(G) *TRANSITION RULE.*—

20                “(i) *IN GENERAL.*—*Notwithstanding*  
21        *the preceding provisions of this paragraph,*  
22        *for plan years beginning in 2007 or 2008,*  
23        *the first, second, or third segment rate for a*  
24        *plan with respect to any month shall be*  
25        *equal to the sum of—*



1                   “(I) the product of such rate for  
 2                   such month determined without regard  
 3                   to this subparagraph, multiplied by the  
 4                   applicable percentage, and

5                   “(II) the product of the rate deter-  
 6                   mined under the rules of section  
 7                   302(b)(5)(B)(ii)(II) (as in effect for  
 8                   plan years beginning in 2006), multi-  
 9                   plied by a percentage equal to 100 per-  
 10                  cent minus the applicable percentage.

11                  “(ii) *APPLICABLE PERCENTAGE.*—For  
 12                  purposes of clause (i), the applicable per-  
 13                  centage is  $33\frac{1}{3}$  percent for plan years be-  
 14                  ginning in 2007 and  $66\frac{2}{3}$  percent for plan  
 15                  years beginning in 2008.

16                  “(3) *MORTALITY TABLES.*—

17                  “(A) *IN GENERAL.*—Except as provided in  
 18                  subparagraphs (C) and (D), the mortality table  
 19                  used in determining any present value or mak-  
 20                  ing any computation under this section shall be  
 21                  the *RP-2000 Combined Mortality Table*, using  
 22                  *Scale AA*, as published by the Society of Actu-  
 23                  aries, as in effect on the date of the enactment  
 24                  of the Pension Security and Transparency Act of

1       2005 and as revised from time to time under  
2       subparagraph (B).

3               “(B) *PERIODIC REVISION.*—The Secretary  
4       of the Treasury shall (at least every 10 years)  
5       make revisions in any table in effect under sub-  
6       paragraph (A) to reflect the actual experience of  
7       pension plans and projected trends in such expe-  
8       rience.

9               “(C) *SUBSTITUTE MORTALITY TABLE.*—

10              “(i) *IN GENERAL.*—Upon request by  
11       the plan sponsor and approval by the Sec-  
12       retary of the Treasury, a mortality table  
13       which meets the requirements of clause (ii)  
14       shall be used in determining any present  
15       value or making any computation under  
16       this section during the 10-consecutive plan  
17       year period specified in the request. A mor-  
18       tality table described in this clause shall  
19       cease to be in effect if the plan actuary de-  
20       termines at any time that such table does  
21       not meet the requirements of clause (ii).

22              “(ii) *REQUIREMENTS.*—A mortality  
23       table meets the requirements of this clause if  
24       the Secretary of the Treasury determines  
25       that—

1           “(I) there is a sufficient number  
2           of plan participants, and the pension  
3           plans have been maintained for a suffi-  
4           cient period of time, to have credible  
5           information necessary for purposes of  
6           subclause (II),

7           “(II) such table reflects the actual  
8           experience of the pension plans main-  
9           tained by the sponsor and projected  
10          trends in general mortality experience,

11          “(III) except as provided by the  
12          Secretary, such table will be used by  
13          all plans maintained by the plan spon-  
14          sor and all members of any controlled  
15          group which includes the plan sponsor,  
16          and

17          “(IV) such table is significantly  
18          different from the table described in  
19          subparagraph (A).

20          “(iii) *DEADLINE FOR DISPOSITION OF*  
21          *APPLICATION.—Any mortality table sub-*  
22          *mitted to the Secretary of the Treasury for*  
23          *approval under this subparagraph shall be*  
24          *treated as in effect for the first plan year in*  
25          *the 10-year period described in clause (i)*

1           *unless the Secretary of the Treasury, during*  
 2           *the 180-day period beginning on the date of*  
 3           *such submission, disapproves of such table*  
 4           *and provides the reasons that such table*  
 5           *fails to meet the requirements of clause (ii).*  
 6           *The 180-day period shall be extended for*  
 7           *any period during which the Secretary of*  
 8           *the Treasury has requested information*  
 9           *from the plan sponsor and such information*  
 10          *has not been provided.*

11           “(D) *SEPARATE MORTALITY TABLES FOR*  
 12          *THE DISABLED.*—*Notwithstanding subparagraph*  
 13          *(A)—*

14           “(i) *IN GENERAL.*—*The Secretary of*  
 15          *the Treasury shall establish mortality tables*  
 16          *which may be used (in lieu of the tables*  
 17          *under subparagraph (A)) under this sub-*  
 18          *section for individuals who are entitled to*  
 19          *benefits under the plan on account of dis-*  
 20          *ability. The Secretary of the Treasury shall*  
 21          *establish separate tables for individuals*  
 22          *whose disabilities occur in plan years begin-*  
 23          *ning before January 1, 1995, and for indi-*  
 24          *viduals whose disabilities occur in plan*  
 25          *years beginning on or after such date.*

1                   “(ii) *SPECIAL RULE FOR DISABILITIES*  
2                   *OCCURRING AFTER 1994.*—*In the case of dis-*  
3                   *abilities occurring in plan years beginning*  
4                   *after December 31, 1994, the tables under*  
5                   *clause (i) shall apply only with respect to*  
6                   *individuals described in such subclause who*  
7                   *are disabled within the meaning of title II*  
8                   *of the Social Security Act and the regula-*  
9                   *tions thereunder.*

10                   “(iii) *PERIODIC REVISION.*—*The Sec-*  
11                   *retary of the Treasury shall (at least every*  
12                   *10 years) make revisions in any table in ef-*  
13                   *fect under clause (i) to reflect the actual ex-*  
14                   *perience of pension plans and projected*  
15                   *trends in such experience.*

16                   “(E) *TRANSITION RULE.*—*Under regula-*  
17                   *tions of the Secretary of the Treasury, any dif-*  
18                   *ference in present value resulting from any dif-*  
19                   *ferences in assumptions as set forth in the mor-*  
20                   *tality table specified in subparagraph (A) and*  
21                   *assumptions as set forth in the mortality table*  
22                   *described in section 302(d)(7)(C)(ii) (as in effect*  
23                   *for plan years beginning in 2006) shall be*  
24                   *phased in ratably over the first period of 5 plan*

1           *years beginning in or after 2007 so as to be fully*  
 2           *effective for the fifth plan year.*

3           “(4) *PROBABILITY OF BENEFIT PAYMENTS IN*  
 4           *THE FORM OF LUMP SUMS OR OTHER OPTIONAL*  
 5           *FORMS.—For purposes of determining any present*  
 6           *value or making any computation under this section,*  
 7           *there shall be taken into account—*

8                     “(A) *the probability that future benefit pay-*  
 9                     *ments under the plan will be made in the form*  
 10                    *of optional forms of benefits provided under the*  
 11                    *plan (including lump sum distributions, deter-*  
 12                    *mined on the basis of the plan’s experience and*  
 13                    *other related assumptions), and*

14                   “(B) *any difference in the present value of*  
 15                    *such future benefit payments resulting from the*  
 16                    *use of actuarial assumptions, in determining*  
 17                    *benefit payments in any such optional form of*  
 18                    *benefits, which are different from those specified*  
 19                    *in this subsection.*

20           “(5) *APPROVAL OF LARGE CHANGES IN ACTU-*  
 21           *ARIAL ASSUMPTIONS.—*

22                   “(A) *IN GENERAL.—No actuarial assump-*  
 23                    *tion used to determine the funding target for a*  
 24                    *plan to which this paragraph applies may be*

1        *changed without the approval of the Secretary of*  
2        *the Treasury.*

3                “(B) *PLANS TO WHICH PARAGRAPH AP-*  
4        *PLIES.—This paragraph shall apply to a plan*  
5        *only if—*

6                “(i) *the aggregate unfunded benefits as*  
7                *of the close of the preceding plan year (as*  
8                *determined under section*  
9                *4006(a)(3)(E)(iii)) of such plan and all*  
10               *other plans maintained by the contributing*  
11               *sponsors (as defined in section 4001(a)(13))*  
12               *and members of such sponsors’ controlled*  
13               *groups (as defined in section 4001(a)(14))*  
14               *which are covered by title IV (disregarding*  
15               *plans with no unfunded benefits) exceed*  
16               *\$50,000,000; and*

17               “(ii) *the change in assumptions (deter-*  
18               *mined after taking into account any*  
19               *changes in interest rate and mortality*  
20               *table) results in a decrease in the funding*  
21               *shortfall of the plan for the current plan*  
22               *year that exceeds \$50,000,000, or that ex-*  
23               *ceeds \$5,000,000 and that is 5 percent or*  
24               *more of the funding target of the plan before*  
25               *such change.*

1 “(i) *SPECIAL RULES FOR AT-RISK PLANS.*—

2 “(1) *FUNDING TARGET FOR PLANS IN AT-RISK*  
3 *STATUS.*—

4 “(A) *IN GENERAL.*—*In the case of a plan to*  
5 *which this subsection applies for a plan year, the*  
6 *funding target of the plan for the plan year is*  
7 *equal to the present value of all liabilities to par-*  
8 *ticipants and their beneficiaries under the plan*  
9 *for the plan year, as determined by using the ad-*  
10 *ditional actuarial assumptions described in sub-*  
11 *paragraph (B).*

12 “(B) *ADDITIONAL ACTUARIAL ASSUMP-*  
13 *TIONS.*—*The actuarial assumptions described in*  
14 *this subparagraph are as follows:*

15 “(i) *All employees who are not other-*  
16 *wise assumed to retire as of the valuation*  
17 *date but who will be eligible to elect benefits*  
18 *during the plan year and the 7 succeeding*  
19 *plan years shall be assumed to retire at the*  
20 *earliest retirement date under the plan but*  
21 *not before the end of the plan year for which*  
22 *the at-risk target liability and at-risk target*  
23 *normal cost are being determined.*

24 “(ii) *All employees shall be assumed to*  
25 *elect the retirement benefit available under*



1           the plan at the assumed retirement age (de-  
 2           termined after application of clause (i))  
 3           which would result in the highest present  
 4           value of liabilities.

5           “(2) *TARGET NORMAL COST OF AT-RISK*  
 6           *PLANS.*—In the case of a plan to which this subsection  
 7           applies for a plan year, the target normal cost of the  
 8           plan for such plan year shall be equal to the present  
 9           value of all benefits which are expected to accrue or  
 10          be earned under the plan during the plan year, deter-  
 11          mined using the additional actuarial assumptions de-  
 12          scribed in paragraph (1)(B).

13          “(3) *MINIMUM AMOUNT.*—In no event shall—  
 14               “(A) the at-risk target liability be less than  
 15               the target liability, as determined without regard  
 16               to this subsection, or

17               “(B) the at-risk target normal cost be less  
 18               than the target normal cost, as determined with-  
 19               out regard to this subsection.

20          “(4) *DETERMINATION OF AT-RISK STATUS.*—For  
 21          purposes of this subsection, a plan is in at-risk status  
 22          for a plan year if—

23               “(A) the plan is maintained by a finan-  
 24               cially-weak employer, and

1           “(B) the funding target attainment percent-  
2           age for the plan year is less than 93 percent.

3           “(5) FINANCIALLY-WEAK EMPLOYER.—

4           “(A) IN GENERAL.—For purposes of this  
5           subsection, the term ‘financially-weak employer’  
6           means any employer if—

7                   “(i) as of the valuation date for each  
8                   of the years during a period of at least 3  
9                   consecutive plan years ending with the plan  
10                  year—

11                           “(I) the employer has an out-  
12                           standing senior unsecured debt instru-  
13                           ment which is rated lower than invest-  
14                           ment grade by each of the nationally  
15                           recognized statistical rating organiza-  
16                           tions for corporate bonds that has  
17                           issued a credit rating for such instru-  
18                           ment, or

19                           “(II) if no such debt instrument  
20                           has been rated by such an organization  
21                           but 1 or more of such organizations  
22                           has made an issuer credit rating for  
23                           such employer, all such organizations  
24                           which have so rated the employer have

rated such employer lower than investment grade, and

“(ii) at least 2 of the years during such period are deterioration years.

If an employer is treated as a financially-weak employer for any plan year, clause (ii) shall not apply in determining whether the employer is so treated for any succeeding plan year in any continuous period of plan years for which the employer is treated as a financially-weak employer.

“(B) CONTROLLED GROUP EXCEPTION.—If an employer treated as a financially-weak employer under subparagraph (A) is a member of a controlled group (as defined in section 302(d)(3)), the employer shall not be treated as a financially-weak employer if a significant member (as determined under regulations prescribed by the Secretary of the Treasury) of such group has an outstanding senior unsecured debt instrument that is rated as being investment grade by an organization described in subparagraph (A).

“(C) EMPLOYERS WITH NO RATINGS.—If—

“(i) an employer has no debt instrument described in subparagraph (A)(i)

1           *which was rated by an organization de-*  
 2           *scribed in such subparagraph, and*

3           “(ii) *no such organization has made*  
 4           *an issuer credit rating for such employer,*  
 5           *then such employer shall only be treated as a fi-*  
 6           *nancially-weak employer to the extent provided*  
 7           *in regulations prescribed by the Secretary of the*  
 8           *Treasury.*

9           “(6) *DETERMINATION OF DETERIORATION*  
 10          *YEAR.—For purposes of paragraph (5), the term ‘de-*  
 11          *terioration year’ means any year during the period*  
 12          *described in paragraph (5)(A)(i) for which the rating*  
 13          *described in subclause (I) or (II) of paragraph*  
 14          *(5)(A)(i) by each organization is either—*

15               “(A) *lower than the lowest rating of the em-*  
 16               *ployer by such organization for a preceding year*  
 17               *in such period, or*

18               “(B) *the lowest rating used by such organi-*  
 19               *zation.*

20           “(7) *YEARS BEFORE EFFECTIVE DATE.—For*  
 21          *purposes of paragraphs (5) and (6), plan years begin-*  
 22          *ning before 2007 shall not be taken into account.*

23           “(8) *TRANSITION BETWEEN APPLICABLE FUND-*  
 24          *ING TARGETS AND BETWEEN APPLICABLE TARGET*  
 25          *NORMAL COSTS.—*

1           “(A) *IN GENERAL.*—*In any case in which a*  
 2           *plan which is in at-risk status for a plan year*  
 3           *has been in such status for a consecutive period*  
 4           *of fewer than 5 plan years, the applicable*  
 5           *amount of the funding target and of the target*  
 6           *normal cost shall be, in lieu of the amount deter-*  
 7           *mined without regard to this paragraph, the sum*  
 8           *of—*

9                     “(i) *the amount determined under this*  
 10           *section without regard to this subsection,*  
 11           *plus*

12                    “(ii) *the transition percentage for such*  
 13           *plan year of the excess of the amount deter-*  
 14           *mined under this subsection (without regard*  
 15           *to this paragraph) over the amount deter-*  
 16           *mined under this section without regard to*  
 17           *this subsection.*

18           “(B) *IMPROVEMENT YEARS NOT TAKEN INTO*  
 19           *ACCOUNT.*—

20                    “(i) *IN GENERAL.*—*An improvement*  
 21           *year shall not be taken into account in de-*  
 22           *termining any consecutive period of plan*  
 23           *years for purposes of subparagraph (A).*

24                    “(ii) *APPLICATION OF SUBSECTION*  
 25           *AFTER IMPROVEMENT YEAR ENDS.*—*Plan*

years immediately before and after an improvement year (or consecutive period of improvement years) shall be treated as consecutive for purposes of subparagraph (A).

“(iii) *IMPROVEMENT YEAR*.—For purposes of this subparagraph, the term ‘improvement year’ means any plan year for which any rating described in subclause (I) or (II) of paragraph (5)(A)(i) is higher than such rating for the preceding plan year.

“(C) *TRANSITION PERCENTAGE*.—For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

<b><i>If the consecutive number of years (including the plan year) the plan is in at-risk status is—</i></b>	<b><i>The transition percentage is—</i></b>
1 .....	20
2 .....	40
3 .....	60
4 .....	80.

“(D) *YEARS BEFORE EFFECTIVE DATE*.—For purposes of this paragraph, plan years beginning before 2007 shall not be taken into account.

“(9) *PLANS TO WHICH SUBSECTION APPLIES*.—

“(A) *IN GENERAL*.—Except as provided in this paragraph, this subsection shall apply to

1           *any plan to which this section applies and which*  
 2           *is in at-risk status for the plan year.*

3           “(B) *EXCEPTION FOR SMALL PLANS.*—*This*  
 4           *subsection shall not apply to a plan for a plan*  
 5           *year if the plan was described in subsection*  
 6           *(g)(2)(B) for the preceding plan year, deter-*  
 7           *mined by substituting ‘500’ for ‘100’.*

8           “(C) *EXCEPTION FOR PLANS MAINTAINED*  
 9           *BY CERTAIN COOPERATIVES.*—*This subsection*  
 10          *shall not apply to an eligible cooperative plan*  
 11          *described in subparagraph (D).*

12          “(D) *ELIGIBLE COOPERATIVE PLAN DE-*  
 13          *FINED.*—*For purposes of subparagraph (C), a*  
 14          *plan shall be treated as an eligible cooperative*  
 15          *plan for a plan year if the plan is maintained*  
 16          *by more than 1 employer and at least 85 percent*  
 17          *of the employers are—*

18               “(i) *rural cooperatives (as defined in*  
 19               *section 401(k)(7)(B) of the Internal Revenue*  
 20               *Code of 1986 without regard to clause (iv)*  
 21               *thereof), or*

22               “(ii) *organizations which are—*

23                       “(I) *cooperative organizations de-*  
 24                       *scribed in section 1381(a) of such Code*  
 25                       *which are more than 50-percent owned*

1           *by agricultural producers or by co-*  
 2           *operatives owned by agricultural pro-*  
 3           *ducers, or*

4                   “(II) *more than 50-percent owned,*  
 5           *or controlled by, one or more coopera-*  
 6           *tive organizations described in sub-*  
 7           *clause (I).*

8           *A plan shall also be treated as an eligible coopera-*  
 9           *ative plan for any plan year for which it is de-*  
 10          *scribed in section 210(a) and is maintained by*  
 11          *a rural telephone cooperative association de-*  
 12          *scribed in section 3(40)(B)(v).*

13                   “(E) *EXCEPTION FOR PLANS SECURED BY*  
 14          *THIRD PARTIES BOUND BY PBGC AGREEMENTS.—*  
 15          *This subsection shall not apply to any plan if—*

16                   “(i) *a person other than the employer*  
 17           *obligated to contribute under the plan is,*  
 18           *under the terms of an agreement with the*  
 19           *Pension Benefit Guaranty Corporation, lia-*  
 20           *ble for any failure of the employer to meet*  
 21           *its obligation to pay any minimum re-*  
 22           *quired contribution or termination liability*  
 23           *with respect to the plan; and*

24                   “(ii) *such person is not a financially-*  
 25           *weak employer under paragraph (5).*



1       “(j) *PAYMENT OF MINIMUM REQUIRED CONTRIBU-*  
 2   *TIONS.*—

3               “(1) *IN GENERAL.*—*For purposes of this section,*  
 4       *the due date for any payment of any minimum re-*  
 5       *quired contribution for any plan year shall be 8½*  
 6       *months after the close of the plan year.*

7               “(2) *INTEREST.*—*Any payment required under*  
 8       *paragraph (1) for a plan year made after the valu-*  
 9       *ation date for such plan year shall be increased by in-*  
 10       *terest for the period from the valuation date to the*  
 11       *payment date, determined by using the effective rate*  
 12       *of interest for the plan for such plan year.*

13               “(3) *ACCELERATED QUARTERLY CONTRIBUTION*  
 14       *SCHEDULE FOR UNDERFUNDED PLANS.*—

15               “(A) *FAILURE TO TIMELY MAKE REQUIRED*  
 16       *INSTALLMENT.*—

17               “(i) *IN GENERAL.*—*In the case of a*  
 18       *plan to which this paragraph applies, the*  
 19       *employer maintaining the plan shall make*  
 20       *the required installments under this para-*  
 21       *graph and if the employer fails to pay the*  
 22       *full amount of a required installment for*  
 23       *the plan year, then the amount of interest*  
 24       *charged under paragraph (2) on the under-*  
 25       *payment for the period of underpayment*

1           *shall be determined by using a rate of inter-*  
 2           *est equal to the rate otherwise used under*  
 3           *paragraph (2) plus 5 percentage points.*

4           “(ii) *PLANS TO WHICH PARAGRAPH AP-*  
 5           *PLIES.—This paragraph applies to any de-*  
 6           *finied benefit plan to which this section ap-*  
 7           *plies other than a plan which—*

8                     “(I) *is a plan described in sub-*  
 9                     *section (g)(2)(B)), or*

10                    “(II) *had a funding shortfall of*  
 11                    *\$1,000,000 or less for the preceding*  
 12                    *plan year.*

13           “(B) *AMOUNT OF UNDERPAYMENT, PERIOD*  
 14           *OF UNDERPAYMENT.—For purposes of subpara-*  
 15           *graph (A)—*

16                    “(i) *AMOUNT.—The amount of the un-*  
 17                    *derpayment shall be the excess of—*

18                             “(I) *the required installment, over*

19                             “(II) *the amount (if any) of the*  
 20                             *installment contributed to or under the*  
 21                             *plan on or before the due date for the*  
 22                             *installment.*

23                    “(ii) *PERIOD OF UNDERPAYMENT.—*  
 24                    *The period for which any interest is charged*  
 25                    *under this paragraph with respect to any*

1           portion of the underpayment shall run from  
 2           the due date for the installment to the date  
 3           on which such portion is contributed to or  
 4           under the plan.

5           “(iii) ORDER OF CREDITING CON-  
 6           TRIBUTIONS.—For purposes of clause  
 7           (i)(II), contributions shall be credited  
 8           against unpaid required installments in the  
 9           order in which such installments are re-  
 10          quired to be paid.

11          “(C) NUMBER OF REQUIRED INSTALL-  
 12          MENTS; DUE DATES.—For purposes of this  
 13          paragraph—

14               “(i) PAYABLE IN 4 INSTALLMENTS.—  
 15               There shall be 4 required installments for  
 16               each plan year.

17               “(ii) TIME FOR PAYMENT OF INSTALL-  
 18               MENTS.—The due dates for required install-  
 19               ments are set forth in the following table:

***In the case of the following required install-  
 ment:***

<i>1st</i> .....	<i>April 15</i>
<i>2nd</i> .....	<i>July 15</i>
<i>3rd</i> .....	<i>October 15</i>
<i>4th</i> .....	<i>January 15 of the fol- lowing year.</i>

***The due date is:***

20          “(D) AMOUNT OF REQUIRED INSTALL-  
 21          MENT.—For purposes of this paragraph—

1           “(i) *IN GENERAL.*—*The amount of any*  
 2           *required installment shall be 25 percent of*  
 3           *the required annual payment.*

4           “(ii) *REQUIRED ANNUAL PAYMENT.*—  
 5           *For purposes of clause (i), the term ‘re-*  
 6           *quired annual payment’ means the lesser*  
 7           *of—*

8                     “(I) *90 percent of the minimum*  
 9                     *required contribution (without regard*  
 10                    *to any waiver under section 302(c)) to*  
 11                    *the plan for the plan year under this*  
 12                    *section, or*

13                   “(II) *in the case of a plan year*  
 14                    *beginning after 2007, 100 percent of*  
 15                    *the minimum required contribution*  
 16                    *(without regard to any waiver under*  
 17                    *section 302(c)) to the plan for the pre-*  
 18                    *ceding plan year.*

19           *Subclause (II) shall not apply if the pre-*  
 20           *ceding plan year referred to in such clause*  
 21           *was not a year of 12 months.*

22           “(E) *FISCAL YEARS AND SHORT YEARS.*—

23                   “(i) *FISCAL YEARS.*—*In applying this*  
 24                    *paragraph to a plan year beginning on any*  
 25                    *date other than January 1, there shall be*

1           *substituted for the months specified in this*  
 2           *paragraph, the months which correspond*  
 3           *thereto.*

4           “(ii) *SHORT PLAN YEAR.*—*This sub-*  
 5           *paragraph shall be applied to plan years of*  
 6           *less than 12 months in accordance with reg-*  
 7           *ulations prescribed by the Secretary of the*  
 8           *Treasury.*

9           “(4) *LIQUIDITY REQUIREMENT IN CONNECTION*  
 10          *WITH QUARTERLY CONTRIBUTIONS.*—

11           “(A) *IN GENERAL.*—*A plan to which this*  
 12           *paragraph applies shall be treated as failing to*  
 13           *pay the full amount of any required installment*  
 14           *under paragraph (3) to the extent that the value*  
 15           *of the liquid assets paid in such installment is*  
 16           *less than the liquidity shortfall (whether or not*  
 17           *such liquidity shortfall exceeds the amount of*  
 18           *such installment required to be paid but for this*  
 19           *paragraph).*

20           “(B) *PLANS TO WHICH PARAGRAPH AP-*  
 21           *PLIES.*—*This paragraph shall apply to a plan*  
 22           *which—*

23           “(i) *is required to pay installments*  
 24           *under paragraph (3) for a plan year, and*

1                   “(ii) has a liquidity shortfall for any  
2                   quarter during such plan year.

3                   “(C) *PERIOD OF UNDERPAYMENT.*—For  
4                   purposes of paragraph (3)(A), any portion of an  
5                   installment that is treated as not paid under  
6                   subparagraph (A) shall continue to be treated as  
7                   unpaid until the close of the quarter in which the  
8                   due date for such installment occurs.

9                   “(D) *LIMITATION ON INCREASE.*—If the  
10                  amount of any required installment is increased  
11                  by reason of subparagraph (A), in no event shall  
12                  such increase exceed the amount which, when  
13                  added to prior installments for the plan year, is  
14                  necessary to increase the funding target attain-  
15                  ment percentage of the plan for the plan year  
16                  (taking into account the expected increase in  
17                  funding target due to benefits accruing or earned  
18                  during the plan year) to 100 percent.

19                  “(E) *DEFINITIONS.*—For purposes of this  
20                  subparagraph:

21                         “(i) *LIQUIDITY SHORTFALL.*—The term  
22                         ‘liquidity shortfall’ means, with respect to  
23                         any required installment, an amount equal  
24                         to the excess (as of the last day of the quar-  
25                         ter for which such installment is made) of—

1                   “(I) the base amount with respect  
2 to such quarter, over

3                   “(II) the value (as of such last  
4 day) of the plan’s liquid assets.

5                   “(ii) *BASE AMOUNT.*—

6                   “(I) *IN GENERAL.*—The term ‘base  
7 amount’ means, with respect to any  
8 quarter, an amount equal to 3 times  
9 the sum of the adjusted disbursements  
10 from the plan for the 12 months ending  
11 on the last day of such quarter.

12                   “(II) *SPECIAL RULE.*—If the  
13 amount determined under subclause (I)  
14 exceeds an amount equal to 2 times the  
15 sum of the adjusted disbursements from  
16 the plan for the 36 months ending on  
17 the last day of the quarter and an en-  
18 rolled actuary certifies to the satisfac-  
19 tion of the Secretary of the Treasury  
20 that such excess is the result of non-  
21 recurring circumstances, the base  
22 amount with respect to such quarter  
23 shall be determined without regard to  
24 amounts related to those nonrecurring  
25 circumstances.

1                   “(iii) *DISBURSEMENTS FROM THE*  
 2                   *PLAN.*—*The term ‘disbursements from the*  
 3                   *plan’ means all disbursements from the*  
 4                   *trust, including purchases of annuities,*  
 5                   *payments of single sums and other benefits,*  
 6                   *and administrative expenses.*

7                   “(iv) *ADJUSTED DISBURSEMENTS.*—  
 8                   *The term ‘adjusted disbursements’ means*  
 9                   *disbursements from the plan reduced by the*  
 10                   *product of—*

11                    “(I) *the plan’s funding target at-*  
 12                    *tainment percentage for the plan year,*  
 13                    *and*

14                    “(II) *the sum of the purchases of*  
 15                    *annuities, payments of single sums,*  
 16                    *and such other disbursements as the*  
 17                    *Secretary of the Treasury shall provide*  
 18                    *in regulations.*

19                   “(v) *LIQUID ASSETS.*—*The term ‘liq-*  
 20                    *uid assets’ means cash, marketable securi-*  
 21                    *ties, and such other assets as specified by*  
 22                    *the Secretary of the Treasury in regula-*  
 23                    *tions.*

24                   “(vi) *QUARTER.*—*The term ‘quarter’*  
 25                    *means, with respect to any required install-*



1                    *ment, the 3-month period preceding the*  
 2                    *month in which the due date for such in-*  
 3                    *stallment occurs.*

4                    *“(F) REGULATIONS.—The Secretary of the*  
 5                    *Treasury may prescribe such regulations as are*  
 6                    *necessary to carry out this paragraph.*

7                    *“(k) IMPOSITION OF LIEN WHERE FAILURE TO MAKE*  
 8                    *REQUIRED CONTRIBUTIONS.—*

9                    *“(1) IN GENERAL.—In the case of a plan to*  
 10                    *which this subsection applies, if—*

11                    *“(A) any person fails to make a contribu-*  
 12                    *tion payment required by section 302 and this*  
 13                    *section before the due date for such payment, and*

14                    *“(B) the unpaid balance of such payment*  
 15                    *(including interest), when added to the aggregate*  
 16                    *unpaid balance of all preceding such payments*  
 17                    *for which payment was not made before the due*  
 18                    *date (including interest), exceeds \$1,000,000,*

19                    *then there shall be a lien in favor of the plan in the*  
 20                    *amount determined under paragraph (3) upon all*  
 21                    *property and rights to property, whether real or per-*  
 22                    *sonal, belonging to such person and any other person*  
 23                    *who is a member of the same controlled group of*  
 24                    *which such person is a member.*

1           “(2) *PLANS TO WHICH SUBSECTION APPLIES.*—

2           *This subsection shall apply to a defined benefit plan*  
 3           *which is a single-employer plan covered under section*  
 4           *4021 for any plan year for which the funding target*  
 5           *attainment percentage (as defined in subsection*  
 6           *(d)(2)) of such plan is less than 100 percent.*

7           “(3) *AMOUNT OF LIEN.*—*For purposes of para-*  
 8           *graph (1), the amount of the lien shall be equal to the*  
 9           *aggregate unpaid balance of contribution payments*  
 10           *required under this section and section 302 for which*  
 11           *payment has not been made before the due date.*

12           “(4) *NOTICE OF FAILURE; LIEN.*—

13           “(A) *NOTICE OF FAILURE.*—*A person com-*  
 14           *mitting a failure described in paragraph (1)*  
 15           *shall notify the Pension Benefit Guaranty Cor-*  
 16           *poration of such failure within 10 days of the*  
 17           *due date for the required contribution payment.*

18           “(B) *PERIOD OF LIEN.*—*The lien imposed*  
 19           *by paragraph (1) shall arise on the due date for*  
 20           *the required contribution payment and shall con-*  
 21           *tinue until the last day of the first plan year in*  
 22           *which the plan ceases to be described in para-*  
 23           *graph (1)(B). Such lien shall continue to run*  
 24           *without regard to whether such plan continues to*

1        *be described in paragraph (2) during the period*  
 2        *referred to in the preceding sentence.*

3                “(C) *CERTAIN RULES TO APPLY.—Any*  
 4        *amount with respect to which a lien is imposed*  
 5        *under paragraph (1) shall be treated as taxes*  
 6        *due and owing the United States and rules simi-*  
 7        *lar to the rules of subsections (c), (d), and (e) of*  
 8        *section 4068 shall apply with respect to a lien*  
 9        *imposed by subsection (a) and the amount with*  
 10       *respect to such lien.*

11              “(5) *ENFORCEMENT.—Any lien created under*  
 12       *paragraph (1) may be perfected and enforced only by*  
 13       *the Pension Benefit Guaranty Corporation, or at the*  
 14       *direction of the Pension Benefit Guaranty Corpora-*  
 15       *tion, by the contributing sponsor (or any member of*  
 16       *the controlled group of the contributing sponsor).*

17              “(6) *DEFINITIONS.—For purposes of this*  
 18       *subsection—*

19              “(A) *CONTRIBUTION PAYMENT.—The term*  
 20       *‘contribution payment’ means, in connection*  
 21       *with a plan, a contribution payment required to*  
 22       *be made to the plan, including any required in-*  
 23       *stallment under paragraphs (3) and (4) of sub-*  
 24       *section (j).*

1                   “(B) *DUE DATE; REQUIRED INSTALL-*  
 2                   *MENT.—The terms ‘due date’ and ‘required in-*  
 3                   *stallment’ have the meanings given such terms*  
 4                   *by subsection (j), except that in the case of a*  
 5                   *payment other than a required installment, the*  
 6                   *due date shall be the date such payment is re-*  
 7                   *quired to be made under section 303.*

8                   “(C) *CONTROLLED GROUP.—The term ‘con-*  
 9                   *trolled group’ means any group treated as a sin-*  
 10                   *gle employer under subsections (b), (c), (m), and*  
 11                   *(o) of section 414 of the Internal Revenue Code*  
 12                   *of 1986.*

13                   “(l) *QUALIFIED TRANSFERS TO HEALTH BENEFIT AC-*  
 14                   *COUNTS.—In the case of a qualified transfer (as defined in*  
 15                   *section 420 of the Internal Revenue Code of 1986), any as-*  
 16                   *sets so transferred shall not, for purposes of this section,*  
 17                   *be treated as assets in the plan.”.*

18                   (b) *CLERICAL AMENDMENT.—The table of sections in*  
 19                   *section 1 of such Act (as amended by section 101) is amend-*  
 20                   *ed by inserting after the item relating to section 302 the*  
 21                   *following new item:*

*“Sec. 303. Minimum funding standards for single-employer defined benefit  
 pension plans.”.*

22                   (c) *EFFECTIVE DATE.—The amendments made by this*  
 23                   *section shall apply with respect to plan years beginning*  
 24                   *after 2006.*

1 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER**  
 2 **PLANS.**

3 (a) *LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—*

4 (1) *IN GENERAL.—Section 206 of such Act is*  
 5 *amended by adding at the end the following new sub-*  
 6 *section:*

7 “(g) *FUNDING-BASED LIMITS ON BENEFITS AND BEN-*  
 8 *EFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.—*

9 “(1) *LIMITATIONS ON PLAN AMENDMENTS IN-*  
 10 *CREASING LIABILITY FOR BENEFITS.—*

11 “(A) *IN GENERAL.—Except as provided in*  
 12 *paragraph (4), no amendment to a single-em-*  
 13 *ployer plan which has the effect of increasing li-*  
 14 *abilities of the plan by reason of increases in*  
 15 *benefits, establishment of new benefits, changing*  
 16 *the rate of benefit accrual, or changing the rate*  
 17 *at which benefits become nonforfeitable may take*  
 18 *effect during any plan year if the adjusted fund-*  
 19 *ing target attainment percentage as of the valu-*  
 20 *ation date of the plan for such plan year is—*

21 “(i) *less than 80 percent, or*

22 “(ii) *would be less than 80 percent tak-*  
 23 *ing into account such amendment.*

24 “(B) *EXEMPTION.—Subparagraph (A) shall*  
 25 *cease to apply with respect to any plan year, ef-*  
 26 *fective as of the first date of the plan year (or*

1        *if later, the effective date of the amendment),*  
 2        *upon payment by the plan sponsor of a contribu-*  
 3        *tion (in addition to any minimum required con-*  
 4        *tribution under section 303) equal to—*

5                *“(i) in the case of subparagraph (A)(i),*  
 6                *the amount of the increase in the funding*  
 7                *target of the plan (under section 303) for*  
 8                *the plan year attributable to the amend-*  
 9                *ment, and*

10               *“(ii) in the case of subparagraph*  
 11               *(A)(ii), the amount sufficient to result in an*  
 12               *adjusted funding target attainment percent-*  
 13               *age of 80 percent.*

14               *“(C) EXCEPTION FOR CERTAIN BENEFIT IN-*  
 15               *CREASES.—Subparagraph (A) shall not apply to*  
 16               *any amendment which provides for an increase*  
 17               *in benefits under a formula which is not based*  
 18               *on a participant’s compensation, but only if the*  
 19               *rate of such increase is not in excess of the con-*  
 20               *temporaneous rate of increase in average wages*  
 21               *of participants covered by the amendment.*

22               *“(2) LIMITATIONS ON ACCELERATED BENEFIT*  
 23               *DISTRIBUTIONS.—*

1           “(A) *IN GENERAL.*—A defined benefit plan  
2           which is a single-employer plan shall provide  
3           that, with respect to any plan year—

4                   “(i) if the plan’s adjusted funded tar-  
5                   get liability percentage as of the valuation  
6                   date for the preceding plan year was less  
7                   than 60 percent and the preceding plan  
8                   year is not otherwise in a prohibited period,  
9                   the plan sponsor shall, in addition to any  
10                  other contribution required under section  
11                  303, contribute for the current plan year  
12                  and each succeeding plan year in the pro-  
13                  hibited period with respect to the current  
14                  plan year the amount (if any) which, when  
15                  added to the portion of the minimum re-  
16                  quired contribution for the plan year de-  
17                  scribed in subparagraphs (B) and (C) of  
18                  section 303(a)(1), is sufficient to result in  
19                  an adjusted funded target liability percent-  
20                  age for the plan year of 60 percent, and

21                   “(ii) no prohibited payments will be  
22                   made during a prohibited period.

23           “(B) *PROHIBITED PAYMENT.*—For purpose  
24           of this subsection—

1                   “(i) *IN GENERAL.*—*The term ‘prohib-*  
 2                   *ited payment’ means—*

3                   “*(I) any payment, in excess of the*  
 4                   *monthly amount paid under a single*  
 5                   *life annuity (plus any social security*  
 6                   *supplements described in the last sen-*  
 7                   *tence of section 204(b)(1)(G)), to a*  
 8                   *participant or beneficiary whose annu-*  
 9                   *ity starting date (as defined in section*  
 10                   *205(h)(2)) occurs during a prohibited*  
 11                   *period,*

12                   “*(II) any payment for the pur-*  
 13                   *chase of an irrevocable commitment*  
 14                   *from an insurer to pay benefits, and*

15                   “*(III) any other payment speci-*  
 16                   *fied by the Secretary of the Treasury*  
 17                   *by regulations.*

18                   “(ii) *EXCEPTION FOR CERTAIN PAY-*  
 19                   *MENTS.*—*In the case of any prohibited pe-*  
 20                   *riod described in subparagraph (C)(i), the*  
 21                   *term ‘prohibited payment’ shall not include*  
 22                   *any payment if the amount of the payment*  
 23                   *does not exceed the lesser of—*



1                   “(I) 50 percent of the amount of  
2                   the payment which could be made  
3                   without regard to this subsection, or  
4                   “(II) the present value (deter-  
5                   mined under guidance prescribed by  
6                   the Pension Benefit Guaranty Cor-  
7                   poration, using the interest and mor-  
8                   tality assumptions under section  
9                   205(g)) of the maximum guarantee  
10                  with respect to the participant under  
11                  section 4022.

12               *The exception under this clause shall only*  
13               *apply once with respect to any participant,*  
14               *except that, for purposes of this sentence, a*  
15               *participant and any beneficiary on his be-*  
16               *half (including an alternate payee, as de-*  
17               *finied in section 206(d)(3)(K)) shall be treat-*  
18               *ed as 1 participant. If the accrued benefit*  
19               *of a participant is allocated to such an al-*  
20               *ternate payee and 1 or more other persons,*  
21               *the amount under subclause (II) shall be al-*  
22               *located among such persons in the same*  
23               *manner as the accrued benefit is allocated*  
24               *unless the qualified domestic relations order*

1           *(as defined in section 206(d)(3)(B)(i)) pro-*  
 2           *vides otherwise.*

3           “(C) *PROHIBITED PERIOD.*—*For purposes*  
 4           *of subparagraph (A), the term ‘prohibited period’*  
 5           *means—*

6                     “(i) *except as provided in subpara-*  
 7                     *graph (D), if a plan sponsor is required to*  
 8                     *make the contribution for the current plan*  
 9                     *year under subparagraph (A), the period*  
 10                    *beginning on the 1st day of the plan year*  
 11                    *and ending on the last day of the 1st period*  
 12                    *of 2 consecutive plan years (beginning on or*  
 13                    *after such 1st day) for which the plan’s ad-*  
 14                    *justed funded target liability percentage was*  
 15                    *at least 60 percent,*

16                   “(ii) *any period the plan sponsor is in*  
 17                    *bankruptcy, or*

18                   “(iii) *any period during which the*  
 19                    *plan has a liquidity shortfall (as defined in*  
 20                    *section 303(j)(4)(E)(i)).*

21           *The prohibited period for purposes of clause (ii)*  
 22           *shall not include any portion of a plan year*  
 23           *(even if the plan sponsor is in bankruptcy dur-*  
 24           *ing such period) which occurs on or after the*  
 25           *date the plan’s enrolled actuary certifies that, as*

1        *of the valuation date for the plan year, the*  
 2        *plan’s adjusted funded target liability percentage*  
 3        *is at least 100 percent.*

4                *“(D) SATISFACTION OF REQUIREMENT BE-*  
 5        *FORE CLOSE OF PLAN YEAR.—If, before the close*  
 6        *of the current plan year—*

7                    *“(i) the plan sponsor makes the con-*  
 8                    *tribution required to be made under sub-*  
 9                    *paragraph (A), or*

10                   *“(ii) the plan’s enrolled actuary cer-*  
 11                   *tifies that, as of the valuation date for the*  
 12                   *plan year, the adjusted funded target liabil-*  
 13                   *ity percentage of the plan is at least 60 per-*  
 14                   *cent,*

15        *this paragraph shall be applied as if no prohib-*  
 16        *ited period had begun as of the beginning of such*  
 17        *year and the plan shall, under rules described by*  
 18        *the Secretary of the Treasury, restore any pay-*  
 19        *ments not made during the prohibited period in*  
 20        *effect before the application of this paragraph.*

21                *“(3) LIMITATION ON BENEFIT ACCRUALS FOR*  
 22        *PLANS WITH SEVERE FUNDING SHORTFALLS.—*

23                   *“(A) IN GENERAL.—Except as provided in*  
 24                   *paragraph (4), a single-employer plan shall pro-*  
 25                   *vide that all future benefit accruals under the*

1        *plan shall cease during a severe funding shortfall*  
 2        *period, but only to the extent the cessation of*  
 3        *such accruals would have been permitted under*  
 4        *section 204(g) if the cessation had been imple-*  
 5        *mented by a plan amendment adopted imme-*  
 6        *diately before the severe funding shortfall period.*

7                *“(B) SEVERE FUNDING SHORTFALL PE-*  
 8        *RIOD.—For purposes of subparagraph (A), the*  
 9        *term ‘severe funding shortfall period’ means in*  
 10        *the case of a plan the adjusted funding target at-*  
 11        *tainment percentage of which as of the valuation*  
 12        *date of the plan for any plan year is less than*  
 13        *60 percent, the period—*

14                *“(i) beginning on the 1st day of the*  
 15        *succeeding plan year, and*

16                *“(ii) ending on the date the plan’s en-*  
 17        *rolled actuary certifies that the plan’s ad-*  
 18        *justed funding target attainment percentage*  
 19        *is at least 60 percent, and*

20                *“(C) OPPORTUNITY FOR INCREASED FUND-*  
 21        *ING.—For purposes of subparagraph (B), a plan*  
 22        *shall not be treated as described in such subpara-*  
 23        *graph for a plan year if the plan’s enrolled actu-*  
 24        *ary certifies that the plan sponsor has before the*  
 25        *end of the plan year contributed (in addition to*

1           *any minimum required contribution under sec-*  
2           *tion 303) the amount sufficient to result in an*  
3           *adjusted funding target attainment percentage as*  
4           *of the valuation date for the plan year of 60 per-*  
5           *cent.*

6           “(4) *EXCEPTION FOR CERTAIN COLLECTIVELY*  
7           *BARGAINED BENEFITS.—In the case of a plan main-*  
8           *tained pursuant to a collective bargaining agreement*  
9           *between employee representatives and the plan spon-*  
10          *sor and in effect before the beginning of the first day*  
11          *on which a limitation would otherwise apply under*  
12          *paragraph (1), (2), or (3)—*

13               “(A) *such limitations shall not apply to*  
14               *any amendment, prohibited payment, or accrual*  
15               *with respect to such plan, but*

16               “(B) *the plan sponsor shall contribute (in*  
17               *addition to any minimum required contribution*  
18               *under section 303) the amount sufficient to re-*  
19               *sult in an adjusted funding target attainment*  
20               *percentage (as of the valuation date for the plan*  
21               *year in which any such limitation would other-*  
22               *wise apply) equal to the percentage necessary to*  
23               *prevent the limitation from applying.*

24           “(5) *RULES RELATING TO REQUIRED CONTRIBU-*  
25           *TIONS.—*

1 “(A) *SECURITY MAY BE PROVIDED.*—

2 “(i) *IN GENERAL.*—For purposes of  
3 this subsection, the adjusted funding target  
4 attainment percentage shall be determined  
5 by treating as an asset of the plan any se-  
6 curity provided by a plan sponsor in a  
7 form meeting the requirements of clause (ii).

8 “(ii) *FORM OF SECURITY.*—The secu-  
9 rity required under clause (i) shall consist  
10 of—

11 “(I) a bond issued by a corporate  
12 surety company that is an acceptable  
13 surety for purposes of section 412 of  
14 this Act,

15 “(II) cash, or United States obli-  
16 gations which mature in 3 years or  
17 less, held in escrow by a bank or simi-  
18 lar financial institution, or

19 “(III) such other form of security  
20 as is satisfactory to the Secretary of  
21 the Treasury and the parties involved.

22 “(iii) *ENFORCEMENT.*—Any security  
23 provided under clause (i) may be perfected  
24 and enforced at any time after the earlier  
25 of—

1                   “(I) the date on which the plan  
2                   terminates,

3                   “(II) if there is a failure to make  
4                   a payment of the minimum required  
5                   contribution for any plan year begin-  
6                   ning after the security is provided, the  
7                   due date for the payment under section  
8                   303(j), or

9                   “(III) if the adjusted funding tar-  
10                  get attainment percentage is less than  
11                  60 percent for a consecutive period of  
12                  7 years, the valuation date for the last  
13                  year in the period.

14                  “(iv) *RELEASE OF SECURITY.*—The se-  
15                  curity shall be released (and any amounts  
16                  thereunder shall be refunded together with  
17                  any interest accrued thereon) at such time  
18                  as the Secretary of the Treasury may pre-  
19                  scribe in regulations, including regulations  
20                  for partial releases of the security by reason  
21                  of increases in the funding target attain-  
22                  ment percentage.

23                  “(B) *PREFUNDING BALANCE MAY NOT BE*  
24                  *USED.*—No prefunding balance under section

1       303(f) may be used to satisfy any required con-  
 2       tribution under this subsection.

3               “(C) *TREATMENT AS UNPAID MINIMUM RE-*  
 4       *QUIRED CONTRIBUTION.*—*The amount of any re-*  
 5       *quired contribution which a plan sponsor fails to*  
 6       *make under paragraph (1) or (3) for any plan*  
 7       *year shall be treated as an unpaid minimum re-*  
 8       *quired contribution for purposes of subsection (j)*  
 9       *and (k) of section 303 and for purposes of section*  
 10       *4971 of the Internal Revenue Code of 1986.*

11              “(6) *NEW PLANS.*—*Paragraphs (1) and (3) shall*  
 12       *not apply to a plan for the first 5 plan years of the*  
 13       *plan. For purposes of this paragraph, the reference in*  
 14       *this paragraph to a plan shall include a reference to*  
 15       *any predecessor plan.*

16              “(7) *PRESUMED UNDERFUNDING FOR PURPOSES*  
 17       *OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S*  
 18       *FUNDING STATUS.*—

19              “(A) *PRESUMPTION OF CONTINUED UNDER-*  
 20       *FUNDING.*—*In any case in which a benefit limi-*  
 21       *tation under paragraph (1), (2), or (3) has been*  
 22       *applied to a plan with respect to the plan year*  
 23       *preceding the current plan year, the adjusted*  
 24       *funding target attainment percentage of the plan*  
 25       *as of the valuation date of the plan for the cur-*



rent plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

“(B) *PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.*—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of paragraphs (1), (2), and (3), the plan’s adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month.

“(8) *TREATMENT OF PLAN AS OF CLOSE OF PROHIBITED OR CESSATION PERIOD.*—For purposes of applying this part—

“(A) *OPERATION OF PLAN AFTER PERIOD.*—Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of a period of limitation of

1        *payment or accrual of benefits under paragraph*  
 2        *(2) or (3).*

3                “(B) *TREATMENT OF AFFECTED BENE-*  
 4        *FITS.—Nothing in this paragraph shall be con-*  
 5        *strued as affecting the plan’s treatment of bene-*  
 6        *fits which would have been paid or accrued but*  
 7        *for this subsection.*

8                “(9) *FUNDING TARGET ATTAINMENT PERCENT-*  
 9        *AGE.—For purposes of this subsection—*

10               “(A) *IN GENERAL.—The term ‘funding tar-*  
 11        *get attainment percentage’ has the same meaning*  
 12        *given such term by section 303(d)(2).*

13               “(B) *ADJUSTED FUNDED TARGET LIABILITY*  
 14        *PERCENTAGE.—The term ‘adjusted funded target*  
 15        *liability percentage’ means the funded target li-*  
 16        *ability percentage which is determined under*  
 17        *subparagraph (A) by increasing each of the*  
 18        *amounts under subparagraphs (A) and (B) of*  
 19        *section 303(d)(2) by the aggregate amount of*  
 20        *purchases of annuities, payments of single sums,*  
 21        *and such other disbursements as the Secretary of*  
 22        *the Treasury shall prescribe in regulations,*  
 23        *which were made by the plan during the pre-*  
 24        *ceding 2 plan years.*

1           “(10) *YEARS BEFORE EFFECTIVE DATE.*—No  
 2           *plan year beginning before 2007 shall be taken into*  
 3           *account in determining whether this subsection ap-*  
 4           *plies to any plan year beginning after 2006.”.*

5           (2) *NOTICE REQUIREMENT.*—

6                   (A) *IN GENERAL.*—Section 101 of such Act  
 7           (29 U.S.C. 1021) is amended—

8                           (i) *by redesignating subsection (j) as*  
 9                           *subsection (k); and*

10                           (ii) *by inserting after subsection (i) the*  
 11                           *following new subsection:*

12           “(j) *NOTICE OF FUNDING-BASED LIMITATION ON CER-*  
 13           *TAIN FORMS OF DISTRIBUTION.*—The plan administrator  
 14           *of a single-employer plan shall provide a written notice to*  
 15           *plan participants and beneficiaries within 30 days—*

16                   “(1) *after the plan has become subject to the re-*  
 17                   *striction described in section 206(g)(2),*

18                   “(2) *in the case of a plan to which section*  
 19                   *206(g)(3) applies, after—*

20                           “(A) *the date in the plan year described in*  
 21                           *section 206(g)(3)(B) on which the plan’s enrolled*  
 22                           *actuary certifies that the plan’s adjusted funding*  
 23                           *target attainment percentage for the plan year is*  
 24                           *less than 60 percent (or, if earlier, the date such*

1           percentage is deemed to be less than 60 percent  
2           under section 206(g)(7)), and

3           “(B) the first day of the severe funding  
4           shortfall period, and

5           “(3) at such other time as may be determined by  
6           the Secretary of the Treasury.

7   The notice required to be provided under this subsection  
8   shall be in writing, except that such notice may be in elec-  
9   tronic or other form to the extent that such form is reason-  
10  ably accessible to the recipient.”.

11           (B) *ENFORCEMENT*.—Section 502(c)(4) of  
12           such Act (29 U.S.C. 1132(c)(4)) is amended by  
13           striking “section 302(b)(7)(F)(iv)” and inserting  
14           “sections 101(j) and 302(b)(7)(F)(iv)”.

15           (b) *EFFECTIVE DATES*.—

16           (1) *IN GENERAL*.—The amendments made by  
17           this section shall apply to plan years beginning after  
18           December 31, 2006.

19           (2) *COLLECTIVE BARGAINING EXCEPTION*.—In  
20           the case of a plan maintained pursuant to 1 or more  
21           collective bargaining agreements between employee  
22           representatives and 1 or more employers ratified be-  
23           fore January 1, 2007, the amendments made by this  
24           section shall not apply to plan years beginning before  
25           the earlier of—

1 (A) the later of—

2 (i) the date on which the last collective  
3 bargaining agreement relating to the plan  
4 terminates (determined without regard to  
5 any extension thereof agreed to after the  
6 date of the enactment of this Act), or

7 (ii) the first day of the first plan year  
8 to which the amendments made by this sub-  
9 section would (but for this subparagraph)  
10 apply, or

11 (B) January 1, 2010.

12 For purposes of subparagraph (A)(i), any plan  
13 amendment made pursuant to a collective bargaining  
14 agreement relating to the plan which amends the plan  
15 solely to conform to any requirement added by this  
16 section shall not be treated as a termination of such  
17 collective bargaining agreement.

18 **SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.**

19 (a) MISCELLANEOUS AMENDMENTS TO TITLE I.—Sub-  
20 title B of title I of such Act (29 U.S.C. 1021 et seq.) is  
21 amended—

22 (1) in section 101(d)(3), by striking “section  
23 302(e)” and inserting “section 303(j)”;

24 (2) in section 103(d)(8)(B), by striking “the re-  
25 quirements of section 302(c)(3)” and inserting “the

1 applicable requirements of sections 303(h) and  
 2 304(c)(3)”;

3 (3) in section 103(d), by striking paragraph (11)  
 4 and inserting the following:

5 “(11) If the current value of the assets of the  
 6 plan is less than 70 percent of—

7 “(A) in the case of a single-employer plan,  
 8 the funding target (as defined in section  
 9 303(d)(1)) of the plan, or

10 “(B) in the case of a multiemployer plan,  
 11 the current liability (as defined in section  
 12 304(c)(6)(D)) under the plan,

13 the percentage which such value is of the amount de-  
 14 scribed in subparagraph (A) or (B).”;

15 (4) in section 203(a)(3)(C), by striking “section  
 16 302(c)(8)” and inserting “section 302(d)(2)”;

17 (5) in section 204(g)(1), by striking “section  
 18 302(c)(8)” and inserting “section 302(d)(2)”;

19 (6) in section 204(i)(2)(B), by striking “section  
 20 302(c)(8)” and inserting “section 302(d)(2)”;

21 (7) in section 204(i)(3), by striking “funded cur-  
 22 rent liability percentage (within the meaning of sec-  
 23 tion 302(d)(8) of this Act)” and inserting “funding  
 24 target attainment percentage (as defined in section  
 25 303(d)(2))”;

1           (8) in section 204(i)(4), by striking “section  
2       302(c)(11)(A), without regard to section  
3       302(c)(11)(B)” and inserting “section 302(b)(1),  
4       without regard to section 302(b)(2)”;

5           (9) in section 206(e)(1), by striking “section  
6       302(d)” and inserting “section 303(j)(4)”, and by  
7       striking “section 302(e)(5)” and inserting “section  
8       303(j)(4)(E)(i)”;

9           (10) in section 206(e)(3), by striking “section  
10      302(e) by reason of paragraph (5)(A) thereof” and in-  
11      serting “section 303(j)(3) by reason of section  
12      303(j)(4)(A)”;

13          (11) in sections 101(e)(3), 403(c)(1), and  
14      408(b)(13), by striking “American Jobs Creation Act  
15      of 2004” and inserting “Pension Security and Trans-  
16      parency Act of 2005”.

17      (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—  
18      Title IV of such Act is amended—

19          (1) in section 4001(a)(13) (29 U.S.C.  
20      1301(a)(13)), by striking “302(c)(11)(A)” and insert-  
21      ing “302(b)(1)”, by striking “412(c)(11)(A)” and in-  
22      serting “412(c)(1)”, by striking “302(c)(11)(B)” and  
23      inserting “302(b)(2)”, and by striking  
24      “412(c)(11)(B)” and inserting “412(c)(2)”;

1           (2) in section 4003(e)(1) (29 U.S.C. 1303(e)(1)),  
 2       by striking “302(f)(1)(A) and (B)” and inserting  
 3       “303(k)(1)(A) and (B)”, and by striking  
 4       “412(n)(1)(A) and (B)” and inserting “430(k)(1)(A)  
 5       and (B)”;

6           (3) in section 4010(b)(2) (29 U.S.C. 1310(b)(2)),  
 7       by striking “302(f)(1)(A) and (B)” and inserting  
 8       “303(k)(1)(A) and (B)”, and by striking  
 9       “412(n)(1)(A) and (B)” and inserting “430(k)(1)(A)  
 10       and (B)”;

11          (4) in section 4062(c)(1) (29 U.S.C. 1362(c)(1)),  
 12       by striking paragraphs (1), (2), and (3) and inserting  
 13       the following:

14           “(1)(A) in the case of a single-employer plan, the  
 15       sum of the shortfall amortization charge (within the  
 16       meaning of section 303(c)(1) of this Act and  
 17       430(d)(1) of the Internal Revenue Code of 1986) with  
 18       respect to the plan (if any) for the plan year in which  
 19       the termination date occurs, plus the aggregate total  
 20       of shortfall amortization installments (if any) deter-  
 21       mined for succeeding plan years under section  
 22       303(c)(2) of this Act and section 430(d)(2) of such  
 23       Code (which, for purposes of this subparagraph, shall  
 24       include any increase in such sum which would result  
 25       if all applications for waivers of the minimum fund-



1     *ing standard under section 302(c) of this Act and sec-*  
2     *tion 412(d) of such Code which are pending with re-*  
3     *spect to such plan were denied and if no additional*  
4     *contributions (other than those already made by the*  
5     *termination date) were made for the plan year in*  
6     *which the termination date occurs or for any previous*  
7     *plan year), or*

8             *“(B) in the case of a multiemployer plan, the*  
9     *outstanding balance of the accumulated funding defi-*  
10    *ciencies (within the meaning of section 304(a)(2) of*  
11    *this Act and section 431(a) of the Internal Revenue*  
12    *Code of 1986) of the plan (if any) (which, for pur-*  
13    *poses of this subparagraph, shall include the amount*  
14    *of any increase in such accumulated funding defi-*  
15    *ciencies of the plan which would result if all pending*  
16    *applications for waivers of the minimum funding*  
17    *standard under section 302(c) of this Act or section*  
18    *412(d) of such Code and for extensions of the amorti-*  
19    *zation period under section 304(d) of this Act or sec-*  
20    *tion 431(d) of such Code with respect to such plan*  
21    *were denied and if no additional contributions (other*  
22    *than those already made by the termination date)*  
23    *were made for the plan year in which the termination*  
24    *date occurs or for any previous plan year),*

1           “(2)(A) in the case of a single-employer plan, the  
 2           sum of the waiver amortization charge (within the  
 3           meaning of section 303(e)(1) of this Act and 430(e)(2)  
 4           of the Internal Revenue Code of 1986) with respect to  
 5           the plan (if any) for the plan year in which the ter-  
 6           mination date occurs, plus the aggregate total of  
 7           waiver amortization installments (if any) determined  
 8           for succeeding plan years under section 303(e)(3) of  
 9           this Act and section 430(e)(3) of such Code, or

10           “(B) in the case of a multiemployer plan, the  
 11           outstanding balance of the amount of waived funding  
 12           deficiencies of the plan waived before such date under  
 13           section 302(c) of this Act or section 412(d) of such  
 14           Code (if any), and

15           “(3) in the case of a multiemployer plan, the  
 16           outstanding balance of the amount of decreases in the  
 17           minimum funding standard allowed before such date  
 18           under section 304(d) of this Act or section 431(d) of  
 19           such Code (if any);”;

20           (5) in section 4071 (29 U.S.C. 1371), by striking  
 21           “302(f)(4)” and inserting “303(k)(4)”;

22           (6) in section 4243(a)(1)(B) (29 U.S.C.  
 23           1423(a)(1)(B)), by striking “302(a)” and inserting  
 24           “304(a)”, and, in clause (i), by striking “302(a)” and  
 25           inserting “304(a)”;

1           (7) in section 4243(f)(1) (29 U.S.C. 1423(f)(1)),  
 2       *by striking “303(a)” and inserting “302(c)”*;

3           (8) in section 4243(f)(2) (29 U.S.C. 1423(f)(2)),  
 4       *by striking “303(c)” and inserting “302(c)(3)”*; and  
 5           (9) in section 4243(g) (29 U.S.C. 1423(g)), *by*  
 6       *striking “302(c)(3)” and inserting “304(c)(3)”*.

7       (c) *AMENDMENTS TO REORGANIZATION PLAN NO. 4 OF*  
 8       1978.—Section 106(b)(ii) of *Reorganization Plan No. 4 of*  
 9       1978 (*ratified and affirmed as law by Public Law 98–532*  
 10       *(98 Stat. 2705)*) is amended by striking “302(c)(8)” and  
 11       inserting “302(d)(2)”, by striking “304(a) and (b)(2)(A)”  
 12       and inserting “304(d)(1), (d)(2), and (e)(2)(A)”, and by  
 13       striking “412(c)(8), (e), and (f)(2)(A)” and inserting  
 14       “412(d)(2) and 431(d)(1), (d)(2), and (e)(2)(A)”.

15       (d) *REPEAL OF EXPIRED AUTHORITY FOR TEMPORARY*  
 16       *VARIANCES*.—Section 207 of such Act (29 U.S.C. 1057) is  
 17       *repealed*.

18       (e) *EFFECTIVE DATE*.—The amendments made by this  
 19       section shall apply to plan years beginning after 2006.

20       **SEC. 105. SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS**  
 21               **OF CERTAIN COOPERATIVES.**

22       (a) *GENERAL RULE*.—Except as provided in this sec-  
 23       tion, if a plan in existence on July 26, 2005, was an eligible  
 24       cooperative plan for its plan year which includes such date,  
 25       the amendments made by section 401 of this Act, this sub-

1 *title, and subtitle B shall not apply to plan years beginning*  
 2 *before the earlier of—*

3 *(1) the first plan year for which the plan ceases*  
 4 *to be an eligible cooperative plan, or*

5 *(2) January 1, 2017.*

6 *(b) INTEREST RATE.—In applying section*  
 7 *302(b)(5)(B) of the Employee Retirement Income Security*  
 8 *Act of 1974 and section 412(b)(5)(B) of the Internal Rev-*  
 9 *enue Code of 1986 (as in effect before the amendments made*  
 10 *by this subtitle and subtitle B) and in applying section*  
 11 *4006(a)(3)(E)(iii) of such Act (as in effect before the*  
 12 *amendments made by section 401) to an eligible cooperative*  
 13 *plan for plan years beginning after December 31, 2006, and*  
 14 *before the first plan year to which such amendments apply,*  
 15 *the third segment rate determined under section*  
 16 *303(h)(2)(C)(iii) of such Act and section 430(h)(2)(C)(iii)*  
 17 *of such Code (as added by such amendments) shall be used*  
 18 *in lieu of the interest rate otherwise used.*

19 *(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For*  
 20 *purposes of this section, a plan shall be treated as an eligi-*  
 21 *ble cooperative plan for a plan year if the plan is main-*  
 22 *tained by more than 1 employer and at least 85 percent*  
 23 *of the employers are—*

1           (1) *rural cooperatives (as defined in section*  
 2           *401(k)(7)(B) of such Code without regard to clause*  
 3           *(iv) thereof), or*

4           (2) *organizations which are—*

5                 (A) *cooperative organizations described in*  
 6                 *section 1381(a) of such Code which are more*  
 7                 *than 50-percent owned by agricultural producers*  
 8                 *or by cooperatives owned by agricultural pro-*  
 9                 *ducers, or*

10                (B) *more than 50-percent owned, or con-*  
 11                *trolled by, one or more cooperative organizations*  
 12                *described in subparagraph (A).*

13 *A plan shall also be treated as an eligible cooperative plan*  
 14 *for any plan year for which it is described in section 210(a)*  
 15 *of the Employee Retirement Income Security Act of 1974*  
 16 *and is maintained by a rural telephone cooperative associa-*  
 17 *tion described in section 3(40)(B)(v) of such Act.*

18 **SEC. 106. TEMPORARY RELIEF FOR CERTAIN RESCUED**  
 19 **PLANS.**

20           (a) *GENERAL RULE.—Except as provided in this sec-*  
 21 *tion, if a plan in existence on July 26, 2005, was a rescued*  
 22 *plan as of such date, the amendments made by section 401*  
 23 *of this Act, this subtitle, and subtitle B shall not apply to*  
 24 *plan years beginning before January 1, 2014.*

1       (b) *INTEREST RATE.*—In applying section  
 2 302(b)(5)(B) of the *Employee Retirement Income Security*  
 3 *Act of 1974* and section 412(b)(5)(B) of the *Internal Rev-*  
 4 *enue Code of 1986* (as in effect before the amendments made  
 5 by this subtitle and subtitle B), and in applying section  
 6 4006(a)(3)(E)(iii) of such *Act* (as in effect before the  
 7 amendments made by section 401), to a rescued plan for  
 8 plan years beginning after December 31, 2006, and before  
 9 January 1, 2014, the third segment rate determined under  
 10 section 303(h)(2)(C)(iii) of such *Act* and section  
 11 430(h)(2)(C)(iii) of such *Code* (as added by such amend-  
 12 ments) shall be used in lieu of the interest rate otherwise  
 13 used.

14       (c) *RESCUED PLAN.*—For purposes of this section, the  
 15 term “rescued plan” means a defined benefit plan (other  
 16 than a multiemployer plan) to which section 302 of such  
 17 *Act* and section 412 of such *Code* apply and—

18               (1) which was sponsored by an employer which  
 19 was in bankruptcy, giving rise to a claim by the *Pen-*  
 20 *sion Benefit Guaranty Corporation* of at least  
 21 \$100,000,000, but not greater than \$150,000,000, and

22               (2) the sponsorship of which was assumed by an-  
 23 other employer that was not a member of the same  
 24 controlled group as the bankrupt sponsor and the  
 25 claim of the *Pension Benefit Guaranty Corporation*

1        *was settled or withdrawn in connection with the as-*  
 2        *sumption of the sponsorship.*

3                ***Subtitle B—Amendments to***  
 4                ***Internal Revenue Code of 1986***

5    ***SEC. 111. MODIFICATIONS OF THE MINIMUM FUNDING***  
 6                ***STANDARDS.***

7        *(a) IN GENERAL.—Section 412 of the Internal Revenue*  
 8        *Code of 1986 (relating to minimum funding standards) is*  
 9        *amended to read as follows:*

10    ***“SEC. 412. MINIMUM FUNDING STANDARDS.***

11        *“(a) REQUIREMENT TO MEET MINIMUM FUNDING*  
 12        *STANDARD.—*

13                *“(1) IN GENERAL.—A plan to which this section*  
 14        *applies shall satisfy the minimum funding standard*  
 15        *applicable to the plan for any plan year.*

16                *“(2) MINIMUM FUNDING STANDARD.—For pur-*  
 17        *poses of paragraph (1), a plan shall be treated as sat-*  
 18        *isfying the minimum funding standard for a plan*  
 19        *year if—*

20                *“(A) in the case of a defined benefit plan*  
 21        *which is a single-employer plan, the employer*  
 22        *makes contributions to or under the plan for the*  
 23        *plan year which, in the aggregate, are not less*  
 24        *than the minimum required contribution deter-*

1        *mined under section 430 for the plan for the*  
 2        *plan year,*

3                *“(B) in the case of a money purchase pen-*  
 4        *sion plan which is a single-employer plan, the*  
 5        *employer makes contributions to or under the*  
 6        *plan for the plan year which are required under*  
 7        *the terms of the plan, and*

8                *“(C) in the case of a multiemployer plan,*  
 9        *the employers make contributions to or under the*  
 10        *plan for the plan year which, in the aggregate,*  
 11        *are sufficient to ensure that the plan does not*  
 12        *have an accumulated funding deficiency under*  
 13        *section 431 as of the end of the plan year.*

14        *“(b) PLANS TO WHICH SECTION APPLIES.—*

15                *“(1) IN GENERAL.—Except as provided in para-*  
 16        *graphs (2) and (3), this section applies to a plan if,*  
 17        *for any plan year beginning on or after the effective*  
 18        *date of this section for such plan under the Employee*  
 19        *Retirement Income Security Act of 1974—*

20                *“(A) the plan included a trust which quali-*  
 21        *fied (or was determined by the Secretary to have*  
 22        *qualified) under section 401(a), or*

23                *“(B) the plan satisfied (or was determined*  
 24        *by the Secretary to have satisfied) the require-*  
 25        *ments of section 403(a).*



1           “(2) *EXCEPTIONS.*—*This section shall not apply*  
 2     *to—*

3                     “(A) *any profit-sharing or stock bonus plan,*

4                     “(B) *any insurance contract plan described*  
 5     *in subsection (g)(3),*

6                     “(C) *any governmental plan (within the*  
 7     *meaning of section 414(d)),*

8                     “(D) *any church plan (within the meaning*  
 9     *of section 414(e)) with respect to which the elec-*  
 10    *tion provided by section 410(d) has not been*  
 11    *made,*

12                    “(E) *any plan which has not, at any time*  
 13    *after September 2, 1974, provided for employer*  
 14    *contributions, or*

15                    “(F) *any plan established and maintained*  
 16    *by a society, order, or association described in*  
 17    *section 501(c)(8) or (9), if no part of the con-*  
 18    *tributions to or under such plan are made by*  
 19    *employers of participants in such plan.*

20    *No plan described in subparagraph (C), (D), or (F)*  
 21    *shall be treated as a qualified plan for purposes of*  
 22    *section 401(a) unless such plan meets the require-*  
 23    *ments of section 401(a)(7) as in effect on September*  
 24    *1, 1974.*

1           “(3) *CERTAIN TERMINATED MULTIEMPLOYER*  
 2           *PLANS.*—*This section applies with respect to a termi-*  
 3           *nated multiemployer plan to which section 4021 of*  
 4           *the Employee Retirement Income Security Act of*  
 5           *1974 applies until the last day of the plan year in*  
 6           *which the plan terminates (within the meaning of sec-*  
 7           *tion 4041A(a)(2) of such Act).*

8           “(c) *LIABILITY FOR CONTRIBUTIONS.*—

9           “(1) *IN GENERAL.*—*Except as provided in para-*  
 10          *graph (2), the amount of any contribution required*  
 11          *by this section and any required installments under*  
 12          *section 430(j) shall be paid by any employer respon-*  
 13          *sible for making the contribution to or under the*  
 14          *plan.*

15          “(2) *JOINT AND SEVERAL LIABILITY WHERE EM-*  
 16          *PLOYER MEMBER OF CONTROLLED GROUP.*—*If the*  
 17          *employer referred to in paragraph (1) is a member of*  
 18          *a controlled group, each member of such group shall*  
 19          *be jointly and severally liable for payment of such*  
 20          *contribution or required installment.*

21          “(d) *VARIANCE FROM MINIMUM FUNDING STAND-*  
 22          *ARDS.*—

23          “(1) *WAIVER IN CASE OF BUSINESS HARD-*  
 24          *SHIP.*—

25          “(A) *IN GENERAL.*—*If—*

1           “(i) an employer is (or in the case of  
 2           a multiemployer plan, 10 percent or more  
 3           of the number of employers contributing to  
 4           or under the plan are) unable to satisfy the  
 5           minimum funding standard for a plan year  
 6           without temporary substantial business  
 7           hardship (substantial business hardship in  
 8           the case of a multiemployer plan), and

9           “(ii) application of the standard would  
 10          be adverse to the interests of plan partici-  
 11          pants in the aggregate,

12          the Secretary may, subject to subparagraph (C),  
 13          waive the requirements of subsection (a) for such  
 14          year with respect to all or any portion of the  
 15          minimum funding standard. The Secretary of  
 16          the Treasury shall not waive the minimum fund-  
 17          ing standard with respect to a plan for more  
 18          than 3 of any 15 (5 of any 15 in the case of a  
 19          multiemployer plan) consecutive plan years.

20          “(B) EFFECTS OF WAIVER.—If a waiver is  
 21          granted under subparagraph (A) for any plan  
 22          year—

23               “(i) in the case of a single-employer  
 24               plan, the minimum required contribution  
 25               under section 430 for the plan year shall be

1           *reduced by the amount of the waived fund-*  
 2           *ing deficiency and such amount shall be*  
 3           *amortized as required under section 430(e),*  
 4           *and*

5           “(ii) *in the case of a multiemployer*  
 6           *plan, the funding standard account shall be*  
 7           *credited under section 431(b)(3)(C) with the*  
 8           *amount of the waived funding deficiency*  
 9           *and such amount shall be amortized as re-*  
 10          *quired under section 431(b)(2)(C).*

11          “(C) *WAIVER OF AMORTIZED PORTION NOT*  
 12          *ALLOWED.—The Secretary may not waive under*  
 13          *subparagraph (A) any portion of the minimum*  
 14          *funding standard under subsection (a) for a plan*  
 15          *year which is attributable to any waived funding*  
 16          *deficiency for any preceding plan year.*

17          “(2) *DETERMINATION OF BUSINESS HARD-*  
 18          *SHIP.—For purposes of this subsection, the factors*  
 19          *taken into account in determining temporary sub-*  
 20          *stantial business hardship (substantial business hard-*  
 21          *ship in the case of a multiemployer plan) shall in-*  
 22          *clude (but shall not be limited to) whether or not—*

23               “(A) *the employer is operating at an eco-*  
 24               *nomie loss,*

1           “(B) *there is substantial unemployment or*  
 2           *underemployment in the trade or business and*  
 3           *in the industry concerned,*

4           “(C) *the sales and profits of the industry*  
 5           *concerned are depressed or declining, and*

6           “(D) *it is reasonable to expect that the plan*  
 7           *will be continued only if the waiver is granted.*

8           “(3) *WAIVED FUNDING DEFICIENCY.—For pur-*  
 9           *poses of this part, the term ‘waived funding defi-*  
 10           *ciency’ means the portion of the minimum funding*  
 11           *standard under subsection (a) (determined without*  
 12           *regard to the waiver) for a plan year waived by the*  
 13           *Secretary and not satisfied by employer contributions.*

14           “(4) *SECURITY FOR WAIVERS FOR SINGLE-EM-*  
 15           *PLOYER PLANS, CONSULTATIONS.—*

16           “(A) *SECURITY MAY BE REQUIRED.—*

17           “(i) *IN GENERAL.—Except as provided*  
 18           *in subparagraph (C), the Secretary may re-*  
 19           *quire an employer maintaining a defined*  
 20           *benefit plan which is a single-employer plan*  
 21           *(within the meaning of section 4001(a)(15)*  
 22           *of the Employee Retirement Income Secu-*  
 23           *rity Act of 1974) to provide security to such*  
 24           *plan as a condition for granting or modi-*  
 25           *fying a waiver under paragraph (1).*

1           “(ii) *SPECIAL RULES.*—Any security  
 2           provided under clause (i) may be perfected  
 3           and enforced only by the Pension Benefit  
 4           Guaranty Corporation, or, at the direction  
 5           of the Corporation, by a contributing spon-  
 6           sor (within the meaning of section  
 7           4001(a)(13) of such Act) or a member of  
 8           such sponsor’s controlled group (within the  
 9           meaning of section 4001(a)(14) of such Act).

10          “(B) *CONSULTATION WITH THE PENSION*  
 11          *BENEFIT GUARANTY CORPORATION.*—Except as  
 12          provided in subparagraph (C), the Secretary  
 13          shall, before granting or modifying a waiver  
 14          under this subsection with respect to a plan de-  
 15          scribed in subparagraph (A)(i)—

16               “(i) provide the Pension Benefit Guar-  
 17               anty Corporation with—

18                       “(I) notice of the completed appli-  
 19                       cation for any waiver or modification,  
 20                       and

21                       “(II) an opportunity to comment  
 22                       on such application within 30 days  
 23                       after receipt of such notice, and

24               “(ii) consider—

1           “(I) any comments of the Cor-  
2           poration under clause (i)(II), and

3           “(II) any views of any employee  
4           organization (within the meaning of  
5           section 3(4) of such Act) representing  
6           participants in the plan which are  
7           submitted in writing to the Secretary  
8           of the Treasury in connection with  
9           such application.

10           Information provided to the Corporation under  
11           this subparagraph shall be considered tax return  
12           information and subject to the safeguarding and  
13           reporting requirements of section 6103(p).

14           “(C) EXCEPTION FOR CERTAIN WAIVERS.—

15           “(i) IN GENERAL.—The preceding pro-  
16           visions of this paragraph shall not apply to  
17           any plan with respect to which the sum  
18           of—

19           “(I) the aggregate unpaid min-  
20           imum required contributions for the  
21           plan year and all preceding plan  
22           years, and

23           “(II) the present value of all  
24           waiver amortization installments de-  
25           termined for the plan year and suc-

ceeding plan years under section  
430(e)(2),  
is less than \$1,000,000.

“(ii) *TREATMENT OF WAIVERS FOR WHICH APPLICATIONS ARE PENDING.*—The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

“(iii) *UNPAID MINIMUM REQUIRED CONTRIBUTION.*—For purposes of this subparagraph—

“(I) *IN GENERAL.*—The term ‘unpaid minimum required contribution’ means, with respect to any plan year, any minimum required contribution under section 430 for the plan year which is not paid on or before the due date (as determined under section 430(j)(1)) for the plan year.

“(II) *ORDERING RULE.*—For purposes of subclause (I), any payment to or under a plan for any plan year



1                   *shall be allocated first to unpaid min-*  
 2                   *imum required contributions for all*  
 3                   *preceding plan years on a first-in,*  
 4                   *first-out basis and then to the min-*  
 5                   *imum required contribution under sec-*  
 6                   *tion 430 for the plan year.*

7                   “(5) *SPECIAL RULES FOR SINGLE-EMPLOYER*  
 8                   *PLANS.—*

9                   “(A) *APPLICATION MUST BE SUBMITTED*  
 10                   *BEFORE DATE 2<sup>1</sup>/<sub>2</sub> MONTHS AFTER CLOSE OF*  
 11                   *YEAR.—In the case of a single-employer plan, no*  
 12                   *waiver may be granted under this subsection*  
 13                   *with respect to any plan for any plan year un-*  
 14                   *less an application therefor is submitted to the*  
 15                   *Secretary not later than the 15th day of the 3rd*  
 16                   *month beginning after the close of such plan*  
 17                   *year.*

18                   “(B) *SPECIAL RULE IF EMPLOYER IS MEM-*  
 19                   *BER OF CONTROLLED GROUP.—In the case of a*  
 20                   *single-employer plan, if an employer is a mem-*  
 21                   *ber of a controlled group, the temporary substan-*  
 22                   *tial business hardship requirements of paragraph*  
 23                   *(1) shall be treated as met only if such require-*  
 24                   *ments are met—*

25                   “(i) *with respect to such employer, and*

1                   “(ii) with respect to the controlled  
2                   group of which such employer is a member  
3                   (determined by treating all members of such  
4                   group as a single employer).

5                   *The Secretary may provide that an analysis of*  
6                   *a trade or business or industry of a member need*  
7                   *not be conducted if the Secretary determines such*  
8                   *analysis is not necessary because the taking into*  
9                   *account of such member would not significantly*  
10                  *affect the determination under this paragraph.*

11                  “(6) ADVANCE NOTICE.—

12                   “(A) IN GENERAL.—*The Secretary shall, be-*  
13                   *fore granting a waiver under this subsection, re-*  
14                   *quire each applicant to provide evidence satisfac-*  
15                   *tory to such Secretary that the applicant has*  
16                   *provided notice of the filing of the application*  
17                   *for such waiver to each affected party (as defined*  
18                   *in section 4001(a)(21) of the Employee Retire-*  
19                   *ment Income Security Act of 1974) other than*  
20                   *the Pension Benefit Guaranty Corporation and*  
21                   *in the case of a multiemployer plan, to each em-*  
22                   *ployer required to contribute to the plan under*  
23                   *subsection (b)(1). Such notice shall include a de-*  
24                   *scription of the extent to which the plan is fund-*

1 *ed for benefits which are guaranteed under title*  
 2 *IV of such Act and for benefit liabilities.*

3 “(B) *CONSIDERATION OF RELEVANT INFOR-*  
 4 *MATION.—The Secretary shall consider any rel-*  
 5 *evant information provided by a person to whom*  
 6 *notice was given under subparagraph (A).*

7 “(7) *RESTRICTION ON PLAN AMENDMENTS.—*

8 “(A) *IN GENERAL.—No amendment of a*  
 9 *plan which increases the liabilities of the plan by*  
 10 *reason of any increase in benefits, any change in*  
 11 *the accrual of benefits, or any change in the rate*  
 12 *at which benefits become nonforfeitable under the*  
 13 *plan shall be adopted if a waiver under this sub-*  
 14 *section or an extension of time under section*  
 15 *431(d) is in effect with respect to the plan, or if*  
 16 *a plan amendment described in subsection (e)(2)*  
 17 *has been made at any time in the preceding 24*  
 18 *months. If a plan is amended in violation of the*  
 19 *preceding sentence, any such waiver, or extension*  
 20 *of time, shall not apply to any plan year ending*  
 21 *on or after the date on which such amendment*  
 22 *is adopted.*

23 “(B) *EXCEPTION.—Subparagraph (A) shall*  
 24 *not apply to any plan amendment which—*

1                   “(i) the Secretary determines to be rea-  
 2                   sonable and which provides for only de-  
 3                   minimis increases in the liabilities of the  
 4                   plan,

5                   “(ii) only repeals an amendment de-  
 6                   scribed in subsection (e)(2), or

7                   “(iii) is required as a condition of  
 8                   qualification under part I of subchapter D,  
 9                   of chapter 1 of the Internal Revenue Code of  
 10                  1986.

11           “(e) MISCELLANEOUS RULES.—For purposes of this  
 12 section—

13                   “(1) CHANGE IN METHOD OR YEAR.—If the fund-  
 14                   ing method, the valuation date, or a plan year for a  
 15                   plan is changed, the change shall take effect only if  
 16                   approved by the Secretary.

17                   “(2) CERTAIN RETROACTIVE PLAN AMEND-  
 18                   MENTS.—For purposes of this section, any amend-  
 19                   ment applying to a plan year which—

20                   “(A) is adopted after the close of such plan  
 21                   year but no later than 2½ months after the close  
 22                   of the plan year (or, in the case of a multiem-  
 23                   ployer plan, no later than 2 years after the close  
 24                   of such plan year),

1           “(B) does not reduce the accrued benefit of  
2           any participant determined as of the beginning  
3           of the first plan year to which the amendment  
4           applies, and

5           “(C) does not reduce the accrued benefit of  
6           any participant determined as of the time of  
7           adoption except to the extent required by the cir-  
8           cumstances,

9           shall, at the election of the plan administrator, be  
10          deemed to have been made on the first day of such  
11          plan year. No amendment described in this para-  
12          graph which reduces the accrued benefits of any par-  
13          ticipant shall take effect unless the plan adminis-  
14          trator files a notice with the Secretary notifying him  
15          of such amendment and the Secretary has approved  
16          such amendment, or within 90 days after the date on  
17          which such notice was filed, failed to disapprove such  
18          amendment. No amendment described in this sub-  
19          section shall be approved by the Secretary unless the  
20          Secretary determines that such amendment is nec-  
21          essary because of a temporary substantial business  
22          hardship (as determined under subsection (d)(2)) or  
23          a substantial business hardship (as so determined) in  
24          the case of a multiemployer plan and that a waiver  
25          under subsection (d)(1) (or in the case of a multiem-

1        *ployer plan, any extension of the amortization period*  
2        *under section 431(d)) is unavailable or inadequate.*

3                “(3) *CERTAIN INSURANCE CONTRACT PLANS.—A*  
4        *plan is described in this paragraph if—*

5                “(A) *the plan is funded exclusively by the*  
6        *purchase of individual insurance contracts,*

7                “(B) *such contracts provide for level annual*  
8        *premium payments to be paid extending not*  
9        *later than the retirement age for each individual*  
10       *participating in the plan, and commencing with*  
11       *the date the individual became a participant in*  
12       *the plan (or, in the case of an increase in bene-*  
13       *fits, commencing at the time such increase be-*  
14       *comes effective),*

15               “(C) *benefits provided by the plan are equal*  
16       *to the benefits provided under each contract at*  
17       *normal retirement age under the plan and are*  
18       *guaranteed by an insurance carrier (licensed*  
19       *under the laws of a State to do business with the*  
20       *plan) to the extent premiums have been paid,*

21               “(D) *premiums payable for the plan year,*  
22       *and all prior plan years, under such contracts*  
23       *have been paid before lapse or there is reinstate-*  
24       *ment of the policy,*

1           “(E) no rights under such contracts have  
 2           been subject to a security interest at any time  
 3           during the plan year, and

4           “(F) no policy loans are outstanding at any  
 5           time during the plan year.

6           A plan funded exclusively by the purchase of group  
 7           insurance contracts which are determined under regu-  
 8           lations prescribed by the Secretary to have the same  
 9           characteristics as contracts described in the preceding  
 10          sentence shall be treated as a plan described in this  
 11          paragraph.

12          “(4) CONTROLLED GROUP.—For purposes of this  
 13          section and section 430, the term ‘controlled group’  
 14          means any group treated as a single employer under  
 15          subsection (b), (c), (m), or (o) of section 414.”.

16          (b) EFFECTIVE DATE.—The amendment made by this  
 17          section shall apply to plan years beginning after December  
 18          31, 2006.

19       **SEC. 112. FUNDING RULES APPLICABLE TO SINGLE-EM-**  
 20       **PLOYER PENSION PLANS.**

21          Subchapter D of chapter 1 of the Internal Revenue  
 22          Code of 1986 (relating to deferred compensation, etc.) is  
 23          amended by adding at the end the following new part:

1       **“PART III—RULES RELATING TO MINIMUM**  
 2       **FUNDING STANDARDS AND BENEFIT LIMITATION**

*“430. Minimum funding standards for single-employer defined benefit plans.*

*“431. Minimum funding standards for multiemployer plans.*

3       **“SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EM-**  
 4       **PLOYER DEFINED BENEFIT PLANS.**

5       “(a) *MINIMUM REQUIRED CONTRIBUTION.*—For pur-  
 6       poses of this section and section 412(a)(2)(A), except as pro-  
 7       vided in subsection (f), the term ‘minimum required con-  
 8       tribution’ means, with respect to any plan year of a defined  
 9       benefit plan which is a single employer plan—

10               “(1) in any case in which the value of plan as-  
 11               sets of the plan (as reduced under subsection (f)(4))  
 12               is less than the funding target of the plan for the plan  
 13               year, the sum of—

14                       “(A) the target normal cost of the plan for  
 15                       the plan year,

16                       “(B) the shortfall amortization charge (if  
 17                       any) for the plan for the plan year determined  
 18                       under subsection (c), and

19                       “(C) the waiver amortization charge (if  
 20                       any) for the plan for the plan year as deter-  
 21                       mined under subsection (e); or

22               “(2) in any case in which the value of plan as-  
 23               sets of the plan (as reduced under subsection (f)(4))  
 24               equals or exceeds the funding target of the plan for the



1        *plan year, the target normal cost of the plan for the*  
 2        *plan year reduced (but not below zero) by any such*  
 3        *excess.*

4        “(b) *TARGET NORMAL COST.*—*For purposes of this*  
 5        *section, except as provided in subsection (i)(2) with respect*  
 6        *to plans in at-risk status, the term ‘target normal cost’*  
 7        *means, for any plan year, the present value of all benefits*  
 8        *which are expected to accrue or to be earned under the plan*  
 9        *during the plan year. For purposes of this subsection, if*  
 10       *any benefit attributable to services performed in a preceding*  
 11       *plan year is increased by reason of any increase in com-*  
 12       *pensation during the current plan year, the increase in such*  
 13       *benefit shall be treated as having accrued during the current*  
 14       *plan year.*

15       “(c) *SHORTFALL AMORTIZATION CHARGE.*—

16                “(1) *IN GENERAL.*—*For purposes of this section,*  
 17        *the shortfall amortization charge for a plan for any*  
 18        *plan year is the aggregate total of the shortfall amor-*  
 19        *tization installments for such plan year with respect*  
 20        *to the shortfall amortization bases for such plan year*  
 21        *and each of the 6 preceding plan years.*

22                “(2) *SHORTFALL AMORTIZATION INSTALL-*  
 23        *MENT.*—*For purposes of paragraph (1)—*

24                        “(A) *DETERMINATION.*—*The shortfall amor-*  
 25        *tization installments are the amounts necessary*

1           to amortize the shortfall amortization base of the  
 2           plan for any plan year in level annual install-  
 3           ments over the 7-plan-year period beginning  
 4           with such plan year.

5           “(B)    SHORTFALL    INSTALLMENT.—The  
 6           shortfall amortization installment for any plan  
 7           year in the 7-plan-year period under subpara-  
 8           graph (A) with respect to any shortfall amortiza-  
 9           tion base is the annual installment determined  
 10          under subparagraph (A) for that year for that  
 11          base.

12          “(C)    SEGMENT    RATES.—In determining  
 13          any shortfall amortization installment under  
 14          this paragraph, the plan sponsor shall use the  
 15          segment rates determined under subparagraph  
 16          (C) of subsection (h)(2), applied under rules  
 17          similar to the rules of subparagraph (B) of sub-  
 18          section (h)(2).

19          “(3)    SHORTFALL    AMORTIZATION    BASE.—For  
 20          purposes of this section, the shortfall amortization  
 21          base of a plan for a plan year is the excess (if any)  
 22          of—

23                 “(A) the funding shortfall of such plan for  
 24                 such plan year, over

“(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

“(4) FUNDING SHORTFALL.—

“(A) IN GENERAL.—For purposes of this section, except as provided in subparagraph (B), the funding shortfall of a plan for any plan year is the excess (if any) of—

“(i) the funding target of the plan for the plan year, over

“(ii) the value of plan assets of the plan (as reduced under subsection (f)(4)) for the plan year which are held by the plan on the valuation date.

“(B) TRANSITION RULE FOR AMORTIZATION OF FUNDING SHORTFALL.—

“(i) *IN GENERAL.*—*Solely for purposes of applying paragraph (3) in the case of plan years beginning after 2006 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year.*

“(ii) *APPLICABLE PERCENTAGE.*—*For purposes of subparagraph (A)—*

“(I) *IN GENERAL.*—*Except as provided in subclause (II), the applicable percentage shall be 93 percent for plan years beginning in 2007, 96 percent for plan years beginning in 2008, and 100 percent for any succeeding plan year.*

“(II) *SMALL PLANS.*—*In the case of a plan described in subsection (g)(2)(B), the applicable percentage shall be determined in accordance with the following table:*

<b><i>“In the case of a plan year beginning in calendar year:</i></b>	<b><i>The applicable percentage is—</i></b>
<i>2007 .....</i>	<i>92</i>
<i>2008 .....</i>	<i>94</i>
<i>2009 .....</i>	<i>96</i>
<i>2010 .....</i>	<i>98.</i>

1           “(5) *EARLY DEEMED AMORTIZATION UPON AT-*  
 2           *TAINMENT OF FUNDING TARGET.*—*In any case in*  
 3           *which the funding shortfall of a plan for a plan year*  
 4           *is zero, for purposes of determining the shortfall am-*  
 5           *ortization charge for such plan year and succeeding*  
 6           *plan years, the shortfall amortization bases for all*  
 7           *preceding plan years (and all shortfall amortization*  
 8           *installments determined with respect to such bases)*  
 9           *shall be reduced to zero.*

10          “(d) *RULES RELATING TO FUNDING TARGET.*—*For*  
 11          *purposes of this section—*

12               “(1) *FUNDING TARGET.*—*Except as provided in*  
 13               *subsection (i)(1) with respect to plans in at-risk sta-*  
 14               *tus, the funding target of a plan for a plan year is*  
 15               *the present value of all benefits accrued or earned*  
 16               *under the plan as of the beginning of the plan year.*

17               “(2) *FUNDING TARGET ATTAINMENT PERCENT-*  
 18               *AGE.*—*The ‘funding target attainment percentage’ of*  
 19               *a plan for a plan year is the ratio (expressed as a*  
 20               *percentage) which—*

21                       “(A) *the value of plan assets for the plan*  
 22                       *year, bears to*

23                       “(B) *the funding target of the plan for the*  
 24                       *plan year (determined without regard to sub-*  
 25                       *section (i)(1)).*

1 “(e) *WAIVER AMORTIZATION CHARGE.*—

2 “(1) *DETERMINATION OF WAIVER AMORTIZATION*  
 3 *CHARGE.*—*The waiver amortization charge (if any)*  
 4 *for a plan for any plan year is the aggregate total*  
 5 *of the waiver amortization installments for such plan*  
 6 *year with respect to the waiver amortization bases for*  
 7 *each of the 5 preceding plan years.*

8 “(2) *WAIVER AMORTIZATION INSTALLMENT.*—*For*  
 9 *purposes of paragraph (1)—*

10 “(A) *DETERMINATION.*—*The waiver amorti-*  
 11 *zation installments are the amounts necessary to*  
 12 *amortize the waiver amortization base of the*  
 13 *plan for any plan year in level annual install-*  
 14 *ments over a period of 5 plan years beginning*  
 15 *with the succeeding plan year.*

16 “(B) *WAIVER INSTALLMENT.*—*The waiver*  
 17 *amortization installment for any plan year in*  
 18 *the 5-year period under subparagraph (A) with*  
 19 *respect to any waiver amortization base is the*  
 20 *annual installment determined under subpara-*  
 21 *graph (A) for that year for that base.*

22 “(3) *INTEREST RATE.*—*In determining any*  
 23 *waiver amortization installment under this sub-*  
 24 *section, the plan sponsor shall use the segment rates*  
 25 *determined under subparagraph (C) of subsection*

1       (h)(2), applied under rules similar to the rules of sub-  
 2       paragraph (B) of subsection (h)(2).

3               “(4) *WAIVER AMORTIZATION BASE.*—*The waiver*  
 4       *amortization base of a plan for a plan year is the*  
 5       *amount of the waived funding deficiency (if any) for*  
 6       *such plan year under section 412(d).*

7               “(5) *EARLY DEEMED AMORTIZATION UPON AT-*  
 8       *TAINMENT OF FUNDING TARGET.*—*In any case in*  
 9       *which the funding shortfall of a plan for a plan year*  
 10       *is zero, for purposes of determining the waiver amor-*  
 11       *tization charge for such plan year and succeeding*  
 12       *plan years, the waiver amortization bases for all pre-*  
 13       *ceding plan years (and all waiver amortization in-*  
 14       *stallments with respect to such bases) shall be reduced*  
 15       *to zero.*

16              “(f) *USE OF PREFUNDING BALANCES TO SATISFY*  
 17       *MINIMUM REQUIRED CONTRIBUTIONS.*—

18              “(1) *IN GENERAL.*—*A plan sponsor may credit*  
 19       *any amount of a plan’s prefunding balance for a*  
 20       *plan year against the minimum required contribution*  
 21       *for the plan year and the amount of the contributions*  
 22       *an employer is required to make under section 412(c)*  
 23       *for the plan year shall be reduced by the amount so*  
 24       *credited. Any such amount shall be credited on the*  
 25       *first day of the plan year.*

1           “(2) *PREFUNDING BALANCE.*—

2                   “(A) *BEGINNING BALANCE.*—*The beginning*  
 3                   *balance of a prefunding balance maintained by*  
 4                   *a plan shall be zero, except that if a plan was*  
 5                   *in effect for a plan year beginning in 2006 and*  
 6                   *had a positive balance in the funding standard*  
 7                   *account under section 412(b) (as in effect for*  
 8                   *such plan year) as of the end of such plan year,*  
 9                   *the beginning balance for the plan for its first*  
 10                   *plan year beginning after 2006 shall be such*  
 11                   *positive balance.*

12                   “(B) *INCREASES.*—

13                           “(i) *IN GENERAL.*—*As of the first day*  
 14                           *of each plan year beginning after 2007, the*  
 15                           *prefunding balance of a plan shall be in-*  
 16                           *creased by the excess (if any) of—*

17                                   “(I) *the aggregate amount of em-*  
 18                                   *ployer contributions to the plan for the*  
 19                                   *preceding plan year, over*

20                                   “(II) *the minimum required con-*  
 21                                   *tribution for the preceding plan year.*

22                           “(ii) *ADJUSTMENTS FOR INTEREST.*—  
 23                           *Any excess contributions under clause (i)*  
 24                           *shall be properly adjusted for interest accru-*  
 25                           *ing for the periods between the first day of*



1           the current plan year and the dates on  
 2           which the excess contributions were made,  
 3           determined by using the effective interest  
 4           rate for the preceding plan year and by  
 5           treating contributions as being first used to  
 6           satisfy the minimum required contribution.

7           “(iii) CERTAIN CONTRIBUTIONS DIS-  
 8           REGARDED.—Any contribution which is re-  
 9           quired to be made under section 436 in ad-  
 10          dition to any contribution required under  
 11          this section shall not be taken into account  
 12          for purposes of clause (i).

13          “(C) DECREASES.—As of the first day of  
 14          each plan year after 2007, the prefunding bal-  
 15          ance of a plan shall be decreased (but not below  
 16          zero) by the amount of the balance credited  
 17          under paragraph (1) against the minimum re-  
 18          quired contribution of the plan for the preceding  
 19          plan year.

20          “(D) ADJUSTMENTS FOR INVESTMENT EX-  
 21          PERIENCE.—In determining the prefunding bal-  
 22          ance of a plan as of the first day of the plan  
 23          year, the plan sponsor shall, in accordance with  
 24          regulations prescribed by the Secretary, adjust  
 25          such balance to reflect the rate of return on plan

1        *assets for the preceding plan year. Notwith-*  
 2        *standing subsection (g)(3), such rate of return*  
 3        *shall be determined on the basis of fair market*  
 4        *value and shall properly take into account, in*  
 5        *accordance with such regulations, all contribu-*  
 6        *tions, distributions, and other plan payments*  
 7        *made during such period.*

8        *“(3) LIMITATION FOR UNDERFUNDED PLANS.—*

9                *“(A) IN GENERAL.—If the ratio (expressed*  
 10        *as a percentage) for any plan year which—*

11                    *“(i) the value of plan assets for the*  
 12                    *preceding plan year, bears to*

13                    *“(ii) the funding target of the plan for*  
 14                    *the preceding plan year (determined with-*  
 15                    *out regard to subsection (i)(1)),*

16        *is less than 80 percent, the preceding provisions*  
 17        *of this subsection shall not apply unless employ-*  
 18        *ers liable for contributions to the plan under sec-*  
 19        *tion 412(c) make contributions to the plan for*  
 20        *the plan year in an aggregate amount not less*  
 21        *than the amount determined under subpara-*  
 22        *graph (B). Any contribution required by this*  
 23        *subparagraph may not be reduced by any credit*  
 24        *otherwise allowable under paragraph (1).*

1                   “(B) *APPLICABLE AMOUNT.*—*The amount*  
 2                   *determined under this subparagraph for any*  
 3                   *plan year is the greater of—*

4                   “(i) *the target normal cost of the plan*  
 5                   *for the plan year, or*

6                   “(ii) *25 percent of the minimum re-*  
 7                   *quired contribution under subsection (a) for*  
 8                   *the plan year without regard to this sub-*  
 9                   *section.*

10                  “(4) *REDUCTION IN VALUE OF ASSETS.*—*Solely*  
 11                  *for purposes of applying subsections (a) and*  
 12                  *(c)(4)(A)(ii) in determining the minimum required*  
 13                  *contribution under this section, the value of the plan*  
 14                  *assets otherwise determined without regard to this*  
 15                  *paragraph shall be reduced by the amount of the*  
 16                  *prefunding balance under this subsection.*

17                  “(g) *VALUATION OF PLAN ASSETS AND LIABILITIES.*—

18                  “(1) *TIMING OF DETERMINATIONS.*—*Except as*  
 19                  *otherwise provided under this subsection, all deter-*  
 20                  *minations under this section for a plan year shall be*  
 21                  *made as of the valuation date of the plan for such*  
 22                  *plan year.*

23                  “(2) *VALUATION DATE.*—*For purposes of this*  
 24                  *section—*

1           “(A) *IN GENERAL.*—*Except as provided in*  
 2           *subparagraph (B), the valuation date of a plan*  
 3           *for any plan year shall be the first day of the*  
 4           *plan year.*

5           “(B) *EXCEPTION FOR SMALL PLANS.*—*If, on*  
 6           *each day during the preceding plan year, a plan*  
 7           *had 100 or fewer participants, the plan may des-*  
 8           *ignate any day during the plan year as its valu-*  
 9           *ation date for such plan year and succeeding*  
 10          *plan years. For purposes of this subparagraph,*  
 11          *all defined benefit plans (other than multiem-*  
 12          *ployer plans) maintained by the same employer*  
 13          *(or any member of such employer’s controlled*  
 14          *group) shall be treated as 1 plan, but only em-*  
 15          *ployees of such employer or member shall be*  
 16          *taken into account.*

17          “(C) *APPLICATION OF CERTAIN RULES IN*  
 18          *DETERMINATION OF PLAN SIZE.*—*For purposes of*  
 19          *this paragraph—*

20               “(i) *PLANS NOT IN EXISTENCE IN PRE-*  
 21               *CEDING YEAR.*—*In the case of the first plan*  
 22               *year of any plan, subparagraph (B) shall*  
 23               *apply to such plan by taking into account*  
 24               *the number of participants that the plan is*

1                   *reasonably expected to have on days during*  
 2                   *such first plan year.*

3                   “(ii) *PREDECESSORS.*—*Any reference*  
 4                   *in subparagraph (B) to an employer shall*  
 5                   *include a reference to any predecessor of*  
 6                   *such employer.*

7                   “(3) *DETERMINATION OF VALUE OF PLAN AS-*  
 8                   *SETS.*—*For purposes of this section—*

9                   “(A) *IN GENERAL.*—*Except as provided in*  
 10                   *subparagraph (B), the value of plan assets shall*  
 11                   *be the fair market value of the assets.*

12                   “(B) *AVERAGING ALLOWED.*—*A plan may*  
 13                   *determine the value of plan assets on the basis*  
 14                   *of any reasonable actuarial method of valuation*  
 15                   *providing for the averaging of fair market val-*  
 16                   *ues, but only if such method—*

17                   “(i) *is permitted under regulations*  
 18                   *prescribed by the Secretary, and*

19                   “(ii) *does not provide for averaging of*  
 20                   *such values over more than the period be-*  
 21                   *ginning on the last day of the 12th month*  
 22                   *preceding the valuation date and ending on*  
 23                   *the valuation date (or a similar period in*  
 24                   *the case of a valuation date which is not the*  
 25                   *1st day of a month).*

1           “(4) ACCOUNTING FOR CONTRIBUTION RE-  
 2           CEIPTS.—*For purposes of determining the value of as-*  
 3           *sets under paragraph (3)—*

4           “(A) PRIOR YEAR CONTRIBUTIONS.—*If—*

5           “(i) *an employer makes any contribu-*  
 6           *tion to the plan after the valuation date for*  
 7           *the plan year in which the contribution is*  
 8           *made, and*

9           “(ii) *the contribution is for a pre-*  
 10          *ceding plan year,*

11          *the contribution shall be taken into account as*  
 12          *an asset of the plan as of the valuation date, ex-*  
 13          *cept that in the case of any plan year beginning*  
 14          *after 2007, only the present value (determined as*  
 15          *of the valuation date) of such contribution may*  
 16          *be taken into account. For purposes of the pre-*  
 17          *ceding sentence, present value shall be deter-*  
 18          *mined using the effective interest rate for the*  
 19          *preceding plan year to which the contribution is*  
 20          *properly allocable.*

21          “(B) SPECIAL RULE FOR CURRENT YEAR  
 22          CONTRIBUTIONS MADE BEFORE VALUATION  
 23          DATE.—*If any contributions for any plan year*  
 24          *are made to or under the plan during the plan*  
 25          *year but before the valuation date for the plan*

year, the assets of the plan as of the valuation date shall not include—

“(i) such contributions, and

“(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

“(h) *ACTUARIAL ASSUMPTIONS AND METHODS.*—

“(1) *IN GENERAL.*—Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

“(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

“(B) which, in combination, offer the actuary’s best estimate of anticipated experience under the plan.

“(2) *INTEREST RATES.*—

“(A) *EFFECTIVE INTEREST RATE.*—For purposes of this section, the term ‘effective interest rate’ means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan’s

1        *accrued or earned benefits referred to in sub-*  
2        *section (d)(1), would result in an amount equal*  
3        *to the funding target of the plan for such plan*  
4        *year.*

5                *“(B) INTEREST RATES FOR DETERMINING*  
6        *FUNDING TARGET.—For purposes of determining*  
7        *the funding target of a plan for any plan year,*  
8        *the interest rate used in determining the present*  
9        *value of the benefits of the plan shall be—*

10                *“(i) in the case of benefits reasonably*  
11                *determined to be payable during the 5-year*  
12                *period beginning on the first day of the*  
13                *plan year, the first segment rate with re-*  
14                *spect to the applicable month,*

15                *“(ii) in the case of benefits reasonably*  
16                *determined to be payable during the 15-year*  
17                *period beginning at the end of the period*  
18                *described in clause (i), the second segment*  
19                *rate with respect to the applicable month,*  
20                *and*

21                *“(iii) in the case of benefits reasonably*  
22                *determined to be payable after the period*  
23                *described in clause (ii), the third segment*  
24                *rate with respect to the applicable month.*



1                   “(C) *SEGMENT RATES.*—For purposes of  
2                   *this paragraph—*

3                   “(i) *FIRST SEGMENT RATE.*—The term  
4                   ‘first segment rate’ means, with respect to  
5                   any month, the single rate of interest which  
6                   shall be determined by the Secretary for  
7                   such month on the basis of the corporate  
8                   bond yield curve for such month, taking  
9                   into account only that portion of such yield  
10                  curve which is based on bonds maturing  
11                  during the 5-year period commencing with  
12                  such month.

13                  “(ii) *SECOND SEGMENT RATE.*—The  
14                  term ‘second segment rate’ means, with re-  
15                  spect to any month, the single rate of inter-  
16                  est which shall be determined by the Sec-  
17                  retary for such month on the basis of the  
18                  corporate bond yield curve for such month,  
19                  taking into account only that portion of  
20                  such yield curve which is based on bonds  
21                  maturing during each of the years in the  
22                  15-year period beginning at the end of the  
23                  period described in clause (i).

24                  “(iii) *THIRD SEGMENT RATE.*—The  
25                  term ‘third segment rate’ means, with re-

1           *spect to any month, the single rate of inter-*  
 2           *est which shall be determined by the Sec-*  
 3           *retary for such month on the basis of the*  
 4           *corporate bond yield curve for such month,*  
 5           *taking into account only that portion of*  
 6           *such yield curve which is based on bonds*  
 7           *maturing during periods beginning after*  
 8           *the period described in clause (ii).*

9           “(D) CORPORATE BOND YIELD CURVE.—The  
 10          *term ‘corporate bond yield curve’ means, with re-*  
 11          *spect to any month, a yield curve which is pre-*  
 12          *scribed by the Secretary for such month and*  
 13          *which reflects the average, for the 12-month pe-*  
 14          *riod ending with the month preceding such*  
 15          *month, of yields on investment grade corporate*  
 16          *bonds with varying maturities.*

17          “(E) APPLICABLE MONTH.—For purposes of  
 18          *this paragraph, the term ‘applicable month’*  
 19          *means, with respect to any plan for any plan*  
 20          *year, the month which includes the valuation*  
 21          *date of such plan for such plan year or, at the*  
 22          *election of the plan administrator, any of the 4*  
 23          *months which precede such month. Any election*  
 24          *made under this subparagraph shall apply to the*  
 25          *plan year for which the election is made and all*

1        *succeeding plan years, unless the election is re-*  
 2        *voked with the consent of the Secretary.*

3                “(F) *PUBLICATION REQUIREMENTS.—The*  
 4        *Secretary shall publish for each month the cor-*  
 5        *porate bond yield curve for such month and each*  
 6        *of the rates determined under this paragraph for*  
 7        *such month. The Secretary shall also publish a*  
 8        *description of the methodology used to determine*  
 9        *such yield curve and such rates which is suffi-*  
 10       *ciently detailed to enable plans to make reason-*  
 11       *able projections regarding the yield curve and*  
 12       *such rates for future months based on the plan’s*  
 13       *projection of future interest rates.*

14               “(G) *TRANSITION RULE.—*

15               “(i) *IN GENERAL.—Notwithstanding*  
 16        *the preceding provisions of this paragraph,*  
 17        *for plan years beginning in 2007 or 2008,*  
 18        *the first, second, or third segment rate for a*  
 19        *plan with respect to any month shall be*  
 20        *equal to the sum of—*

21               “(I) *the product of such rate for*  
 22        *such month determined without regard*  
 23        *to this subparagraph, multiplied by the*  
 24        *applicable percentage, and*

1                   “(II) the product of the rate deter-  
 2                   mined under the rules of section  
 3                   412(b)(5)(B)(ii)(II) (as in effect for  
 4                   plan years beginning in 2006), multi-  
 5                   plied by a percentage equal to 100 per-  
 6                   cent minus the applicable percentage.

7                   “(ii) *APPLICABLE PERCENTAGE.*—For  
 8                   purposes of clause (i), the applicable per-  
 9                   centage is  $33\frac{1}{3}$  percent for plan years be-  
 10                  ginning in 2007 and  $66\frac{2}{3}$  percent for plan  
 11                  years beginning in 2008.

12               “(3) *MORTALITY TABLES.*—

13               “(A) *IN GENERAL.*—Except as provided in  
 14               subparagraphs (C) and (D), the mortality table  
 15               used in determining any present value or mak-  
 16               ing any computation under this section shall be  
 17               the RP–2000 Combined Mortality Table, using  
 18               Scale AA, as published by the Society of Actu-  
 19               aries, as in effect on the date of the enactment  
 20               of the Pension Security and Transparency Act of  
 21               2005 and as revised from time to time under  
 22               subparagraph (B).

23               “(B) *PERIODIC REVISION.*—The Secretary  
 24               shall (at least every 10 years) make revisions in  
 25               any table in effect under subparagraph (A) to re-

1 *flect the actual experience of pension plans and*  
 2 *projected trends in such experience.*

3 “(C) *SUBSTITUTE MORTALITY TABLE.*—

4 “(i) *IN GENERAL.*—Upon request by  
 5 *the plan sponsor and approval by the Sec-*  
 6 *retary, a mortality table which meets the re-*  
 7 *quirements of clause (ii) shall be used in de-*  
 8 *termining any present value or making any*  
 9 *computation under this section during the*  
 10 *10-consecutive plan year period specified in*  
 11 *the request. A mortality table described in*  
 12 *this clause shall cease to be in effect if the*  
 13 *plan actuary determines at any time that*  
 14 *such table does not meet the requirements of*  
 15 *clause (ii).*

16 “(ii) *REQUIREMENTS.*—A mortality  
 17 *table meets the requirements of this clause if*  
 18 *the Secretary determines that—*

19 “(I) *there is a sufficient number*  
 20 *of plan participants, and the pension*  
 21 *plans have been maintained for a suffi-*  
 22 *cient period of time, to have credible*  
 23 *information necessary for purposes of*  
 24 *subclause (II),*

1                   “(II) *such table reflects the actual*  
 2                   *experience of the pension plans main-*  
 3                   *tained by the sponsor and projected*  
 4                   *trends in general mortality experience,*

5                   “(III) *except as provided by the*  
 6                   *Secretary, such table will be used by*  
 7                   *all plans maintained by the plan spon-*  
 8                   *sor and all members of any controlled*  
 9                   *group which includes the plan sponsor,*  
 10                  *and*

11                  “(IV) *such table is significantly*  
 12                  *different from the table described in*  
 13                  *subparagraph (A).*

14                  “(iii) *DEADLINE FOR DISPOSITION OF*  
 15                  *APPLICATION.—Any mortality table sub-*  
 16                  *mitted to the Secretary for approval under*  
 17                  *this subparagraph shall be treated as in ef-*  
 18                  *fect for the first plan year in the 10-year*  
 19                  *period described in clause (i) unless the Sec-*  
 20                  *retary, during the 180-day period beginning*  
 21                  *on the date of such submission, disapproves*  
 22                  *of such table and provides the reasons that*  
 23                  *such table fails to meet the requirements of*  
 24                  *clause (ii). The 180-day period shall be ex-*  
 25                  *tended for any period during which the Sec-*

1           retary has requested information from the  
2           plan sponsor and such information has not  
3           been provided.

4           “(D) *SEPARATE MORTALITY TABLES FOR*  
5           *THE DISABLED.*—Notwithstanding subparagraph  
6           (A)—

7                   “(i) *IN GENERAL.*—The Secretary shall  
8           establish mortality tables which may be  
9           used (in lieu of the tables under subpara-  
10          graph (A)) under this subsection for indi-  
11          viduals who are entitled to benefits under  
12          the plan on account of disability. The Sec-  
13          retary shall establish separate tables for in-  
14          dividuals whose disabilities occur in plan  
15          years beginning before January 1, 1995,  
16          and for individuals whose disabilities occur  
17          in plan years beginning on or after such  
18          date.

19                  “(ii) *SPECIAL RULE FOR DISABILITIES*  
20          *OCCURRING AFTER 1994.*—In the case of dis-  
21          abilities occurring in plan years beginning  
22          after December 31, 1994, the tables under  
23          clause (i) shall apply only with respect to  
24          individuals described in such subclause who  
25          are disabled within the meaning of title II

1                   *of the Social Security Act and the regula-*  
 2                   *tions thereunder.*

3                   “(iii) *PERIODIC REVISION.*—*The Sec-*  
 4                   *retary shall (at least every 10 years) make*  
 5                   *revisions in any table in effect under clause*  
 6                   *(i) to reflect the actual experience of pension*  
 7                   *plans and projected trends in such experi-*  
 8                   *ence.*

9                   “(E) *TRANSITION RULE.*—*Under regula-*  
 10                  *tions of the Secretary, any difference in present*  
 11                  *value resulting from any differences in assump-*  
 12                  *tions as set forth in the mortality table specified*  
 13                  *in subparagraph (A) and assumptions as set*  
 14                  *forth in the mortality table described in section*  
 15                  *412(l)(7)(C)(ii) (as in effect for plan years be-*  
 16                  *ginning in 2006) shall be phased in ratably over*  
 17                  *the first period of 5 plan years beginning in or*  
 18                  *after 2007 so as to be fully effective for the fifth*  
 19                  *plan year.*

20                  “(4) *PROBABILITY OF BENEFIT PAYMENTS IN*  
 21                  *THE FORM OF LUMP SUMS OR OTHER OPTIONAL*  
 22                  *FORMS.*—*For purposes of determining any present*  
 23                  *value or making any computation under this section,*  
 24                  *there shall be taken into account—*



1           “(A) the probability that future benefit pay-  
 2           ments under the plan will be made in the form  
 3           of optional forms of benefits provided under the  
 4           plan (including lump sum distributions, deter-  
 5           mined on the basis of the plan’s experience and  
 6           other related assumptions), and

7           “(B) any difference in the present value of  
 8           such future benefit payments resulting from the  
 9           use of actuarial assumptions, in determining  
 10          benefit payments in any such optional form of  
 11          benefits, which are different from those specified  
 12          in this subsection.

13          “(5) APPROVAL OF LARGE CHANGES IN ACTU-  
 14          ARIAL ASSUMPTIONS.—

15           “(A) IN GENERAL.—No actuarial assump-  
 16           tion used to determine the funding target for a  
 17           plan to which this paragraph applies may be  
 18           changed without the approval of the Secretary.

19           “(B) PLANS TO WHICH PARAGRAPH AP-  
 20           PLIES.—This paragraph shall apply to a plan  
 21           only if—

22           “(i) the aggregate unfunded benefits as  
 23           of the close of the preceding plan year (as  
 24           determined under section 4006(a)(3)(E)(iii)  
 25           of the Employee Retirement Income Secu-

1            *rity Act of 1974) of such plan and all other*  
 2            *plans maintained by the contributing spon-*  
 3            *sors (as defined in section 4001(a)(13) of*  
 4            *such Act) and members of such sponsors’*  
 5            *controlled groups (as defined in section*  
 6            *4001(a)(14) of such Act) which are covered*  
 7            *by title IV of such Act (disregarding plans*  
 8            *with no unfunded benefits) exceed*  
 9            *\$50,000,000; and*

10            *“(ii) the change in assumptions (deter-*  
 11            *mined after taking into account any*  
 12            *changes in interest rate and mortality*  
 13            *table) results in a decrease in the funding*  
 14            *shortfall of the plan for the current plan*  
 15            *year that exceeds \$50,000,000, or that ex-*  
 16            *ceeds \$5,000,000 and that is 5 percent or*  
 17            *more of the funding target of the plan before*  
 18            *such change.*

19            *“(i) SPECIAL RULES FOR AT-RISK PLANS.—*

20            *“(1) FUNDING TARGET FOR PLANS IN AT-RISK*  
 21            *STATUS.—*

22            *“(A) IN GENERAL.—In the case of a plan to*  
 23            *which this subsection applies for a plan year, the*  
 24            *funding target of the plan for the plan year is*  
 25            *equal to the present value of all liabilities to par-*

1        *ticipants and their beneficiaries under the plan*  
 2        *for the plan year, as determined by using the ad-*  
 3        *ditional actuarial assumptions described in sub-*  
 4        *paragraph (B).*

5                “(B)    *ADDITIONAL    ACTUARIAL    ASSUMP-*  
 6        *TIONS.—The actuarial assumptions described in*  
 7        *this subparagraph are as follows:*

8                “(i) *All employees who are not other-*  
 9        *wise assumed to retire as of the valuation*  
 10        *date but who will be eligible to elect benefits*  
 11        *during the plan year and the 7 succeeding*  
 12        *plan years shall be assumed to retire at the*  
 13        *earliest retirement date under the plan but*  
 14        *not before the end of the plan year for which*  
 15        *the at-risk target liability and at-risk target*  
 16        *normal cost are being determined.*

17                “(ii) *All employees shall be assumed to*  
 18        *elect the retirement benefit available under*  
 19        *the plan at the assumed retirement age (de-*  
 20        *termined after application of clause (i))*  
 21        *which would result in the highest present*  
 22        *value of liabilities.*

23                “(2)    *TARGET    NORMAL    COST    OF    AT-RISK*  
 24        *PLANS.—In the case of a plan to which this subsection*  
 25        *applies for a plan year, the target normal cost of the*

1     *plan for such plan year shall be equal to the present*  
 2     *value of all benefits which are expected to accrue or*  
 3     *be earned under the plan during the plan year, deter-*  
 4     *mined using the additional actuarial assumptions de-*  
 5     *scribed in paragraph (1)(B).*

6             “(3) *MINIMUM AMOUNT.*—*In no event shall—*

7                 “(A) *the at-risk target liability be less than*  
 8                 *the target liability, as determined without regard*  
 9                 *to this subsection, or*

10                “(B) *the at-risk target normal cost be less*  
 11                *than the target normal cost, as determined with-*  
 12                *out regard to this subsection.*

13             “(4) *DETERMINATION OF AT-RISK STATUS.*—*For*  
 14     *purposes of this subsection, a plan is in at-risk status*  
 15     *for a plan year if—*

16                “(A) *the plan is maintained by a finan-*  
 17                *cially-weak employer, and*

18                “(B) *the funding target attainment percent-*  
 19                *age for the plan year is less than 93 percent.*

20             “(5) *FINANCIALLY-WEAK EMPLOYER.*—

21                “(A) *IN GENERAL.*—*For purposes of this*  
 22                *subsection, the term ‘financially-weak employer’*  
 23                *means any employer if—*

24                    “(i) *as of the valuation date for each*  
 25                    *of the years during a period of at least 3*

1           *consecutive plan years ending with the plan*  
2           *year—*

3                   “(I) *the employer has an out-*  
4                   *standing senior unsecured debt instru-*  
5                   *ment which is rated lower than invest-*  
6                   *ment grade by each of the nationally*  
7                   *recognized statistical rating organiza-*  
8                   *tions for corporate bonds that has*  
9                   *issued a credit rating for such instru-*  
10                  *ment, or*

11                  “(II) *if no such debt instrument*  
12                  *has been rated by such an organization*  
13                  *but 1 or more of such organizations*  
14                  *has made an issuer credit rating for*  
15                  *such employer, all such organizations*  
16                  *which have so rated the employer have*  
17                  *rated such employer lower than invest-*  
18                  *ment grade, and*

19                  “(ii) *at least 2 of the years during such*  
20                  *period are deterioration years.*

21           *If an employer is treated as a financially-weak*  
22           *employer for any plan year, clause (ii) shall not*  
23           *apply in determining whether the employer is so*  
24           *treated for any succeeding plan year in any con-*

1        *tinuous period of plan years for which the em-*  
 2        *ployer is treated as a financially-weak employer.*

3                “(B) *CONTROLLED GROUP EXCEPTION.—If*  
 4        *an employer treated as a financially-weak em-*  
 5        *ployer under subparagraph (A) is a member of*  
 6        *a controlled group (as defined in section*  
 7        *412(e)(4)), the employer shall not be treated as*  
 8        *a financially-weak employer if a significant*  
 9        *member (as determined under regulations pre-*  
 10        *scribed by the Secretary) of such group has an*  
 11        *outstanding senior unsecured debt instrument*  
 12        *that is rated as being investment grade by an or-*  
 13        *ganization described in subparagraph (A).*

14                “(C) *EMPLOYERS WITH NO RATINGS.—If—*

15                “(i) *an employer has no debt instru-*  
 16        *ment described in subparagraph (A)(i)*  
 17        *which was rated by an organization de-*  
 18        *scribed in such subparagraph, and*

19                “(ii) *no such organization has made*  
 20        *an issuer credit rating for such employer,*

21        *then such employer shall only be treated as a fi-*  
 22        *nancially-weak employer to the extent provided*  
 23        *in regulations prescribed by the Secretary.*

24                “(6) *DETERMINATION OF DETERIORATION*  
 25        *YEAR.—For purposes of paragraph (5), the term ‘de-*

1        *terioration year’ means any year during the period*  
 2        *described in paragraph (5)(A)(i) for which the rating*  
 3        *described in subclause (I) or (II) of paragraph*  
 4        *(5)(A)(i) by each organization is either—*

5                *“(A) lower than the lowest rating of the em-*  
 6                *ployer by such organization for a preceding year*  
 7                *in such period, or*

8                *“(B) the lowest rating used by such organi-*  
 9                *zation.*

10              *“(7) YEARS BEFORE EFFECTIVE DATE.—For*  
 11              *purposes of paragraphs (5) and (6), plan years begin-*  
 12              *ning before 2007 shall not be taken into account.*

13              *“(8) TRANSITION BETWEEN APPLICABLE FUND-*  
 14              *ING TARGETS AND BETWEEN APPLICABLE TARGET*  
 15              *NORMAL COSTS.—*

16              *“(A) IN GENERAL.—In any case in which a*  
 17              *plan which is in at-risk status for a plan year*  
 18              *has been in such status for a consecutive period*  
 19              *of fewer than 5 plan years, the applicable*  
 20              *amount of the funding target and of the target*  
 21              *normal cost shall be, in lieu of the amount deter-*  
 22              *mined without regard to this paragraph, the sum*  
 23              *of—*

1           “(i) *the amount determined under this*  
 2           *section without regard to this subsection,*  
 3           *plus*

4           “(ii) *the transition percentage for such*  
 5           *plan year of the excess of the amount deter-*  
 6           *mined under this subsection (without regard*  
 7           *to this paragraph) over the amount deter-*  
 8           *mined under this section without regard to*  
 9           *this subsection.*

10           “(B) *IMPROVEMENT YEARS NOT TAKEN INTO*  
 11           *ACCOUNT.—*

12           “(i) *IN GENERAL.—An improvement*  
 13           *year shall not be taken into account in de-*  
 14           *termining any consecutive period of plan*  
 15           *years for purposes of subparagraph (A).*

16           “(ii) *APPLICATION OF SUBSECTION*  
 17           *AFTER IMPROVEMENT YEAR ENDS.—Plan*  
 18           *years immediately before and after an im-*  
 19           *provement year (or consecutive period of*  
 20           *improvement years) shall be treated as con-*  
 21           *secutive for purposes of subparagraph (A).*

22           “(iii) *IMPROVEMENT YEAR.—For pur-*  
 23           *poses of this subparagraph, the term ‘im-*  
 24           *provement year’ means any plan year for*  
 25           *which any rating described in subclause (I)*



1                   or (II) of paragraph (5)(A)(i) is higher  
 2                   than such rating for the preceding plan  
 3                   year.

4                   “(C) *TRANSITION PERCENTAGE.*—For pur-  
 5                   poses of subparagraph (A), the transition per-  
 6                   centage shall be determined in accordance with  
 7                   the following table:

<b><i>“If the consecutive number of years (including the plan year) the plan is in at-risk status is—</i></b>	<b><i>The transition percentage is—</i></b>
1 .....	20
2 .....	40
3 .....	60
4 .....	80.

8                   “(D) *YEARS BEFORE EFFECTIVE DATE.*—  
 9                   For purposes of this paragraph, plan years be-  
 10                  ginning before 2007 shall not be taken into ac-  
 11                  count.

12                  “(9) *PLANS TO WHICH SUBSECTION APPLIES.*—

13                  “(A) *IN GENERAL.*—Except as provided in  
 14                  this paragraph, this subsection shall apply to  
 15                  any plan to which this section applies and which  
 16                  is in at-risk status for the plan year.

17                  “(B) *EXCEPTION FOR SMALL PLANS.*—This  
 18                  subsection shall not apply to a plan for a plan  
 19                  year if the plan was described in subsection  
 20                  (g)(2)(B) for the preceding plan year, deter-  
 21                  mined by substituting ‘500’ for ‘100’.

1           “(C) *EXCEPTION FOR PLANS MAINTAINED*  
 2           *BY CERTAIN COOPERATIVES.*—*This subsection*  
 3           *shall not apply to an eligible cooperative plan*  
 4           *described in subparagraph (D).*

5           “(D) *ELIGIBLE COOPERATIVE PLAN DE-*  
 6           *FINED.*—*For purposes of subparagraph (C), a*  
 7           *plan shall be treated as an eligible cooperative*  
 8           *plan for a plan year if the plan is maintained*  
 9           *by more than 1 employer and at least 85 percent*  
 10          *of the employers are—*

11                   “(i) *rural cooperatives (as defined in*  
 12                   *section 401(k)(7)(B) without regard to*  
 13                   *clause (iv) thereof), or*

14                   “(ii) *organizations which are—*

15                           “(I) *cooperative organizations de-*  
 16                           *scribed in section 1381(a) which are*  
 17                           *more than 50-percent owned by agri-*  
 18                           *cultural producers or by cooperatives*  
 19                           *owned by agricultural producers, or*

20                                   “(II) *more than 50-percent owned,*  
 21                                   *or controlled by, one or more coopera-*  
 22                                   *tive organizations described in sub-*  
 23                                   *clause (I).*

24           *A plan shall also be treated as an eligible cooper-*  
 25           *ative plan for any plan year for which it is de-*

scribed in section 210(a) of the *Employee Retirement Income Security Act of 1974* and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act.

“(E) *EXCEPTION FOR PLANS SECURED BY THIRD PARTIES BOUND BY PBGC AGREEMENTS.*—

*This subsection shall not apply to any plan if—*

“(i) a person other than the employer obligated to contribute under the plan is, under the terms of an agreement with the Pension Benefit Guaranty Corporation, liable for any failure of the employer to meet its obligation to pay any minimum required contribution or termination liability with respect to the plan; and

“(ii) such person is not a financially-weak employer under paragraph (5).

“(j) *PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.*—

“(1) *IN GENERAL.*—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

“(2) *INTEREST.*—Any payment required under paragraph (1) for a plan year made after the valu-

1        *ation date for such plan year shall be increased by in-*  
 2        *terest for the period from the valuation date to the*  
 3        *payment date, determined by using the effective rate*  
 4        *of interest for the plan for such plan year.*

5                *“(3) ACCELERATED QUARTERLY CONTRIBUTION*  
 6        *SCHEDULE FOR UNDERFUNDED PLANS.—*

7                *“(A) INTEREST PENALTY FOR FAILURE TO*  
 8        *MEET ACCELERATED QUARTERLY PAYMENT*  
 9        *SCHEDULE.—A plan shall make the required in-*  
 10        *stallments under this paragraph for a plan year*  
 11        *if the plan had a funding shortfall for the pre-*  
 12        *ceding plan year. If the required installment is*  
 13        *not paid in full, then the minimum required*  
 14        *contribution for the plan year (as increased*  
 15        *under paragraph (2)) shall be further increased*  
 16        *by an amount equal to the interest on the*  
 17        *amount of the underpayment for the period of*  
 18        *the underpayment, using an interest rate equal*  
 19        *to the excess of—*

20                *“(i) 175 percent of the Federal mid-*  
 21        *term rate (as in effect under section 1274*  
 22        *for the 1st month of such plan year), over*

23                *“(ii) the effective rate of interest for the*  
 24        *plan for the plan year.*

1           “(B) *AMOUNT OF UNDERPAYMENT, PERIOD*  
 2           *OF UNDERPAYMENT.—For purposes of subpara-*  
 3           *graph (A)—*

4           “(i) *AMOUNT.—The amount of the un-*  
 5           *derpayment shall be the excess of—*

6           “(I) *the required installment, over*

7           “(II) *the amount (if any) of the*  
 8           *installment contributed to or under the*  
 9           *plan on or before the due date for the*  
 10          *installment.*

11          “(ii) *PERIOD OF UNDERPAYMENT.—*  
 12          *The period for which any interest is charged*  
 13          *under this paragraph with respect to any*  
 14          *portion of the underpayment shall run from*  
 15          *the due date for the installment to the date*  
 16          *on which such portion is contributed to or*  
 17          *under the plan.*

18          “(iii) *ORDER OF CREDITING CON-*  
 19          *TRIBUTIONS.—For purposes of clause*  
 20          *(i)(II), contributions shall be credited*  
 21          *against unpaid required installments in the*  
 22          *order in which such installments are re-*  
 23          *quired to be paid.*

1                   “(C) *NUMBER OF REQUIRED INSTALL-*  
 2                   *MENTS; DUE DATES.*—*For purposes of this*  
 3                   *paragraph—*

4                   “(i) *PAYABLE IN 4 INSTALLMENTS.*—  
 5                   *There shall be 4 required installments for*  
 6                   *each plan year.*

7                   “(ii) *TIME FOR PAYMENT OF INSTALL-*  
 8                   *MENTS.*—*The due dates for required install-*  
 9                   *ments are set forth in the following table:*

***In the case of the following required install-***  
***ment:***

<i>1st</i> .....	<i>April 15</i>
<i>2nd</i> .....	<i>July 15</i>
<i>3rd</i> .....	<i>October 15</i>
<i>4th</i> .....	<i>January 15 of the fol-</i> <i>lowing year.</i>

10                   “(D) *AMOUNT OF REQUIRED INSTALL-*  
 11                   *MENT.*—*For purposes of this paragraph—*

12                   “(i) *IN GENERAL.*—*The amount of any*  
 13                   *required installment shall be 25 percent of*  
 14                   *the required annual payment.*

15                   “(ii) *REQUIRED ANNUAL PAYMENT.*—  
 16                   *For purposes of clause (i), the term ‘re-*  
 17                   *quired annual payment’ means the lesser*  
 18                   *of—*

19                   “(I) *90 percent of the minimum*  
 20                   *required contribution (without regard*  
 21                   *to any waiver under section 302(c)) to*

1           *the plan for the plan year under this*  
2           *section, or*

3                     “(II) *in the case of a plan year*  
4                     *beginning after 2007, 100 percent of*  
5                     *the minimum required contribution*  
6                     *(without regard to any waiver under*  
7                     *section 302(c)) to the plan for the pre-*  
8                     *ceding plan year.*

9           *Subclause (II) shall not apply if the pre-*  
10           *ceding plan year referred to in such clause*  
11           *was not a year of 12 months.*

12           “(E) *FISCAL YEARS AND SHORT YEARS.—*

13                     “(i) *FISCAL YEARS.—In applying this*  
14                     *paragraph to a plan year beginning on any*  
15                     *date other than January 1, there shall be*  
16                     *substituted for the months specified in this*  
17                     *paragraph, the months which correspond*  
18                     *thereto.*

19                     “(ii) *SHORT PLAN YEAR.—This sub-*  
20                     *paragraph shall be applied to plan years of*  
21                     *less than 12 months in accordance with reg-*  
22                     *ulations prescribed by the Secretary of the*  
23                     *Treasury.*

24           “(4) *LIQUIDITY REQUIREMENT IN CONNECTION*  
25           *WITH QUARTERLY CONTRIBUTIONS.—*

1           “(A) *IN GENERAL.*—A plan to which this  
 2           paragraph applies shall be treated as failing to  
 3           pay the full amount of any required installment  
 4           under paragraph (3) to the extent that the value  
 5           of the liquid assets paid in such installment is  
 6           less than the liquidity shortfall (whether or not  
 7           such liquidity shortfall exceeds the amount of  
 8           such installment required to be paid but for this  
 9           paragraph).

10           “(B) *PLANS TO WHICH PARAGRAPH AP-*  
 11           *PLIES.*—This paragraph shall apply to a plan  
 12           which—

13                   “(i) is required to pay installments  
 14                   under paragraph (3) for a plan year, and

15                   “(ii) has a liquidity shortfall for any  
 16                   quarter during such plan year.

17           “(C) *PERIOD OF UNDERPAYMENT.*—For  
 18           purposes of paragraph (3)(A), any portion of an  
 19           installment that is treated as not paid under  
 20           subparagraph (A) shall continue to be treated as  
 21           unpaid until the close of the quarter in which the  
 22           due date for such installment occurs.

23           “(D) *LIMITATION ON INCREASE.*—If the  
 24           amount of any required installment is increased  
 25           by reason of subparagraph (A), in no event shall



1        *such increase exceed the amount which, when*  
 2        *added to prior installments for the plan year, is*  
 3        *necessary to increase the funding target attain-*  
 4        *ment percentage of the plan for the plan year*  
 5        *(taking into account the expected increase in*  
 6        *funding target due to benefits accruing or earned*  
 7        *during the plan year) to 100 percent.*

8                *“(E) DEFINITIONS.—For purposes of this*  
 9        *subparagraph:*

10                *“(i) LIQUIDITY SHORTFALL.—The term*  
 11        *‘liquidity shortfall’ means, with respect to*  
 12        *any required installment, an amount equal*  
 13        *to the excess (as of the last day of the quar-*  
 14        *ter for which such installment is made) of—*

15                *“(I) the base amount with respect*  
 16        *to such quarter, over*

17                *“(II) the value (as of such last*  
 18        *day) of the plan’s liquid assets.*

19                *“(ii) BASE AMOUNT.—*

20                *“(I) IN GENERAL.—The term ‘base*  
 21        *amount’ means, with respect to any*  
 22        *quarter, an amount equal to 3 times*  
 23        *the sum of the adjusted disbursements*  
 24        *from the plan for the 12 months ending*  
 25        *on the last day of such quarter.*

1                   “(II) *SPECIAL RULE.*—If the  
 2                   *amount determined under subclause (I)*  
 3                   *exceeds an amount equal to 2 times the*  
 4                   *sum of the adjusted disbursements from*  
 5                   *the plan for the 36 months ending on*  
 6                   *the last day of the quarter and an en-*  
 7                   *rolled actuary certifies to the satisfac-*  
 8                   *tion of the Secretary that such excess is*  
 9                   *the result of nonrecurring cir-*  
 10                   *cumstances, the base amount with re-*  
 11                   *spect to such quarter shall be deter-*  
 12                   *mined without regard to amounts re-*  
 13                   *lated to those nonrecurring cir-*  
 14                   *cumstances.*

15                   “(iii) *DISBURSEMENTS FROM THE*  
 16                   *PLAN.*—The term ‘disbursements from the  
 17                   *plan’ means all disbursements from the*  
 18                   *trust, including purchases of annuities,*  
 19                   *payments of single sums and other benefits,*  
 20                   *and administrative expenses.*

21                   “(iv) *ADJUSTED DISBURSEMENTS.*—  
 22                   *The term ‘adjusted disbursements’ means*  
 23                   *disbursements from the plan reduced by the*  
 24                   *product of—*

1                   “(I) the plan’s funding target at-  
 2                   tainment percentage for the plan year,  
 3                   and

4                   “(II) the sum of the purchases of  
 5                   annuities, payments of single sums,  
 6                   and such other disbursements as the  
 7                   Secretary shall provide in regulations.

8                   “(v) *LIQUID ASSETS*.—The term ‘liq-  
 9                   uid assets’ means cash, marketable securi-  
 10                  ties, and such other assets as specified by  
 11                  the Secretary in regulations.

12                  “(vi) *QUARTER*.—The term ‘quarter’  
 13                  means, with respect to any required install-  
 14                  ment, the 3-month period preceding the  
 15                  month in which the due date for such in-  
 16                  stallment occurs.

17                  “(F) *REGULATIONS*.—The Secretary may  
 18                  prescribe such regulations as are necessary to  
 19                  carry out this paragraph.

20                  “(k) *IMPOSITION OF LIEN WHERE FAILURE TO MAKE*  
 21                  *REQUIRED CONTRIBUTIONS*.—

22                  “(1) *IN GENERAL*.—In the case of a plan to  
 23                  which this subsection applies, if—

1           “(A) any person fails to make a contribu-  
 2           tion payment required by section 412 and this  
 3           section before the due date for such payment, and

4           “(B) the unpaid balance of such payment  
 5           (including interest), when added to the aggregate  
 6           unpaid balance of all preceding such payments  
 7           for which payment was not made before the due  
 8           date (including interest), exceeds \$1,000,000,  
 9           then there shall be a lien in favor of the plan in the  
 10          amount determined under paragraph (3) upon all  
 11          property and rights to property, whether real or per-  
 12          sonal, belonging to such person and any other person  
 13          who is a member of the same controlled group of  
 14          which such person is a member.

15          “(2) PLANS TO WHICH SUBSECTION APPLIES.—  
 16          This subsection shall apply to a defined benefit plan  
 17          which is a single-employer plan covered under section  
 18          4021 of the Employee Retirement Income Security  
 19          Act of 1974 for any plan year for which the funding  
 20          target attainment percentage (as defined in subsection  
 21          (d)(2)) of such plan is less than 100 percent.

22          “(3) AMOUNT OF LIEN.—For purposes of para-  
 23          graph (1), the amount of the lien shall be equal to the  
 24          aggregate unpaid balance of contribution payments

1       *required under this section and section 302 for which*  
 2       *payment has not been made before the due date.*

3           “(4) *NOTICE OF FAILURE; LIEN.*—

4               “(A) *NOTICE OF FAILURE.*—A person com-  
 5       *mitting a failure described in paragraph (1)*  
 6       *shall notify the Pension Benefit Guaranty Cor-*  
 7       *poration of such failure within 10 days of the*  
 8       *due date for the required contribution payment.*

9               “(B) *PERIOD OF LIEN.*—The lien imposed  
 10      *by paragraph (1) shall arise on the due date for*  
 11      *the required contribution payment and shall con-*  
 12      *tinue until the last day of the first plan year in*  
 13      *which the plan ceases to be described in para-*  
 14      *graph (1)(B). Such lien shall continue to run*  
 15      *without regard to whether such plan continues to*  
 16      *be described in paragraph (2) during the period*  
 17      *referred to in the preceding sentence.*

18              “(C) *CERTAIN RULES TO APPLY.*—Any  
 19      *amount with respect to which a lien is imposed*  
 20      *under paragraph (1) shall be treated as taxes*  
 21      *due and owing the United States and rules simi-*  
 22      *lar to the rules of subsections (c), (d), and (e) of*  
 23      *section 4068 of the Employee Retirement Income*  
 24      *Security Act of 1974 shall apply with respect to*

1           *a lien imposed by subsection (a) and the amount*  
 2           *with respect to such lien.*

3           “(5) *ENFORCEMENT.*—*Any lien created under*  
 4           *paragraph (1) may be perfected and enforced only by*  
 5           *the Pension Benefit Guaranty Corporation, or at the*  
 6           *direction of the Pension Benefit Guaranty Corpora-*  
 7           *tion, by the contributing sponsor (or any member of*  
 8           *the controlled group of the contributing sponsor).*

9           “(6) *DEFINITIONS.*—*For purposes of this*  
 10          *subsection—*

11           “(A) *CONTRIBUTION PAYMENT.*—*The term*  
 12           *‘contribution payment’ means, in connection*  
 13           *with a plan, a contribution payment required to*  
 14           *be made to the plan, including any required in-*  
 15           *stallment under paragraphs (3) and (4) of sub-*  
 16           *section (j).*

17           “(B) *DUE DATE; REQUIRED INSTALL-*  
 18           *MENT.*—*The terms ‘due date’ and ‘required in-*  
 19           *stallment’ have the meanings given such terms*  
 20           *by subsection (j), except that in the case of a*  
 21           *payment other than a required installment, the*  
 22           *due date shall be the date such payment is re-*  
 23           *quired to be made under section 303.*

24           “(C) *CONTROLLED GROUP.*—*The term ‘con-*  
 25           *trolled group’ means any group treated as a sin-*

1           gle employer under subsections (b), (c), (m), and  
 2           (o) of section 414.

3           “(l) *QUALIFIED TRANSFERS TO HEALTH BENEFIT AC-*  
 4 *COUNTS.*—*In the case of a qualified transfer (as defined in*  
 5 *section 420), any assets so transferred shall not, for pur-*  
 6 *poses of this section, be treated as assets in the plan.*”.

7           (b) *EFFECTIVE DATE.*—*The amendments made by this*  
 8 *section shall apply with respect to plan years beginning*  
 9 *after 2006.*

10 **SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER**  
 11 **PLANS.**

12           (a) *IN GENERAL.*—*Part III of subchapter D of chapter*  
 13 *1 of the Internal Revenue Code of 1986 (relating to rules*  
 14 *relating to minimum funding standards) is amended by*  
 15 *adding at the end the following new subpart:*

16 **“Subpart B—Limitations on Benefit Improvements by**  
 17 **Single-Employer Plans**

“Sec. 436. *Funding-based limits on benefits and benefit accruals under sin-*  
*gle-employer plans.*”

18 **“SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BEN-**  
 19 **EFIT ACCRUALS UNDER SINGLE-EMPLOYER**  
 20 **PLANS.**

21           “(a) *GENERAL RULE.*—*For purposes of section*  
 22 *401(a)(29), a defined benefit plan which is a single-em-*  
 23 *ployer plan shall be treated as meeting the requirements*

1 *of this section if the plan meets the requirements of sub-*  
 2 *sections (b), (c), and (d).*

3       “(b) *LIMITATIONS ON PLAN AMENDMENTS INCREASING*  
 4 *LIABILITY FOR BENEFITS.*—

5               “(1) *IN GENERAL.*—*Except as provided in this*  
 6 *section, no amendment to a single-employer plan*  
 7 *which has the effect of increasing liabilities of the*  
 8 *plan by reason of increases in benefits, establishment*  
 9 *of new benefits, changing the rate of benefit accrual,*  
 10 *or changing the rate at which benefits become non-*  
 11 *forfeitable may take effect during any plan year if the*  
 12 *adjusted funding target attainment percentage as of*  
 13 *the valuation date of the plan for such plan year is—*

14                       “(A) *less than 80 percent, or*

15                       “(B) *would be less than 80 percent taking*  
 16 *into account such amendment.*

17               “(2) *EXEMPTION.*—*Paragraph (1) shall cease to*  
 18 *apply with respect to any plan year, effective as of*  
 19 *the first date of the plan year (or if later, the effective*  
 20 *date of the amendment), upon payment by the plan*  
 21 *sponsor of a contribution (in addition to any min-*  
 22 *imum required contribution under section 430) equal*  
 23 *to—*

24                       “(A) *in the case of paragraph (1)(A), the*  
 25 *amount of the increase in the funding target of*



1           the plan (under section 430) for the plan year  
2           attributable to the amendment, and

3           “(B) in the case of paragraph (1)(B), the  
4           amount sufficient to result in a funding target  
5           attainment percentage of 80 percent.

6           “(3) *EXCEPTION FOR CERTAIN BENEFIT IN-*  
7           *CREASES.*—Paragraph (1) shall not apply to any  
8           amendment which provides for an increase in benefits  
9           under a formula which is not based on a partici-  
10          pant’s compensation, but only if the rate of such in-  
11          crease is not in excess of the contemporaneous rate of  
12          increase in average wages of participants covered by  
13          the amendment.

14          “(c) *LIMITATIONS ON ACCELERATED BENEFIT DIS-*  
15          *TRIBUTIONS.*—

16               “(1) *IN GENERAL.*—The requirements of this sub-  
17          section are met if the plan provides that, with respect  
18          to any plan year—

19                   “(A) if the plan’s adjusted funded target li-  
20                  ability percentage as of the valuation date for the  
21                  preceding plan year was less than 60 percent  
22                  and the preceding plan year is not otherwise in  
23                  a prohibited period, the plan sponsor shall, in  
24                  addition to any other contribution required  
25                  under section 430, contribute for the current

1        *plan year and each succeeding plan year in the*  
 2        *prohibited period with respect to the current*  
 3        *plan year the amount (if any) which, when*  
 4        *added to the portion of the minimum required*  
 5        *contribution for the plan year described in sub-*  
 6        *paragraphs (B) and (C) of section 430(a)(1), is*  
 7        *sufficient to result in an adjusted funded target*  
 8        *liability percentage for the plan year of 60 per-*  
 9        *cent, and*

10            *“(B) no prohibited payments will be made*  
 11            *during a prohibited period.*

12            *“(2) PROHIBITED PAYMENT.—For purpose of*  
 13            *this subsection—*

14            *“(A) IN GENERAL.—The term ‘prohibited*  
 15            *payment’ means—*

16            *“(i) any payment, in excess of the*  
 17            *monthly amount paid under a single life*  
 18            *annuity (plus any social security supple-*  
 19            *ments described in the last sentence of sec-*  
 20            *tion 411(a)(9)), to a participant or bene-*  
 21            *ficiary whose annuity starting date (as de-*  
 22            *finied in section 417(f)(2)) occurs during a*  
 23            *prohibited period,*

1           “(ii) any payment for the purchase of  
 2           an irrevocable commitment from an insurer  
 3           to pay benefits, and

4           “(iii) any other payment specified by  
 5           the Secretary by regulations.

6           “(B) EXCEPTION FOR CERTAIN PAY-  
 7           MENTS.—In the case of any prohibited period de-  
 8           scribed in paragraph (3)(A), the term ‘prohibited  
 9           payment’ shall not include any payment if the  
 10          amount of the payment does not exceed the lesser  
 11          of—

12           “(i) 50 percent of the amount of the  
 13           payment which could be made without re-  
 14           gard to this subsection, or

15           “(ii) the present value (determined  
 16           under guidance prescribed by the Pension  
 17           Benefit Guaranty Corporation, using the  
 18           interest and mortality assumptions under  
 19           section 417(e)) of the maximum guarantee  
 20           with respect to the participant under sec-  
 21           tion 4022 of the Employee Retirement In-  
 22           come Security Act of 1974.

23          The exception under this subparagraph shall  
 24          only apply once with respect to any participant,  
 25          except that, for purposes of this sentence, a par-

1        *participant and any beneficiary on his behalf (in-*  
 2        *cluding an alternate payee, as defined in section*  
 3        *414(p)(8)) shall be treated as 1 participant. If*  
 4        *the accrued benefit of a participant is allocated*  
 5        *to such an alternate payee and 1 or more other*  
 6        *persons, the amount under clause (ii) shall be al-*  
 7        *located among such persons in the same manner*  
 8        *as the accrued benefit is allocated unless the*  
 9        *qualified domestic relations order (as defined in*  
 10       *section 414(p)(1)(A)) provides otherwise.*

11        *“(3) PROHIBITED PERIOD.—For purposes of*  
 12        *paragraph (1), the term ‘prohibited period’ means—*

13                *“(A) except as provided in paragraph (4),*  
 14                *if a plan sponsor is required to make the con-*  
 15                *tribution for the current plan year under para-*  
 16                *graph (1), the period beginning on the 1st day*  
 17                *of the plan year and ending on the last day of*  
 18                *the 1st period of 2 consecutive plan years (begin-*  
 19                *ning on or after such 1st day) for which the*  
 20                *plan’s adjusted funded target liability percentage*  
 21                *was at least 60 percent,*

22                *“(B) any period the plan sponsor is in*  
 23                *bankruptcy, or*

1           “(C) any period during which the plan has  
 2           a liquidity shortfall (as defined in section  
 3           430(j)(4)(E)(i)).

4           The prohibited period for purposes of subparagraph  
 5           (B) shall not include any portion of a plan year  
 6           (even if the plan sponsor is in bankruptcy during  
 7           such period) which occurs on or after the date the  
 8           plan’s enrolled actuary certifies that, as of the valu-  
 9           ation date for the plan year, the plan’s adjusted fund-  
 10          ed target liability percentage is at least 100 percent.

11          “(4) SATISFACTION OF REQUIREMENT BEFORE  
 12          CLOSE OF PLAN YEAR.—If, before the close of the cur-  
 13          rent plan year—

14               “(A) the plan sponsor makes the contribu-  
 15               tion required to be made under paragraph (1),  
 16               or

17               “(B) the plan’s enrolled actuary certifies  
 18               that, as of the valuation date for the plan year,  
 19               the adjusted funded target liability percentage of  
 20               the plan is at least 60 percent,  
 21          this subsection shall be applied as if no prohibited pe-  
 22          riod had begun as of the beginning of such year and  
 23          the plan shall, under rules described by the Secretary,  
 24          restore any payments not made during the prohibited

1        *period in effect before the application of this para-*  
 2        *graph.*

3        “(d) *LIMITATION ON BENEFIT ACCRUALS FOR PLANS*  
 4        *WITH SEVERE FUNDING SHORTFALLS.—*

5                “(1) *IN GENERAL.—Except as provided in sub-*  
 6        *section (e), a single-employer plan shall provide that*  
 7        *all future benefit accruals under the plan shall cease*  
 8        *during a severe funding shortfall period, but only to*  
 9        *the extent the cessation of such accruals would have*  
 10       *been permitted under section 411(d)(6) if the ces-*  
 11       *sation had been implemented by a plan amendment*  
 12       *adopted immediately before the severe funding short-*  
 13       *fall period.*

14               “(2) *SEVERE FUNDING SHORTFALL PERIOD.—*  
 15       *For purposes of paragraph (1), the term ‘severe fund-*  
 16       *ing shortfall period’ means in the case of a plan the*  
 17       *adjusted funding target attainment percentage of*  
 18       *which as of the valuation date of the plan for any*  
 19       *plan year is less than 60 percent, the period—*

20               “(A) *beginning on the 1st day of the suc-*  
 21       *ceeding plan year, and*

22               “(B) *ending on the date the plan’s enrolled*  
 23       *actuary certifies that the plan’s funding target*  
 24       *attainment percentage is at least 60 percent.*

1           “(3) *OPPORTUNITY FOR INCREASED FUNDING.*—

2           *For purposes of paragraph (2)(A), a plan shall not*  
 3           *be treated as described in such paragraph for a plan*  
 4           *year if the plan’s enrolled actuary certifies that the*  
 5           *plan sponsor has before the end of the plan year con-*  
 6           *tributed (in addition to any minimum required con-*  
 7           *tribution under section 430) the amount sufficient to*  
 8           *result in an adjusted funding target attainment per-*  
 9           *centage as of the valuation date for the plan year of*  
 10          *60 percent.*

11          “(e) *EXCEPTION FOR CERTAIN COLLECTIVELY BAR-*  
 12          *GAINED BENEFITS.*—*In the case of a plan maintained pur-*  
 13          *suant to a collective bargaining agreement between em-*  
 14          *ployee representatives and the plan sponsor and in effect*  
 15          *before the beginning of the first day on which a limitation*  
 16          *would otherwise apply under subsections (b), (c), or (d)—*

17                 “(1) *such limitations shall not apply to any*  
 18                 *amendment, prohibited payment, or accrual with re-*  
 19                 *spect to such plan, but*

20                 “(2) *the plan sponsor shall contribute (in addi-*  
 21                 *tion to any minimum required contribution under*  
 22                 *section 430) the amount sufficient to result in a fund-*  
 23                 *ing target attainment percentage (as of the valuation*  
 24                 *date for the plan year in which any such limitation*

1       *would otherwise apply) equal to the percentage nec-*  
 2       *essary to prevent the limitation from applying.*

3       “(f) *RULES RELATING TO REQUIRED CONTRIBU-*  
 4       *TIONS.—*

5               “(1) *SECURITY MAY BE PROVIDED.—*

6                       “(A) *IN GENERAL.—For purposes of this*  
 7                       *section, the adjusted funding target attainment*  
 8                       *percentage shall be determined by treating as an*  
 9                       *asset of the plan any security provided by a plan*  
 10                      *sponsor in a form meeting the requirements of*  
 11                      *subparagraph (B) .*

12                     “(B) *FORM OF SECURITY.—The security re-*  
 13                     *quired under subparagraph (A) shall consist of—*

14                               “(i) *a bond issued by a corporate sur-*  
 15                               *ety company that is an acceptable surety*  
 16                               *for purposes of section 412 of the Employee*  
 17                               *Retirement Income Security Act of 1974,*

18                               “(ii) *cash, or United States obligations*  
 19                               *which mature in 3 years or less, held in es-*  
 20                               *crow by a bank or similar financial institu-*  
 21                               *tion, or*

22                               “(iii) *such other form of security as is*  
 23                               *satisfactory to the Secretary and the parties*  
 24                               *involved.*



1           “(C) *ENFORCEMENT.*—Any security pro-  
 2           vided under subparagraph (A) may be perfected  
 3           and enforced at any time after the earlier of—

4                   “(i) the date on which the plan termi-  
 5           nates,

6                   “(ii) if there is a failure to make a  
 7           payment of the minimum required con-  
 8           tribution for any plan year beginning after  
 9           the security is provided, the due date for the  
 10          payment under section 430(j), or

11                  “(iii) if the adjusted funding target at-  
 12          tainment percentage is less than 60 percent  
 13          for a consecutive period of 7 years, the valu-  
 14          ation date for the last year in the period.

15          “(D) *RELEASE OF SECURITY.*—The security  
 16          shall be released (and any amounts thereunder  
 17          shall be refunded together with any interest ac-  
 18          crued thereon) at such time as the Secretary may  
 19          prescribe in regulations, including regulations  
 20          for partial releases of the security by reason of  
 21          increases in the funding target attainment per-  
 22          centage.

23          “(2) *PREFUNDING BALANCE MAY NOT BE*  
 24          *USED.*—No prefunding balance under section 430(f)

1        *may be used to satisfy any required contribution*  
 2        *under this section.*

3            “(3) *TREATMENT AS UNPAID MINIMUM RE-*  
 4        *QUIRED CONTRIBUTION.—The amount of any required*  
 5        *contribution which a plan sponsor fails to make*  
 6        *under subsection (b) or (d) for any plan year shall*  
 7        *be treated as an unpaid minimum required contribu-*  
 8        *tion for purposes of subsection (j) and (k) of section*  
 9        *430 and for purposes of section 4971.*

10          “(g) *NEW PLANS.—Subsections (b) and (d) shall not*  
 11        *apply to a plan for the first 5 plan years of the plan. For*  
 12        *purposes of this subsection, the reference in this subsection*  
 13        *to a plan shall include a reference to any predecessor plan.*

14          “(h) *PRESUMED UNDERFUNDING FOR PURPOSES OF*  
 15        *BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUNDING*  
 16        *STATUS.—*

17            “(1) *PRESUMPTION OF CONTINUED UNDER-*  
 18        *FUNDING.—In any case in which a benefit limitation*  
 19        *under subsection (b), (c), or (d) has been applied to*  
 20        *a plan with respect to the plan year preceding the*  
 21        *current plan year, the adjusted funding target attain-*  
 22        *ment percentage of the plan as of the valuation date*  
 23        *of the plan for the current plan year shall be pre-*  
 24        *sumed to be equal to the adjusted funding target at-*  
 25        *tainment percentage of the plan as of the valuation*

1      *date of the plan for the preceding plan year until the*  
 2      *enrolled actuary of the plan certifies the actual ad-*  
 3      *justed funding target attainment percentage of the*  
 4      *plan as of the valuation date of the plan for the cur-*  
 5      *rent plan year.*

6            “(2) *PRESUMPTION OF UNDERFUNDING AFTER*  
 7      *10TH MONTH.—In any case in which no such certifi-*  
 8      *cation is made with respect to the plan before the first*  
 9      *day of the 10th month of the current plan year, for*  
 10     *purposes of subsections (b), (c), and (d), the plan’s*  
 11     *adjusted funding target attainment percentage shall*  
 12     *be conclusively presumed to be less than 60 percent as*  
 13     *of the first day of such 10th month.*

14          “(i) *TREATMENT OF PLAN AS OF CLOSE OF PROHIB-*  
 15     *ITED OR CESSATION PERIOD.—For purposes of applying*  
 16     *this part—*

17            “(1) *OPERATION OF PLAN AFTER PERIOD.—Un-*  
 18     *less the plan provides otherwise, payments and accru-*  
 19     *als will resume effective as of the day following the*  
 20     *close of a period of limitation of payment or accrual*  
 21     *of benefits under subsection (c) or (d).*

22            “(2) *TREATMENT OF AFFECTED BENEFITS.—*  
 23     *Nothing in this subsection shall be construed as affect-*  
 24     *ing the plan’s treatment of benefits which would have*  
 25     *been paid or accrued but for this section.*

1       “(j) *FUNDING TARGET ATTAINMENT PERCENTAGE.*—

2       *For purposes of this section—*

3               “(1) *IN GENERAL.*—*The term ‘funding target at-*  
 4       *tainment percentage’ has the same meaning given*  
 5       *such term by section 430(d)(2).*

6               “(2) *ADJUSTED FUNDED TARGET LIABILITY PER-*  
 7       *CENTAGE.*—*The term ‘adjusted funded target liability*  
 8       *percentage’ means the funded target liability percent-*  
 9       *age which is determined under subparagraph (A) by*  
 10       *increasing each of the amounts under subparagraphs*  
 11       *(A) and (B) of section 430(d)(2) by the aggregate*  
 12       *amount of purchases of annuities, payments of single*  
 13       *sums, and such other disbursements as the Secretary*  
 14       *shall prescribe in regulations, which were made by the*  
 15       *plan during the preceding 2 plan years.*

16       “(k) *SPECIAL RULES.*—

17               “(1) *BANKRUPTCY.*—*In the case of a plan spon-*  
 18       *sor during any period the plan is in bankruptcy—*

19                       “(A) *subsection (b) shall be applied by sub-*  
 20       *stituting ‘100 percent’ for ‘80 percent’ each place*  
 21       *it appears,*

22                       “(B) *any exception under subsection (b) for*  
 23       *any benefit increases pursuant to a collective*  
 24       *bargaining agreement shall not apply, and*

1           “(C) the exception under subsection (f) shall  
2           not apply for purposes of subsection (b).

3           “(2) YEARS BEFORE EFFECTIVE DATE.—No plan  
4           year beginning before 2007 shall be taken into ac-  
5           count in determining whether this section applies to  
6           any plan year beginning after 2006.”.

7           (b) EFFECTIVE DATES.—

8           (1) IN GENERAL.—The amendments made by  
9           this section shall apply to plan years beginning after  
10          December 31, 2006.

11          (2) COLLECTIVE BARGAINING EXCEPTION.—In  
12          the case of a plan maintained pursuant to 1 or more  
13          collective bargaining agreements between employee  
14          representatives and 1 or more employers ratified be-  
15          fore January 1, 2007, the amendments made by this  
16          section shall not apply to plan years beginning before  
17          the earlier of—

18               (A) the later of—

19                       (i) the date on which the last collective  
20                       bargaining agreement relating to the plan  
21                       terminates (determined without regard to  
22                       any extension thereof agreed to after the  
23                       date of the enactment of this Act), or

24                       (ii) the first day of the first plan year  
25                       to which the amendments made by this sub-

1                    *section would (but for this subparagraph)*  
 2                    *apply, or*

3                    *(B) January 1, 2010.*

4                    *For purposes of subparagraph (A)(i), any plan*  
 5                    *amendment made pursuant to a collective bargaining*  
 6                    *agreement relating to the plan which amends the plan*  
 7                    *solely to conform to any requirement added by this*  
 8                    *section shall not be treated as a termination of such*  
 9                    *collective bargaining agreement.*

10 ***SEC. 114. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EM-***  
 11 ***PLOYER PLANS.***

12                    *(a) IN GENERAL.—Section 404 of the Internal Revenue*  
 13 *Code of 1986 (relating to deduction for contributions of an*  
 14 *employer to an employees’ trust or annuity plan and com-*  
 15 *pensation under a deferred payment plan) is amended—*

16                    *(1) in subsection (a)(1)(A), by inserting “in the*  
 17 *case of a defined benefit plan other than a multiem-*  
 18 *ployer plan, in an amount determined under sub-*  
 19 *section (o), and in the case of any other plan” after*  
 20 *“section 501(a),”, and*

21                    *(2) by inserting at the end the following new*  
 22 *subsection:*

23                    ***“(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER***  
 24 ***PLANS.—For purposes of subsection (a)(1)(A)—***

1           “(1) *IN GENERAL.*—*In the case of a defined ben-*  
 2           *efit plan to which subsection (a)(1)(A) applies (other*  
 3           *than a multiemployer plan), the amount determined*  
 4           *under this subsection for any taxable year shall be*  
 5           *equal to the greater of—*

6                     “(A) *the sum of the amounts determined*  
 7                     *under paragraph (2) with respect to each plan*  
 8                     *year ending with or within the taxable year, or*

9                     “(B) *the sum of the minimum required con-*  
 10                    *tributions under section 430 for such plan years.*

11           “(2) *DETERMINATION OF AMOUNT.*—

12                    “(A) *IN GENERAL.*—*The amount determined*  
 13                    *under this paragraph for any plan year shall be*  
 14                    *equal to the excess (if any) of—*

15                           “(i) *the sum of—*

16                                     “(I) *the funding target for the*  
 17                                     *plan year,*

18                                     “(II) *the target normal cost for*  
 19                                     *the plan year, and*

20                                     “(III) *the cushion amount for the*  
 21                                     *plan year, over*

22                           “(ii) *the value (determined under sec-*  
 23                           *tion 430(g)(2)) of the assets of the plan*  
 24                           *which are held by the plan as of the valu-*  
 25                           *ation date for the plan year.*

1           “(B) *SPECIAL RULE FOR CERTAIN EMPLOY-*  
 2           *ERS.—If section 430(i) does not apply to a plan*  
 3           *for a plan year, the amount determined under*  
 4           *subparagraph (A)(i) for the plan year shall in*  
 5           *no event be less than the sum of—*

6                     “(i) *the funding target for the plan*  
 7                     *year (determined as if section 430(i) ap-*  
 8                     *plied to the plan), plus*

9                     “(ii) *the target normal cost for the*  
 10                    *plan year (as so determined).*

11           “(3) *CUSHION AMOUNT.—For purposes of para-*  
 12           *graph (2)(A)(i)(III)—*

13                    “(A) *IN GENERAL.—The cushion amount for*  
 14                    *any plan year is the sum of—*

15                             “(i) *80 percent of the funding target*  
 16                             *for the plan year, and*

17                             “(ii) *the amount by which the funding*  
 18                             *target for the plan year would increase if*  
 19                             *the plan were to take into account—*

20                                     “(I) *increases in compensation*  
 21                                     *which are expected to occur in suc-*  
 22                                     *ceeding plan years, or*

23                                     “(II) *if the plan does not base*  
 24                                     *benefits for service to date on com-*  
 25                                     *penetration, increases in benefits which*



1           are expected to occur in succeeding  
 2           plan years (determined on the basis of  
 3           the average annual increase in benefits  
 4           over the 6 immediately preceding plan  
 5           years).

6           “(B) *LIMITATIONS.*—

7                   “(i) *IN GENERAL.*—In making the  
 8                   computation under subparagraph (A)(ii),  
 9                   the plan’s actuary shall assume that the  
 10                   limitations under subsection (l) and section  
 11                   415(b) shall apply.

12                   “(ii) *EXPECTED INCREASES.*—In the  
 13                   case of a plan year during which a plan is  
 14                   covered under section 4021 of the Employee  
 15                   Retirement Income Security Act of 1974,  
 16                   the plan’s actuary may, notwithstanding  
 17                   subsection (j) or (l), take into account in-  
 18                   creases in the limitations which are ex-  
 19                   pected to occur in succeeding plan years.

20           “(4) *SPECIAL RULES FOR PLANS WITH 100 OR*  
 21           *FEWER PARTICIPANTS.*—

22                   “(A) *IN GENERAL.*—For purposes of deter-  
 23                   mining the amount under paragraph (3) for any  
 24                   plan year, in the case of a plan which has 100  
 25                   or fewer participants for the plan year, the li-

1        *ability of the plan attributable to benefit in-*  
 2        *creases for highly compensated employees (as de-*  
 3        *defined in section 414(q)) resulting from a plan*  
 4        *amendment which is made or becomes effective,*  
 5        *whichever is later, within the last 2 years shall*  
 6        *not be taken into account in determining the tar-*  
 7        *get liability.*

8                *“(B) RULE FOR DETERMINING NUMBER OF*  
 9        *PARTICIPANTS.—For purposes of determining the*  
 10        *number of plan participants, all defined benefit*  
 11        *plans maintained by the same employer (or any*  
 12        *member of such employer’s controlled group*  
 13        *(within the meaning of section 412(f)(4))) shall*  
 14        *be treated as one plan, but only participants of*  
 15        *such member or employer shall be taken into ac-*  
 16        *count.*

17                *“(5) SPECIAL RULE FOR TERMINATING PLANS.—*  
 18        *In the case of a plan which, subject to section 4041*  
 19        *of the Employee Retirement Income Security Act of*  
 20        *1974, terminates during the plan year, the amount*  
 21        *determined under paragraph (2) shall in no event be*  
 22        *less than the amount required to make the plan suffi-*  
 23        *cient for benefit liabilities (within the meaning of sec-*  
 24        *tion 4041(d) of such Act).*

1           “(6) *ACTUARIAL ASSUMPTIONS.*—Any computa-  
 2           tion under this subsection for any plan year shall use  
 3           the same actuarial assumptions which are used for  
 4           the plan year under section 430.

5           “(7) *DEFINITIONS.*—Any term used in this sub-  
 6           section which is also used in section 430 shall have  
 7           the same meaning given such term by section 430.”.

8           (b) *EXCEPTION FROM LIMITATION ON DEDUCTION*  
 9           *WHERE COMBINATION OF DEFINED CONTRIBUTION AND*  
 10          *DEFINED BENEFIT PLANS.*—Section 404(a)(7)(C) of such  
 11          Code, as amended by this Act, is amended by adding at  
 12          the end the following new clause:

13                       “(iv) *GUARANTEED PLANS.*—In apply-  
 14                       ing this paragraph, any single-employer  
 15                       plan covered under section 4021 of the Em-  
 16                       ployee Retirement Income Security Act of  
 17                       1974 shall not be taken into account.”.

18          (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—

19               (1) The last sentence of section 404(a)(1)(A) of  
 20               such Code is amended by striking “section 412” each  
 21               place it appears and inserting “section 431”.

22               (2) Section 404(a)(1)(B) of such Code is  
 23               amended—

24                       (A) by striking “In the case of a plan” and  
 25                       inserting “In the case of a multiemployer plan”,

1           (B) by striking “section 412(c)(7)” each  
 2           place it appears and inserting “section  
 3           431(c)(6)”,

4           (C) by striking “section 412(c)(7)(B)” and  
 5           inserting “section 431(c)(6)(A)(ii)”,

6           (D) by striking “section 412(c)(7)(A)” and  
 7           inserting “section 431(c)(6)(A)(i)”, and

8           (E) by striking “section 412” and inserting  
 9           “section 431”.

10          (3) Section 404(a)(7)(A) of such Code, as amend-  
 11          ed by this Act, is amended—

12           (A) by adding at the end of subparagraph  
 13           (A) the following new sentence: “In the case of a  
 14           defined benefit plan which is a single employer  
 15           plan, the amount necessary to satisfy the min-  
 16           imum funding standard provided by section 412  
 17           shall not be less than the plan’s funding shortfall  
 18           determined under section 430.”, and

19           (B) by striking subparagraph (D) and in-  
 20           serting:

21           “(D) *INSURANCE CONTRACT PLANS.*—For  
 22           purposes of this paragraph, a plan described in  
 23           section 412(g)(3) shall be treated as a defined  
 24           benefit plan.”.

1           (4) Section 404A(g)(3)(A) of such Code is  
 2           amended by striking “paragraphs (3) and (7) of sec-  
 3           tion 412(c)” and inserting “paragraphs (3) and (6)  
 4           of section 431(c)”.

5           (d) *EFFECTIVE DATE.*—The amendments made by this  
 6           section shall apply to plan years beginning after December  
 7           31, 2006.

8           **SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.**

9           (a) *AMENDMENTS RELATED TO QUALIFICATION RE-*  
 10          *QUIREMENTS.*—

11           (1) Section 401(a)(29) of the Internal Revenue  
 12          Code of 1986 is amended to read as follows:

13           “(29) *BENEFIT LIMITATIONS ON PLANS IN AT-*  
 14          *RISK STATUS.*—In the case of a defined benefit plan  
 15          (other than a multiemployer plan) to which the re-  
 16          quirements of section 412 apply, the trust of which  
 17          the plan is a part shall not constitute a qualified  
 18          trust under this subsection unless the plan meets the  
 19          requirements of section 436.”.

20           (2) Section 401(a)(32) of such Code is  
 21          amended—

22           (A) in subparagraph (A), by striking  
 23           “412(m)(5)” each place it appears and inserting  
 24           “section 430(j)(4)”, and

1                   (B) in subparagraph (C), by striking “sec-  
2                   tion 412(m)” and inserting “section 430(j)”.

3                   (3) Section 401(a), as amended by this Act, is  
4                   amended by striking paragraph (33) and by redesign-  
5                   nating paragraphs (34) and (35) as paragraph (33)  
6                   and (34).

7                   (b) VESTING RULES.—Section 411 of such Code is  
8                   amended—

9                   (1) by striking “section 412(c)(8)” in subsection  
10                  (a)(3)(C) and inserting “section 412(d)(2)”,

11                  (2) in subsection (b)(1)(F)—

12                   (A) by striking “paragraphs (2) and (3) of  
13                   section 412(i)” in clause (ii) and inserting “sub-  
14                   paragraphs (B) and (C) of section 412(e)(3)”,  
15                   and

16                   (B) by striking “paragraphs (4), (5), and  
17                   (6) of section 412(i)” and inserting “subpara-  
18                   graphs (D), (E), and (F) of section 412(e)(3)”,  
19                   and

20                   (3) by striking “section 412(c)(8)” in subsection  
21                   (d)(6)(A) and inserting “section 412(e)(2)”.

22                   (c) MERGERS AND CONSOLIDATIONS OF PLANS.—Sub-  
23                   clause (I) of section 414(l)(2)(B)(i) of such Code is amended  
24                   to read as follows:

1                   “(I) the amount determined under  
 2                   section 431(c)(6)(A)(i) in the case of a  
 3                   multiemployer plan (and the sum of  
 4                   the funding shortfall and target normal  
 5                   cost determined under section 430 in  
 6                   the case of any other plan), over”.

7           (d) *TRANSFER OF EXCESS PENSION ASSETS TO RE-*  
 8 *TIREE HEALTH ACCOUNTS.*—

9                   (1) Section 420(e)(2) of such Code is amended to  
 10           read as follows:

11                   “(2) *EXCESS PENSION ASSETS.*—The term ‘excess  
 12           pension assets’ means the excess (if any) of—

13                   “(A) the lesser of—

14                   “(i) the fair market value of the plan’s  
 15                   assets (reduced by the prefunding balance  
 16                   determined under section 430(f)), or

17                   “(ii) the value of plan assets as deter-  
 18                   mined under section 430(g)(3) after reduc-  
 19                   tion under section 430(f), over

20                   “(B) 125 percent of the sum of the funding  
 21                   shortfall and the target normal cost determined  
 22                   under section 430 for such plan year.”.

23                   (2) Section 420(e)(4) of such Code is amended to  
 24           read as follows:

1           “(4) *COORDINATION WITH SECTION 430.*—*In the*  
 2           *case of a qualified transfer, any assets so transferred*  
 3           *shall not, for purposes of this section, be treated as as-*  
 4           *sets in the plan.*”.

5           *(e) EXCISE TAXES.*—

6           (1) *IN GENERAL.*—*Subsections (a) and (b) of sec-*  
 7           *tion 4971 of such Code are amended to read as fol-*  
 8           *lows:*

9           “(a) *INITIAL TAX.*—*If at any time during any taxable*  
 10          *year an employer maintains a plan to which section 412*  
 11          *applies, there is hereby imposed for the taxable year a tax*  
 12          *equal to—*

13           “(1) *in the case of a single-employer plan, 10*  
 14          *percent of the aggregate unpaid minimum required*  
 15          *contributions for all plan years remaining unpaid as*  
 16          *of the end of any plan year ending with or within the*  
 17          *taxable year, and*

18           “(2) *in the case of a multiemployer plan, 5 per-*  
 19          *cent of the accumulated funding deficiency deter-*  
 20          *mined under section 431 as of the end of any plan*  
 21          *year ending with or within the taxable year.*

22          “(b) *ADDITIONAL TAX.*—*If—*

23           “(1) *a tax is imposed under subsection (a)(1) on*  
 24          *any unpaid required minimum contribution and such*



1        *amount remains unpaid as of the close of the taxable*  
 2        *period, or*

3                *“(2) a tax is imposed under subsection (a)(2) on*  
 4        *any accumulated funding deficiency and the accumu-*  
 5        *lated funding deficiency is not corrected within the*  
 6        *taxable period,*

7        *there is hereby imposed a tax equal to 100 percent of the*  
 8        *unpaid minimum required contribution or accumulated*  
 9        *funding deficiency, whichever is applicable, to the extent not*  
 10       *so paid or corrected.”.*

11                *(2) Section 4971(c) of such Code is amended—*

12                        *(A) by striking “the last two sentences of*  
 13        *section 412(a)” in paragraph (1) and inserting*  
 14        *“section 431”, and*

15                        *(B) by adding at the end the following new*  
 16        *paragraph:*

17                *“(4) UNPAID MINIMUM REQUIRED CONTRIBU-*  
 18        *TION.—*

19                        *“(A) IN GENERAL.—The term ‘unpaid min-*  
 20        *imum required contribution’ means, with respect*  
 21        *to any plan year, any minimum required con-*  
 22        *tribution under section 430 for the plan year*  
 23        *which is not paid on or before the due date (as*  
 24        *determined under section 430(j)(1)) for the plan*  
 25        *year.*

1           “(B) *ORDERING RULE.*—Any payment to or  
 2           under a plan for any plan year shall be allo-  
 3           cated first to unpaid minimum required con-  
 4           tributions for all preceding plan years on a first-  
 5           in, first-out basis and then to the minimum re-  
 6           quired contribution under section 430 for the  
 7           plan year.”.

8           (3) Section 4971(e)(1) of such Code is amended  
 9           by striking “section 412(b)(3)(A)” and inserting “sec-  
 10          tion 412(a)(1)(A)”.

11          (4) Section 4971(f)(1) of such Code is  
 12          amended—

13               (A) by striking “section 412(m)(5)” and in-  
 14               serting “section 430(j)(4)”, and

15               (B) by striking “section 412(m)” and in-  
 16               serting “section 430(j)”.

17          (5) Section 4972(c)(7) of such Code is amended  
 18          by striking “except to the extent that such contribu-  
 19          tions exceed the full-funding limitation (as defined in  
 20          section 412(c)(7), determined without regard to sub-  
 21          paragraph (A)(i)(I) thereof)” and inserting “except,  
 22          in the case of a multiemployer plan, to the extent that  
 23          such contributions exceed the full-funding limitation  
 24          (as defined in section 431(c)(6))”.

1       (f) *REPORTING REQUIREMENTS.*—Section 6059(b) of  
2 such Code is amended—

3           (1) by striking “the accumulated funding defi-  
4 ciency (as defined in section 412(a))” in paragraph  
5 (2) and inserting “the minimum required contribu-  
6 tion determined under section 430, or the accumu-  
7 lated funding deficiency determined under section  
8 431,” and

9           (2) by striking paragraph (3)(B) and inserting:  
10           “(B) the requirements for reasonable actu-  
11 arial assumptions under section 430(h)(1) or  
12 431(c)(3), whichever are applicable, have been  
13 complied with.”.

14 ***Subtitle C—Interest Rate Assump-***  
15 ***tions and Deductible Amounts***  
16 ***for 2006***

17 ***SEC. 121. EXTENSION OF REPLACEMENT OF 30-YEAR TREAS-***  
18 ***URY RATES.***

19       (a) *AMENDMENTS OF ERISA.*—

20           (1) *DETERMINATION OF RANGE.*—Subclause (II)  
21 of section 302(b)(5)(B)(ii) of the Employee Retire-  
22 ment Income Security Act of 1974 is amended—

23           (A) by striking “2006” and inserting  
24 “2007”, and

1                   (B) by striking “AND 2005” in the heading  
2                   and inserting “, 2005, AND 2006”.

3                   (2) *DETERMINATION OF CURRENT LIABILITY.*—  
4                   Subclause (IV) of section 302(d)(7)(C)(i) of such Act  
5                   is amended—

6                   (A) by striking “or 2005” and inserting “,  
7                   2005, or 2006”, and

8                   (B) by striking “AND 2005” in the heading  
9                   and inserting “, 2005, AND 2006”.

10                  (3) *PBGC PREMIUM RATE.*—Subclause (V) of  
11                  section 4006(a)(3)(E)(iii) of such Act is amended by  
12                  striking “2006” and inserting “2007”.

13                  (b) *AMENDMENTS OF INTERNAL REVENUE CODE.*—

14                  (1) *DETERMINATION OF RANGE.*—Subclause (II)  
15                  of section 412(b)(5)(B)(ii) of the Internal Revenue  
16                  Code of 1986 is amended—

17                  (A) by striking “2006” and inserting  
18                  “2007”, and

19                  (B) by striking “AND 2005” in the heading  
20                  and inserting “, 2005, AND 2006”.

21                  (2) *DETERMINATION OF CURRENT LIABILITY.*—  
22                  Subclause (IV) of section 412(l)(7)(C)(i) of such Code  
23                  is amended—

24                  (A) by striking “or 2005” and inserting “,  
25                  2005, or 2006”, and

1                   (B) by striking “AND 2005” in the heading  
2                   and inserting “, 2005, AND 2006”.

3           (c) *PLAN AMENDMENTS.*—Clause (ii) of section  
4 101(c)(2)(A) of the Pension Funding Equity Act of 2004  
5 is amended by striking “2006” and inserting “2007”.

6 **SEC. 122. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

7           (a) *IN GENERAL.*—Clause (i) of section 404(a)(1)(D)  
8 of the Internal Revenue Code of 1986 (relating to special  
9 rule in case of certain plans) is amended by striking “sec-  
10 tion 412(l)” and inserting “section 412(l)(8)(A), except that  
11 section 412(l)(8)(A) shall be applied for purposes of this  
12 clause by substituting ‘180 percent (130 percent in the case  
13 of a multiemployer plan) of current liability’ for ‘the cur-  
14 rent liability’ in clause (i).”

15           (b) *CONFORMING AMENDMENT.*—Section 404(a)(1) of  
16 the Internal Revenue Code of 1986 is amended by striking  
17 subparagraph (F).

18           (c) *EFFECTIVE DATE.*—The amendments made by this  
19 section shall apply to years beginning after December 31,  
20 2005.

21 **SEC. 123. UPDATING DEDUCTION RULES FOR COMBINATION**  
22 **OF PLANS.**

23           (a) *IN GENERAL.*—Subparagraph (C) of section  
24 404(a)(7) of the Internal Revenue Code of 1986 (relating  
25 to limitation on deductions where combination of defined

1 *contribution plan and defined benefit plan) is amended by*  
 2 *adding after clause (ii) the following new clause:*

3                   “(iii) *LIMITATION.—In the case of em-*  
 4                   *ployer contributions to 1 or more defined*  
 5                   *contribution plans, this paragraph shall*  
 6                   *only apply to the extent that such contribu-*  
 7                   *tions exceed 6 percent of the compensation*  
 8                   *otherwise paid or accrued during the tax-*  
 9                   *able year to the beneficiaries under such*  
 10                   *plans. For purposes of this clause, amounts*  
 11                   *carried over from preceding taxable years*  
 12                   *under subparagraph (B) shall be treated as*  
 13                   *employer contributions to 1 or more defined*  
 14                   *contributions to the extent attributable to*  
 15                   *employer contributions to such plans in*  
 16                   *such preceding taxable years.”*

17           (b) *CONFORMING AMENDMENT.—Subparagraph (A) of*  
 18 *section 4972(c)(6) of such Code (relating to nondeductible*  
 19 *contributions) is amended to read as follows:*

20                   “(A) *so much of the contributions to 1 or*  
 21                   *more defined contribution plans which are not*  
 22                   *deductible when contributed solely because of sec-*  
 23                   *tion 404(a)(7) as does not exceed the amount of*  
 24                   *contributions described in section 401(m)(4)(A),*  
 25                   *or”.*

1       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
 2 *section shall apply to contributions for taxable years begin-*  
 3 *ning after December 31, 2005.*

4       ***TITLE II—FUNDING AND DEDUC-***  
 5       ***TION RULES FOR MULTIEM-***  
 6       ***PLOYER DEFINED BENEFIT***  
 7       ***PLANS AND RELATED PROVI-***  
 8       ***SIONS***

9       ***Subtitle A—Funding Rules***

10       ***PART I—AMENDMENTS TO EMPLOYEE***

11       ***RETIREMENT INCOME SECURITY ACT OF 1974***

12       ***SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED***  
 13       ***BENEFIT PLANS.***

14       (a) *IN GENERAL.*—*Part 3 of subtitle B of title I of*  
 15 *the Employee Retirement Income Security Act of 1974 (as*  
 16 *amended by this Act) is amended by inserting after section*  
 17 *303 the following new section:*

18       ***“MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER***  
 19       ***PLANS***

20       ***“SEC. 304. (a) IN GENERAL.***—*For purposes of section*  
 21 *302, the accumulated funding deficiency of a multiemployer*  
 22 *plan for any plan year is—*

23               ***“(1) except as provided in paragraph (2), the***  
 24       *amount, determined as of the end of the plan year,*  
 25       *equal to the excess (if any) of the total charges to the*  
 26       *funding standard account of the plan for all plan*

1        *years (beginning with the first plan year for which*  
 2        *this part applies to the plan) over the total credits to*  
 3        *such account for such years, and*

4                *“(2) if the multiemployer plan is in reorganiza-*  
 5        *tion for any plan year, the accumulated funding defi-*  
 6        *ciency of the plan determined under section 4243.*

7        *“(b) FUNDING STANDARD ACCOUNT.—*

8                *“(1) ACCOUNT REQUIRED.—Each multiemployer*  
 9        *plan to which this part applies shall establish and*  
 10        *maintain a funding standard account. Such account*  
 11        *shall be credited and charged solely as provided in*  
 12        *this section.*

13                *“(2) CHARGES TO ACCOUNT.—For a plan year,*  
 14        *the funding standard account shall be charged with*  
 15        *the sum of—*

16                        *“(A) the normal cost of the plan for the*  
 17                        *plan year,*

18                        *“(B) the amounts necessary to amortize in*  
 19                        *equal annual installments (until fully amor-*  
 20                        *tized)—*

21                                *“(i) separately, with respect to each*  
 22                                *plan year, the net increase (if any) in un-*  
 23                                *funded past service liability under the plan*  
 24                                *arising from plan amendments adopted in*  
 25                                *such year, over a period of 15 plan years,*



1                   “(ii) separately, with respect to each  
 2                   plan year, the net experience loss (if any)  
 3                   under the plan, over a period of 15 plan  
 4                   years, and

5                   “(iii) separately, with respect to each  
 6                   plan year, the net loss (if any) resulting  
 7                   from changes in actuarial assumptions used  
 8                   under the plan, over a period of 15 plan  
 9                   years,

10                  “(C) the amount necessary to amortize each  
 11                  waived funding deficiency (within the meaning  
 12                  of section 302(c)(3)) for each prior plan year in  
 13                  equal annual installments (until fully amor-  
 14                  tized) over a period of 15 plan years,

15                  “(D) the amount necessary to amortize in  
 16                  equal annual installments (until fully amor-  
 17                  tized) over a period of 5 plan years any amount  
 18                  credited to the funding standard account under  
 19                  section 302(b)(3)(D) (as in effect on the day be-  
 20                  fore the date of the enactment of the Pension Se-  
 21                  curity and Transparency Act of 2005), and

22                  “(E) the amount necessary to amortize in  
 23                  equal annual installments (until fully amor-  
 24                  tized) over a period of 20 years the contributions  
 25                  which would be required to be made under the

1           *plan but for the provisions of section*  
 2           *302(c)(7)(A)(i)(I) (as in effect on the day before*  
 3           *the date of the enactment of the Pension Security*  
 4           *and Transparency Act of 2005).*

5           “(3) *CREDITS TO ACCOUNT.—For a plan year,*  
 6           *the funding standard account shall be credited with*  
 7           *the sum of—*

8                   “(A) *the amount considered contributed by*  
 9                   *the employer to or under the plan for the plan*  
 10                  *year,*

11                  “(B) *the amount necessary to amortize in*  
 12                  *equal annual installments (until fully amor-*  
 13                  *tized)—*

14                   “(i) *separately, with respect to each*  
 15                   *plan year, the net decrease (if any) in un-*  
 16                   *funded past service liability under the plan*  
 17                   *arising from plan amendments adopted in*  
 18                   *such year, over a period of 15 plan years,*

19                   “(ii) *separately, with respect to each*  
 20                   *plan year, the net experience gain (if any)*  
 21                   *under the plan, over a period of 15 plan*  
 22                   *years, and*

23                   “(iii) *separately, with respect to each*  
 24                   *plan year, the net gain (if any) resulting*  
 25                   *from changes in actuarial assumptions used*

1           under the plan, over a period of 15 plan  
2           years,

3           “(C) the amount of the waived funding defi-  
4           ciency (within the meaning of section 302(c)(3))  
5           for the plan year, and

6           “(D) in the case of a plan year for which  
7           the accumulated funding deficiency is deter-  
8           mined under the funding standard account if  
9           such plan year follows a plan year for which  
10          such deficiency was determined under the alter-  
11          native minimum funding standard under section  
12          305 (as in effect on the day before the date of the  
13          enactment of the Pension Security and Trans-  
14          parency Act of 2005), the excess (if any) of any  
15          debit balance in the funding standard account  
16          (determined without regard to this subpara-  
17          graph) over any debit balance in the alternative  
18          minimum funding standard account.

19          “(4) SPECIAL RULE FOR AMOUNTS FIRST AMOR-  
20          TIZED TO PLAN YEARS BEFORE 2007.—In the case of  
21          any amount amortized under section 302(b) (as in ef-  
22          fect on the day before the date of the enactment of the  
23          Pension Security and Transparency Act of 2005) over  
24          any period beginning with a plan year beginning be-  
25          fore 2007, in lieu of the amortization described in

1        paragraphs (2)(B) and (3)(B), such amount shall  
 2        continue to be amortized under such section as so in  
 3        effect.

4                “(5) COMBINING AND OFFSETTING AMOUNTS TO  
 5        BE AMORTIZED.—Under regulations prescribed by the  
 6        Secretary of the Treasury, amounts required to be  
 7        amortized under paragraph (2) or paragraph (3), as  
 8        the case may be—

9                “(A) may be combined into one amount  
 10        under such paragraph to be amortized over a pe-  
 11        riod determined on the basis of the remaining  
 12        amortization period for all items entering into  
 13        such combined amount, and

14               “(B) may be offset against amounts re-  
 15        quired to be amortized under the other such  
 16        paragraph, with the resulting amount to be am-  
 17        ortized over a period determined on the basis of  
 18        the remaining amortization periods for all items  
 19        entering into whichever of the two amounts being  
 20        offset is the greater.

21               “(6) INTEREST.—The funding standard account  
 22        (and items therein) shall be charged or credited (as  
 23        determined under regulations prescribed by the Sec-  
 24        retary of the Treasury) with interest at the appro-

1        *prate rate consistent with the rate or rates of interest*  
 2        *used under the plan to determine costs.*

3                “(7) *SPECIAL RULES RELATING TO CHARGES*  
 4        *AND CREDITS TO FUNDING STANDARD ACCOUNT.—For*  
 5        *purposes of this part—*

6                “(A)        *WITHDRAWAL        LIABILITY.—Any*  
 7        *amount received by a multiemployer plan in*  
 8        *payment of all or part of an employer’s with-*  
 9        *drawal liability under part 1 of subtitle E of*  
 10        *title IV shall be considered an amount contrib-*  
 11        *uted by the employer to or under the plan. The*  
 12        *Secretary of the Treasury may prescribe by regu-*  
 13        *lation additional charges and credits to a multi-*  
 14        *employer plan’s funding standard account to the*  
 15        *extent necessary to prevent withdrawal liability*  
 16        *payments from being unduly reflected as advance*  
 17        *funding for plan liabilities.*

18                “(B) *ADJUSTMENTS WHEN A MULTIEM-*  
 19        *PLOYER PLAN LEAVES REORGANIZATION.—If a*  
 20        *multiemployer plan is not in reorganization in*  
 21        *the plan year but was in reorganization in the*  
 22        *immediately preceding plan year, any balance*  
 23        *in the funding standard account at the close of*  
 24        *such immediately preceding plan year—*

1           “(i) shall be eliminated by an offset-  
 2           ting credit or charge (as the case may be),  
 3           but

4           “(ii) shall be taken into account in  
 5           subsequent plan years by being amortized  
 6           in equal annual installments (until fully  
 7           amortized) over 30 plan years.

8           *The preceding sentence shall not apply to the ex-*  
 9           *tent of any accumulated funding deficiency*  
 10          *under section 4243(a) as of the end of the last*  
 11          *plan year that the plan was in reorganization.*

12          “(C) *PLAN PAYMENTS TO SUPPLEMENTAL*  
 13          *PROGRAM OR WITHDRAWAL LIABILITY PAYMENT*  
 14          *FUND.—Any amount paid by a plan during a*  
 15          *plan year to the Pension Benefit Guaranty Cor-*  
 16          *poration pursuant to section 4222 of this Act or*  
 17          *to a fund exempt under section 501(c)(22) of the*  
 18          *Internal Revenue Code of 1986 pursuant to sec-*  
 19          *tion 4223 of this Act shall reduce the amount of*  
 20          *contributions considered received by the plan for*  
 21          *the plan year.*

22          “(D) *INTERIM WITHDRAWAL LIABILITY PAY-*  
 23          *MENTS.—Any amount paid by an employer*  
 24          *pending a final determination of the employer’s*  
 25          *withdrawal liability under part 1 of subtitle E*

1        *of title IV and subsequently refunded to the em-*  
 2        *ployer by the plan shall be charged to the fund-*  
 3        *ing standard account in accordance with regula-*  
 4        *tions prescribed by the Secretary of the Treasury.*

5                *“(E) ELECTION FOR DEFERRAL OF CHARGE*  
 6        *FOR PORTION OF NET EXPERIENCE LOSS.—If an*  
 7        *election is in effect under section 302(b)(7)(F)*  
 8        *(as in effect on the day before the date of the en-*  
 9        *actment of the Pension Security and Trans-*  
 10        *parency Act of 2005) for any plan year, the*  
 11        *funding standard account shall be charged in the*  
 12        *plan year to which the portion of the net experi-*  
 13        *ence loss deferred by such election was deferred*  
 14        *with the amount so deferred (and paragraph*  
 15        *(2)(B)(ii) shall not apply to the amount so*  
 16        *charged).*

17                *“(F) FINANCIAL ASSISTANCE.—Any amount*  
 18        *of any financial assistance from the Pension*  
 19        *Benefit Guaranty Corporation to any plan, and*  
 20        *any repayment of such amount, shall be taken*  
 21        *into account under this section and section 412*  
 22        *of the Internal Revenue Code of 1986 in such*  
 23        *manner as is determined by the Secretary of the*  
 24        *Treasury.*

1           “(G) *SHORT-TERM BENEFITS.*—*To the ex-*  
 2           *tent that any plan amendment increases the un-*  
 3           *funded past service liability under the plan by*  
 4           *reason of an increase in benefits which are pay-*  
 5           *able under the terms of the plan for a period that*  
 6           *does not exceed 14 years from the effective date*  
 7           *of the amendment, paragraph (2)(B)(i) shall be*  
 8           *applied separately with respect to such increase*  
 9           *in unfunded past service liability by substituting*  
 10          *the number of years of the period during which*  
 11          *such benefits are payable for ‘15’.*

12          “(c) *ADDITIONAL RULES.*—

13           “(1) *DETERMINATIONS TO BE MADE UNDER*  
 14          *FUNDING METHOD.*—*For purposes of this part, nor-*  
 15          *mal costs, accrued liability, past service liabilities,*  
 16          *and experience gains and losses shall be determined*  
 17          *under the funding method used to determine costs*  
 18          *under the plan.*

19           “(2) *VALUATION OF ASSETS.*—

20           “(A) *IN GENERAL.*—*For purposes of this*  
 21          *part, the value of the plan’s assets shall be deter-*  
 22          *mined on the basis of any reasonable actuarial*  
 23          *method of valuation which takes into account*  
 24          *fair market value and which is permitted under*



1        *regulations prescribed by the Secretary of the*  
2        *Treasury.*

3            “(B)    *ELECTION    WITH    RESPECT    TO*  
4        *BONDS.—The value of a bond or other evidence*  
5        *of indebtedness which is not in default as to*  
6        *principal or interest may, at the election of the*  
7        *plan administrator, be determined on an amor-*  
8        *tized basis running from initial cost at purchase*  
9        *to par value at maturity or earliest call date.*  
10       *Any election under this subparagraph shall be*  
11       *made at such time and in such manner as the*  
12       *Secretary of the Treasury shall by regulations*  
13       *provide, shall apply to all such evidences of in-*  
14       *debtedness, and may be revoked only with the*  
15       *consent of such Secretary.*

16           “(3) *ACTUARIAL ASSUMPTIONS MUST BE REA-*  
17        *SONABLE.—For purposes of this section, all costs, li-*  
18        *abilities, rates of interest, and other factors under the*  
19        *plan shall be determined on the basis of actuarial as-*  
20        *sumptions and methods—*

21           “(A) *each of which is reasonable (taking*  
22        *into account the experience of the plan and rea-*  
23        *sonable expectations), and*

1           “(B) which, in combination, offer the actu-  
 2           ary’s best estimate of anticipated experience  
 3           under the plan.

4           “(4) TREATMENT OF CERTAIN CHANGES AS EX-  
 5           PERIENCE GAIN OR LOSS.—For purposes of this sec-  
 6           tion, if—

7           “(A) a change in benefits under the Social  
 8           Security Act or in other retirement benefits cre-  
 9           ated under Federal or State law, or

10          “(B) a change in the definition of the term  
 11          ‘wages’ under section 3121 of the Internal Rev-  
 12          enue Code of 1986, or a change in the amount  
 13          of such wages taken into account under regula-  
 14          tions prescribed for purposes of section 401(a)(5)  
 15          of such Code,

16          results in an increase or decrease in accrued liability  
 17          under a plan, such increase or decrease shall be treat-  
 18          ed as an experience loss or gain.

19          “(5) FULL FUNDING.—If, as of the close of a  
 20          plan year, a plan would (without regard to this para-  
 21          graph) have an accumulated funding deficiency in ex-  
 22          cess of the full funding limitation—

23          “(A) the funding standard account shall be  
 24          credited with the amount of such excess, and

“(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

“(6) *FULL-FUNDING LIMITATION.*—

“(A) *IN GENERAL.*—For purposes of paragraph (5), the term ‘full-funding limitation’ means the excess (if any) of—

“(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

“(ii) the lesser of—

“(I) the fair market value of the plan’s assets, or

“(II) the value of such assets determined under paragraph (2).

“(B) *MINIMUM AMOUNT.*—

“(i) *IN GENERAL.*—In no event shall the full-funding limitation determined

1           under subparagraph (A) be less than the ex-  
2           cess (if any) of—

3                   “(I) 90 percent of the current li-  
4                   ability of the plan (including the ex-  
5                   pected increase in current liability due  
6                   to benefits accruing during the plan  
7                   year), over

8                   “(II) the value of the plan’s assets  
9                   determined under paragraph (2).

10                  “(ii) ASSETS.—For purposes of clause  
11                  (i), assets shall not be reduced by any credit  
12                  balance in the funding standard account.

13                  “(C) FULL FUNDING LIMITATION.—For pur-  
14                  poses of this paragraph, unless otherwise pro-  
15                  vided by the plan, the accrued liability under a  
16                  multiemployer plan shall not include benefits  
17                  which are not nonforfeitable under the plan after  
18                  the termination of the plan (taking into consid-  
19                  eration section 411(d)(3) of the Internal Revenue  
20                  Code of 1986).

21                  “(D) CURRENT LIABILITY.—For purposes of  
22                  this paragraph—

23                   “(i) IN GENERAL.—The term ‘current  
24                   liability’ means all liabilities to employees  
25                   and their beneficiaries under the plan.

1                   “(ii) *TREATMENT OF UNPREDICTABLE*  
 2                   *CONTINGENT EVENT BENEFITS.*—*For pur-*  
 3                   *poses of clause (i), any benefit contingent on*  
 4                   *an event other than—*

5                               “(I) *age, service, compensation,*  
 6                               *death, or disability, or*

7                               “(II) *an event which is reasonably*  
 8                               *and reliably predictable (as determined*  
 9                               *by the Secretary of the Treasury),*  
 10                   *shall not be taken into account until the*  
 11                   *event on which the benefit is contingent oc-*  
 12                   *curs.*

13                   “(iii) *INTEREST RATE USED.*—*The*  
 14                   *rate of interest used to determine current li-*  
 15                   *ability under this paragraph shall be the*  
 16                   *rate of interest determined under subpara-*  
 17                   *graph (E).*

18                   “(iv) *MORTALITY TABLES.*—

19                               “(I) *COMMISSIONERS’ STANDARD*  
 20                               *TABLE.*—*In the case of plan years be-*  
 21                               *ginning before the first plan year to*  
 22                               *which the first tables prescribed under*  
 23                               *subclause (II) apply, the mortality*  
 24                               *table used in determining current li-*  
 25                               *ability under this paragraph shall be*

1 *the table prescribed by the Secretary of*  
2 *the Treasury which is based on the*  
3 *prevailing commissioners' standard*  
4 *table (described in section 807(d)(5)(A)*  
5 *of the Internal Revenue Code of 1986)*  
6 *used to determine reserves for group*  
7 *annuity contracts issued on January*  
8 *1, 1993.*

9 “(II) SECRETARIAL AUTHOR-  
10 ITY.—The Secretary of the Treasury  
11 may by regulation prescribe for plan  
12 years beginning after December 31,  
13 1999, mortality tables to be used in de-  
14 termining current liability under this  
15 subsection. Such tables shall be based  
16 upon the actual experience of pension  
17 plans and projected trends in such ex-  
18 perience. In prescribing such tables,  
19 such Secretary shall take into account  
20 results of available independent studies  
21 of mortality of individuals covered by  
22 pension plans.

23 “(v) SEPARATE MORTALITY TABLES  
24 FOR THE DISABLED.—Notwithstanding  
25 clause (iv)—

1                   “(I) *IN GENERAL.*—*The Secretary*  
2                   *of the Treasury shall establish mor-*  
3                   *tality tables which may be used (in*  
4                   *lieu of the tables under clause (iv)) to*  
5                   *determine current liability under this*  
6                   *subsection for individuals who are en-*  
7                   *titled to benefits under the plan on ac-*  
8                   *count of disability. Such Secretary*  
9                   *shall establish separate tables for indi-*  
10                  *viduals whose disabilities occur in*  
11                  *plan years beginning before January*  
12                  *1, 1995, and for individuals whose dis-*  
13                  *abilities occur in plan years beginning*  
14                  *on or after such date.*

15                  “(II) *SPECIAL RULE FOR DISABIL-*  
16                  *ITIES OCCURRING AFTER 1994.*—*In the*  
17                  *case of disabilities occurring in plan*  
18                  *years beginning after December 31,*  
19                  *1994, the tables under subclause (I)*  
20                  *shall apply only with respect to indi-*  
21                  *viduals described in such subclause*  
22                  *who are disabled within the meaning*  
23                  *of title II of the Social Security Act*  
24                  *and the regulations thereunder.*

1                   “(vi) *PERIODIC REVIEW.*—*The Sec-*  
 2                   *retary of the Treasury shall periodically (at*  
 3                   *least every 5 years) review any tables in ef-*  
 4                   *fect under this subparagraph and shall, to*  
 5                   *the extent such Secretary determines nec-*  
 6                   *essary, by regulation update the tables to*  
 7                   *reflect the actual experience of pension*  
 8                   *plans and projected trends in such experi-*  
 9                   *ence.*

10                   “(E) *REQUIRED CHANGE OF INTEREST*  
 11                   *RATE.*—*For purposes of determining a plan’s*  
 12                   *current liability for purposes of this*  
 13                   *paragraph—*

14                   “(i) *IN GENERAL.*—*If any rate of in-*  
 15                   *terest used under the plan under subsection*  
 16                   *(b)(6) to determine cost is not within the*  
 17                   *permissible range, the plan shall establish a*  
 18                   *new rate of interest within the permissible*  
 19                   *range.*

20                   “(ii) *PERMISSIBLE RANGE.*—*For pur-*  
 21                   *poses of this subparagraph—*

22                   “(I) *IN GENERAL.*—*Except as pro-*  
 23                   *vided in subclause (II), the term ‘per-*  
 24                   *missible range’ means a rate of interest*  
 25                   *which is not more than 5 percent*



1           *above, and not more than 10 percent*  
 2           *below, the weighted average of the rates*  
 3           *of interest on 30-year Treasury securi-*  
 4           *ties during the 4-year period ending on*  
 5           *the last day before the beginning of the*  
 6           *plan year.*

7                   “(II)    *SECRETARIAL    AUTHOR-*  
 8           *ITY.—If the Secretary of the Treasury*  
 9           *finds that the lowest rate of interest*  
 10          *permissible under subclause (I) is un-*  
 11          *reasonably high, such Secretary may*  
 12          *prescribe a lower rate of interest, ex-*  
 13          *cept that such rate may not be less*  
 14          *than 80 percent of the average rate de-*  
 15          *termined under such subclause.*

16                   “(iii)       *ASSUMPTIONS.—Notwith-*  
 17          *standing paragraph (3)(A), the interest rate*  
 18          *used under the plan shall be—*

19                   “(I)   *determined without taking*  
 20                   *into account the experience of the plan*  
 21                   *and reasonable expectations, but*

22                   “(II)   *consistent with the assump-*  
 23                   *tions which reflect the purchase rates*  
 24                   *which would be used by insurance com-*

1                   panies to satisfy the liabilities under  
2                   the plan.

3                   “(7) ANNUAL VALUATION.—

4                   “(A) IN GENERAL.—For purposes of this  
5                   section, a determination of experience gains and  
6                   losses and a valuation of the plan’s liability  
7                   shall be made not less frequently than once every  
8                   year, except that such determination shall be  
9                   made more frequently to the extent required in  
10                  particular cases under regulations prescribed by  
11                  the Secretary of the Treasury.

12                  “(B) VALUATION DATE.—

13                  “(i) CURRENT YEAR.—Except as pro-  
14                  vided in clause (ii), the valuation referred  
15                  to in subparagraph (A) shall be made as of  
16                  a date within the plan year to which the  
17                  valuation refers or within one month prior  
18                  to the beginning of such year.

19                  “(ii) USE OF PRIOR YEAR VALU-  
20                  ATION.—The valuation referred to in sub-  
21                  paragraph (A) may be made as of a date  
22                  within the plan year prior to the year to  
23                  which the valuation refers if, as of such  
24                  date, the value of the assets of the plan are  
25                  not less than 100 percent of the plan’s cur-

1            *rent liability (as defined in paragraph*  
 2            *(6)(D) without regard to clause (iv) there-*  
 3            *of).*

4            “(iii)     *ADJUSTMENTS.—Information*  
 5            *under clause (ii) shall, in accordance with*  
 6            *regulations, be actuarially adjusted to re-*  
 7            *flect significant differences in participants.*

8            “(iv) *LIMITATION.—A change in fund-*  
 9            *ing method to use a prior year valuation,*  
 10           *as provided in clause (ii), may not be made*  
 11           *unless as of the valuation date within the*  
 12           *prior plan year, the value of the assets of*  
 13           *the plan are not less than 125 percent of the*  
 14           *plan’s current liability (as defined in para-*  
 15           *graph (6)(D) without regard to clause (iv)*  
 16           *thereof).*

17           “(8)     *TIME WHEN CERTAIN CONTRIBUTIONS*  
 18           *DEEMED MADE.—For purposes of this section, any*  
 19           *contributions for a plan year made by an employer*  
 20           *after the last day of such plan year, but not later*  
 21           *than two and one-half months after such day, shall be*  
 22           *deemed to have been made on such last day. For pur-*  
 23           *poses of this subparagraph, such two and one-half*  
 24           *month period may be extended for not more than six*

1        *months under regulations prescribed by the Secretary*  
 2        *of the Treasury.*

3        “(d) *EXTENSION OF AMORTIZATION PERIODS FOR*  
 4        *MULTIEMPLOYER PLANS.—*

5                “(1) *AUTOMATIC EXTENSION UPON APPLICATION*  
 6        *BY CERTAIN PLANS.—*

7                “(A) *IN GENERAL.—If the plan sponsor of*  
 8        *a multiemployer plan—*

9                “(i) *submits to the Secretary of the*  
 10        *Treasury an application for an extension of*  
 11        *the period of years required to amortize any*  
 12        *unfunded liability described in any clause*  
 13        *of subsection (b)(2)(B) or described in sub-*  
 14        *section (b)(4), and*

15                “(ii) *includes with the application a*  
 16        *certification by the plan’s actuary described*  
 17        *in subparagraph (B),*

18        *the Secretary of the Treasury shall extend the*  
 19        *amortization period for the period of time (not*  
 20        *in excess of 5 years) specified in the application.*  
 21        *Such extension shall be in addition to any exten-*  
 22        *sion under paragraph (2).*

23                “(B) *CRITERIA.—A certification with re-*  
 24        *spect to a multiemployer plan is described in*

1        *this subparagraph if the plan’s actuary certifies*  
 2        *that, based on reasonable assumptions—*

3                *“(i) absent the extension under sub-*  
 4                *paragraph (A), the plan would have an ac-*  
 5                *cumulated funding deficiency in the current*  
 6                *plan year or any of the 9 succeeding plan*  
 7                *years,*

8                *“(ii) the plan sponsor has adopted a*  
 9                *plan to improve the plan’s funding status,*

10               *“(iii) the plan is projected to have suf-*  
 11               *ficient assets to timely pay expected benefits*  
 12               *and anticipated expenditures over the amor-*  
 13               *tization period as extended, and*

14               *“(iv) the notice required under para-*  
 15               *graph (3)(A) has been provided.*

16        *“(2) ADDITIONAL EXTENSION.—*

17               *“(A) IN GENERAL.—If the plan sponsor of*  
 18               *a multiemployer plan submits to the Secretary of*  
 19               *the Treasury an application for an extension of*  
 20               *the period of years required to amortize any un-*  
 21               *funded liability described in any clause of sub-*  
 22               *section (b)(2)(B) or described in subsection*  
 23               *(b)(4), the Secretary of the Treasury may extend*  
 24               *the amortization period for a period of time (not*  
 25               *in excess of 5 years) if the Secretary of the*

1        *Treasury makes the determination described in*  
 2        *subparagraph (B). Such extension shall be in ad-*  
 3        *dition to any extension under paragraph (1).*

4                “(B)    *DETERMINATION.—The    Secretary*  
 5        *make grant an extension under subparagraph*  
 6        *(A) if the Secretary determines that—*

7                        “(i) *such extension would carry out the*  
 8                        *purposes of this Act and would provide ade-*  
 9                        *quate protection for participants under the*  
 10                        *plan and their beneficiaries, and*

11                        “(ii) *the failure to permit such exten-*  
 12                        *sion would—*

13                        “(I) *result in a substantial risk to*  
 14                        *the voluntary continuation of the plan,*  
 15                        *or a substantial curtailment of pension*  
 16                        *benefit levels or employee compensa-*  
 17                        *tion, and*

18                        “(II) *be adverse to the interests of*  
 19                        *plan participants in the aggregate.*

20                “(C)    *ACTION BY SECRETARY.—The Sec-*  
 21        *retary of the Treasury shall act upon any appli-*  
 22        *cation for an extension under this paragraph*  
 23        *within 180 days of the submission of such appli-*  
 24        *cation. If the Secretary rejects the application*  
 25        *for an extension under this paragraph, the Sec-*

retary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

“(3) *ADVANCE NOTICE.*—

“(A) *IN GENERAL.*—The Secretary of the Treasury shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21)) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

“(B) *CONSIDERATION OF RELEVANT INFORMATION.*—The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).”.

(b) *SHORTFALL FUNDING METHOD.*—

(1) *IN GENERAL.*—A multiemployer plan meeting the criteria of paragraph (2) may adopt, use, or cease using, the shortfall funding method and such adoption, use, or cessation of use of such method, shall

1 *be deemed approved by the Secretary of the Treasury*  
 2 *under section 302(d)(1) of the Employee Retirement*  
 3 *Income Security Act of 1974 and section 412(e)(1) of*  
 4 *the Internal Revenue Code of 1986.*

5 (2) *CRITERIA.—A multiemployer pension plan*  
 6 *meets the criteria of this clause if—*

7 (A) *the plan has not used the shortfall fund-*  
 8 *ing method during the 5-year period ending on*  
 9 *the day before the date the plan is to use the*  
 10 *method under paragraph (1); and*

11 (B) *the plan is not operating under an am-*  
 12 *ortization period extension under section 304(d)*  
 13 *of such Act and did not operate under such an*  
 14 *extension during such 5-year period.*

15 (3) *SHORTFALL FUNDING METHOD DEFINED.—*  
 16 *For purposes of this subsection, the term “shortfall*  
 17 *funding method” means the shortfall funding method*  
 18 *described in Treasury Regulations section*  
 19 *1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).*

20 (4) *BENEFIT RESTRICTIONS TO APPLY.—The*  
 21 *benefit restrictions under section 302(c)(7) of such Act*  
 22 *and section 412(d)(7) of such Code shall apply during*  
 23 *any period a multiemployer plan is on the shortfall*  
 24 *funding method pursuant to this subsection.*



(5) *USE OF SHORTFALL METHOD NOT TO PRECLUDE OTHER OPTIONS.*—*Nothing in this subsection shall be construed to affect a multiemployer plan’s ability to adopt the shortfall funding method with the Secretary’s permission under otherwise applicable regulations or to affect a multiemployer plan’s right to change funding methods, with or without the Secretary’s consent, as provided in applicable rules and regulations.*

(c) *CONFORMING AMENDMENTS.*—

(1) *Section 301 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1081) is amended by striking subsection (d).*

(2) *The table of contents in section 1 of such Act (as amended by this Act) is amended by inserting after the item relating to section 303 the following new item:*

*“Sec. 304. Minimum funding standards for multiemployer plans.”.*

(d) *EFFECTIVE DATE.*—

(1) *IN GENERAL.*—*The amendments made by this section shall apply to plan years beginning after 2006.*

(2) *SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.*—*If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 and section*

1       412(e) of the Internal Revenue Code of 1986 with re-  
 2       spect to any application filed with the Secretary of  
 3       the Treasury on or before June 30, 2005, the exten-  
 4       sion (and any modification thereof) shall be applied  
 5       and administered under the rules of such sections as  
 6       in effect before the enactment of this Act, including  
 7       the use of the rate of interest determined under section  
 8       6621(b) of such Code.

9   **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
 10                   **PLOYER PLANS IN ENDANGERED OR CRIT-**  
 11                   **ICAL STATUS.**

12       (a) *IN GENERAL.*—Part 3 of subtitle B of title I of  
 13       the Employee Retirement Income Security Act of 1974 (as  
 14       amended by the preceding provisions of this Act) is amend-  
 15       ed by inserting after section 304 the following new section:

16       “*ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER*  
 17       *PLANS IN ENDANGERED STATUS OR CRITICAL STATUS*

18       “*SEC. 305. (a) GENERAL RULE.*—For purposes of this  
 19       part, in the case of a multiemployer plan—

20               “(1) if the plan is in endangered status—

21                   “(A) the plan sponsor shall adopt and im-  
 22                   plement a funding improvement plan in accord-  
 23                   ance with the requirements of subsection (c), and

24                   “(B) the requirements of subsection (d) shall  
 25                   apply during the funding plan adoption period  
 26                   and the funding improvement period, and

1           “(2) if the plan is in critical status—

2                   “(A) the plan sponsor shall adopt and im-  
3                   plement a rehabilitation plan in accordance with  
4                   the requirements of subsection (e), and

5                   “(B) the requirements of subsection (f) shall  
6                   apply during the rehabilitation plan adoption  
7                   period and the rehabilitation period.

8           “(b) *DETERMINATION OF ENDANGERED AND CRITICAL*  
9 *STATUS.—For purposes of this section—*

10                   “(1) *ENDANGERED STATUS.—A multiemployer*  
11 *plan is in endangered status for a plan year if, as*  
12 *determined by the plan actuary under paragraph (3),*  
13 *the plan is not in critical status for the plan year*  
14 *and either—*

15                           “(A) the plan’s funded percentage for such  
16                           plan year is less than 80 percent, or

17                           “(B) the plan has an accumulated funding  
18                           deficiency for such plan year, or is projected to  
19                           have such an accumulated funding deficiency for  
20                           any of the 6 succeeding plan years, taking into  
21                           account any extension of amortization periods  
22                           under section 304(d).

23           *For purposes of this section, a plan described in sub-*  
24 *paragraph (B) shall be treated as in seriously endan-*  
25 *gered status.*

1           “(2) *CRITICAL STATUS.*—A multiemployer plan  
2           is in critical status for a plan year if, as determined  
3           by the plan actuary under paragraph (3), the plan is  
4           described in 1 or more of the following subparagraphs  
5           as of the beginning of the plan year:

6                   “(A) A plan is described in this subpara-  
7                   graph if—

8                           “(i) the funded percentage of the plan  
9                           is less than 65 percent, and

10                           “(ii) the sum of—

11                                   “(I) the market value of plan as-  
12                                   sets, plus

13                                   “(II) the present value of the rea-  
14                                   sonably anticipated employer contribu-  
15                                   tions for the current plan year and  
16                                   each of the 5 succeeding plan years, as-  
17                                   suming that the terms of all collective  
18                                   bargaining agreements pursuant to  
19                                   which the plan is maintained for the  
20                                   current plan year continue in effect for  
21                                   succeeding plan years,

22                           is less than the present value of all benefits  
23                           projected to be payable under the plan dur-  
24                           ing the current plan year and each of the

1           5 succeeding plan years (plus administra-  
2           tive expenses for such plan years).

3           “(B) A plan is described in this subpara-  
4           graph if—

5                   “(i) the plan has an accumulated  
6                   funding deficiency for the current plan  
7                   year, not taking into account any extension  
8                   of amortization periods under section  
9                   304(d), or

10                   “(ii) the plan is projected to have an  
11                   accumulated funding deficiency for any of  
12                   the 3 succeeding plan years (4 succeeding  
13                   plan years if the funded percentage of the  
14                   plan is 65 percent or less), not taking into  
15                   account any extension of amortization peri-  
16                   ods under section 304(d).

17           “(C) A plan is described in this subpara-  
18           graph if—

19                   “(i)(I) the plan’s normal cost for the  
20                   current plan year, plus interest (determined  
21                   at the rate used for determining costs under  
22                   the plan) for the current plan year on the  
23                   amount of unfunded benefit liabilities under  
24                   the plan as of the last date of the preceding  
25                   plan year, exceeds

1           “(II) the present value of the reason-  
2           ably anticipated employer contributions for  
3           the current plan year,

4           “(ii) the present value of nonforfeitable  
5           benefits of inactive participants is greater  
6           than the present value of nonforfeitable ben-  
7           efits of active participants, and

8           “(iii) the plan has an accumulated  
9           funding deficiency for the current plan  
10          year, or is projected to have such a defi-  
11          ciency for any of the 4 succeeding plan  
12          years, not taking into account any exten-  
13          sion of amortization periods under section  
14          304(d).

15          “(D) A plan is described in this subpara-  
16          graph if the sum of—

17               “(i) the market value of plan assets,  
18               plus

19               “(ii) the present value of the reason-  
20               ably anticipated employer contributions for  
21               the current plan year and each of the 4 suc-  
22               ceeding plan years, assuming that the terms  
23               of all collective bargaining agreements pur-  
24               suant to which the plan is maintained for

1           *the current plan year continue in effect for*  
 2           *succeeding plan years,*  
 3           *is less than the present value of all benefits pro-*  
 4           *jected to be payable under the plan during the*  
 5           *current plan year and each of the 4 succeeding*  
 6           *plan years (plus administrative expenses for*  
 7           *such plan years).*

8           “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
 9       ARY.—

10           “(A) IN GENERAL.—During the 90-day pe-  
 11           riod beginning on the first day of each plan year  
 12           of a multiemployer plan, the plan actuary shall  
 13           certify to the Secretary of the Treasury—

14           “(i) whether or not the plan is in en-  
 15           dangered status for such plan year and  
 16           whether or not the plan is in critical status  
 17           for such plan year, and

18           “(ii) in the case of a plan which is in  
 19           a funding improvement or rehabilitation  
 20           period, whether or not the plan is making  
 21           the scheduled progress in meeting the re-  
 22           quirements of its funding improvement or  
 23           rehabilitation plan.

24           “(B) ACTUARIAL PROJECTIONS OF ASSETS  
 25       AND LIABILITIES.—

1           “(i) *IN GENERAL.*—*In making the de-*  
2           *terminations and projections under this*  
3           *subsection, the plan actuary shall make pro-*  
4           *jections required for the current and suc-*  
5           *ceeding plan years, using reasonable actu-*  
6           *arial estimates, assumptions, and methods,*  
7           *of the current value of the assets of the plan*  
8           *and the present value of all liabilities to*  
9           *participants and beneficiaries under the*  
10          *plan for the current plan year as of the be-*  
11          *ginning of such year. The projected present*  
12          *value of liabilities as of the beginning of*  
13          *such year shall be determined based on the*  
14          *actuarial statement required under section*  
15          *103(d) with respect to the most recently*  
16          *filed annual report or the actuarial valu-*  
17          *ation for the preceding plan year.*

18          “(ii) *DETERMINATIONS OF FUTURE*  
19          *CONTRIBUTIONS.*—*Any actuarial projection*  
20          *of plan assets shall assume—*

21                 “(I) *reasonably anticipated em-*  
22                 *ployer contributions for the current*  
23                 *and succeeding plan years, assuming*  
24                 *that the terms of the one or more col-*  
25                 *lective bargaining agreements pursuant*



1           to which the plan is maintained for the  
2           current plan year continue in effect for  
3           succeeding plan years, or

4                   “(II) that employer contributions  
5           for the most recent plan year will con-  
6           tinue indefinitely, but only if the plan  
7           actuary determines there have been no  
8           significant demographic changes that  
9           would make such assumption unrea-  
10          sonable.

11                   “(C) *PENALTY FOR FAILURE TO SECURE*  
12           *TIMELY ACTUARIAL CERTIFICATION.*—Any fail-  
13           ure of the plan’s actuary to certify the plan’s  
14           status under this subsection by the date specified  
15           in subparagraph (A) shall be treated for pur-  
16           poses of section 502(c)(2) as a failure or refusal  
17           by the plan administrator to file the annual re-  
18           port required to be filed with the Secretary under  
19           section 101(b)(4).

20                   “(D) *NOTICE.*—In any case in which a  
21           multiemployer plan is certified to be in endan-  
22           gered or critical status under subparagraph (A),  
23           the plan sponsor shall, not later than 30 days  
24           after the date of the certification, provide notifi-  
25           cation of the endangered or critical status to the

1        *participants and beneficiaries, the bargaining*  
 2        *parties, the Pension Benefit Guaranty Corpora-*  
 3        *tion, the Secretary of the Treasury, and the Sec-*  
 4        *retary.*

5        “(c) *FUNDING IMPROVEMENT PLAN MUST BE ADOPT-*  
 6        *ED FOR MULTIEMPLOYER PLANS IN ENDANGERED STA-*  
 7        *TUS.—*

8                “(1) *IN GENERAL.—In any case in which a mul-*  
 9        *tiemployer plan is in endangered status for a plan*  
 10        *year, the plan sponsor, in accordance with this*  
 11        *subsection—*

12                “(A) *shall adopt a funding improvement*  
 13        *plan not later than 240 days following the re-*  
 14        *quired date for the actuarial certification of en-*  
 15        *dangered status under subsection (b)(3)(A), and*

16                “(B) *within 30 days after the adoption of*  
 17        *the funding improvement plan—*

18                “(i) *in the case of a plan in seriously*  
 19        *endangered status, shall provide to the bar-*  
 20        *gaining parties 1 or more schedules showing*  
 21        *revised benefit structures, revised contribu-*  
 22        *tion structures, or both, which, if adopted,*  
 23        *may reasonably be expected to enable the*  
 24        *multiemployer plan to meet the applicable*  
 25        *requirements under paragraph (3) in ac-*

1 cordance with the funding improvement  
2 plan, including a description of the reduc-  
3 tions in future benefit accruals and in-  
4 creases in contributions that the plan spon-  
5 sor determines are reasonably necessary to  
6 meet the applicable requirements if the plan  
7 sponsor assumes that there are no increases  
8 in contributions under the plan other than  
9 the increases necessary to meet the applica-  
10 ble requirements after future benefit accru-  
11 als have been reduced to the maximum ex-  
12 tent permitted by law, and

13 “(ii) may, if the plan sponsor deems  
14 appropriate, prepare and provide the bar-  
15 gaining parties with additional information  
16 relating to contribution rates or benefit re-  
17 ductions, alternative schedules, or other in-  
18 formation relevant to achieving the require-  
19 ments under paragraph (3) in accordance  
20 with the funding improvement plan.

21 “(2) *EXCEPTION FOR YEARS AFTER PROCESS BE-*  
22 *GINS.*—Paragraph (1) shall not apply to a plan year  
23 if such year is in a funding plan adoption period or  
24 funding improvement period by reason of the plan  
25 being in endangered status for a preceding plan year.

1     *For purposes of this section, such preceding plan year*  
 2     *shall be the initial determination year with respect to*  
 3     *the funding improvement plan to which it relates.*

4             “(3) *FUNDING IMPROVEMENT PLAN.*—*For pur-*  
 5     *poses of this section—*

6                     “(A) *IN GENERAL.*—*A funding improve-*  
 7     *ment plan is a plan which consists of the ac-*  
 8     *tions, including options or a range of options to*  
 9     *be proposed to the bargaining parties, which,*  
 10    *under reasonable actuarial assumptions, will re-*  
 11    *sult in the plan meeting the requirements of this*  
 12    *paragraph.*

13                    “(B) *PLANS OTHER THAN SERIOUSLY EN-*  
 14    *DANGERED PLANS.*—*In the case of plan not in*  
 15    *seriously endangered status, the requirements of*  
 16    *this paragraph are met if the plan’s funded per-*  
 17    *centage as of the close of the funding improve-*  
 18    *ment period exceeds the lesser of 80 percent or a*  
 19    *percentage equal to the sum of—*

20                             “(i) *such percentage as of the begin-*  
 21                             *ning of such period, plus*

22                             “(ii) *10 percent of the percentage*  
 23                             *under clause (i).*

1           “(C) *SERIOUSLY ENDANGERED PLANS.*—*In*  
 2           *the case of a plan in seriously endangered status,*  
 3           *the requirements of this paragraph are met if—*

4                   “(i) *the plan’s funded percentage as of*  
 5                   *the close of the funding improvement period*  
 6                   *equals or exceeds the percentage which is*  
 7                   *equal to the sum of—*

8                           “(I) *such percentage as of the be-*  
 9                           *ginning of such period, plus*

10                           “(II) *33 percent of the difference*  
 11                           *between 100 percent and the percentage*  
 12                           *under subclause (I), and*

13                           “(ii) *there is no accumulated funding*  
 14                           *deficiency for any plan year during the*  
 15                           *funding improvement period (taking into*  
 16                           *account any extension of amortization peri-*  
 17                           *ods under section 304(d)).*

18           “(4) *FUNDING IMPROVEMENT PERIOD.*—*For pur-*  
 19           *poses of this section—*

20                   “(A) *IN GENERAL.*—*The funding improve-*  
 21                   *ment period for any funding improvement plan*  
 22                   *adopted pursuant to this subsection is the 10-*  
 23                   *year period beginning on the first day of the*  
 24                   *first plan year of the multiemployer plan begin-*  
 25                   *ning after the earlier of—*

1           “(i) the second anniversary of the date  
2           of the adoption of the funding improvement  
3           plan, or

4           “(ii) the expiration of the collective  
5           bargaining agreements in effect on the due  
6           date for the actuarial certification of endan-  
7           gered status for the initial determination  
8           year under subsection (b)(3)(A) and cov-  
9           ering, as of such due date, at least 75 per-  
10          cent of the active participants in such mul-  
11          tiemployer plan.

12          “(B) COORDINATION WITH CHANGES IN STA-  
13          TUS.—

14               “(i) PLANS NO LONGER IN ENDAN-  
15               GERED STATUS.—If the plan’s actuary cer-  
16               tifies under subsection (b)(3)(A) for a plan  
17               year in any funding plan adoption period  
18               or funding improvement period that the  
19               plan is no longer in endangered status and  
20               is not in critical status, the funding plan  
21               adoption period or funding improvement  
22               period, whichever is applicable, shall end as  
23               of the close of the preceding plan year.

24               “(ii) PLANS IN CRITICAL STATUS.—If  
25               the plan’s actuary certifies under subsection

(b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

“(C) *PLANS IN ENDANGERED STATUS AT END OF PERIOD.*—If the plan’s actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

“(5) *SPECIAL RULES FOR CERTAIN UNDERFUNDED PLANS.*—

“(A) *IN GENERAL.*—Except as provided in subparagraph (B), if the funded percentage of a

1        *plan in seriously endangered status was 70 per-*  
 2        *cent or less as of the beginning of the initial de-*  
 3        *termination year, the following rules shall apply*  
 4        *in determining whether the requirements of*  
 5        *paragraph (3)(C)(i) are met:*

6                *“(i) The plan’s funded percentage as of*  
 7                *the close of the funding improvement period*  
 8                *must equal or exceed a percentage which is*  
 9                *equal to the sum of—*

10                    *“(I) such percentage as of the be-*  
 11                    *ginning of such period, plus*

12                    *“(II) 20 percent of the difference*  
 13                    *between 100 percent and the percentage*  
 14                    *under subclause (I).*

15                *“(ii) The funding improvement period*  
 16                *under paragraph (4)(A) shall be 15 years*  
 17                *rather than 10 years.*

18                *“(B) SPECIAL RULES FOR PLANS WITH*  
 19                *FUNDED PERCENTAGE OVER 70 PERCENT.—If the*  
 20                *funded percentage described in subparagraph (A)*  
 21                *was more than 70 percent but less than 80 per-*  
 22                *cent as of the beginning of the initial determina-*  
 23                *tion year—*

24                    *“(i) subparagraph (A) shall apply if*  
 25                    *the plan’s actuary certifies, within 30 days*



1           *after the certification under subsection*  
2           *(b)(3)(A) for the initial determination year,*  
3           *that, based on the terms of the plan and the*  
4           *collective bargaining agreements in effect at*  
5           *the time of such certification, the plan is*  
6           *not projected to meet the requirements of*  
7           *paragraph (3)(C)(i) without regard to this*  
8           *paragraph, and*

9           *“(ii) if there is a certification under*  
10          *clause (i), the plan may, in formulating its*  
11          *funding improvement plan, only take into*  
12          *account the rules of subparagraph (A) for*  
13          *plan years in the funding improvement pe-*  
14          *riod beginning on or before the date on*  
15          *which the last of the collective bargaining*  
16          *agreements described in paragraph*  
17          *(4)(A)(ii) expires.*

18          *Notwithstanding clause (ii), if for any plan year*  
19          *ending after the date described in clause (ii) the*  
20          *plan actuary certifies (at the time of the annual*  
21          *certification under subsection (b)(3)(A) for such*  
22          *plan year) that, based on the terms of the plan*  
23          *and collective bargaining agreements in effect at*  
24          *the time of that annual certification, the plan is*  
25          *not projected to be able to meet the requirements*

1       *of paragraph (3)(C)(i) without regard to this*  
 2       *paragraph, the plan may continue to assume for*  
 3       *such year that the funding improvement period*  
 4       *is 15 years rather than 10 years.*

5       “(6) *UPDATES TO FUNDING IMPROVEMENT PLAN*  
 6       *AND SCHEDULES.—*

7               “(A) *FUNDING IMPROVEMENT PLAN.—The*  
 8       *plan sponsor shall annually update the funding*  
 9       *improvement plan and shall file the update with*  
 10       *the plan’s annual report under section 104.*

11              “(B) *SCHEDULES.—The plan sponsor may*  
 12       *periodically update any schedule of contribution*  
 13       *rates provided under this subsection to reflect the*  
 14       *experience of the plan, except that the schedule or*  
 15       *schedules described in paragraph (1)(B)(i) shall*  
 16       *be updated at least once every 3 years.*

17              “(C) *DURATION OF SCHEDULE.—A schedule*  
 18       *of contribution rates provided by the plan spon-*  
 19       *sor and relied upon by bargaining parties in ne-*  
 20       *gotiating a collective bargaining agreement shall*  
 21       *remain in effect for the duration of that collec-*  
 22       *tive bargaining agreement.*

23              “(7) *PENALTY IF NO FUNDING IMPROVEMENT*  
 24       *PLAN ADOPTED.—A failure of the plan sponsor to*  
 25       *adopt a funding improvement plan by the date speci-*

1 *fied in paragraph (1)(A) shall be treated for purposes*  
 2 *of section 502(c)(2) as a failure or refusal by the plan*  
 3 *administrator to file the annual report required to be*  
 4 *filed with the Secretary under section 101(b)(4).*

5 “(8) *FUNDING PLAN ADOPTION PERIOD.*—*For*  
 6 *purposes of this section, the term ‘funding plan adop-*  
 7 *tion period’ means the period beginning on the date*  
 8 *of the certification under subsection (b)(3)(A) for the*  
 9 *initial determination year and ending on the day be-*  
 10 *fore the first day of the funding improvement period.*

11 “(d) *RULES FOR OPERATION OF PLAN DURING ADOP-*  
 12 *TION AND IMPROVEMENT PERIODS; FAILURE TO MEET RE-*  
 13 *QUIREMENTS.*—

14 “(1) *SPECIAL RULES FOR PLAN ADOPTION PE-*  
 15 *RIOD.*—*During the plan adoption period—*

16 “(A) *the plan sponsor may not accept a col-*  
 17 *lective bargaining agreement or participation*  
 18 *agreement with respect to the multiemployer*  
 19 *plan that provides for—*

20 “(i) *a reduction in the level of con-*  
 21 *tributions for any participants,*

22 “(ii) *a suspension of contributions*  
 23 *with respect to any period of service, or*

1                   “(iii) any new direct or indirect exclu-  
2                   sion of younger or newly hired employees  
3                   from plan participation,

4                   “(B) no amendment of the plan which in-  
5                   creases the liabilities of the plan by reason of  
6                   any increase in benefits, any change in the ac-  
7                   crual of benefits, or any change in the rate at  
8                   which benefits become nonforfeitable under the  
9                   plan may be adopted unless the amendment is  
10                  required as a condition of qualification under  
11                  part I of subchapter D of chapter 1 of the Inter-  
12                  nal Revenue Code of 1986 or to comply with  
13                  other applicable law, and

14                  “(C) in the case of a plan in seriously en-  
15                  dangered status, the plan sponsor shall take all  
16                  reasonable actions which are consistent with the  
17                  terms of the plan and applicable law and which  
18                  are expected, based on reasonable assumptions, to  
19                  achieve—

20                         “(i) an increase in the plan’s funded  
21                         percentage, and

22                         “(ii) postponement of an accumulated  
23                         funding deficiency for at least 1 additional  
24                         plan year.

1     *Actions under subparagraph (C) include applications*  
 2     *for extensions of amortization periods under section*  
 3     *304(d), use of the shortfall funding method in making*  
 4     *funding standard account computations, amendments*  
 5     *to the plan’s benefit structure, reductions in future*  
 6     *benefit accruals, and other reasonable actions con-*  
 7     *sistent with the terms of the plan and applicable law.*

8             “(2) COMPLIANCE WITH FUNDING IMPROVEMENT  
 9     PLAN.—

10            “(A) IN GENERAL.—A plan may not be  
 11            amended after the date of the adoption of a fund-  
 12            ing improvement plan under subsection (c) so as  
 13            to be inconsistent with the funding improvement  
 14            plan.

15            “(B) NO REDUCTION IN CONTRIBUTIONS.—  
 16            A plan sponsor may not during any funding im-  
 17            provement period accept a collective bargaining  
 18            agreement or participation agreement with re-  
 19            spect to the multiemployer plan that provides  
 20            for—

21                    “(i) a reduction in the level of con-  
 22                    tributions for any participants,

23                    “(ii) a suspension of contributions  
 24                    with respect to any period of service, or

1                   “(iii) any new direct or indirect exclu-  
 2                   sion of younger or newly hired employees  
 3                   from plan participation.

4                   “(C) *SPECIAL RULES FOR BENEFIT IN-*  
 5                   *CREASES.*—A plan may not be amended after the  
 6                   date of the adoption of a funding improvement  
 7                   plan under subsection (c) so as to increase bene-  
 8                   fits, including future benefit accruals, unless—

9                   “(i) in the case of a plan in seriously  
 10                  endangered status, the plan actuary certifies  
 11                  that, after taking into account the benefit  
 12                  increase, the plan is still reasonably ex-  
 13                  pected to meet the requirements under sub-  
 14                  section (c)(3) in accordance with the sched-  
 15                  ule contemplated in the funding improve-  
 16                  ment plan, and

17                  “(ii) in the case of a plan not in seri-  
 18                  ously endangered status, the actuary cer-  
 19                  tifies that such increase is paid for out of  
 20                  contributions not required by the funding  
 21                  improvement plan to meet the requirements  
 22                  under subsection (c)(3) in accordance with  
 23                  the schedule contemplated in the funding  
 24                  improvement plan.

25                  “(3) *FAILURE TO MEET REQUIREMENTS.*—

1           “(A) *IN GENERAL.*—Notwithstanding sec-  
 2           tion 4971(g) of the Internal Revenue Code of  
 3           1986, if a plan fails to meet the requirements of  
 4           subsection (c)(3) by the end of the funding im-  
 5           provement period, the plan shall be treated as  
 6           having an accumulated funding deficiency for  
 7           purposes of section 4971 of such Code for the last  
 8           plan year in such period (and each succeeding  
 9           plan year until such requirements are met) in  
 10          an amount equal to the greater of the amount of  
 11          the contributions necessary to meet such require-  
 12          ments or the amount of such accumulated fund-  
 13          ing deficiency without regard to this paragraph.

14          “(B) *WAIVER.*—In the case of a failure de-  
 15          scribed in subparagraph (A) which is due to rea-  
 16          sonable cause and not to willful neglect, the Sec-  
 17          retary of the Treasury may waive part or all of  
 18          the tax imposed by section 4971 of such Code to  
 19          the extent that the payment of such tax would be  
 20          excessive or otherwise inequitable relative to the  
 21          failure involved.

22          “(e) *REHABILITATION PLAN MUST BE ADOPTED FOR*  
 23          *MULTIEMPLOYER PLANS IN CRITICAL STATUS.*—

24                 “(1) *IN GENERAL.*—In any case in which a mul-  
 25          tiemployer plan is in critical status for a plan year,

1       *the plan sponsor, in accordance with this*  
2       *subsection—*

3               “(A) *shall adopt a rehabilitation plan not*  
4               *later than 240 days following the required date*  
5               *for the actuarial certification of critical status*  
6               *under subsection (b)(3)(A), and*

7               “(B) *within 30 days after the adoption of*  
8               *the rehabilitation plan—*

9                       “(i) *shall provide to the bargaining*  
10                      *parties 1 or more schedules showing revised*  
11                      *benefit structures, revised contribution*  
12                      *structures, or both, which, if adopted, may*  
13                      *reasonably be expected to enable the multi-*  
14                      *employer plan to emerge from critical status*  
15                      *in accordance with the rehabilitation plan,*  
16                      *and*

17                      “(ii) *may, if the plan sponsor deems*  
18                      *appropriate, prepare and provide the bar-*  
19                      *gaining parties with additional information*  
20                      *relating to contribution rates or benefit re-*  
21                      *ductions, alternative schedules, or other in-*  
22                      *formation relevant to emerging from critical*  
23                      *status in accordance with the rehabilitation*  
24                      *plan.*



1     *The schedule or schedules described in subparagraph*  
 2     *(B)(i) shall reflect reductions in future benefit accru-*  
 3     *als and increases in contributions that the plan spon-*  
 4     *sor determines are reasonably necessary to emerge*  
 5     *from critical status. One schedule shall be designated*  
 6     *as the default schedule and such schedule shall assume*  
 7     *that there are no increases in contributions under the*  
 8     *plan other than the increases necessary to emerge*  
 9     *from critical status after future benefit accruals and*  
 10    *other benefits (other than benefits the reduction or*  
 11    *elimination of which are not permitted under section*  
 12    *204(g)) have been reduced to the maximum extent*  
 13    *permitted by law.*

14           “(2) *EXCEPTION FOR YEARS AFTER PROCESS BE-*  
 15    *GINS.—Paragraph (1) shall not apply to a plan year*  
 16    *if such year is in a rehabilitation plan adoption pe-*  
 17    *riod or rehabilitation period by reason of the plan*  
 18    *being in critical status for a preceding plan year. For*  
 19    *purposes of this section, such preceding plan year*  
 20    *shall be the initial critical year with respect to the re-*  
 21    *habilitation plan to which it relates.*

22           “(3) *REHABILITATION PLAN.—For purposes of*  
 23    *this section—*

24                   “(A) *IN GENERAL.—A rehabilitation plan is*  
 25           *a plan which consists of—*

1           “(i) actions which will enable, under  
2           reasonable actuarial assumptions, the plan  
3           to cease to be in critical status by the end  
4           of the rehabilitation period and may in-  
5           clude reductions in plan expenditures (in-  
6           cluding plan mergers and consolidations),  
7           reductions in future benefit accruals or in-  
8           creases in contributions, if agreed to by the  
9           bargaining parties, or any combination of  
10          such actions, or

11          “(ii) if the plan sponsor determines  
12          that, based on reasonable actuarial assump-  
13          tions and upon exhaustion of all reasonable  
14          measures, the plan can not reasonably be  
15          expected to emerge from critical status by  
16          the end of the rehabilitation period, reason-  
17          able measures to emerge from critical status  
18          at a later time or to forestall possible insol-  
19          vency (within the meaning of section 4245).

20          Such plan shall include the schedules required to  
21          be provided under paragraph (1)(B)(i). If clause  
22          (ii) applies, such plan shall set forth the alter-  
23          natives considered, explain why the plan is not  
24          reasonably expected to emerge from critical sta-  
25          tus by the end of the rehabilitation period, and

1       *specify when, if ever, the plan is expected to*  
2       *emerge from critical status in accordance with*  
3       *the rehabilitation plan.*

4               “(B) *UPDATES TO REHABILITATION PLAN*  
5       *AND SCHEDULES.—*

6               “(i) *REHABILITATION PLAN.—The plan*  
7       *sponsor shall annually update the rehabili-*  
8       *tation plan and shall file the update with*  
9       *the plan’s annual report under section 104.*

10              “(ii) *SCHEDULES.—The plan sponsor*  
11       *may periodically update any schedule of*  
12       *contribution rates provided under this sub-*  
13       *section to reflect the experience of the plan,*  
14       *except that the schedule or schedules de-*  
15       *scribed in paragraph (1)(B)(i) shall be up-*  
16       *dated at least once every 3 years.*

17              “(iii) *DURATION OF SCHEDULE.—A*  
18       *schedule of contribution rates provided by*  
19       *the plan sponsor and relied upon by bar-*  
20       *gaining parties in negotiating a collective*  
21       *bargaining agreement shall remain in effect*  
22       *for the duration of that collective bar-*  
23       *gaining agreement.*

24              “(C) *DEFAULT SCHEDULE.—If the collective*  
25       *bargaining agreement providing for contribu-*

tions under a multiemployer plan that was in effect at the time the plan entered critical status expires and, after receiving a schedule from the plan sponsor under paragraph (1)(B)(i), the bargaining parties have not adopted a collective bargaining agreement with terms consistent with such a schedule, the default schedule described in the last sentence of paragraph (1) shall go into effect with respect to those bargaining parties.

“(4) *REHABILITATION PERIOD.*—For purposes of this section—

“(A) *IN GENERAL.*—The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

“(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

“(ii) the expiration of the collective bargaining agreements in effect on the date of the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of

1           the active participants in such multiem-  
2           ployer plan.

3           If a plan emerges from critical status as pro-  
4           vided under subparagraph (B) before the end of  
5           such 10-year period, the rehabilitation period  
6           shall end with the plan year preceding the plan  
7           year for which the determination under subpara-  
8           graph (B) is made.

9           “(B) *EMERGENCE*.—A plan in critical sta-  
10          tus shall remain in such status until a plan year  
11          for which the plan actuary certifies, in accord-  
12          ance with subsection (b)(3)(A), that the plan is  
13          not projected to have an accumulated funding  
14          deficiency for the plan year or any of the 9 suc-  
15          ceeding plan years, without regard to use of the  
16          shortfall method or any extension of amortiza-  
17          tion periods under section 304(d).

18          “(5) *PENALTY IF NO REHABILITATION PLAN*  
19          *ADOPTED*.—A failure of a plan sponsor to adopt a re-  
20          habilitation plan by the date specified in paragraph  
21          (1)(A) shall be treated for purposes of section  
22          502(c)(2) as a failure or refusal by the plan adminis-  
23          trator to file the annual report required to be filed  
24          with the Secretary under section 101(b)(4).

1           “(6) *REHABILITATION PLAN ADOPTION PE-*  
 2           *RIOD.*—*For purposes of this section, the term ‘reha-*  
 3           *bilitation plan adoption period’ means the period be-*  
 4           *ginning on the date of the certification under sub-*  
 5           *section (b)(3)(A) for the initial critical year and end-*  
 6           *ing on the day before the first day of the rehabilita-*  
 7           *tion period.*

8           “(7) *LIMITATION ON REDUCTION IN RATES OF*  
 9           *FUTURE ACCRUALS.*—*Any reduction in the rate of fu-*  
 10          *ture accruals under any schedule described in para-*  
 11          *graph (1)(B)(i) shall not reduce the rate of future ac-*  
 12          *cruals below—*

13               “(A) *a monthly benefit (payable as a single*  
 14               *life annuity commencing at the participant’s*  
 15               *normal retirement age) equal to 1 percent of the*  
 16               *contributions required to be made with respect to*  
 17               *a participant, or the equivalent standard accrual*  
 18               *rate for a participant or group of participants*  
 19               *under the collective bargaining agreements in ef-*  
 20               *fect as of the first day of the initial critical year,*  
 21               *or*

22               “(B) *if lower, the accrual rate under the*  
 23               *plan on such first day.*

24           *The equivalent standard accrual rate shall be deter-*  
 25           *mined by the plan sponsor based on the standard or*

1        *average contribution base units which the plan spon-*  
 2        *sor determines to be representative for active partici-*  
 3        *pants and such other factors as the plan sponsor de-*  
 4        *termines to be relevant. Nothing in this paragraph*  
 5        *shall be construed as limiting the ability of the plan*  
 6        *sponsor to prepare and provide the bargaining par-*  
 7        *ties with alternative schedules to the default schedule*  
 8        *that established lower or higher accrual and contribu-*  
 9        *tion rates than the rates otherwise described in this*  
 10       *paragraph.*

11            *“(8) EMPLOYER IMPACT.—For the purposes of*  
 12        *this section, the plan sponsor shall consider the im-*  
 13        *pect of the rehabilitation plan and contribution*  
 14        *schedules authorized by this section on bargaining*  
 15        *parties with fewer than 500 employees and shall im-*  
 16        *plement the plan in a manner that encourages their*  
 17        *continued participation in the plan and minimizes*  
 18        *financial harm to employers and their workers.*

19            *“(f) RULES FOR OPERATION OF PLAN DURING ADOP-*  
 20        *TION AND REHABILITATION PERIOD.—*

21            *“(1) COMPLIANCE WITH REHABILITATION*  
 22        *PLAN.—*

23            *“(A) IN GENERAL.—A plan may not be*  
 24        *amended after the date of the adoption of a reha-*

1           *bilitation plan under subsection (e) so as to be*  
 2           *inconsistent with the rehabilitation plan.*

3           “(B) *SPECIAL RULES FOR BENEFIT IN-*  
 4           *CREASES.—A plan may not be amended after the*  
 5           *date of the adoption of a rehabilitation plan*  
 6           *under subsection (e) so as to increase benefits,*  
 7           *including future benefit accruals, unless the plan*  
 8           *actuary certifies that such increase is paid for*  
 9           *out of additional contributions not contemplated*  
 10          *by the rehabilitation plan, and, after taking into*  
 11          *account the benefit increase, the multiemployer*  
 12          *plan still is reasonably expected to emerge from*  
 13          *critical status by the end of the rehabilitation pe-*  
 14          *riod on the schedule contemplated in the reha-*  
 15          *bilitation plan.*

16          “(2) *RESTRICTION ON LUMP SUMS AND SIMILAR*  
 17          *BENEFITS.—*

18                 “(A) *IN GENERAL.—Effective on the date*  
 19                 *the notice of certification of the plan’s critical*  
 20                 *status for the initial critical year under sub-*  
 21                 *section (b)(3)(D) is sent, and notwithstanding*  
 22                 *section 204(g), the plan shall not pay—*

23                         “(i) *any payment, in excess of the*  
 24                         *monthly amount paid under a single life*  
 25                         *annuity (plus any social security supple-*



1                   ments described in the last sentence of sec-  
2                   tion 204(b)(1)(G)),

3                   “(ii) any payment for the purchase of  
4                   an irrevocable commitment from an insurer  
5                   to pay benefits, and

6                   “(iii) any other payment specified by  
7                   the Secretary of the Treasury by regula-  
8                   tions.

9                   “(B) *EXCEPTION.*—Subparagraph (A) shall  
10                  not apply to a benefit which under section 203(e)  
11                  may be immediately distributed without the con-  
12                  sent of the participant or to any makeup pay-  
13                  ment in the case of a retroactive annuity start-  
14                  ing date or any similar payment of benefits  
15                  owed with respect to a prior period.

16                  “(3) *ADJUSTMENTS DISREGARDED IN WITH-*  
17                  *DRAWAL LIABILITY DETERMINATION.*—Any benefit re-  
18                  ductions under this subsection shall be disregarded in  
19                  determining a plan’s unfunded vested benefits for  
20                  purposes of determining an employer’s withdrawal li-  
21                  ability under section 4201.

22                  “(4) *SPECIAL RULES FOR PLAN ADOPTION PE-*  
23                  *RIOD.*—During the rehabilitation plan adoption  
24                  period—

1           “(A) the plan sponsor may not accept a col-  
 2           lective bargaining agreement or participation  
 3           agreement with respect to the multiemployer  
 4           plan that provides for—

5                   “(i) a reduction in the level of con-  
 6                   tributions for any participants,

7                   “(ii) a suspension of contributions  
 8                   with respect to any period of service, or

9                   “(iii) any new direct or indirect exclu-  
 10                  sion of younger or newly hired employees  
 11                  from plan participation, and

12           “(B) no amendment of the plan which in-  
 13           creases the liabilities of the plan by reason of  
 14           any increase in benefits, any change in the ac-  
 15           crual of benefits, or any change in the rate at  
 16           which benefits become nonforfeitable under the  
 17           plan may be adopted unless the amendment is  
 18           required as a condition of qualification under  
 19           part I of subchapter D of chapter 1 of the Inter-  
 20           nal Revenue Code of 1986 or to comply with  
 21           other applicable law.

22           “(5) *FAILURE TO MEET REQUIREMENTS.*—

23                   “(A) *IN GENERAL.*—Notwithstanding sec-  
 24                   tion 4971(g) of the Internal Revenue Code of  
 25                   1986, if a plan—

1           “(i) fails to meet the requirements of  
2           subsection (e) by the end of the rehabilita-  
3           tion period, or

4           “(ii) has received a certification under  
5           subsection (b)(3)(A)(ii) for 3 consecutive  
6           plan years that the plan is not making the  
7           scheduled progress in meeting its require-  
8           ments under the rehabilitation plan,

9           the plan shall be treated as having an accumu-  
10          lated funding deficiency for purposes of section  
11          4971 of such Code for the last plan year in such  
12          period (and each succeeding plan year until such  
13          requirements are met) in an amount equal to the  
14          greater of the amount of the contributions nec-  
15          essary to meet such requirements or the amount  
16          of such accumulated funding deficiency without  
17          regard to this paragraph.

18          “(B) WAIVER.—In the case of a failure de-  
19          scribed in subparagraph (A) which is due to rea-  
20          sonable cause and not to willful neglect, the Sec-  
21          retary of the Treasury may waive part or all of  
22          the tax imposed by section 4971 of such Code to  
23          the extent that the payment of such tax would be  
24          excessive or otherwise inequitable relative to the  
25          failure involved.

1       “(g) *EXPEDITED RESOLUTION OF PLAN SPONSOR DE-*  
 2 *CISIONS.*—*If, within 60 days of the due date for adoption*  
 3 *of a funding improvement plan under subsection (c) or a*  
 4 *rehabilitation plan under subsection (e), the plan sponsor*  
 5 *of a plan in endangered status or a plan in critical status*  
 6 *has not agreed on a funding improvement plan or rehabili-*  
 7 *tation plan, then any member of the board or group that*  
 8 *constitutes the plan sponsor may require that the plan*  
 9 *sponsor enter into an expedited dispute resolution procedure*  
 10 *for the development and adoption of a funding improvement*  
 11 *plan or rehabilitation plan.*

12       “(h) *NONBARGAINED PARTICIPATION.*—

13               “(1) *BOTH BARGAINED AND NONBARGAINED EM-*  
 14 *PLOYEE-PARTICIPANTS.*—*In the case of an employer*  
 15 *that contributes to a multiemployer plan with respect*  
 16 *to both employees who are covered by one or more col-*  
 17 *lective bargaining agreements and to employees who*  
 18 *are not so covered, if the plan is in endangered status*  
 19 *or in critical status, benefits of and contributions for*  
 20 *the nonbargained employees, including surcharges on*  
 21 *those contributions, shall be determined as if those*  
 22 *nonbargained employees were covered under the first*  
 23 *to expire of the employer’s collective bargaining agree-*  
 24 *ments in effect when the plan entered endangered or*  
 25 *critical status.*

1           “(2) *NONBARGAINED EMPLOYEES ONLY.*—*In the*  
 2           *case of an employer that contributes to a multiem-*  
 3           *ployer plan only with respect to employees who are*  
 4           *not covered by a collective bargaining agreement, this*  
 5           *section shall be applied as if the employer were the*  
 6           *bargaining parties, and its participation agreement*  
 7           *with the plan was a collective bargaining agreement*  
 8           *with a term ending on the first day of the plan year*  
 9           *beginning after the employer is provided the schedule*  
 10          *or schedules described in subsections (c) and (e).*

11           “(3) *EMPLOYEES COVERED BY A COLLECTIVE*  
 12          *BARGAINING AGREEMENT.*—*The determination as to*  
 13          *whether an employee covered by a collective bar-*  
 14          *gaining agreement for purposes of this section shall be*  
 15          *made without regard to the special rule in Treasury*  
 16          *Regulation section 1.410(b)–6(d)(ii)(D).*

17          “(i) *DEFINITIONS; ACTUARIAL METHOD.*—*For pur-*  
 18          *poses of this section—*

19               “(1) *BARGAINING PARTY.*—*The term ‘bargaining*  
 20               *party’ means—*

21                       “(A)(i) *except as provided in clause (ii), an*  
 22                       *employer who has an obligation to contribute*  
 23                       *under the plan; or*

24                       “(ii) *in the case of a plan described under*  
 25                       *section 404(c) of the Internal Revenue Code of*

1       1986, or a continuation of such a plan, the asso-  
 2       ciation of employers that is the employee settlor  
 3       of the plan; and

4               “(B) an employee organization which, for  
 5       purposes of collective bargaining, represents plan  
 6       participants employed by an employer who has  
 7       an obligation to contribute under the plan.

8               “(2) *FUNDED PERCENTAGE*.—The term ‘funded  
 9       percentage’ means the percentage equal to a  
 10      fraction—

11              “(A) the numerator of which is the value of  
 12      the plan’s assets, as determined under section  
 13      304(c)(2), and

14              “(B) the denominator of which is the ac-  
 15      crued liability of the plan, determined using ac-  
 16      tuarial assumptions described in section  
 17      304(c)(3).

18              “(3) *ACCUMULATED FUNDING DEFICIENCY*.—The  
 19      term ‘accumulated funding deficiency’ has the mean-  
 20      ing given such term in section 304(a).

21              “(4) *ACTIVE PARTICIPANT*.—The term ‘active  
 22      participant’ means, in connection with a multiem-  
 23      ployer plan, a participant who is in covered service  
 24      under the plan.

1           “(5) *INACTIVE PARTICIPANT*.—The term ‘inactive  
2           participant’ means, in connection with a multiem-  
3           ployer plan, a participant, or the beneficiary or alter-  
4           nate payee of a participant, who—

5                   “(A) is not in covered service under the  
6           plan, and

7                   “(B) is in pay status under the plan or has  
8           a nonforfeitable right to benefits under the plan.

9           “(6) *PAY STATUS*.—A person is in pay status  
10          under a multiemployer plan if—

11                   “(A) at any time during the current plan  
12          year, such person is a participant or beneficiary  
13          under the plan and is paid an early, late, nor-  
14          mal, or disability retirement benefit under the  
15          plan (or a death benefit under the plan related  
16          to a retirement benefit), or

17                   “(B) to the extent provided in regulations of  
18          the Secretary of the Treasury, such person is en-  
19          titled to such a benefit under the plan.

20           “(7) *OBLIGATION TO CONTRIBUTE*.—The term  
21          ‘obligation to contribute’ has the meaning given such  
22          term under section 4212(a).

23           “(8) *ACTUARIAL METHOD*.—Notwithstanding  
24          any other provision of this section, the actuary’s de-  
25          terminations with respect to a plan’s normal cost, ac-

1      *tuarial accrued liability, and improvements in a*  
 2      *plan's funded percentage under this section shall be*  
 3      *based upon the unit credit funding method (whether*  
 4      *or not that method is used for the plan's actuarial*  
 5      *valuation).*

6            “(9) *PLAN SPONSOR.*—*In the case of a plan de-*  
 7      *scribed under section 404(c) of the Internal Revenue*  
 8      *Code of 1986, or a continuation of such a plan, the*  
 9      *term ‘plan sponsor’ means the bargaining parties de-*  
 10     *scribed under paragraph (1).”.*

11        (b) *CAUSE OF ACTION TO COMPEL ADOPTION OF*  
 12     *FUNDING IMPROVEMENT OR REHABILITATION PLAN.*—*Sec-*  
 13     *tion 502(a) of the Employee Retirement Income Security*  
 14     *Act of 1974 is amended by striking “or” at the end of para-*  
 15     *graph (8), by striking the period at the end of paragraph*  
 16     *(9) and inserting “; or” and by adding at the end the fol-*  
 17     *lowing:*

18            “(10) *in the case of a multiemployer plan that*  
 19      *has been certified by the actuary to be in endangered*  
 20      *or critical status under section 305, if the plan spon-*  
 21      *sor has not adopted a funding improvement or reha-*  
 22      *bilitation plan under subsection (c) or (e) of that sec-*  
 23      *tion by the deadline established in that section, by an*  
 24      *employer that has an obligation to contribute with re-*  
 25      *spect to the multiemployer plan or an employee orga-*



1       nization that represents active participants in the  
 2       multiemployer plan, for an order compelling the plan  
 3       sponsor to adopt a funding improvement or rehabili-  
 4       tation plan.”.

5       (c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971  
 6       of the Internal Revenue Code of 1986 is amended by redesignig-  
 7       nating subsection (g) as subsection (h), and inserting after  
 8       subsection (f) the following:

9       “(g) *MULTIEMPLOYER PLANS IN CRITICAL STATUS.*—  
 10      No tax shall be imposed under this section for a taxable  
 11      year with respect to a multiemployer plan if, for the plan  
 12      years ending with or within the taxable year, the plan is  
 13      in critical status pursuant to section 305 of the Employee  
 14      Retirement Income Security Act of 1974. This subsection  
 15      shall only apply if the plan adopts a rehabilitation plan  
 16      in accordance with section 305(e) of such Act and complies  
 17      with such rehabilitation plan (and any modifications of the  
 18      plan) and shall not apply if an excise tax is required to  
 19      be imposed under this section by reason of a violation of  
 20      such section 305.”.

21      (d) *NO ADDITIONAL CONTRIBUTIONS REQUIRED.*—

22           (1) Section 302(b) of the Employee Retirement  
 23      Income Security Act of 1974, as amended by this Act,  
 24      is amended by adding at the end the following new  
 25      paragraph:

1           “(3) *MULTIEMPLOYER PLANS IN CRITICAL STA-*  
 2           *TUS.—Subparagraph (A) shall not apply in the case*  
 3           *of a multiemployer plan for any plan year in which*  
 4           *the plan is in critical status pursuant to section 305.*  
 5           *This paragraph shall only apply if the plan adopts*  
 6           *a rehabilitation plan in accordance with section*  
 7           *305(e) and complies with such rehabilitation plan*  
 8           *(and any modifications of the plan).”.*

9           (2) *Section 412(c) of the Internal Revenue Code*  
 10          *of 1986, as amended by this Act, is amended by add-*  
 11          *ing at the end the following new paragraph:*

12           “(3) *MULTIEMPLOYER PLANS IN CRITICAL STA-*  
 13           *TUS.—Subparagraph (A) shall not apply in the case*  
 14           *of a multiemployer plan for any plan year in which*  
 15           *the plan is in critical status pursuant to section 305*  
 16           *of the Employee Retirement Income Security Act of*  
 17           *1974. This paragraph shall only apply if the plan*  
 18           *adopts a rehabilitation plan in accordance with sec-*  
 19           *tion 305(e) of such Act and complies with such reha-*  
 20           *bilitation plan (and any modifications of the plan).”.*

21          (e) *CONFORMING AMENDMENT.—The table of contents*  
 22          *in section 1 of such Act (as amended by the preceding provi-*  
 23          *sions of this Act) is amended by inserting after the item*  
 24          *relating to section 304 the following new item:*

          “Sec. 305. *Additional funding rules for multiemployer plans in endangered status*  
   *or critical status.”.*

1 (f) *EFFECTIVE DATES.*—

2 (1) *IN GENERAL.*—*The amendment made by this*  
 3 *section shall apply with respect to plan years begin-*  
 4 *ning after 2006.*

5 (2) *SPECIAL RULE FOR CERTAIN RESTORED BEN-*  
 6 *EFITS.*—*In the case of a multiemployer plan—*

7 (A) *with respect to which benefits were re-*  
 8 *duced pursuant to a plan amendment adopted*  
 9 *on or after January 1, 2002, and before June 30,*  
 10 *2005, and*

11 (B) *which, pursuant to the plan document,*  
 12 *the trust agreement, or a formal written commu-*  
 13 *nication from the plan sponsor to participants*  
 14 *provided before June 30, 2005, provided for the*  
 15 *restoration of such benefits,*

16 *the amendments made by this section shall not apply*  
 17 *to such benefit restorations to the extent that any re-*  
 18 *striction on the providing or accrual of such benefits*  
 19 *would otherwise apply by reason of such amendments.*

20 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**  
 21 **TIEMPLOYER PLANS.**

22 (a) *ADVANCE DETERMINATION OF IMPENDING INSOL-*  
 23 *VENCY OVER 5 YEARS.*—*Section 4245(d)(1) of the Em-*  
 24 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*  
 25 *1426(d)(1)) is amended—*

11           (b) *EFFECTIVE DATE.*—The amendments made by this  
12 section shall apply with respect to determinations made in  
13 plan years beginning after 2006.

17        *In the case of a multiemployer plan that is a party*  
18        *to an agreement that was approved by the Pension Benefit*  
19        *Guaranty Corporation prior to June 30, 2005, and that—*

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1 *any plan amendment adopted prior to June 30, 2005, that*  
 2 *are funded pursuant to such agreement if the plan is funded*  
 3 *in compliance with such agreement (and any amendments*  
 4 *thereto).*

5 **SEC. 205. WITHDRAWAL LIABILITY REFORMS.**

6 *(a) REPEAL OF LIMITATION ON WITHDRAWAL LIABIL-*  
 7 *ITY OF INSOLVENT EMPLOYERS.—*

8 *(1) IN GENERAL.—Subsections (b) and (d) of sec-*  
 9 *tion 4225 of the Employee Retirement Income Secu-*  
 10 *rity Act of 1974 (29 U.S.C. 1405) are repealed.*

11 *(2) CONFORMING AMENDMENTS.—Subsections (c)*  
 12 *and (e) of section 4225 of such Act are redesignated*  
 13 *as subsections (b) and (c), respectively.*

14 *(3) EFFECTIVE DATE.—The amendments made*  
 15 *by this section shall apply with respect to sales occur-*  
 16 *ring on or after January 1, 2006.*

17 *(b) WITHDRAWAL LIABILITY CONTINUES IF WORK*  
 18 *CONTRACTED OUT.—*

19 *(1) IN GENERAL.—Clause (i) of section*  
 20 *4205(b)(2)(A) of such Act (29 U.S.C. 1385(b)(2)(A))*  
 21 *is amended by inserting “or to an entity or entities*  
 22 *owned or controlled by the employer” after “to an-*  
 23 *other location”.*

24 *(2) EFFECTIVE DATE.—The amendment made by*  
 25 *this subsection shall apply with respect to work trans-*

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

3       (c) *APPLICATION OF FORGIVENESS RULE TO PLANS*  
4 *PRIMARILY COVERING EMPLOYEES IN THE BUILDING AND*  
5 *CONSTRUCTION.*—

6           (1) *IN GENERAL.*—Section 4210(b) of such Act  
7       (29 U.S.C. 1390(b)) is amended—

8           (A) by striking paragraph (1); and

9           (B) by redesignating paragraphs (2)  
10       through (4) as paragraphs (1) through (3), re-  
11       spectively.

12       (2) *EFFECTIVE DATE.*—The amendments made  
13       by this subsection shall apply with respect to plan  
14       withdrawals occurring on or after January 1, 2006.

15       **PART II—AMENDMENTS TO INTERNAL REVENUE**

16                       **CODE OF 1986**

17       **SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED**  
18                       **BENEFIT PLANS.**

19       (a) *IN GENERAL.*—Subpart A of part III of subchapter  
20 *D* of chapter 1 of the Internal Revenue Code of 1986 (as  
21 added by this Act) is amended by inserting after section  
22 430 the following new section:

1 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**  
 2 **PLOYER PLANS.**

3 “(a) *IN GENERAL.*—For purposes of section 412, the  
 4 accumulated funding deficiency of a multiemployer plan for  
 5 any plan year is—

6 “(1) *except as provided in paragraph (2), the*  
 7 *amount, determined as of the end of the plan year,*  
 8 *equal to the excess (if any) of the total charges to the*  
 9 *funding standard account of the plan for all plan*  
 10 *years (beginning with the first plan year for which*  
 11 *this part applies to the plan) over the total credits to*  
 12 *such account for such years, and*

13 “(2) *if the multiemployer plan is in reorganiza-*  
 14 *tion for any plan year, the accumulated funding defi-*  
 15 *ciency of the plan determined under section 4243 of*  
 16 *the Employee Retirement Income Security Act of*  
 17 *1974.*

18 “(b) *FUNDING STANDARD ACCOUNT.*—

19 “(1) *ACCOUNT REQUIRED.*—Each multiemployer  
 20 plan to which this part applies shall establish and  
 21 maintain a funding standard account. Such account  
 22 shall be credited and charged solely as provided in  
 23 this section.

24 “(2) *CHARGES TO ACCOUNT.*—For a plan year,  
 25 the funding standard account shall be charged with  
 26 the sum of—

1           “(A) the normal cost of the plan for the  
2 plan year,

3           “(B) the amounts necessary to amortize in  
4 equal annual installments (until fully amor-  
5 tized)—

6           “(i) separately, with respect to each  
7 plan year, the net increase (if any) in un-  
8 funded past service liability under the plan  
9 arising from plan amendments adopted in  
10 such year, over a period of 15 plan years,

11           “(ii) separately, with respect to each  
12 plan year, the net experience loss (if any)  
13 under the plan, over a period of 15 plan  
14 years, and

15           “(iii) separately, with respect to each  
16 plan year, the net loss (if any) resulting  
17 from changes in actuarial assumptions used  
18 under the plan, over a period of 15 plan  
19 years,

20           “(C) the amount necessary to amortize each  
21 waived funding deficiency (within the meaning  
22 of section 412(d)(3)) for each prior plan year in  
23 equal annual installments (until fully amor-  
24 tized) over a period of 15 plan years,



1           “(D) the amount necessary to amortize in  
 2           equal annual installments (until fully amor-  
 3           tized) over a period of 5 plan years any amount  
 4           credited to the funding standard account under  
 5           section 412(b)(3)(D) (as in effect on the day be-  
 6           fore the date of the enactment of the Pension Se-  
 7           curity and Transparency Act of 2005), and

8           “(E) the amount necessary to amortize in  
 9           equal annual installments (until fully amor-  
 10          tized) over a period of 20 years the contributions  
 11          which would be required to be made under the  
 12          plan but for the provisions of section  
 13          412(c)(7)(A)(i)(I) (as in effect on the day before  
 14          the date of the enactment of the Pension Security  
 15          and Transparency Act of 2005).

16          “(3) CREDITS TO ACCOUNT.—For a plan year,  
 17          the funding standard account shall be credited with  
 18          the sum of—

19               “(A) the amount considered contributed by  
 20               the employer to or under the plan for the plan  
 21               year,

22               “(B) the amount necessary to amortize in  
 23               equal annual installments (until fully amor-  
 24               tized)—

1           “(i) separately, with respect to each  
2           plan year, the net decrease (if any) in un-  
3           funded past service liability under the plan  
4           arising from plan amendments adopted in  
5           such year, over a period of 15 plan years,

6           “(ii) separately, with respect to each  
7           plan year, the net experience gain (if any)  
8           under the plan, over a period of 15 plan  
9           years, and

10          “(iii) separately, with respect to each  
11          plan year, the net gain (if any) resulting  
12          from changes in actuarial assumptions used  
13          under the plan, over a period of 15 plan  
14          years,

15          “(C) the amount of the waived funding defi-  
16          ciency (within the meaning of section 412(d)(3))  
17          for the plan year, and

18          “(D) in the case of a plan year for which  
19          the accumulated funding deficiency is deter-  
20          mined under the funding standard account if  
21          such plan year follows a plan year for which  
22          such deficiency was determined under the alter-  
23          native minimum funding standard under section  
24          412(g) (as in effect on the day before the date of  
25          the enactment of the Pension Security and

1        *Transparency Act of 2005), the excess (if any) of*  
 2        *any debit balance in the funding standard ac-*  
 3        *count (determined without regard to this sub-*  
 4        *paragraph) over any debit balance in the alter-*  
 5        *native minimum funding standard account.*

6        “(4) *SPECIAL RULE FOR AMOUNTS FIRST AMOR-*  
 7        *TIZED TO PLAN YEARS BEFORE 2007.—In the case of*  
 8        *any amount amortized under section 412(b) (as in ef-*  
 9        *fect on the day before the date of the enactment of the*  
 10        *Pension Security and Transparency Act of 2005) over*  
 11        *any period beginning with a plan year beginning be-*  
 12        *fore 2007, in lieu of the amortization described in*  
 13        *paragraphs (2)(B) and (3)(B), such amount shall*  
 14        *continue to be amortized under such section as so in*  
 15        *effect.*

16        “(5) *COMBINING AND OFFSETTING AMOUNTS TO*  
 17        *BE AMORTIZED.—Under regulations prescribed by the*  
 18        *Secretary, amounts required to be amortized under*  
 19        *paragraph (2) or paragraph (3), as the case may*  
 20        *be—*

21                “(A) *may be combined into one amount*  
 22                *under such paragraph to be amortized over a pe-*  
 23                *riod determined on the basis of the remaining*  
 24                *amortization period for all items entering into*  
 25                *such combined amount, and*

1           “(B) may be offset against amounts re-  
 2           quired to be amortized under the other such  
 3           paragraph, with the resulting amount to be am-  
 4           ortized over a period determined on the basis of  
 5           the remaining amortization periods for all items  
 6           entering into whichever of the two amounts being  
 7           offset is the greater.

8           “(6) *INTEREST.*—The funding standard account  
 9           (and items therein) shall be charged or credited (as  
 10          determined under regulations prescribed by the Sec-  
 11          retary of the Treasury) with interest at the appro-  
 12          priate rate consistent with the rate or rates of interest  
 13          used under the plan to determine costs.

14          “(7) *SPECIAL RULES RELATING TO CHARGES*  
 15          *AND CREDITS TO FUNDING STANDARD ACCOUNT.*—For  
 16          purposes of this part—

17               “(A) *WITHDRAWAL LIABILITY.*—Any  
 18               amount received by a multiemployer plan in  
 19               payment of all or part of an employer’s with-  
 20               drawal liability under part 1 of subtitle E of  
 21               title IV of the Employee Retirement Income Se-  
 22               curity Act of 1974 shall be considered an amount  
 23               contributed by the employer to or under the  
 24               plan. The Secretary may prescribe by regulation  
 25               additional charges and credits to a multiem-

1        *ployer plan’s funding standard account to the*  
 2        *extent necessary to prevent withdrawal liability*  
 3        *payments from being unduly reflected as advance*  
 4        *funding for plan liabilities.*

5                “(B) *ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.*—*If a*  
 6        *multiemployer plan is not in reorganization in*  
 7        *the plan year but was in reorganization in the*  
 8        *immediately preceding plan year, any balance*  
 9        *in the funding standard account at the close of*  
 10        *such immediately preceding plan year—*

12                “(i) *shall be eliminated by an offset-*  
 13                *ting credit or charge (as the case may be),*  
 14                *but*

15                “(ii) *shall be taken into account in*  
 16                *subsequent plan years by being amortized*  
 17                *in equal annual installments (until fully*  
 18                *amortized) over 30 plan years.*

19        *The preceding sentence shall not apply to the ex-*  
 20        *tent of any accumulated funding deficiency*  
 21        *under section 4243(a) of such Act as of the end*  
 22        *of the last plan year that the plan was in reorga-*  
 23        *nization.*

24                “(C) *PLAN PAYMENTS TO SUPPLEMENTAL*  
 25        *PROGRAM OR WITHDRAWAL LIABILITY PAYMENT*

1        *FUND.—Any amount paid by a plan during a*  
 2        *plan year to the Pension Benefit Guaranty Cor-*  
 3        *poration pursuant to section 4222 of such Act or*  
 4        *to a fund exempt under section 501(c)(22) pur-*  
 5        *suant to section 4223 of such Act shall reduce the*  
 6        *amount of contributions considered received by*  
 7        *the plan for the plan year.*

8                *“(D) INTERIM WITHDRAWAL LIABILITY PAY-*  
 9        *MENTS.—Any amount paid by an employer*  
 10        *pending a final determination of the employer’s*  
 11        *withdrawal liability under part 1 of subtitle E*  
 12        *of title IV of such Act and subsequently refunded*  
 13        *to the employer by the plan shall be charged to*  
 14        *the funding standard account in accordance with*  
 15        *regulations prescribed by the Secretary.*

16                *“(E) ELECTION FOR DEFERRAL OF CHARGE*  
 17        *FOR PORTION OF NET EXPERIENCE LOSS.—If an*  
 18        *election is in effect under section 412(b)(7)(F)*  
 19        *(as in effect on the day before the date of the en-*  
 20        *actment of the Pension Security and Trans-*  
 21        *parency Act of 2005) for any plan year, the*  
 22        *funding standard account shall be charged in the*  
 23        *plan year to which the portion of the net experi-*  
 24        *ence loss deferred by such election was deferred*  
 25        *with the amount so deferred (and paragraph*

1           (2)(B)(ii) shall not apply to the amount so  
2 charged).

3           “(F) *FINANCIAL ASSISTANCE.*—Any amount  
4 of any financial assistance from the Pension  
5 Benefit Guaranty Corporation to any plan, and  
6 any repayment of such amount, shall be taken  
7 into account under this section and section 412  
8 in such manner as is determined by the Sec-  
9 retary.

10           “(G) *SHORT-TERM BENEFITS.*—To the ex-  
11 tent that any plan amendment increases the un-  
12 funded past service liability under the plan by  
13 reason of an increase in benefits which are pay-  
14 able under the terms of the plan for a period that  
15 does not exceed 14 years from the effective date  
16 of the amendment, paragraph (2)(B)(i) shall be  
17 applied separately with respect to such increase  
18 in unfunded past service liability by substituting  
19 the number of years of the period during which  
20 such benefits are payable for ‘15’.

21           “(c) *ADDITIONAL RULES.*—

22           “(1) *DETERMINATIONS TO BE MADE UNDER*  
23 *FUNDING METHOD.*—For purposes of this part, nor-  
24 mal costs, accrued liability, past service liabilities,  
25 and experience gains and losses shall be determined

1        *under the funding method used to determine costs*  
2        *under the plan.*

3                “(2) *VALUATION OF ASSETS.*—

4                        “(A) *IN GENERAL.*—*For purposes of this*  
5                        *part, the value of the plan’s assets shall be deter-*  
6                        *mined on the basis of any reasonable actuarial*  
7                        *method of valuation which takes into account*  
8                        *fair market value and which is permitted under*  
9                        *regulations prescribed by the Secretary.*

10                      “(B) *ELECTION WITH RESPECT TO*  
11                      *BONDS.*—*The value of a bond or other evidence*  
12                      *of indebtedness which is not in default as to*  
13                      *principal or interest may, at the election of the*  
14                      *plan administrator, be determined on an amor-*  
15                      *tized basis running from initial cost at purchase*  
16                      *to par value at maturity or earliest call date.*  
17                      *Any election under this subparagraph shall be*  
18                      *made at such time and in such manner as the*  
19                      *Secretary shall by regulations provide, shall*  
20                      *apply to all such evidences of indebtedness, and*  
21                      *may be revoked only with the consent of the Sec-*  
22                      *retary.*

23                      “(3) *ACTUARIAL ASSUMPTIONS MUST BE REA-*  
24                      *SONABLE.*—*For purposes of this section, all costs, li-*  
25                      *abilities, rates of interest, and other factors under the*



1        *plan shall be determined on the basis of actuarial as-*  
 2        *sumptions and methods—*

3                *“(A) each of which is reasonable (taking*  
 4                *into account the experience of the plan and rea-*  
 5                *sonable expectations), and*

6                *“(B) which, in combination, offer the actu-*  
 7                *ary’s best estimate of anticipated experience*  
 8                *under the plan.*

9                *“(4) TREATMENT OF CERTAIN CHANGES AS EX-*  
 10                *PERIENCE GAIN OR LOSS.—For purposes of this sec-*  
 11                *tion, if—*

12                *“(A) a change in benefits under the Social*  
 13                *Security Act or in other retirement benefits cre-*  
 14                *ated under Federal or State law, or*

15                *“(B) a change in the definition of the term*  
 16                *‘wages’ under section 3121, or a change in the*  
 17                *amount of such wages taken into account under*  
 18                *regulations prescribed for purposes of section*  
 19                *401(a)(5),*

20                *results in an increase or decrease in accrued liability*  
 21                *under a plan, such increase or decrease shall be treat-*  
 22                *ed as an experience loss or gain.*

23                *“(5) FULL FUNDING.—If, as of the close of a*  
 24                *plan year, a plan would (without regard to this para-*

graph) have an accumulated funding deficiency in excess of the full funding limitation—

“(A) the funding standard account shall be credited with the amount of such excess, and

“(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

“(6) *FULL-FUNDING LIMITATION.*—

“(A) *IN GENERAL.*—For purposes of paragraph (5), the term ‘full-funding limitation’ means the excess (if any) of—

“(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

“(ii) the lesser of—

“(I) the fair market value of the plan’s assets, or

“(II) the value of such assets determined under paragraph (2).

1 “(B) *MINIMUM AMOUNT.*—

2 “(i) *IN GENERAL.*—In no event shall  
3 the full-funding limitation determined  
4 under subparagraph (A) be less than the ex-  
5 cess (if any) of—

6 “(I) 90 percent of the current li-  
7 ability of the plan (including the ex-  
8 pected increase in current liability due  
9 to benefits accruing during the plan  
10 year), over

11 “(II) the value of the plan’s assets  
12 determined under paragraph (2).

13 “(ii) *ASSETS.*—For purposes of clause  
14 (i), assets shall not be reduced by any credit  
15 balance in the funding standard account.

16 “(C) *FULL FUNDING LIMITATION.*—For pur-  
17 poses of this paragraph, unless otherwise pro-  
18 vided by the plan, the accrued liability under a  
19 multiemployer plan shall not include benefits  
20 which are not nonforfeitable under the plan after  
21 the termination of the plan (taking into consid-  
22 eration section 411(d)(3)).

23 “(D) *CURRENT LIABILITY.*—For purposes of  
24 this paragraph—

1                   “(i) *IN GENERAL.*—*The term ‘current*  
 2                   *liability’ means all liabilities to employees*  
 3                   *and their beneficiaries under the plan.*

4                   “(ii) *TREATMENT OF UNPREDICTABLE*  
 5                   *CONTINGENT EVENT BENEFITS.*—*For pur-*  
 6                   *poses of clause (i), any benefit contingent on*  
 7                   *an event other than—*

8                               “(I) *age, service, compensation,*  
 9                               *death, or disability, or*

10                              “(II) *an event which is reasonably*  
 11                              *and reliably predictable (as determined*  
 12                              *by the Secretary),*

13                   *shall not be taken into account until the*  
 14                   *event on which the benefit is contingent oc-*  
 15                   *curs.*

16                   “(iii) *INTEREST RATE USED.*—*The*  
 17                   *rate of interest used to determine current li-*  
 18                   *ability under this paragraph shall be the*  
 19                   *rate of interest determined under subpara-*  
 20                   *graph (E).*

21                   “(iv) *MORTALITY TABLES.*—

22                              “(I) *COMMISSIONERS’ STANDARD*  
 23                              *TABLE.*—*In the case of plan years be-*  
 24                              *ginning before the first plan year to*  
 25                              *which the first tables prescribed under*

1           subclause (II) apply, the mortality  
2           table used in determining current li-  
3           ability under this paragraph shall be  
4           the table prescribed by the Secretary  
5           which is based on the prevailing com-  
6           missioners' standard table (described  
7           in section 807(d)(5)(A)) used to deter-  
8           mine reserves for group annuity con-  
9           tracts issued on January 1, 1993.

10           “(II)   SECRETARIAL   AUTHOR-  
11           ITY.—The Secretary may by regulation  
12           prescribe for plan years beginning  
13           after December 31, 1999, mortality ta-  
14           bles to be used in determining current  
15           liability under this subsection. Such  
16           tables shall be based upon the actual  
17           experience of pension plans and pro-  
18           jected trends in such experience. In  
19           prescribing such tables, the Secretary  
20           shall take into account results of avail-  
21           able independent studies of mortality  
22           of individuals covered by pension  
23           plans.

1                   “(v) *SEPARATE MORTALITY TABLES*  
 2                   *FOR THE DISABLED.*—*Notwithstanding*  
 3                   *clause (iv)*—

4                   “(I) *IN GENERAL.*—*The Secretary*  
 5                   *shall establish mortality tables which*  
 6                   *may be used (in lieu of the tables*  
 7                   *under clause (iv)) to determine current*  
 8                   *liability under this subsection for indi-*  
 9                   *viduals who are entitled to benefits*  
 10                   *under the plan on account of dis-*  
 11                   *ability. The Secretary shall establish*  
 12                   *separate tables for individuals whose*  
 13                   *disabilities occur in plan years begin-*  
 14                   *ning before January 1, 1995, and for*  
 15                   *individuals whose disabilities occur in*  
 16                   *plan years beginning on or after such*  
 17                   *date.*

18                   “(II) *SPECIAL RULE FOR DISABIL-*  
 19                   *ITIES OCCURRING AFTER 1994.*—*In the*  
 20                   *case of disabilities occurring in plan*  
 21                   *years beginning after December 31,*  
 22                   *1994, the tables under subclause (I)*  
 23                   *shall apply only with respect to indi-*  
 24                   *viduals described in such subclause*  
 25                   *who are disabled within the meaning*

1                   *of title II of the Social Security Act*  
 2                   *and the regulations thereunder.*

3                   “(vi) *PERIODIC REVIEW.*—*The Sec-*  
 4                   *retary shall periodically (at least every 5*  
 5                   *years) review any tables in effect under this*  
 6                   *subparagraph and shall, to the extent such*  
 7                   *Secretary determines necessary, by regula-*  
 8                   *tion update the tables to reflect the actual*  
 9                   *experience of pension plans and projected*  
 10                   *trends in such experience.*

11                   “(E) *REQUIRED CHANGE OF INTEREST*  
 12                   *RATE.*—*For purposes of determining a plan’s*  
 13                   *current liability for purposes of this*  
 14                   *paragraph—*

15                   “(i) *IN GENERAL.*—*If any rate of in-*  
 16                   *terest used under the plan under subsection*  
 17                   *(b)(6) to determine cost is not within the*  
 18                   *permissible range, the plan shall establish a*  
 19                   *new rate of interest within the permissible*  
 20                   *range.*

21                   “(ii) *PERMISSIBLE RANGE.*—*For pur-*  
 22                   *poses of this subparagraph—*

23                   “(I) *IN GENERAL.*—*Except as pro-*  
 24                   *vided in subclause (II), the term ‘per-*  
 25                   *missible range’ means a rate of interest*

1           *which is not more than 5 percent*  
 2           *above, and not more than 10 percent*  
 3           *below, the weighted average of the rates*  
 4           *of interest on 30-year Treasury securi-*  
 5           *ties during the 4-year period ending on*  
 6           *the last day before the beginning of the*  
 7           *plan year.*

8                   “(II)    SECRETARIAL    AUTHOR-  
 9                   ITY.—If the Secretary finds that the  
 10                  lowest rate of interest permissible  
 11                  under subclause (I) is unreasonably  
 12                  high, the Secretary may prescribe a  
 13                  lower rate of interest, except that such  
 14                  rate may not be less than 80 percent of  
 15                  the average rate determined under such  
 16                  subclause.

17                   “(iii)       ASSUMPTIONS.—Notwith-  
 18                  standing paragraph (3)(A), the interest rate  
 19                  used under the plan shall be—

20                   “(I)   determined without taking  
 21                   into account the experience of the plan  
 22                   and reasonable expectations, but

23                   “(II)   consistent with the assump-  
 24                   tions which reflect the purchase rates  
 25                   which would be used by insurance com-



1                   panies to satisfy the liabilities under  
2                   the plan.

3                   “(7) ANNUAL VALUATION.—

4                   “(A) IN GENERAL.—For purposes of this  
5                   section, a determination of experience gains and  
6                   losses and a valuation of the plan’s liability  
7                   shall be made not less frequently than once every  
8                   year, except that such determination shall be  
9                   made more frequently to the extent required in  
10                  particular cases under regulations prescribed by  
11                  the Secretary.

12                  “(B) VALUATION DATE.—

13                  “(i) CURRENT YEAR.—Except as pro-  
14                  vided in clause (ii), the valuation referred  
15                  to in subparagraph (A) shall be made as of  
16                  a date within the plan year to which the  
17                  valuation refers or within one month prior  
18                  to the beginning of such year.

19                  “(ii) USE OF PRIOR YEAR VALU-  
20                  ATION.—The valuation referred to in sub-  
21                  paragraph (A) may be made as of a date  
22                  within the plan year prior to the year to  
23                  which the valuation refers if, as of such  
24                  date, the value of the assets of the plan are  
25                  not less than 100 percent of the plan’s cur-

1            *rent liability (as defined in paragraph*  
 2            *(6)(D) without regard to clause (iv) there-*  
 3            *of).*

4            “(iii)     *ADJUSTMENTS.—Information*  
 5            *under clause (ii) shall, in accordance with*  
 6            *regulations, be actuarially adjusted to re-*  
 7            *flect significant differences in participants.*

8            “(iv) *LIMITATION.—A change in fund-*  
 9            *ing method to use a prior year valuation,*  
 10           *as provided in clause (ii), may not be made*  
 11           *unless as of the valuation date within the*  
 12           *prior plan year, the value of the assets of*  
 13           *the plan are not less than 125 percent of the*  
 14           *plan’s current liability (as defined in para-*  
 15           *graph (6)(D) without regard to clause (iv)*  
 16           *thereof).*

17           “(8)     *TIME WHEN CERTAIN CONTRIBUTIONS*  
 18           *DEEMED MADE.—For purposes of this section, any*  
 19           *contributions for a plan year made by an employer*  
 20           *after the last day of such plan year, but not later*  
 21           *than two and one-half months after such day, shall be*  
 22           *deemed to have been made on such last day. For pur-*  
 23           *poses of this subparagraph, such two and one-half*  
 24           *month period may be extended for not more than six*  
 25           *months under regulations prescribed by the Secretary.*

1       “(d) *EXTENSION OF AMORTIZATION PERIODS FOR*  
 2 *MULTIEMPLOYER PLANS.*—

3               “(1) *AUTOMATIC EXTENSION UPON APPLICATION*  
 4 *BY CERTAIN PLANS.*—

5               “(A) *IN GENERAL.*—*If the plan sponsor of*  
 6 *a multiemployer plan—*

7                       “(i) *submits to the Secretary an appli-*  
 8 *cation for an extension of the period of*  
 9 *years required to amortize any unfunded li-*  
 10 *ability described in any clause of subsection*  
 11 *(b)(2)(B) or described in subsection (b)(4),*  
 12 *and*

13                      “(ii) *includes with the application a*  
 14 *certification by the plan’s actuary described*  
 15 *in subparagraph (B),*

16 *the Secretary shall extend the amortization pe-*  
 17 *riod for the period of time (not in excess of 5*  
 18 *years) specified in the application. Such exten-*  
 19 *sion shall be in addition to any extension under*  
 20 *paragraph (2).*

21               “(B) *CRITERIA.*—*A certification with re-*  
 22 *spect to a multiemployer plan is described in*  
 23 *this subparagraph if the plan’s actuary certifies*  
 24 *that, based on reasonable assumptions—*

1           “(i) absent the extension under sub-  
 2           paragraph (A), the plan would have an ac-  
 3           cumulated funding deficiency in the current  
 4           plan year or any of the 9 succeeding plan  
 5           years,

6           “(ii) the plan sponsor has adopted a  
 7           plan to improve the plan’s funding status,

8           “(iii) the plan is projected to have suf-  
 9           ficient assets to timely pay expected benefits  
 10          and anticipated expenditures over the amor-  
 11          tization period as extended, and

12          “(iv) the notice required under para-  
 13          graph (3)(A) has been provided.

14          “(2) *ADDITIONAL EXTENSION.*—

15          “(A) *IN GENERAL.*—If the plan sponsor of  
 16          a multiemployer plan submits to the Secretary  
 17          an application for an extension of the period of  
 18          years required to amortize any unfunded liabil-  
 19          ity described in any clause of subsection  
 20          (b)(2)(B) or described in subsection (b)(4), the  
 21          Secretary may extend the amortization period  
 22          for a period of time (not in excess of 5 years) if  
 23          the Secretary of the Treasury makes the deter-  
 24          mination described in subparagraph (B). Such

1       *extension shall be in addition to any extension*  
2       *under paragraph (1).*

3               “(B) *DETERMINATION.*—*The Secretary may*  
4       *grant an extension under subparagraph (A) if*  
5       *the Secretary determines that—*

6                       “(i) *such extension would carry out the*  
7                       *purposes of this Act and would provide ade-*  
8                       *quate protection for participants under the*  
9                       *plan and their beneficiaries, and*

10                      “(ii) *the failure to permit such exten-*  
11                      *sion would—*

12                               “(I) *result in a substantial risk to*  
13                               *the voluntary continuation of the plan,*  
14                               *or a substantial curtailment of pension*  
15                               *benefit levels or employee compensa-*  
16                               *tion, and*

17                               “(II) *be adverse to the interests of*  
18                               *plan participants in the aggregate.*

19               “(C) *ACTION BY SECRETARY.*—*The Sec-*  
20       *retary shall act upon any application for an ex-*  
21       *tension under this paragraph within 180 days of*  
22       *the submission of such application. If the Sec-*  
23       *retary rejects the application for an extension*  
24       *under this paragraph, the Secretary shall pro-*  
25       *vide notice to the plan detailing the specific rea-*

1        *sons for the rejection, including references to the*  
 2        *criteria set forth above.*

3        “(3) *ADVANCE NOTICE.*—

4                “(A) *IN GENERAL.*—*The Secretary shall, be-*  
 5        *fore granting an extension under this subsection,*  
 6        *require each applicant to provide evidence satis-*  
 7        *factory to such Secretary that the applicant has*  
 8        *provided notice of the filing of the application*  
 9        *for such extension to each affected party (as de-*  
 10       *finied in section 4001(a)(21) of the Employee Re-*  
 11       *irement Income Security Act of 1974) with re-*  
 12       *spect to the affected plan. Such notice shall in-*  
 13       *clude a description of the extent to which the*  
 14       *plan is funded for benefits which are guaranteed*  
 15       *under title IV of such Act and for benefit liabil-*  
 16       *ities.*

17               “(B) *CONSIDERATION OF RELEVANT INFOR-*  
 18        *MATION.*—*The Secretary shall consider any rel-*  
 19        *evant information provided by a person to whom*  
 20        *notice was given under paragraph (1).”.*

21        (b) *EFFECTIVE DATE.*—

22               (1) *IN GENERAL.*—*The amendments made by*  
 23        *this section shall apply to plan years beginning after*  
 24        *2006.*

1           (2) *SPECIAL RULE FOR CERTAIN AMORTIZATION*  
 2           *EXTENSIONS.*—*If the Secretary of the Treasury grants*  
 3           *an extension under section 304 of the Employee Re-*  
 4           *irement Income Security Act of 1974 and section*  
 5           *412(e) of the Internal Revenue Code of 1986 with re-*  
 6           *spect to any application filed with the Secretary of*  
 7           *the Treasury on or before June 30, 2005, the exten-*  
 8           *sion (and any modification thereof) shall be applied*  
 9           *and administered under the rules of such sections as*  
 10          *in effect before the enactment of this Act, including*  
 11          *the use of the rate of interest determined under section*  
 12          *6621(b) of such Code.*

13 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
 14                               **PLOYER PLANS IN ENDANGERED OR CRIT-**  
 15                               **ICAL STATUS.**

16          (a) *IN GENERAL.*—*Subpart A of part III of subchapter*  
 17          *D of chapter 1 of the Internal Revenue Code of 1986 (as*  
 18          *amended by this Act) is amended by inserting after section*  
 19          *431 the following new section:*

20 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
 21                               **PLOYER PLANS IN ENDANGERED STATUS OR**  
 22                               **CRITICAL STATUS.**

23          “(a) *GENERAL RULE.*—*For purposes of this part, in*  
 24          *the case of a multiemployer plan—*

25                       “(1) *if the plan is in endangered status—*

1           “(A) the plan sponsor shall adopt and im-  
 2           plement a funding improvement plan in accord-  
 3           ance with the requirements of subsection (c), and

4           “(B) the requirements of subsection (d) shall  
 5           apply during the funding plan adoption period  
 6           and the funding improvement period, and

7           “(2) if the plan is in critical status—

8           “(A) the plan sponsor shall adopt and im-  
 9           plement a rehabilitation plan in accordance with  
 10          the requirements of subsection (e), and

11          “(B) the requirements of subsection (f) shall  
 12          apply during the rehabilitation plan adoption  
 13          period and the rehabilitation period.

14          “(b) *DETERMINATION OF ENDANGERED AND CRITICAL*  
 15          *STATUS.—For purposes of this section—*

16          “(1) *ENDANGERED STATUS.—A multiemployer*  
 17          *plan is in endangered status for a plan year if, as*  
 18          *determined by the plan actuary under paragraph (3),*  
 19          *the plan is not in critical status for the plan year*  
 20          *and either—*

21          “(A) the plan’s funded percentage for such  
 22          plan year is less than 80 percent, or

23          “(B) the plan has an accumulated funding  
 24          deficiency for such plan year, or is projected to  
 25          have such an accumulated funding deficiency for



1           *any of the 6 succeeding plan years, taking into*  
 2           *account any extension of amortization periods*  
 3           *under section 431(d).*

4           *For purposes of this section, a plan described in sub-*  
 5           *paragraph (B) shall be treated as in seriously endan-*  
 6           *gered status.*

7           “(2) *CRITICAL STATUS.*—*A multiemployer plan*  
 8           *is in critical status for a plan year if, as determined*  
 9           *by the plan actuary under paragraph (3), the plan is*  
 10          *described in 1 or more of the following subparagraphs*  
 11          *as of the beginning of the plan year:*

12                 “(A) *A plan is described in this subpara-*  
 13                 *graph if—*

14                         “(i) *the funded percentage of the plan*  
 15                         *is less than 65 percent, and*

16                         “(ii) *the sum of—*

17                                 “(I) *the market value of plan as-*  
 18                                 *sets, plus*

19                                 “(II) *the present value of the rea-*  
 20                                 *sonably anticipated employer contribu-*  
 21                                 *tions for the current plan year and*  
 22                                 *each of the 5 succeeding plan years, as-*  
 23                                 *suming that the terms of all collective*  
 24                                 *bargaining agreements pursuant to*  
 25                                 *which the plan is maintained for the*

1                    *current plan year continue in effect for*  
2                    *succeeding plan years,*  
3                    *is less than the present value of all benefits*  
4                    *projected to be payable under the plan dur-*  
5                    *ing the current plan year and each of the*  
6                    *5 succeeding plan years (plus administra-*  
7                    *tive expenses for such plan years).*

8                    *“(B) A plan is described in this subpara-*  
9                    *graph if—*

10                    *“(i) the plan has an accumulated*  
11                    *funding deficiency for the current plan*  
12                    *year, not taking into account any extension*  
13                    *of amortization periods under section*  
14                    *431(d), or*

15                    *“(ii) the plan is projected to have an*  
16                    *accumulated funding deficiency for any of*  
17                    *the 3 succeeding plan years (4 succeeding*  
18                    *plan years if the funded percentage of the*  
19                    *plan is 65 percent or less), not taking into*  
20                    *account any extension of amortization peri-*  
21                    *ods under section 431(d).*

22                    *“(C) A plan is described in this subpara-*  
23                    *graph if—*

24                    *“(i)(I) the plan’s normal cost for the*  
25                    *current plan year, plus interest (determined*

1           *at the rate used for determining costs under*  
2           *the plan) for the current plan year on the*  
3           *amount of unfunded benefit liabilities under*  
4           *the plan as of the last date of the preceding*  
5           *plan year, exceeds*

6           “(II) *the present value of the reason-*  
7           *ably anticipated employer contributions for*  
8           *the current plan year,*

9           “(ii) *the present value of nonforfeitable*  
10          *benefits of inactive participants is greater*  
11          *than the present value of nonforfeitable ben-*  
12          *efits of active participants, and*

13          “(iii) *the plan has an accumulated*  
14          *funding deficiency for the current plan*  
15          *year, or is projected to have such a defi-*  
16          *ciency for any of the 4 succeeding plan*  
17          *years, not taking into account any exten-*  
18          *sion of amortization periods under section*  
19          *431(d).*

20          “(D) *A plan is described in this subpara-*  
21          *graph if the sum of—*

22               “(i) *the market value of plan assets,*  
23               *plus*

24               “(ii) *the present value of the reason-*  
25               *ably anticipated employer contributions for*

1           the current plan year and each of the 4 suc-  
 2           ceeding plan years, assuming that the terms  
 3           of all collective bargaining agreements pur-  
 4           suant to which the plan is maintained for  
 5           the current plan year continue in effect for  
 6           succeeding plan years,

7           is less than the present value of all benefits pro-  
 8           jected to be payable under the plan during the  
 9           current plan year and each of the 4 succeeding  
 10          plan years (plus administrative expenses for  
 11          such plan years).

12          “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
 13          ARY.—

14               “(A) IN GENERAL.—During the 90-day pe-  
 15               riod beginning on the first day of each plan year  
 16               of a multiemployer plan, the plan actuary shall  
 17               certify to the Secretary—

18                       “(i) whether or not the plan is in en-  
 19                       dangered status for such plan year and  
 20                       whether or not the plan is in critical status  
 21                       for such plan year, and

22                       “(ii) in the case of a plan which is in  
 23                       a funding improvement or rehabilitation  
 24                       period, whether or not the plan is making  
 25                       the scheduled progress in meeting the re-

1            *quirements of its funding improvement or*  
2            *rehabilitation plan.*

3            “(B) *ACTUARIAL PROJECTIONS OF ASSETS*  
4            *AND LIABILITIES.*—

5            “(i) *IN GENERAL.*—*In making the de-*  
6            *terminations and projections under this*  
7            *subsection, the plan actuary shall make pro-*  
8            *jections required for the current and suc-*  
9            *ceeding plan years, using reasonable actu-*  
10           *arial estimates, assumptions, and methods,*  
11           *of the current value of the assets of the plan*  
12           *and the present value of all liabilities to*  
13           *participants and beneficiaries under the*  
14           *plan for the current plan year as of the be-*  
15           *ginning of such year. The projected present*  
16           *value of liabilities as of the beginning of*  
17           *such year shall be determined based on the*  
18           *actuarial statement required under section*  
19           *103(d) of the Employee Retirement Income*  
20           *Security Act of 1974 with respect to the*  
21           *most recently filed annual report or the ac-*  
22           *tuarial valuation for the preceding plan*  
23           *year.*

1                   “(ii) *DETERMINATIONS OF FUTURE*  
 2                   *CONTRIBUTIONS.—Any actuarial projection*  
 3                   *of plan assets shall assume—*

4                   “(I) *reasonably anticipated em-*  
 5                   *ployer contributions for the current*  
 6                   *and succeeding plan years, assuming*  
 7                   *that the terms of the one or more col-*  
 8                   *lective bargaining agreements pursuant*  
 9                   *to which the plan is maintained for the*  
 10                   *current plan year continue in effect for*  
 11                   *succeeding plan years, or*

12                   “(II) *that employer contributions*  
 13                   *for the most recent plan year will con-*  
 14                   *tinue indefinitely, but only if the plan*  
 15                   *actuary determines there have been no*  
 16                   *significant demographic changes that*  
 17                   *would make such assumption unrea-*  
 18                   *sonable.*

19                   “(C) *PENALTY FOR FAILURE TO SECURE*  
 20                   *TIMELY ACTUARIAL CERTIFICATION.—Any fail-*  
 21                   *ure of the plan’s actuary to certify the plan’s*  
 22                   *status under this subsection by the date specified*  
 23                   *in subparagraph (A) shall be treated for pur-*  
 24                   *poses of section 502(c)(2) of such Act as a failure*  
 25                   *or refusal by the plan administrator to file the*

1        *annual report required to be filed with the Sec-*  
 2        *retary under section 101(b)(4) of such Act.*

3                “(D) *NOTICE.—In any case in which a*  
 4        *multiemployer plan is certified to be in endan-*  
 5        *gered or critical status under subparagraph (A),*  
 6        *the plan sponsor shall, not later than 30 days*  
 7        *after the date of the certification, provide notifi-*  
 8        *cation of the endangered or critical status to the*  
 9        *participants and beneficiaries, the bargaining*  
 10        *parties, the Pension Benefit Guaranty Corpora-*  
 11        *tion, the Secretary, and the Secretary of Labor.*

12        “(c) *FUNDING IMPROVEMENT PLAN MUST BE ADOPT-*  
 13        *ED FOR MULTIEMPLOYER PLANS IN ENDANGERED STA-*  
 14        *TUS.—*

15                “(1) *IN GENERAL.—In any case in which a mul-*  
 16        *tiemployer plan is in endangered status for a plan*  
 17        *year, the plan sponsor, in accordance with this*  
 18        *subsection—*

19                “(A) *shall adopt a funding improvement*  
 20        *plan not later than 240 days following the re-*  
 21        *quired date for the actuarial certification of en-*  
 22        *dangered status under subsection (b)(3)(A), and*

23                “(B) *within 30 days after the adoption of*  
 24        *the funding improvement plan—*

1           “(i) in the case of a plan in seriously  
2           endangered status, shall provide to the bar-  
3           gaining parties 1 or more schedules showing  
4           revised benefit structures, revised contribu-  
5           tion structures, or both, which, if adopted,  
6           may reasonably be expected to enable the  
7           multiemployer plan to meet the applicable  
8           requirements under paragraph (3) in ac-  
9           cordance with the funding improvement  
10          plan, including a description of the reduc-  
11          tions in future benefit accruals and in-  
12          creases in contributions that the plan spon-  
13          sor determines are reasonably necessary to  
14          meet the applicable requirements if the plan  
15          sponsor assumes that there are no increases  
16          in contributions under the plan other than  
17          the increases necessary to meet the applica-  
18          ble requirements after future benefit accru-  
19          als have been reduced to the maximum ex-  
20          tent permitted by law, and

21          “(ii) may, if the plan sponsor deems  
22          appropriate, prepare and provide the bar-  
23          gaining parties with additional information  
24          relating to contribution rates or benefit re-  
25          ductions, alternative schedules, or other in-



1                    *formation relevant to achieving the require-*  
 2                    *ments under paragraph (3) in accordance*  
 3                    *with the funding improvement plan.*

4                    “(2) *EXCEPTION FOR YEARS AFTER PROCESS BE-*  
 5                    *GINS.—Paragraph (1) shall not apply to a plan year*  
 6                    *if such year is in a funding plan adoption period or*  
 7                    *funding improvement period by reason of the plan*  
 8                    *being in endangered status for a preceding plan year.*  
 9                    *For purposes of this section, such preceding plan year*  
 10                    *shall be the initial determination year with respect to*  
 11                    *the funding improvement plan to which it relates.*

12                    “(3) *FUNDING IMPROVEMENT PLAN.—For pur-*  
 13                    *poses of this section—*

14                    “(A) *IN GENERAL.—A funding improve-*  
 15                    *ment plan is a plan which consists of the ac-*  
 16                    *tions, including options or a range of options to*  
 17                    *be proposed to the bargaining parties, which,*  
 18                    *under reasonable actuarial assumptions, will re-*  
 19                    *sult in the plan meeting the requirements of this*  
 20                    *paragraph.*

21                    “(B) *PLANS OTHER THAN SERIOUSLY EN-*  
 22                    *DANGERED PLANS.—In the case of plan not in*  
 23                    *seriously endangered status, the requirements of*  
 24                    *this paragraph are met if the plan’s funded per-*  
 25                    *centage as of the close of the funding improve-*

1           *ment period exceeds the lesser of 80 percent or a*  
 2           *percentage equal to the sum of—*

3                   “(i) *such percentage as of the begin-*  
 4                   *ning of such period, plus*

5                   “(ii) *10 percent of the percentage deter-*  
 6                   *mined under clause (i).*

7                   “(C) *SERIOUSLY ENDANGERED PLANS.—In*  
 8                   *the case of a plan in seriously endangered status,*  
 9                   *the requirements of this paragraph are met if—*

10                   “(i) *the plan’s funded percentage as of*  
 11                   *the close of the funding improvement period*  
 12                   *equals or exceeds the percentage which is*  
 13                   *equal to the sum of—*

14                   “(I) *such percentage as of the be-*  
 15                   *ginning of such period, plus*

16                   “(II) *33 percent of the difference*  
 17                   *between 100 percent and the percentage*  
 18                   *under subclause (I), and*

19                   “(ii) *there is no accumulated funding*  
 20                   *deficiency for any plan year during the*  
 21                   *funding improvement period (taking into*  
 22                   *account any extension of amortization peri-*  
 23                   *ods under section 431(d)).*

24                   “(4) *FUNDING IMPROVEMENT PERIOD.—For pur-*  
 25                   *poses of this section—*

1           “(A) *IN GENERAL.*—*The funding improve-*  
 2           *ment period for any funding improvement plan*  
 3           *adopted pursuant to this subsection is the 10-*  
 4           *year period beginning on the first day of the*  
 5           *first plan year of the multiemployer plan begin-*  
 6           *ning after the earlier of—*

7                   “(i) *the second anniversary of the date*  
 8                   *of the adoption of the funding improvement*  
 9                   *plan, or*

10                   “(ii) *the expiration of the collective*  
 11                   *bargaining agreements in effect on the due*  
 12                   *date for the actuarial certification of endan-*  
 13                   *gered status for the initial determination*  
 14                   *year under subsection (b)(3)(A) and cov-*  
 15                   *ering, as of such due date, at least 75 per-*  
 16                   *cent of the active participants in such mul-*  
 17                   *tiemployer plan.*

18           “(B) *COORDINATION WITH CHANGES IN STA-*  
 19           *TUS.*—

20                   “(i) *PLANS NO LONGER IN ENDAN-*  
 21                   *GERED STATUS.*—*If the plan’s actuary cer-*  
 22                   *tifies under subsection (b)(3)(A) for a plan*  
 23                   *year in any funding plan adoption period*  
 24                   *or funding improvement period that the*  
 25                   *plan is no longer in endangered status and*

1            *is not in critical status, the funding plan*  
 2            *adoption period or funding improvement*  
 3            *period, whichever is applicable, shall end as*  
 4            *of the close of the preceding plan year.*

5            “(ii) *PLANS IN CRITICAL STATUS.—If*  
 6            *the plan’s actuary certifies under subsection*  
 7            *(b)(3)(A) for a plan year in any funding*  
 8            *plan adoption period or funding improve-*  
 9            *ment period that the plan is in critical sta-*  
 10           *tus, the funding plan adoption period or*  
 11           *funding improvement period, whichever is*  
 12           *applicable, shall end as of the close of the*  
 13           *plan year preceding the first plan year in*  
 14           *the rehabilitation period with respect to*  
 15           *such status.*

16           “(5) *SPECIAL RULES FOR CERTAIN UNDER-*  
 17           *FUNDED PLANS.—*

18           “(A) *IN GENERAL.—Except as provided in*  
 19           *subparagraph (B), if the funded percentage of a*  
 20           *plan in seriously endangered status was 70 per-*  
 21           *cent or less as of the beginning of the initial de-*  
 22           *termination year, the following rules shall apply*  
 23           *in determining whether the requirements of*  
 24           *paragraph (3)(C)(i) are met:*

1           “(i) *The plan’s funded percentage as of*  
 2           *the close of the funding improvement period*  
 3           *must equal or exceed a percentage which is*  
 4           *equal to the sum of—*

5                       “(I) *such percentage as of the be-*  
 6                       *ginning of such period, plus*

7                       “(II) *20 percent of the difference*  
 8                       *between 100 percent and the percentage*  
 9                       *under subclause (I).*

10           “(ii) *The funding improvement period*  
 11           *under paragraph (4)(A) shall be 15 years*  
 12           *rather than 10 years.*

13           “(B) *SPECIAL RULES FOR PLANS WITH*  
 14           *FUNDED PERCENTAGE OVER 70 PERCENT.—If the*  
 15           *funded percentage described in subparagraph (A)*  
 16           *was more than 70 percent but less than 80 per-*  
 17           *cent as of the beginning of the initial determina-*  
 18           *tion year—*

19                       “(i) *subparagraph (A) shall apply if*  
 20                       *the plan’s actuary certifies, within 30 days*  
 21                       *after the certification under subsection*  
 22                       *(b)(3)(A) for the initial determination year,*  
 23                       *that, based on the terms of the plan and the*  
 24                       *collective bargaining agreements in effect at*  
 25                       *the time of such certification, the plan is*

1           *not projected to meet the requirements of*  
2           *paragraph (3)(C)(i) without regard to this*  
3           *paragraph, and*

4           “(ii) if there is a certification under  
5           *clause (i), the plan may, in formulating its*  
6           *funding improvement plan, only take into*  
7           *account the rules of subparagraph (A) for*  
8           *plan years in the funding improvement pe-*  
9           *riod beginning on or before the date on*  
10          *which the last of the collective bargaining*  
11          *agreements described in paragraph*  
12          *(4)(A)(ii) expires.*

13          *Notwithstanding clause (ii), if for any plan year*  
14          *ending after the date described in clause (ii) the*  
15          *plan actuary certifies (at the time of the annual*  
16          *certification under subsection (b)(3)(A) for such*  
17          *plan year) that, based on the terms of the plan*  
18          *and collective bargaining agreements in effect at*  
19          *the time of that annual certification, the plan is*  
20          *not projected to be able to meet the requirements*  
21          *of paragraph (3)(C)(i) without regard to this*  
22          *paragraph, the plan may continue to assume for*  
23          *such year that the funding improvement period*  
24          *is 15 years rather than 10 years.*

1           “(6) *UPDATES TO FUNDING IMPROVEMENT PLAN*  
2           *AND SCHEDULES.*—

3           “(A) *FUNDING IMPROVEMENT PLAN.*—*The*  
4           *plan sponsor shall annually update the funding*  
5           *improvement plan and shall file the update with*  
6           *the plan’s annual report under section 104 of the*  
7           *Employee Retirement Income Security Act of*  
8           *1974.*

9           “(B) *SCHEDULES.*—*The plan sponsor may*  
10          *periodically update any schedule of contribution*  
11          *rates provided under this subsection to reflect the*  
12          *experience of the plan, except that the schedule or*  
13          *schedules described in paragraph (1)(B)(i) shall*  
14          *be updated at least once every 3 years.*

15          “(C) *DURATION OF SCHEDULE.*—*A schedule*  
16          *of contribution rates provided by the plan spon-*  
17          *sor and relied upon by bargaining parties in ne-*  
18          *gotiating a collective bargaining agreement shall*  
19          *remain in effect for the duration of that collec-*  
20          *tive bargaining agreement.*

21          “(7) *PENALTY IF NO FUNDING IMPROVEMENT*  
22          *PLAN ADOPTED.*—*A failure of the plan sponsor to*  
23          *adopt a funding improvement plan by the date speci-*  
24          *fied in paragraph (1)(A) shall be treated for purposes*  
25          *of section 502(c)(2) of such Act as a failure or refusal*

1        *by the plan administrator to file the annual report*  
 2        *required to be filed with the Secretary of Labor under*  
 3        *section 101(b)(4) of such Act.*

4            “(8) *FUNDING PLAN ADOPTION PERIOD.*—*For*  
 5        *purposes of this section, the term ‘funding plan adop-*  
 6        *tion period’ means the period beginning on the date*  
 7        *of the certification under subsection (b)(3)(A) for the*  
 8        *initial determination year and ending on the day be-*  
 9        *fore the first day of the funding improvement period.*

10          “(d) *RULES FOR OPERATION OF PLAN DURING ADOPT-*  
 11        *ION AND IMPROVEMENT PERIODS; FAILURE TO MEET RE-*  
 12        *QUIREMENTS.*—

13            “(1) *SPECIAL RULES FOR PLAN ADOPTION PE-*  
 14        *RIOD.*—*During the plan adoption period—*

15            “(A) *the plan sponsor may not accept a col-*  
 16        *lective bargaining agreement or participation*  
 17        *agreement with respect to the multiemployer*  
 18        *plan that provides for—*

19            “(i) *a reduction in the level of con-*  
 20        *tributions for any participants,*

21            “(ii) *a suspension of contributions*  
 22        *with respect to any period of service, or*

23            “(iii) *any new direct or indirect exclu-*  
 24        *sion of younger or newly hired employees*  
 25        *from plan participation,*



1           “(B) no amendment of the plan which in-  
2           creases the liabilities of the plan by reason of  
3           any increase in benefits, any change in the ac-  
4           crual of benefits, or any change in the rate at  
5           which benefits become nonforfeitable under the  
6           plan may be adopted unless the amendment is  
7           required as a condition of qualification under  
8           part I of subchapter D of chapter 1 or to comply  
9           with other applicable law, and

10           “(C) in the case of a plan in seriously en-  
11           dangered status, the plan sponsor shall take all  
12           reasonable actions which are consistent with the  
13           terms of the plan and applicable law and which  
14           are expected, based on reasonable assumptions, to  
15           achieve—

16                   “(i) an increase in the plan’s funded  
17                   percentage, and

18                   “(ii) postponement of an accumulated  
19                   funding deficiency for at least 1 additional  
20                   plan year.

21           Actions under subparagraph (C) include applications  
22           for extensions of amortization periods under section  
23           431(d), use of the shortfall funding method in making  
24           funding standard account computations, amendments  
25           to the plan’s benefit structure, reductions in future

1       *benefit accruals, and other reasonable actions con-*  
 2       *sistent with the terms of the plan and applicable law.*

3               “(2) *COMPLIANCE WITH FUNDING IMPROVEMENT*  
 4       *PLAN.*—

5               “(A) *IN GENERAL.*—*A plan may not be*  
 6       *amended after the date of the adoption of a fund-*  
 7       *ing improvement plan under subsection (c) so as*  
 8       *to be inconsistent with the funding improvement*  
 9       *plan.*

10              “(B) *NO REDUCTION IN CONTRIBUTIONS.*—  
 11       *A plan sponsor may not during any funding im-*  
 12       *provement period accept a collective bargaining*  
 13       *agreement or participation agreement with re-*  
 14       *spect to the multiemployer plan that provides*  
 15       *for—*

16                      “(i) *a reduction in the level of con-*  
 17                      *tributions for any participants,*

18                      “(ii) *a suspension of contributions*  
 19                      *with respect to any period of service, or*

20                      “(iii) *any new direct or indirect exclu-*  
 21                      *sion of younger or newly hired employees*  
 22                      *from plan participation.*

23              “(C) *SPECIAL RULES FOR BENEFIT IN-*  
 24       *CREASES.*—*A plan may not be amended after the*  
 25       *date of the adoption of a funding improvement*

1        *plan under subsection (c) so as to increase bene-*  
 2        *fits, including future benefit accruals, unless—*

3                *“(i) in the case of a plan in seriously*  
 4                *endangered status, the plan actuary certifies*  
 5                *that, after taking into account the benefit*  
 6                *increase, the plan is still reasonably ex-*  
 7                *pected to meet the requirements under sub-*  
 8                *section (c)(3) in accordance with the sched-*  
 9                *ule contemplated in the funding improve-*  
 10               *ment plan, and*

11               *“(ii) in the case of a plan not in seri-*  
 12               *ously endangered status, the actuary cer-*  
 13               *tifies that such increase is paid for out of*  
 14               *contributions not required by the funding*  
 15               *improvement plan to meet the requirements*  
 16               *under subsection (c)(3) in accordance with*  
 17               *the schedule contemplated in the funding*  
 18               *improvement plan.*

19        *“(3) FAILURE TO MEET REQUIREMENTS.—*

20               *“(A) IN GENERAL.—Notwithstanding sec-*  
 21               *tion 4971(g), if a plan fails to meet the require-*  
 22               *ments of subsection (c)(3) by the end of the fund-*  
 23               *ing improvement period, the plan shall be treat-*  
 24               *ed as having an accumulated funding deficiency*  
 25               *for purposes of section 4971 for the last plan*

1        *year in such period (and each succeeding plan*  
 2        *year until such requirements are met) in an*  
 3        *amount equal to the greater of the amount of the*  
 4        *contributions necessary to meet such require-*  
 5        *ments or the amount of such accumulated fund-*  
 6        *ing deficiency without regard to this paragraph.*

7                *“(B) WAIVER.—In the case of a failure de-*  
 8        *scribed in subparagraph (A) which is due to rea-*  
 9        *sonable cause and not to willful neglect, the Sec-*  
 10        *retary of the Treasury may waive part or all of*  
 11        *the tax imposed by section 4971 of such Code to*  
 12        *the extent that the payment of such tax would be*  
 13        *excessive or otherwise inequitable relative to the*  
 14        *failure involved.*

15        *“(e) REHABILITATION PLAN MUST BE ADOPTED FOR*  
 16        *MULTIEMPLOYER PLANS IN CRITICAL STATUS.—*

17                *“(1) IN GENERAL.—In any case in which a mul-*  
 18        *tiemployer plan is in critical status for a plan year,*  
 19        *the plan sponsor, in accordance with this*  
 20        *subsection—*

21                *“(A) shall adopt a rehabilitation plan not*  
 22        *later than 240 days following the required date*  
 23        *for the actuarial certification of critical status*  
 24        *under subsection (b)(3)(A), and*

1           “(B) within 30 days after the adoption of  
2           the rehabilitation plan—

3                   “(i) shall provide to the bargaining  
4                   parties 1 or more schedules showing revised  
5                   benefit structures, revised contribution  
6                   structures, or both, which, if adopted, may  
7                   reasonably be expected to enable the multi-  
8                   employer plan to emerge from critical status  
9                   in accordance with the rehabilitation plan,  
10                  and

11                  “(ii) may, if the plan sponsor deems  
12                  appropriate, prepare and provide the bar-  
13                  gaining parties with additional information  
14                  relating to contribution rates or benefit re-  
15                  ductions, alternative schedules, or other in-  
16                  formation relevant to emerging from critical  
17                  status in accordance with the rehabilitation  
18                  plan.

19           The schedule or schedules described in subparagraph  
20           (B)(i) shall reflect reductions in future benefit accru-  
21           als and increases in contributions that the plan spon-  
22           sor determines are reasonably necessary to emerge  
23           from critical status. One schedule shall be designated  
24           as the default schedule and such schedule shall assume  
25           that there are no increases in contributions under the

1     *plan other than the increases necessary to emerge*  
 2     *from critical status after future benefit accruals and*  
 3     *other benefits (other than benefits the reduction or*  
 4     *elimination of which are not permitted under section*  
 5     *411(d)(6)) have been reduced to the maximum extent*  
 6     *permitted by law.*

7             “(2) *EXCEPTION FOR YEARS AFTER PROCESS BE-*  
 8     *GINS.—Paragraph (1) shall not apply to a plan year*  
 9     *if such year is in a rehabilitation plan adoption pe-*  
 10    *riod or rehabilitation period by reason of the plan*  
 11    *being in critical status for a preceding plan year. For*  
 12    *purposes of this section, such preceding plan year*  
 13    *shall be the initial critical year with respect to the re-*  
 14    *habilitation plan to which it relates.*

15            “(3) *REHABILITATION PLAN.—For purposes of*  
 16    *this section—*

17                    “(A) *IN GENERAL.—A rehabilitation plan is*  
 18    *a plan which consists of—*

19                            “(i) *actions which will enable, under*  
 20    *reasonable actuarial assumptions, the plan*  
 21    *to cease to be in critical status by the end*  
 22    *of the rehabilitation period and may in-*  
 23    *clude reductions in plan expenditures (in-*  
 24    *cluding plan mergers and consolidations),*  
 25    *reductions in future benefit accruals or in-*

1           *creases in contributions, if agreed to by the*  
2           *bargaining parties, or any combination of*  
3           *such actions, or*

4           “(ii) if the plan sponsor determines  
5           that, based on reasonable actuarial assump-  
6           tions and upon exhaustion of all reasonable  
7           measures, the plan can not reasonably be  
8           expected to emerge from critical status by  
9           the end of the rehabilitation period, reason-  
10          able measures to emerge from critical status  
11          at a later time or to forestall possible insol-  
12          vency (within the meaning of section 4245  
13          of the Employee Retirement Income Secu-  
14          rity Act of 1974).

15          *Such plan shall include the schedules required to*  
16          *be provided under paragraph (1)(B)(i). If clause*  
17          *(ii) applies, such plan shall set forth the alter-*  
18          *natives considered, explain why the plan is not*  
19          *reasonably expected to emerge from critical sta-*  
20          *tus by the end of the rehabilitation period, and*  
21          *specify when, if ever, the plan is expected to*  
22          *emerge from critical status in accordance with*  
23          *the rehabilitation plan.*

24               “(B) UPDATES TO REHABILITATION PLAN  
25               AND SCHEDULES.—

1           “(i) *REHABILITATION PLAN*.—The plan  
2           sponsor shall annually update the rehabili-  
3           tation plan and shall file the update with  
4           the plan’s annual report under section 104  
5           of the *Employee Retirement Income Secu-*  
6           *rity Act of 1974*.

7           “(ii) *SCHEDULES*.—The plan sponsor  
8           may periodically update any schedule of  
9           contribution rates provided under this sub-  
10          section to reflect the experience of the plan,  
11          except that the schedule or schedules de-  
12          scribed in paragraph (1)(B)(i) shall be up-  
13          dated at least once every 3 years.

14          “(iii) *DURATION OF SCHEDULE*.—A  
15          schedule of contribution rates provided by  
16          the plan sponsor and relied upon by bar-  
17          gaining parties in negotiating a collective  
18          bargaining agreement shall remain in effect  
19          for the duration of that collective bar-  
20          gaining agreement.

21          “(C) *DEFAULT SCHEDULE*.—If the collective  
22          bargaining agreement providing for contribu-  
23          tions under a multiemployer plan that was in  
24          effect at the time the plan entered critical status  
25          expires and, after receiving a schedule from the



1        *plan sponsor under paragraph (1)(B)(i), the bar-*  
 2        *gaining parties have not adopted a collective*  
 3        *bargaining agreement with terms consistent with*  
 4        *such a schedule, the default schedule described in*  
 5        *the last sentence of paragraph (1) shall go into*  
 6        *effect with respect to those bargaining parties.*

7        *“(4) REHABILITATION PERIOD.—For purposes of*  
 8        *this section—*

9                *“(A) IN GENERAL.—The rehabilitation pe-*  
 10              *riod for a plan in critical status is the 10-year*  
 11              *period beginning on the first day of the first*  
 12              *plan year of the multiemployer plan following*  
 13              *the earlier of—*

14                      *“(i) the second anniversary of the date*  
 15                      *of the adoption of the rehabilitation plan, or*

16                      *“(ii) the expiration of the collective*  
 17                      *bargaining agreements in effect on the date*  
 18                      *of the due date for the actuarial certifi-*  
 19                      *cation of critical status for the initial crit-*  
 20                      *ical year under subsection (a)(1) and cov-*  
 21                      *ering, as of such date at least 75 percent of*  
 22                      *the active participants in such multiem-*  
 23                      *ployer plan.*

24        *If a plan emerges from critical status as pro-*  
 25        *vided under subparagraph (B) before the end of*

1        *such 10-year period, the rehabilitation period*  
 2        *shall end with the plan year preceding the plan*  
 3        *year for which the determination under subpara-*  
 4        *graph (B) is made.*

5                *“(B) EMERGENCE.—A plan in critical sta-*  
 6        *tus shall remain in such status until a plan year*  
 7        *for which the plan actuary certifies, in accord-*  
 8        *ance with subsection (b)(3)(A), that the plan is*  
 9        *not projected to have an accumulated funding*  
 10        *deficiency for the plan year or any of the 9 suc-*  
 11        *ceeding plan years, without regard to use of the*  
 12        *shortfall method or any extension of amortiza-*  
 13        *tion periods under section 431(d).*

14                *“(5) PENALTY IF NO REHABILITATION PLAN*  
 15        *ADOPTED.—A failure of a plan sponsor to adopt a re-*  
 16        *habilitation plan by the date specified in paragraph*  
 17        *(1)(A) shall be treated for purposes of section*  
 18        *502(c)(2) of the Employee Retirement Income Secu-*  
 19        *rity Act of 1974 as a failure or refusal by the plan*  
 20        *administrator to file the annual report required to be*  
 21        *filed with the Secretary of Labor under section*  
 22        *101(b)(4) of such Act.*

23                *“(6) REHABILITATION PLAN ADOPTION PE-*  
 24        *RIOD.—For purposes of this section, the term ‘reha-*  
 25        *bilitation plan adoption period’ means the period be-*

1 *ginning on the date of the certification under sub-*  
 2 *section (b)(3)(A) for the initial critical year and end-*  
 3 *ing on the day before the first day of the rehabilita-*  
 4 *tion period.*

5 “(7) *LIMITATION ON REDUCTION IN RATES OF*  
 6 *FUTURE ACCRUALS.*—*Any reduction in the rate of fu-*  
 7 *ture accruals under any schedule described in para-*  
 8 *graph (1)(B)(i) shall not reduce the rate of future ac-*  
 9 *cruals below—*

10 “(A) *a monthly benefit (payable as a single*  
 11 *life annuity commencing at the participant’s*  
 12 *normal retirement age) equal to 1 percent of the*  
 13 *contributions required to be made with respect to*  
 14 *a participant, or the equivalent standard accrual*  
 15 *rate for a participant or group of participants*  
 16 *under the collective bargaining agreements in ef-*  
 17 *fect as of the first day of the initial critical year,*  
 18 *or*

19 “(B) *if lower, the accrual rate under the*  
 20 *plan on such first day.*

21 *The equivalent standard accrual rate shall be deter-*  
 22 *mined by the plan sponsor based on the standard or*  
 23 *average contribution base units which the plan spon-*  
 24 *sor determines to be representative for active partici-*  
 25 *pants and such other factors as the plan sponsor de-*

1 *termines to be relevant. Nothing in this paragraph*  
 2 *shall be construed as limiting the ability of the plan*  
 3 *sponsor to prepare and provide the bargaining par-*  
 4 *ties with alternative schedules to the default schedule*  
 5 *that established lower or higher accrual and contribu-*  
 6 *tion rates than the rates otherwise described in this*  
 7 *paragraph.*

8 “(8) *EMPLOYER IMPACT.—For the purposes of*  
 9 *this section, the plan sponsor shall consider the im-*  
 10 *pect of the rehabilitation plan and contribution*  
 11 *schedules authorized by this section on bargaining*  
 12 *parties with fewer than 500 employees and shall im-*  
 13 *plement the plan in a manner that encourages their*  
 14 *continued participation in the plan and minimizes*  
 15 *financial harm to employers and their workers.*

16 “(f) *RULES FOR OPERATION OF PLAN DURING ADOPT-*  
 17 *ION AND REHABILITATION PERIOD.—*

18 “(1) *COMPLIANCE WITH REHABILITATION*  
 19 *PLAN.—*

20 “(A) *IN GENERAL.—A plan may not be*  
 21 *amended after the date of the adoption of a reha-*  
 22 *bilitation plan under subsection (e) so as to be*  
 23 *inconsistent with the rehabilitation plan.*

24 “(B) *SPECIAL RULES FOR BENEFIT IN-*  
 25 *CREASES.—A plan may not be amended after the*

1        *date of the adoption of a rehabilitation plan*  
 2        *under subsection (e) so as to increase benefits,*  
 3        *including future benefit accruals, unless the plan*  
 4        *actuary certifies that such increase is paid for*  
 5        *out of additional contributions not contemplated*  
 6        *by the rehabilitation plan, and, after taking into*  
 7        *account the benefit increase, the multiemployer*  
 8        *plan still is reasonably expected to emerge from*  
 9        *critical status by the end of the rehabilitation pe-*  
 10       *riod on the schedule contemplated in the reha-*  
 11       *bilitation plan.*

12        *“(2) RESTRICTION ON LUMP SUMS AND SIMILAR*  
 13        *BENEFITS.—*

14                *“(A) IN GENERAL.—Effective on the date*  
 15        *the notice of certification of the plan’s critical*  
 16        *status for the initial critical year under sub-*  
 17        *section (b)(3)(D) is sent, and notwithstanding*  
 18        *section 411(d)(6), the plan shall not pay—*

19                *“(i) any payment, in excess of the*  
 20        *monthly amount paid under a single life*  
 21        *annuity (plus any social security supple-*  
 22        *ments described in the last sentence of sec-*  
 23        *tion 411(b)(1)(A)),*

1                   “(ii) any payment for the purchase of  
 2                   an irrevocable commitment from an insurer  
 3                   to pay benefits, and

4                   “(iii) any other payment specified by  
 5                   the Secretary by regulations.

6                   “(B) *EXCEPTION.*—Subparagraph (A) shall  
 7                   not apply to a benefit which under section  
 8                   411(a)(11) may be immediately distributed with-  
 9                   out the consent of the participant or to any  
 10                  makeup payment in the case of a retroactive an-  
 11                  nuity starting date or any similar payment of  
 12                  benefits owed with respect to a prior period.

13                  “(3) *ADJUSTMENTS DISREGARDED IN WITH-*  
 14                  *DRAWAL LIABILITY DETERMINATION.*—Any benefit re-  
 15                  ductions under this subsection shall be disregarded in  
 16                  determining a plan’s unfunded vested benefits for  
 17                  purposes of determining an employer’s withdrawal li-  
 18                  ability under section 4201 of the Employee Retire-  
 19                  ment Income Security Act of 1974.

20                  “(4) *SPECIAL RULES FOR PLAN ADOPTION PE-*  
 21                  *RIOD.*—During the rehabilitation plan adoption  
 22                  period—

23                         “(A) the plan sponsor may not accept a col-  
 24                         lective bargaining agreement or participation

1       *agreement with respect to the multiemployer*  
2       *plan that provides for—*

3               “(i) *a reduction in the level of con-*  
4               *tributions for any participants,*

5               “(ii) *a suspension of contributions*  
6               *with respect to any period of service, or*

7               “(iii) *any new direct or indirect exclu-*  
8               *sion of younger or newly hired employees*  
9               *from plan participation, and*

10              “(B) *no amendment of the plan which in-*  
11              *creases the liabilities of the plan by reason of*  
12              *any increase in benefits, any change in the ac-*  
13              *crual of benefits, or any change in the rate at*  
14              *which benefits become nonforfeitable under the*  
15              *plan may be adopted unless the amendment is*  
16              *required as a condition of qualification under*  
17              *part I of subchapter D of chapter 1 or to comply*  
18              *with other applicable law.*

19              “(5) *FAILURE TO MEET REQUIREMENTS.—*

20              “(A) *IN GENERAL.—Notwithstanding sec-*  
21              *tion 4971(g), if a plan—*

22              “(i) *fails to meet the requirements of*  
23              *subsection (e) by the end of the rehabilita-*  
24              *tion period, or*

1                   “(ii) has received a certification under  
2                   subsection (b)(3)(A)(ii) for 3 consecutive  
3                   plan years that the plan is not making the  
4                   scheduled progress in meeting its require-  
5                   ments under the rehabilitation plan,  
6                   the plan shall be treated as having an accumu-  
7                   lated funding deficiency for purposes of section  
8                   4971 for the last plan year in such period (and  
9                   each succeeding plan year until such require-  
10                  ments are met) in an amount equal to the great-  
11                  er of the amount of the contributions necessary  
12                  to meet such requirements or the amount of such  
13                  accumulated funding deficiency without regard  
14                  to this paragraph.

15               “(B) WAIVER.—In the case of a failure de-  
16               scribed in subparagraph (A) which is due to rea-  
17               sonable cause and not to willful neglect, the Sec-  
18               retary may waive part or all of the tax imposed  
19               by section 4971 to the extent that the payment  
20               of such tax would be excessive or otherwise in-  
21               equitable relative to the failure involved.

22               “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR DE-  
23               CISIONS.—If, within 60 days of the due date for adoption  
24               of a funding improvement plan under subsection (c) or a  
25               rehabilitation plan under subsection (e), the plan sponsor



1 *of a plan in endangered status or a plan in critical status*  
 2 *has not agreed on a funding improvement plan or rehabili-*  
 3 *tation plan, then any member of the board or group that*  
 4 *constitutes the plan sponsor may require that the plan*  
 5 *sponsor enter into an expedited dispute resolution procedure*  
 6 *for the development and adoption of a funding improvement*  
 7 *plan or rehabilitation plan.*

8 “(h) *NONBARGAINED PARTICIPATION.*—

9 “(1) *BOTH BARGAINED AND NONBARGAINED EM-*  
 10 *PLOYEE-PARTICIPANTS.*—*In the case of an employer*  
 11 *that contributes to a multiemployer plan with respect*  
 12 *to both employees who are covered by one or more col-*  
 13 *lective bargaining agreements and to employees who*  
 14 *are not so covered, if the plan is in endangered status*  
 15 *or in critical status, benefits of and contributions for*  
 16 *the nonbargained employees, including surcharges on*  
 17 *those contributions, shall be determined as if those*  
 18 *nonbargained employees were covered under the first*  
 19 *to expire of the employer’s collective bargaining agree-*  
 20 *ments in effect when the plan entered endangered or*  
 21 *critical status.*

22 “(2) *NONBARGAINED EMPLOYEES ONLY.*—*In the*  
 23 *case of an employer that contributes to a multiem-*  
 24 *ployer plan only with respect to employees who are*  
 25 *not covered by a collective bargaining agreement, this*

1        *section shall be applied as if the employer were the*  
 2        *bargaining parties, and its participation agreement*  
 3        *with the plan was a collective bargaining agreement*  
 4        *with a term ending on the first day of the plan year*  
 5        *beginning after the employer is provided the schedule*  
 6        *or schedules described in subsections (c) and (e).*

7                *“(3) EMPLOYEES COVERED BY A COLLECTIVE*  
 8        *BARGAINING AGREEMENT.—The determination as to*  
 9        *whether an employee covered by a collective bar-*  
 10        *gaining agreement for purposes of this section shall be*  
 11        *made without regard to the special rule in Treasury*  
 12        *Regulation section 1.410(b)–6(d)(ii)(D).*

13                *“(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-*  
 14        *poses of this section—*

15                *“(1) BARGAINING PARTY.—The term ‘bargaining*  
 16        *party’ means—*

17                        *“(A)(i) except as provided in clause (ii), an*  
 18        *employer who has an obligation to contribute*  
 19        *under the plan; or*

20                        *“(ii) in the case of a plan described under*  
 21        *section 404(c), or a continuation of such a plan,*  
 22        *the association of employers that is the employee*  
 23        *settlor of the plan; and*

24                        *“(B) an employee organization which, for*  
 25        *purposes of collective bargaining, represents plan*

1           *participants employed by an employer who has*  
 2           *an obligation to contribute under the plan.*

3           “(2) *FUNDED PERCENTAGE.*—*The term ‘funded*  
 4           *percentage’ means the percentage equal to a*  
 5           *fraction—*

6                     *“(A) the numerator of which is the value of*  
 7                     *the plan’s assets, as determined under section*  
 8                     *431(c)(2), and*

9                     *“(B) the denominator of which is the ac-*  
 10                    *crued liability of the plan, determined using ac-*  
 11                    *tuarial assumptions described in section*  
 12                    *431(c)(3).*

13           “(3) *ACCUMULATED FUNDING DEFICIENCY.*—*The*  
 14           *term ‘accumulated funding deficiency’ has the mean-*  
 15           *ing given such term in section 412(a).*

16           “(4) *ACTIVE PARTICIPANT.*—*The term ‘active*  
 17           *participant’ means, in connection with a multiem-*  
 18           *ployer plan, a participant who is in covered service*  
 19           *under the plan.*

20           “(5) *INACTIVE PARTICIPANT.*—*The term ‘inactive*  
 21           *participant’ means, in connection with a multiem-*  
 22           *ployer plan, a participant, or the beneficiary or alter-*  
 23           *nate payee of a participant, who—*

24                     *“(A) is not in covered service under the*  
 25                     *plan, and*

1           “(B) is in pay status under the plan or has  
2           a nonforfeitable right to benefits under the plan.

3           “(6) *PAY STATUS*.—A person is in pay status  
4           under a multiemployer plan if—

5           “(A) at any time during the current plan  
6           year, such person is a participant or beneficiary  
7           under the plan and is paid an early, late, nor-  
8           mal, or disability retirement benefit under the  
9           plan (or a death benefit under the plan related  
10          to a retirement benefit), or

11          “(B) to the extent provided in regulations of  
12          the Secretary, such person is entitled to such a  
13          benefit under the plan.

14          “(7) *OBLIGATION TO CONTRIBUTE*.—The term  
15          ‘obligation to contribute’ has the meaning given such  
16          term under section 4212(a) of the Employee Retirement  
17          Income Security Act of 1974.

18          “(8) *ACTUARIAL METHOD*.—Notwithstanding  
19          any other provision of this section, the actuary’s de-  
20          terminations with respect to a plan’s normal cost, ac-  
21          tuarial accrued liability, and improvements in a  
22          plan’s funded percentage under this section shall be  
23          based upon the unit credit funding method (whether  
24          or not that method is used for the plan’s actuarial  
25          valuation).

1           “(9) *PLAN SPONSOR*.—*In the case of a plan de-*  
 2           *scribed under section 404(c), or a continuation of*  
 3           *such a plan, the term ‘plan sponsor’ means the bar-*  
 4           *gaining parties described under paragraph (1).”*

5           **(b) *EFFECTIVE DATES***.—

6           (1) *IN GENERAL*.—*The amendment made by this*  
 7           *section shall apply with respect to plan years begin-*  
 8           *ning after 2006.*

9           (2) *SPECIAL RULE FOR CERTAIN RESTORED BEN-*  
 10          *EFITS*.—*In the case of a multiemployer plan—*

11           (A) *with respect to which benefits were re-*  
 12           *duced pursuant to a plan amendment adopted*  
 13           *on or after January 1, 2002, and before June 30,*  
 14           *2005, and*

15           (B) *which, pursuant to the plan document,*  
 16           *the trust agreement, or a formal written commu-*  
 17           *nication from the plan sponsor to participants*  
 18           *provided before June 30, 2005, provided for the*  
 19           *restoration of such benefits,*

20          *the amendments made by this section shall not apply*  
 21          *to such benefit restorations to the extent that any re-*  
 22          *striction on the providing or accrual of such benefits*  
 23          *would otherwise apply by reason of such amendments.*

1           **PART III—SUNSET OF FUNDING RULES**

2   **SEC. 216. SUNSET OF FUNDING RULES.**

3           (a) *REPORT.*—Not later than December 31, 2011, the  
4   Secretary of Labor, the Secretary of the Treasury, and the  
5   Executive Director of the Pension Benefit Guaranty Cor-  
6   poration shall conduct a study of the effect of the amend-  
7   ments made by this subtitle on the operation and funding  
8   status of multiemployer plans and shall report the results  
9   of such study, including any recommendations for legisla-  
10   tion, to the Congress.

11          (b) *MATTERS INCLUDED IN STUDY.*—The study re-  
12   quired under subsection (a) shall include—

13               (1) *the effect of funding difficulties, funding rules*  
14               *in effect before the date of the enactment of this Act,*  
15               *and the amendments made by this subtitle on small*  
16               *businesses participating in multiemployer plans,*

17               (2) *the effect on the financial status of small em-*  
18               *ployers of—*

19                       (A) *funding targets set in funding improve-*  
20                       *ment and rehabilitation plans and associated*  
21                       *contribution increases,*

22                       (B) *funding deficiencies,*

23                       (C) *excise taxes,*

24                       (D) *withdrawal liability,*

1           (E) the possibility of alternatives schedules  
 2           and procedures for financially-troubled employ-  
 3           ers, and

4           (F) other aspects of the multiemployer sys-  
 5           tem, and

6           (3) the role of the multiemployer pension plan  
 7           system in helping small employers to offer pension  
 8           benefits.

9           (c) *SUNSET*.—

10           (1) *IN GENERAL*.—*Except as provided in this*  
 11           *subsection, notwithstanding any other provision of*  
 12           *this Act, the provisions of, and the amendments made*  
 13           *by, this subtitle shall not apply to plan years begin-*  
 14           *ning after December 31, 2014, and the Employee Re-*  
 15           *irement Income Security Act of 1974 and the Inter-*  
 16           *nal Revenue Code of 1986 shall be applied to such*  
 17           *plan years under the provisions of sections 302*  
 18           *through 308 of such Act and 412 of such Code (as in*  
 19           *effect before the amendments made by this Act).*

20           (2) *FUNDING IMPROVEMENT AND REHABILITA-*  
 21           *TION PLANS*.—*If a plan is operating under a funding*  
 22           *improvement or rehabilitation plan under section 305*  
 23           *of such Act or 432 of such Code for its last year be-*  
 24           *ginning before January 1, 2015, such plan shall con-*  
 25           *tinue to operate under such funding improvement or*

1        *rehabilitation plan during any period after December*  
 2        *31, 2014, such funding improvement or rehabilitation*  
 3        *plan is in effect and all provisions of such Act or*  
 4        *Code relating to the operation of such funding im-*  
 5        *provement or rehabilitation plan shall continue in ef-*  
 6        *fect during such period.*

7                (3) *AMORTIZATION SCHEDULES.—In the case of*  
 8        *any amount amortized under section 304(b) of such*  
 9        *Act or 431 of such Code (as in effect after the amend-*  
 10        *ments made by this subtitle) over any period begin-*  
 11        *ning with a plan year beginning before January 1,*  
 12        *2015, such amount shall, in lieu of the amortization*  
 13        *which would apply after the application of this sub-*  
 14        *section, continue to be amortized under such section*  
 15        *304 or 431 (as so in effect).*

## 16        ***Subtitle B—Deduction and Related*** 17        ***Provisions***

### 18        ***SEC. 221. DEDUCTION LIMITS FOR MULTIEMPLOYER PLANS.***

19        (a) *INCREASE IN DEDUCTION.—Section 404(a)(1)(D)*  
 20        *of the Internal Revenue Code of 1986, as amended by this*  
 21        *Act, is amended to read as follows:*

22                        “(D) *AMOUNT DETERMINED ON BASIS OF*  
 23                        *UNFUNDED CURRENT LIABILITY.—*

24                        “(i) *IN GENERAL.—In the case of a de-*  
 25                        *finied benefit plan which is a multiemployer*



1            *plan, except as provided in regulations, the*  
 2            *maximum amount deductible under the lim-*  
 3            *itations of this paragraph shall not be less*  
 4            *than the unfunded current liability of the*  
 5            *plan.*

6            “(ii) *UNFUNDED CURRENT LIABIL-*  
 7            *ITY.—For purposes of clause (i), the term*  
 8            *‘unfunded current liability’ means the ex-*  
 9            *cess (if any) of—*

10            *“(I) 140 percent of the current li-*  
 11            *ability of the plan determined under*  
 12            *section 431(c)(6)(C), over*

13            *“(II) the value of the plan’s assets*  
 14            *determined under section 431(c)(2).”.*

15            (b) *EXCEPTION FROM LIMITATION ON DEDUCTION*  
 16            *WHERE COMBINATION OF DEFINED CONTRIBUTION AND*  
 17            *DEFINED BENEFIT PLANS.—*

18            (1) *IN GENERAL.—Section 404(a)(7)(C) of such*  
 19            *Code, as amended by this Act, is amended by adding*  
 20            *at the end the following new clause:*

21            “(v) *MULTIEMPLOYER PLANS.—In ap-*  
 22            *plying this paragraph, any multiemployer*  
 23            *plan shall not be taken into account.”.*

1           (2)       *CONFORMING        AMENDMENT.—Section*  
 2       *404(a)(7)(A) of such Code is amended by striking the*  
 3       *last sentence.*

4       *(c) EFFECTIVE DATES.—*

5           (1) *DEDUCTION LIMIT.—The amendment made*  
 6       *by subsection (a) shall apply to years beginning after*  
 7       *December 31, 2006.*

8           (2) *EXCEPTION.—The amendments made by sub-*  
 9       *section (b) shall apply to years beginning after De-*  
 10       *cember 31, 2005.*

11   **SEC. 222. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**  
 12       **TIEMPLOYER HEALTH PLAN.**

13       (a) *IN GENERAL.—Section 420(e) of the Internal Rev-*  
 14       *enue Code of 1986 (relating to definitions and special rules)*  
 15       *is amended by adding at the end the following new para-*  
 16       *graph:*

17           “(5) *APPLICATION TO MULTIEMPLOYER PLAN.—*  
 18       *In the case of any plan to which section 404(c) ap-*  
 19       *plies (or any successor plan primarily covering em-*  
 20       *ployees in the building and construction industry)—*

21           “(A) *the prohibition under subsection (a) on*  
 22       *the application of this section to a multiem-*  
 23       *ployer plan shall not apply, and*

24           “(B) *this section shall be applied to any*  
 25       *such plan—*

1           “(i) by treating any reference in this  
 2           section to an employer as a reference to all  
 3           employers maintaining the plan (or, if ap-  
 4           propriate, the plan sponsor), and

5           “(ii) in accordance with such modi-  
 6           fications of this section (and the provisions  
 7           of this title and the Employee Retirement  
 8           Income Security Act of 1974 relating to this  
 9           section) as the Secretary determines appro-  
 10          priate to reflect the fact the plan is not  
 11          maintained by a single employer.”

12          (b) AMENDMENTS OF ERISA.—

13           (1) Section 101(e)(3) of the Employee Retirement  
 14          Income Security Act of 1974 (29 U.S.C. 1021(e)(3))  
 15          is amended by striking “American Jobs Creation Act  
 16          of 2004” and inserting “Pension Security and Trans-  
 17          parency Act of 2005”.

18           (2) Section 403(c)(1) of such Act (29 U.S.C.  
 19          1103(c)(1)) is amended by striking “American Jobs  
 20          Creation Act of 2004” and inserting “Pension Secu-  
 21          rity and Transparency Act of 2005”.

22           (3) Section 408(b)(13) of such Act (29 U.S.C.  
 23          1108(b)(13)) is amended by striking “American Jobs  
 24          Creation Act of 2004” and inserting “Pension Secu-  
 25          rity and Transparency Act of 2005”.

1       (c) *EFFECTIVE DATE.*—*The amendment made by this*  
 2 *section shall apply to transfers made in taxable years begin-*  
 3 *ning after December 31, 2004.*

4               ***TITLE III—INTEREST RATE***  
 5                       ***ASSUMPTIONS***

6 ***SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINA-***  
 7                       ***TION OF LUMP SUM DISTRIBUTIONS.***

8       (a) *AMENDMENTS OF ERISA.*—

9               (1) *IN GENERAL.*—*Section 205(g)(3)(A) of the*  
 10 *Employee Retirement Income Security Act of 1974*  
 11 *(29 U.S.C. 1055(g)(3)(A)) is amended by adding at*  
 12 *the end the following new sentence: “In the case of*  
 13 *plan years beginning after 2006, the preceding sen-*  
 14 *tence shall be applied by using the applicable yield*  
 15 *curve method under subparagraph (C) rather than the*  
 16 *applicable interest rate.”.*

17              (2) *APPLICABLE YIELD CURVE METHOD.*—*Sec-*  
 18 *tion 205(g)(3) of such Act (29 U.S.C. 1055(g)(3)) is*  
 19 *amended by adding at the end the following new sub-*  
 20 *paragraphs:*

21                       “(C) *APPLICABLE YIELD CURVE METHOD.*—  
 22               *For purposes of subparagraph (A), the term ‘ap-*  
 23 *plicable yield curve method’ means—*

1                   “(i) the phase-in yield curve method in  
 2                   the case of plan years beginning in 2007,  
 3                   2008, and 2009, and

4                   “(ii) the yield curve method for years  
 5                   beginning after 2009.

6                   “(D) YIELD CURVE METHOD.—For purposes  
 7                   of this paragraph—

8                   “(i) IN GENERAL.—The yield curve  
 9                   method is a method under which present  
 10                  value is determined—

11                  “(I) by using interest rates drawn  
 12                  from a yield curve which is prescribed  
 13                  by the Secretary of the Treasury and  
 14                  which reflects the yield on high-quality  
 15                  corporate bonds with varying matu-  
 16                  rities, and

17                  “(II) by matching the timing of  
 18                  the expected benefit payments under  
 19                  the plan to the interest rates on such  
 20                  yield curve.

21                  “(ii) PUBLICATION.—Each month the  
 22                  Secretary of the Treasury shall publish any  
 23                  yield curve prescribed under this subpara-  
 24                  graph which shall apply to plan years be-  
 25                  ginning in such month and such yield curve

1           *shall be based on average interest rates for*  
 2           *business days occurring during the 3 pre-*  
 3           *ceding months.*

4           “(E) *PHASE-IN YIELD CURVE METHOD.*—

5                 “(i) *IN GENERAL.*—*Present value de-*  
 6                 *termined under the phase-in yield curve*  
 7                 *method shall be equal to the sum of—*

8                         “(I) *the applicable percentage of*  
 9                         *such amount determined under the*  
 10                         *yield curve method described in sub-*  
 11                         *paragraph (D), and*

12                         “(II) *the product of such amount*  
 13                         *determined by using the applicable in-*  
 14                         *terest rate and a percentage equal to*  
 15                         *100 percent minus the applicable per-*  
 16                         *centage.*

17                 “(ii) *APPLICABLE PERCENTAGE.*—*For*  
 18                 *purposes of clause (i), the applicable per-*  
 19                 *centage is 25 percent for plan years begin-*  
 20                 *ning in 2007, 50 percent for plan years be-*  
 21                 *ginning in 2008, and 75 percent for plan*  
 22                 *years beginning in 2009.”.*

23           (b) *AMENDMENTS OF INTERNAL REVENUE CODE.*—

24                 (1) *IN GENERAL.*—*Section 417(e)(3)(A) of the*  
 25                 *Internal Revenue Code of 1986 (relating to deter-*

mination of present value) is amended by adding at the end the following new sentence: “In the case of plan years beginning after 2006, the preceding sentence shall be applied by using the applicable yield curve method under subparagraph (C) rather than the applicable interest rate.”

(2) *APPLICABLE YIELD CURVE METHOD.*—Section 417(e) of such Code is amended by adding at the end the following new subparagraphs:

“(C) *APPLICABLE YIELD CURVE METHOD.*—For purposes of subparagraph (A), the term ‘applicable yield curve method’ means—

“(i) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, and 2009, and

“(ii) the yield curve method for years beginning after 2009.

“(D) *YIELD CURVE METHOD.*—For purposes of this paragraph—

“(i) *IN GENERAL.*—The yield curve method is a method under which present value is determined—

“(I) by using interest rates drawn from a yield curve which is prescribed by the Secretary and which reflects the

1           *yield on high-quality corporate bonds*  
 2           *with varying maturities, and*

3           “(II) *by matching the timing of*  
 4           *the expected benefit payments under*  
 5           *the plan to the interest rates on such*  
 6           *yield curve.*

7           “(ii) *PUBLICATION.—Each month the*  
 8           *Secretary shall publish any yield curve pre-*  
 9           *scribed under this subparagraph which shall*  
 10          *apply to plan years beginning in such*  
 11          *month and such yield curve shall be based*  
 12          *on average interest rates for business days*  
 13          *occurring during the 3 preceding months.*

14          “(E) *PHASE-IN YIELD CURVE METHOD.—*

15                 “(i) *IN GENERAL.—Present value de-*  
 16                 *termined under the phase-in yield curve*  
 17                 *method shall be equal to the sum of—*

18                         “(I) *the applicable percentage of*  
 19                         *such amount determined under the*  
 20                         *yield curve method described in sub-*  
 21                         *paragraph (D), and*

22                         “(II) *the product of such amount*  
 23                         *determined by using the applicable in-*  
 24                         *terest rate and a percentage equal to*



1                   100 percent minus the applicable per-  
2                   centage.

3                   “(ii) *APPLICABLE PERCENTAGE.*—For  
4                   purposes of clause (i), the applicable per-  
5                   centage is 25 percent for plan years begin-  
6                   ning in 2007, 50 percent for plan years be-  
7                   ginning in 2008, and 75 percent for plan  
8                   years beginning in 2009.”.

9           (c) *SPECIAL RULE FOR PLAN AMENDMENTS.*—A plan  
10   shall not fail to meet the requirements of section 204(g) of  
11   the *Employee Retirement Income Security Act of 1974* or  
12   section 411(d)(6) of the *Internal Revenue Code of 1986* sole-  
13   ly by reason of the adoption by the plan of an amendment  
14   necessary to meet the requirements of the amendments made  
15   by this section.

16           (d) *EFFECTIVE DATE.*—The amendments made by this  
17   section shall apply with respect to plan years beginning  
18   after 2006.

19   **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**  
20                   **BENEFIT LIMITATIONS TO LUMP SUM DIS-**  
21                   **TRIBUTIONS.**

22           (a) *IN GENERAL.*—Clause (ii) of section 415(b)(2)(E)  
23   of the *Internal Revenue Code of 1986* is amended to read  
24   as follows:

1                   “(ii) For purposes of adjusting any  
 2                   benefit under subparagraph (B) for any  
 3                   form of benefit subject to section 417(e)(3),  
 4                   clause (i) shall be applied by substituting  
 5                   ‘5.5 percent’ for ‘5 percent’.”.

6           (b) *EFFECTIVE DATE.*—The amendment made by sub-  
 7   section (a) shall apply to years beginning after December  
 8   31, 2005.

9   **SEC. 303. RESTRICTIONS ON FUNDING OF NONQUALIFIED**  
 10                   **DEFERRED COMPENSATION PLANS BY EM-**  
 11                   **PLOYERS MAINTAINING UNDERFUNDED OR**  
 12                   **TERMINATED SINGLE-EMPLOYER PLANS.**

13           (a) *AMENDMENTS OF ERISA.*—

14                   (1) *IN GENERAL.*—Part 3 of subtitle A of title I  
 15           of the Employee Retirement Income Security Act of  
 16           1974 (29 U.S.C. 1081 et seq.), as amended by this  
 17           Act, is amended by adding at the end the following  
 18           new section:

19           “NOTICE OF FUNDING OF NONQUALIFIED DEFERRED  
 20                                   COMPENSATION PLANS

21           “SEC. 306. (a) *NOTICE AND ACCESS.*—

22                   “(1) *NOTICE RELATING TO RESTRICTED PE-*  
 23           *RIOD.*—The plan administrator of a defined benefit  
 24           plan which is a single-employer plan shall notify each  
 25           plan sponsor of the plan within a reasonable period  
 26           of time after the occurrence of an event which results

1        *in a restricted period with respect to the plan. Such*  
 2        *notice shall include information—*

3                *“(A) as to the duration of the restricted pe-*  
 4                *riod, and*

5                *“(B) the restrictions under section*  
 6                *409A(b)(3) of the Internal Revenue Code of 1986*  
 7                *which apply during the restricted period to the*  
 8                *plan sponsor and any member of a controlled*  
 9                *group which includes such sponsor.*

10              *“(2) NOTICE OF EXISTENCE OF, AND TRANSFERS*  
 11              *TO, NONQUALIFIED DEFERRED COMPENSATION*  
 12              *PLANS.—*

13              *“(A) INITIAL NOTICE.—Within 30 days of*  
 14              *receipt of a notice under paragraph (1), each*  
 15              *plan sponsor shall notify the plan administrator*  
 16              *of the plan described in paragraph (1)—*

17                      *“(i) of nonqualified deferred compensa-*  
 18                      *tion plans maintained by the plan sponsor*  
 19                      *or any member of a controlled group which*  
 20                      *includes such sponsor, and*

21                      *“(ii) the amount of any assets trans-*  
 22                      *ferred or otherwise reserved by the plan*  
 23                      *sponsor or such member in violation of sec-*  
 24                      *tion 409A(b)(3) of such Code during any*  
 25                      *portion of the restricted period occurring on*

1                   or before the date the plan sponsor provides  
2                   such notice.

3                   “(B) *ADDITIONAL NOTICES.*—If, after the  
4                   date on which notice is provided under subpara-  
5                   graph (A) and during any portion of the re-  
6                   maining restricted period specified in the notice  
7                   provided under paragraph (1), the plan sponsor  
8                   of a plan described in paragraph (1) or a mem-  
9                   ber of a controlled group which includes such  
10                  sponsor—

11                   “(i) transfers or reserves assets in vio-  
12                  lation of section 409A(b)(3) of such Code, or

13                   “(ii) establishes a new nonqualified de-  
14                  ferred compensation plan,

15                  the plan sponsor shall notify the plan adminis-  
16                  trator of the plan described in paragraph (1) of  
17                  such transfer, reservation, or establishment with-  
18                  in 3 days of the date of such action.

19                  “(3) *ACCESS TO FINANCIAL DATA.*—Any fidu-  
20                  ciary of the plan shall have access to the financial  
21                  records of a plan sponsor or any member of a con-  
22                  trolled group which includes such sponsor to deter-  
23                  mine if assets were transferred or otherwise reserved  
24                  in violation of section 409A(b)(3) of such Code.

1           “(4) *FORM AND MANNER.*—*The Secretary may*  
 2           *prescribe the form and manner of a notice required*  
 3           *under this section. Such a notice shall be written in*  
 4           *a manner calculated to be understood by the average*  
 5           *plan participant and may be delivered in written,*  
 6           *electronic, or other appropriate form to the extent*  
 7           *that such form is reasonably accessible to the recipi-*  
 8           *ent.*

9           “(b) *RESTRICTED PERIOD.*—*For purposes of this sec-*  
 10          *tion, the term ‘restricted period’ means, with respect to any*  
 11          *plan described in subsection (a)(1)—*

12           “(1) *any period—*

13           “(A) *beginning on the first day of a plan*  
 14           *year following a plan year for which the plan’s*  
 15           *adjusted funding target attainment percentage*  
 16           *(as defined in section 303) was less than 60 per-*  
 17           *cent (determined as of the close of such year),*  
 18           *and*

19           “(B) *ending on the last day of the first pe-*  
 20           *riod of 2 consecutive plan years (beginning on or*  
 21           *after such first day) for which such percentage*  
 22           *was at least 60 percent,*

23           “(2) *any period the plan sponsor is in bank-*  
 24           *ruptcy, and*

1           “(3) the 12-month period beginning on the date  
 2           which is 6 months before the termination date of the  
 3           plan if, as of the termination date, the plan is not  
 4           sufficient for benefit liabilities (within the meaning of  
 5           section 4041).

6   In the case of a plan which is in at-risk status, paragraph  
 7   (1) shall be applied by substituting ‘80 percent’ for ‘60 per-  
 8   cent’ each place it appears.

9           “(c)   NONQUALIFIED   DEFERRED   COMPENSATION  
 10   PLAN.—For purposes of this section—

11           “(1) IN GENERAL.—The term ‘nonqualified de-  
 12           ferred compensation plan’ means any plan that pro-  
 13           vides for the deferral of compensation, other than—

14                   “(A) a qualified employer plan, and

15                   “(B) any bona fide vacation leave, sick  
 16           leave, compensatory time, disability pay, or  
 17           death benefit plan.

18           “(2) QUALIFIED EMPLOYER PLAN.—The term  
 19           ‘qualified employer plan’ means—

20                   “(A) any plan, contract, pension, account,  
 21           or trust described in subparagraph (A) or (B) of  
 22           section 219(g)(5) of the Internal Revenue Code of  
 23           1986 (without regard to subparagraph (A)(iii)),

1           “(B) any eligible deferred compensation  
2           plan (within the meaning of section 457(b)) of  
3           such Code, and

4           “(C) any plan described in section 415(m)  
5           of such Code.

6           “(3) *PLAN INCLUDES ARRANGEMENTS, ETC.*—The  
7           term ‘plan’ includes any agreement or arrangement,  
8           including an agreement or arrangement that includes  
9           one person.

10          “(d) *OTHER DEFINITIONS.*—For purposes of this  
11       section—

12           “(1) *APPLICABLE COVERED EMPLOYEE.*—

13           “(A) *IN GENERAL.*—The term ‘applicable  
14           covered employee’ means any—

15           “(i) covered employee of a plan spon-  
16           sor,

17           “(ii) covered employee of a member of  
18           a controlled group which includes the plan  
19           sponsor, and

20           “(iii) former employee who was a cov-  
21           ered employee at the time of termination of  
22           employment with the plan sponsor or a  
23           member of a controlled group which in-  
24           cludes the plan sponsor.

1                   “(B) *COVERED EMPLOYEE*.—The term ‘cov-  
 2                   ered employee’ has the meaning given such term  
 3                   by section 162(m)(3) of the Internal Revenue  
 4                   Code of 1986.

5                   “(2) *CONTROLLED GROUP*.—The term ‘controlled  
 6                   group’ has the meaning given such term by section  
 7                   302(d)(3).”.

8                   (2) *ENFORCEMENT*.—

9                   (A) *IN GENERAL*.—Section 502(a) of the  
 10                  Employee Retirement Income Security Act (29  
 11                  U.S.C. 1132(a)), as amended by this Act, is  
 12                  amended—

13                   (i) by striking “or” at the end of para-  
 14                   graph (9), by striking the period at the end  
 15                   of paragraph (10) and inserting “; or”, and  
 16                   by adding at the end the following new  
 17                   paragraph:

18                   “(11) by a fiduciary of a defined benefit plan  
 19                   which is a single-employer plan against—

20                   “(A) a plan sponsor, a member of a con-  
 21                   trolled group which includes the plan sponsor,  
 22                   an applicable covered employee, or a person  
 23                   holding assets which are part of a nonqualified  
 24                   deferred compensation plan to recover on behalf  
 25                   of the plan—



1                   “(i) assets which were set aside or  
 2                   transferred in violation of section  
 3                   409A(b)(3) of the Internal Revenue Code of  
 4                   1986 (and any earnings properly allocable  
 5                   to the assets); or

6                   “(ii) amounts equivalent to the assets  
 7                   and earnings described in clause (i); or

8                   “(B) a plan sponsor, or a member of a con-  
 9                   trolled group which includes the plan sponsor, to  
 10                  compel the production of records the fiduciary is  
 11                  entitled to under section 306.”; and

12                  (ii) by adding at the end the following  
 13                  new flush sentence:

14   *“For purposes of paragraph (11), any term used in such*  
 15   *paragraph which is also used in section 306 shall have the*  
 16   *meaning given such term by section 306.”.*

17                  (B) AWARDING OF FEES.—Section 502(g) of  
 18                  such Act (29 U.S.C. 1132(g)) is amended by add-  
 19                  ing at the end the following new paragraph:

20                  “(3) ACTIONS TO RECOVER ASSETS TRANS-  
 21                  FERRED TO NONQUALIFIED DEFERRED COMPENSA-  
 22                  TION PLANS.—If, in any action under subsection  
 23                  (a)(11) by a fiduciary for or on behalf of a plan to  
 24                  enforce section 306 of this Act and section 409A(b)(3),  
 25                  a judgment is awarded in favor of the plan, the court

1        *may, in addition to any other amount, award the*  
 2        *plan reasonable attorney’s fees and costs of the action,*  
 3        *to be paid by the defendant”.*

4            (3) *CLERICAL AMENDMENT.—The table of con-*  
 5        *tents in section 1 of such Act, as amended by this Act,*  
 6        *is amended by adding at the end the following new*  
 7        *item:*

*“Sec. 306. Restrictions on funding of nonqualified deferred compensation plans.”.*

8            (b) *AMENDMENTS OF INTERNAL REVENUE CODE.—*

9            (1) *IN GENERAL.—Subsection (b) of section 409A*  
 10        *of the Internal Revenue Code of 1986 (providing rules*  
 11        *relating to funding) is amended by redesignating*  
 12        *paragraphs (3) and (4) as paragraphs (4) and (5),*  
 13        *respectively, and by inserting after paragraph (2) the*  
 14        *following new paragraph:*

15            “(3) *EMPLOYERS OF UNDERFUNDED OR TERMI-*  
 16        *NATED DEFINED BENEFIT PLANS.—During any re-*  
 17        *stricted period—*

18            “(A) *a plan sponsor of a defined benefit*  
 19        *plan which is a single-employer plan, or*

20            “(B) *any member of a controlled group*  
 21        *which includes such sponsor,*

22        *shall not directly or indirectly transfer assets, or di-*  
 23        *rectly or indirectly otherwise reserve assets, in a trust*  
 24        *(or other arrangement determined by the Secretary)*

1     *for purposes of paying deferred compensation of an*  
 2     *applicable covered employee under a nonqualified de-*  
 3     *ferred compensation plan of the plan sponsor or mem-*  
 4     *ber. Any assets transferred or reserved in violation of*  
 5     *the preceding sentence shall, for purposes of section*  
 6     *83, be treated as property transferred in connection*  
 7     *with the performance of services whether or not such*  
 8     *assets are available to satisfy claims of general credi-*  
 9     *tors. For purposes of this paragraph, any term used*  
 10    *in this paragraph which is also used in section 306*  
 11    *of the Employee Retirement Income Security Act of*  
 12    *1974 shall have the meaning given such term by such*  
 13    *section.”.*

14           (2) *CONFORMING AMENDMENTS.—Paragraphs*  
 15    *(4) and (5) of section 409A(b) of such Code, as redes-*  
 16    *ignated by subsection (a) of this subsection, are each*  
 17    *amended by striking “paragraph (1) or (2)” each*  
 18    *place it appears and inserting “paragraph (1), (2), or*  
 19    *(3)”.*

20           (c) *EFFECTIVE DATE.—The amendments made by this*  
 21    *section shall apply to transfers or other reservation of assets*  
 22    *after December 31, 2006.*

1 **SEC. 304. MODIFICATION OF PENSION FUNDING REQUIRE-**  
 2 **MENTS FOR PLANS SUBJECT TO CURRENT**  
 3 **TRANSITION RULE.**

4 (a) *PLAN YEAR BEFORE NEW FUNDING RULES.*—Sec-  
 5 tion 769(c)(3) of the Retirement Protection Act of 1994, as  
 6 added by section 201 of the Pension Funding Equity Act  
 7 of 2004, is amended by striking “and 2005” and inserting  
 8 “, 2005, and 2006”.

9 (b) *PLAN YEARS AFTER NEW FUNDING RULES.*—

10 (1) *IN GENERAL.*—In the case of a plan that—

11 (A) was not required to pay a variable rate  
 12 premium for the plan year beginning in 1996,

13 (B) has not, in any plan year beginning  
 14 after 1995, merged with another plan (other than  
 15 a plan sponsored by an employer that was in  
 16 1996 within the controlled group of the plan  
 17 sponsor), and

18 (C) is sponsored by a company that is en-  
 19 gaged primarily in the interurban or interstate  
 20 passenger bus service,

21 the rules described in subsection (b) shall apply for  
 22 any plan year beginning after 2006.

23 (2) *MODIFIED RULES.*—The rules described in  
 24 this subsection are as follows:

25 (A) For purposes of—

1                   (i) *determining unfunded benefits*  
 2                   *under section 4006(a)(3)(E)(ii) of the Em-*  
 3                   *ployee Retirement Income Security Act of*  
 4                   *1974, and*

5                   (ii) *determining any present value or*  
 6                   *making any computation under section 412*  
 7                   *and section 430 of the Internal Revenue*  
 8                   *Code of 1986 and sections 302 and 303 of*  
 9                   *such Act,*

10           *the mortality table shall be the mortality table used*  
 11           *by the plan.*

12                   (B) *Notwithstanding section 303(f)(4) of*  
 13                   *such Act or 430(f)(4) of such Code, for purposes*  
 14                   *of section 303(c)(4)(A)(ii) of such Act and*  
 15                   *430(c)(4)(A)(ii) of such Code, the value of plan*  
 16                   *assets shall not be reduced by the amount of the*  
 17                   *prefunding balance if, pursuant to a binding*  
 18                   *written agreement with the Pension Benefit*  
 19                   *Guaranty Corporation entered into before Janu-*  
 20                   *ary 1, 2006, the prefunding balance is not avail-*  
 21                   *able to reduce the minimum required contribu-*  
 22                   *tion for the plan year.*

23                   (3) *DEFINITIONS.—Any term used in this section*  
 24                   *which is also used in section 303 of such Act or sec-*

1        *tion 430 of such Code shall have the meaning pro-*  
 2        *vided such term in such section.*

3                (4) *CONFORMING AMENDMENT.*—*Section 769 of*  
 4        *the Retirement Protection Act of 1994 is amended by*  
 5        *striking subsection (c).*

6                (5) *EFFECTIVE DATE.*—*The amendments made*  
 7        *by this subsection shall apply to plan years beginning*  
 8        *after 2006.*

9        ***TITLE IV—IMPROVEMENTS IN***  
 10       ***PBGC GUARANTEE PROVISIONS***

11       ***SEC. 401. INCREASES IN PBGC PREMIUMS.***

12                (a) *FLAT-RATE PREMIUMS.*—

13                        (1) *IN GENERAL.*—*Section 4006(a)(3)(A)(i) of*  
 14        *the Employee Retirement Income Security Act of*  
 15        *1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended to read*  
 16        *as follows:*

17                                “(i) *in the case of a single-employer*  
 18                                *plan, an amount equal to—*

19                                        “(I) *for plan years beginning*  
 20                                        *after December 31, 1990, and before*  
 21                                        *January 1, 2006, \$19, or*

22                                        “(II) *for plan years beginning*  
 23                                        *after December 31, 2005, the amount*  
 24                                        *determined under subparagraph (H),*

1           *plus the additional premium (if any) deter-*  
 2           *mined under subparagraph (E) for each in-*  
 3           *dividual who is a participant in such plan*  
 4           *during the plan year;”.*

5           (2) *AMOUNT OF PREMIUM AFTER 2005.*—Section  
 6           4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)), as  
 7           amended by sections 406 and 407, is amended by  
 8           adding at the end the following:

9           “(H) *AMOUNT OF PREMIUM.*—

10           “(i) *IN GENERAL.*—The amount deter-  
 11           mined under this subparagraph is the great-  
 12           er of \$30 or in the case of plan years begin-  
 13           ning after December 31, 2006, the adjusted  
 14           amount determined under clause (ii).

15           “(ii) *ADJUSTED AMOUNT.*—The ad-  
 16           justed amount determined under this clause  
 17           is the product derived by multiplying \$30  
 18           by the ratio of—

19           “(I) *the contribution and benefit*  
 20           *base (determined under section 230 of*  
 21           *the Social Security Act) in effect in the*  
 22           *calendar year in which the plan year*  
 23           *begins, to*

24           “(II) *the contribution and benefit*  
 25           *base in effect in 2006.*

1                   “(iii) *ROUNDING.*—If the amount de-  
 2                   *termined under clause (ii) is not a multiple*  
 3                   *of \$1, such product shall be rounded to the*  
 4                   *nearest multiple of \$1.”.*

5           (b) *RISK-BASED PREMIUMS.*—

6                   (1) *CONFORMING AMENDMENTS RELATED TO*  
 7                   *FUNDING RULES FOR SINGLE-EMPLOYER PLANS.*—Sec-  
 8                   *tion 4006(a)(3)(E) of such Act is amended by striking*  
 9                   *clauses (iii) and (iv) and inserting the following:*

10           “(iii)(I) *For purposes of clause (ii), except as provided*  
 11           *in subclause (II), the term ‘unfunded benefits’ means, for*  
 12           *a plan year, the amount which would be the plan’s funding*  
 13           *shortfall (as defined in section 303(c)(4)) if the value of*  
 14           *plan assets of the plan were equal to the fair market value*  
 15           *of such assets.*

16           “(II) *The interest rate used in valuing benefits for pur-*  
 17           *poses of subclause (I) shall be equal to the first, second, or*  
 18           *third segment rate which would be determined under section*  
 19           *303(h)(2)(C) if section 303(h)(2)(D) were applied by using*  
 20           *the yields on investment grade corporate bonds with vary-*  
 21           *ing maturities rather than the average of such yields for*  
 22           *a 12-month period.”.*

23                   (2) *EFFECTIVE DATE.*—*The amendments made*  
 24                   *by paragraph (1) shall apply with respect to plan*  
 25                   *years beginning after 2006.*



1       (c) *FLAT-RATE PREMIUM ADJUSTMENT.*—

2               (1) *IN GENERAL.*—Beginning in 2011, and every  
3       5 years thereafter, the Board of Directors of the Pen-  
4       sion Benefit Guaranty Corporation under title IV of  
5       the Employee Retirement Income Security Act (29  
6       U.S.C. 1301 et seq.) shall submit to Congress a report  
7       that describes any recommendations for adjusting the  
8       premium rate payable to the Corporation described  
9       under section 4006(a)(3)(A)(i) of such Act (as amend-  
10      ed by subsection (a)).

11              (2) *CONSIDERATIONS.*—In developing the report  
12      described under paragraph (1), the Corporation shall  
13      consider—

14                      (A) the national average wage index (as de-  
15      fined in section 209(k)(1) of the Social Security  
16      Act (42 U.S.C. 409(k)(1)));

17                      (B) the finances of the Corporation as of the  
18      date of such report and an actuarial evaluation  
19      of the expected operations and status of the funds  
20      established under section 4005 of such title IV  
21      (29 U.S.C. 1305) for the 5 years succeeding such  
22      date;

23                      (C) the impact of any increases in such pre-  
24      mium rate on plan sponsors subject to such title  
25      IV; and

1                   (D) such other factors determined relevant  
2                   by the Corporation.

3   **SEC. 402. AUTHORITY TO ENTER ALTERNATIVE FUNDING**  
4                   **AGREEMENTS TO PREVENT PLAN TERMI-**  
5                   **NATIONS.**

6           (a) *AUTHORITY TO ENTER INTO AGREEMENTS.—*

7                   (1) *DISTRESS TERMINATIONS.—Section 4041(c)*  
8                   *of the Employee Retirement Income Security Act of*  
9                   *1974 (29 U.S.C. 1341(c)) is amended by adding at*  
10                  *the end the following:*

11                   “(4) *ALTERNATIVE FUNDING AGREEMENTS.—*

12                           “(A) *IN GENERAL.—If the corporation de-*  
13                           *termines that—*

14                                   “(i) *a plan meets the requirements for*  
15                                   *a distress termination under this subsection*  
16                                   *without regard to an alternative funding*  
17                                   *agreement under section 4047(a), and*

18                                   “(ii) *the termination of the plan would*  
19                                   *not be necessary if such an agreement were*  
20                                   *entered into,*

21                           *the corporation may request that the Secretary of*  
22                           *the Treasury, in consultation with the corpora-*  
23                           *tion, enter into such an agreement with the con-*  
24                           *tributing sponsors under the plan.*

1           “(B) *EARLY ACTION INITIATIVES.*—Subject  
2           to the limitations in subsection (a)(3), if—

3                   “(i) *the corporation determines that it*  
4                   *is reasonable to believe that a plan may be*  
5                   *subject to a distress termination within 6*  
6                   *months unless action is taken, the corpora-*  
7                   *tion may request that the Secretary of the*  
8                   *Treasury, in consultation with the corpora-*  
9                   *tion, enter into an alternative funding*  
10                  *agreement under section 4047(a); and*

11                  “(ii) *the corporation, upon the request*  
12                  *of the contributing sponsor of a plan or*  
13                  *other person, determines that it is reason-*  
14                  *able to believe that a plan may be subject*  
15                  *to a distress termination within 2 years un-*  
16                  *less action is taken, the corporation may re-*  
17                  *quest that the Secretary of the Treasury, in*  
18                  *consultation with the corporation, enter into*  
19                  *an alternative funding agreement under sec-*  
20                  *tion 4047(a).”.*

21           (2) *INVOLUNTARY TERMINATIONS.*—Section 4042  
22           *of the Employee Retirement Income Security Act of*  
23           *1974 (29 U.S.C. 1342) is amended by adding at the*  
24           *end the following:*

25           “(i) *ALTERNATIVE FUNDING AGREEMENTS.*—If—

1           “(1) the corporation determines that it is reason-  
 2           able to believe that a plan will meet the requirements  
 3           for an involuntary termination under this section  
 4           without regard to an alternative funding agreement  
 5           under section 4047(a) within 6 months unless action  
 6           is taken, or

7           “(B) the corporation, upon the request of the  
 8           contributing sponsor of a plan or other person, deter-  
 9           mines that it is reasonable to believe that a plan may  
 10          be subject to an involuntary termination within 2  
 11          years unless action is taken,

12          and such a termination would not be necessary if such an  
 13          agreement is entered into, the corporation may request that  
 14          the Secretary of the Treasury, in consultation with the cor-  
 15          poration, enter into an alternative funding agreement  
 16          under section 4047(a).”.

17          (b) *ALTERNATIVE FUNDING SCHEDULES TO PREVENT*  
 18          *PLAN TERMINATION.*—

19                 (1) *IN GENERAL.*—Section 4047 of the *Employee*  
 20                 *Retirement Income Security Act of 1974 (29 U.S.C.*  
 21                 *1347)* is amended by—

22                         (A) striking the section heading and all that  
 23                         follows through “Whenever” and inserting—

1 **“SEC. 4047. ALTERNATIVE FUNDING SCHEDULES TO PRE-**  
 2 **VENT TERMINATION; RESTORATION OF TER-**  
 3 **MINATED PLANS.**

4 *“(a) ALTERNATIVE FUNDING AGREEMENTS.—*

5 *“(1) IN GENERAL.—If the requirements of section*  
 6 *4041(c)(4) or 4042(i) are met with respect to any*  
 7 *plan, the Secretary of the Treasury, in consultation*  
 8 *with the corporation, may enter into an alternative*  
 9 *funding agreement with the contributing sponsors*  
 10 *under the plan that meets the requirements of this*  
 11 *subsection.*

12 *“(2) OTHER REQUIREMENTS.—An alternative*  
 13 *funding agreement may be entered into by the Sec-*  
 14 *retary of the Treasury, in consultation with corpora-*  
 15 *tion, only if—*

16 *“(A) such Secretary finds the agreement to*  
 17 *be in the best interests of the participants and*  
 18 *beneficiaries; and*

19 *“(B) the agreement meets the requirements*  
 20 *set forth by such Secretary in regulations.*

21 *“(3) ALTERNATIVE FUNDING AGREEMENT.—*

22 *“(A) IN GENERAL.—An agreement meets the*  
 23 *requirements of this subsection if the*  
 24 *agreement—*

1           “(i) provides for an additional amorti-  
2           zation schedule for a period not to exceed 10  
3           years,

4           “(ii) requires the plan to pay at the  
5           time the agreement is entered into any pro-  
6           fessional fees or other expenses incurred by  
7           the Secretary of the Treasury or the cor-  
8           poration in connection with the agreements,

9           “(iii) requires approval by the cor-  
10          poration before the contributing sponsor es-  
11          tablishes or maintains any other defined  
12          benefit plan other than any multiemployer  
13          plan that covers a substantial number of  
14          employees who are covered by the plan sub-  
15          ject to the agreement or who perform sub-  
16          stantially the same type of work with re-  
17          spect to the same business operations as em-  
18          ployees covered by such plan, and

19          “(iv) provides for a termination date,  
20          or a schedule of termination dates, for the  
21          purpose of the guarantee under section  
22          4022, to apply if a plan terminates during  
23          the period that the agreement is in effect.

24          “(B)     OTHER     CONDITIONS.—Notwith-  
25          standing any other provision of this Act, an

1           *agreement meeting the requirements of this sub-*  
2           *section may provide—*

3                   “(i) *for restrictions on, or the elimi-*  
4                   *nation of, future accruals, but only to the*  
5                   *extent that such restrictions or eliminations*  
6                   *would have been permitted under section*  
7                   *204(g) or section 411(d)(6) of the Internal*  
8                   *Revenue Code of 1986 if they had been im-*  
9                   *plemented by a plan amendment adopted*  
10                  *immediately before the effective date of the*  
11                  *agreement,*

12                  “(ii) *that the contributing sponsors*  
13                  *will provide security or other collateral in*  
14                  *such form and amount as specified in the*  
15                  *agreement,*

16                  “(iii) *conditions under which the plan*  
17                  *could be terminated in a standard termi-*  
18                  *nation under section 4041(b) or conditions*  
19                  *under which accruals to which clause (i)*  
20                  *applies could resume in the future, and*

21                  “(iv) *for such other terms and condi-*  
22                  *tions as the Secretary of the Treasury, in*  
23                  *consultation with the corporation, deter-*  
24                  *mines necessary to protect the interests of*  
25                  *the corporation.*

1 “(C) *EMPLOYEE REQUIREMENTS.*—

2 “(i) *IN GENERAL.*—*An agreement*  
3 *meets the requirements of this subsection*  
4 *only if—*

5 “(I) *at least 60 days before the*  
6 *agreement is to take effect the contrib-*  
7 *uting sponsors notify affected parties*  
8 *(other than the corporation) of the*  
9 *terms of the agreement and its effect on*  
10 *such parties, and*

11 “(II) *each employee organization*  
12 *representing participants in the plan*  
13 *approves the agreement before it takes*  
14 *effect.*

15 “(ii) *FORM AND MANNER OF NOTICE.*—  
16 *The notice under clause (i) shall be written*  
17 *in a manner calculated to be understood by*  
18 *the average plan participant and may be*  
19 *provided to a person designated, in writing,*  
20 *by the person to which it would otherwise be*  
21 *provided. Such notice may be provided in*  
22 *written, electronic, or other appropriate*  
23 *form to the extent such form is reasonably*  
24 *accessible to persons to whom the notice is*  
25 *required to be provided.*



1           “(4) *COORDINATION WITH MINIMUM FUNDING*  
 2           *REQUIREMENTS.*—*Any alternative funding schedule*  
 3           *under an agreement meeting the requirements under*  
 4           *this subsection shall supersede the minimum funding*  
 5           *requirements of this Act and the Internal Revenue*  
 6           *Code of 1986. For purposes of applying this Act or*  
 7           *such Code, any contribution required under such*  
 8           *schedule shall be treated in the same manner as con-*  
 9           *tributions required under section 302 of this Act and*  
 10           *section 412 of such Code.*

11           “(b) *RESTORATION OF TERMINATED PLANS.*—*When-*  
 12           *ever*”.

13           (2) *CONFORMING AMENDMENT.*—*The table of*  
 14           *contents for title IV of such Act is amended by strik-*  
 15           *ing the item relating to section 4047 and inserting*  
 16           *the following:*

“4047. *Alternative funding schedules to prevent terminations; restoration of terminated plans.*”.

17           (c) *AMENDMENTS TO OTHER PROVISIONS.*—

18           (1) *QUALIFICATION REQUIREMENT.*—*Section*  
 19           *401(a) of the Internal Revenue Code of 1986, as*  
 20           *amended by sections 115 and 701 of this Act, is*  
 21           *amended by inserting after paragraph (35) the fol-*  
 22           *lowing new paragraph:*

23           “(36) *SUCCESSOR PLANS TO CERTAIN PLANS.*—  
 24           *If—*

1           “(A) an alternative funding agreement de-  
 2           scribed in section 4047(a) of the Employee Re-  
 3           tirement Income Security Act of 1974 is in effect  
 4           with respect to any plan, and

5           “(B) the plan is maintained by an em-  
 6           ployer that establishes or maintains 1 or more  
 7           other defined benefit plans (other than any mul-  
 8           tiemployer plan), and such other plans in com-  
 9           bination provide benefit accruals to any substan-  
 10          tial number of successor employees,

11          the Secretary may, in the Secretary’s discretion, de-  
 12          termine that any trust of which any other such plan  
 13          is a part does not constitute a qualified trust under  
 14          this subsection unless all benefit obligations of the  
 15          plan to which the alternative funding agreement ap-  
 16          plies have been satisfied. For purposes of this para-  
 17          graph, the term ‘successor employee’ means any em-  
 18          ployee who is or was covered by the plan to which the  
 19          alternative funding agreement applies and any em-  
 20          ployee who performs substantially the same type of  
 21          work with respect to the same business operations as  
 22          an employee covered by such plan.”.

23               (2) *LIMITATION ON DEDUCTIONS UNDER CERTAIN*  
 24          *PLANS.*—Section 404(a)(7)(C) of the Internal Revenue

1        *Code of 1986 is amended by adding at the end the fol-*  
 2        *lowing:*

3                        “(iii) *PLANS SUBJECT TO ALTER-*  
 4                        *NATIVE FUNDING AGREEMENTS.—This*  
 5                        *paragraph shall not apply to any plan for*  
 6                        *a plan year if an alternative funding agree-*  
 7                        *ment described in section 4047(a) of the*  
 8                        *Employee Retirement Income Security Act*  
 9                        *of 1974 is in effect for such year.”.*

10        (d) *EFFECTIVE DATE.—The amendments made by this*  
 11        *section shall take effect on the date of enactment of this Act.*

12        **SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAIN-**  
 13                        **TAINED BY COMMERCIAL AIRLINES THAT ARE**  
 14                        **AMENDED TO CEASE FUTURE BENEFIT AC-**  
 15                        **CRUALS.**

16        (a) *IN GENERAL.—If an election is made to have this*  
 17        *section apply to an eligible plan—*

18                        (1) *in the case of any applicable plan year be-*  
 19                        *ginning before January 1, 2007, the plan shall not*  
 20                        *have an accumulated funding deficiency for purposes*  
 21                        *of section 302 of the Employee Retirement Income Se-*  
 22                        *curity Act of 1974 and sections 412 and 4971 of the*  
 23                        *Internal Revenue Code of 1986 if contributions to the*  
 24                        *plan for the plan year are not less than the minimum*

1        *required contribution determined under subsection (d)*  
 2        *for the plan for the plan year, and*

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

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

12            *(1) IN GENERAL.—The term “eligible plan”*  
 13        *means a defined benefit plan (other than a multiem-*  
 14        *ployer plan) to which sections 302 of such Act and*  
 15        *412 of such Code applies—*

16            *(A) which is sponsored by an employer—*

17                    *(i) which is a commercial airline pas-*  
 18                    *senger airline, or*

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

22            *(B) with respect to which the requirements*  
 23        *of paragraphs (2) and (3) are met.*

24        *(2) ACCRUAL RESTRICTIONS.—*

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

6                   (i) *the accrued benefit, any death or*  
 7                   *disability benefit, and any social security*  
 8                   *supplement described in the last sentence of*  
 9                   *section 411(a)(9) of such Code and section*  
 10                   *204(b)(1)(G) of such Act, of each partici-*  
 11                   *pant are frozen at the amount of such ben-*  
 12                   *efit or supplement immediately before such*  
 13                   *first day, and*

14                   (ii) *all other benefits under the plan*  
 15                   *are eliminated,*

16           *but only to the extent the freezing or elimination*  
 17           *of such benefits would have been permitted under*  
 18           *section 411(d)(6) of such Code and section 204(g)*  
 19           *of such Act if they had been implemented by a*  
 20           *plan amendment adopted immediately before*  
 21           *such first day.*

22           (B) *INCREASES IN SECTION 415 LIMITS DIS-*  
 23           *REGARDED.*—*If a plan provides that an accrued*  
 24           *benefit of a participant which has been subject to*  
 25           *any limitation under section 415 of such Code*

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

12        (3) *RESTRICTION ON APPLICABLE BENEFIT IN-*  
 13        *CREASES.—*

14                (A) *IN GENERAL.—The requirements of this*  
 15        *paragraph are met if no applicable benefit in-*  
 16        *crease takes effect at any time during the period*  
 17        *beginning on July 26, 2005, and ending on the*  
 18        *day before the first day of the first applicable*  
 19        *plan year.*

20                (B) *APPLICABLE BENEFIT INCREASE.—For*  
 21        *purposes of this paragraph, the term “applicable*  
 22        *benefit increase” means, with respect to any*  
 23        *plan year, any increase in liabilities of the plan*  
 24        *by plan amendment (or otherwise provided in*  
 25        *regulations provided by the Secretary) which,*

1           *but for this paragraph, would occur during the*  
 2           *plan year by reason of—*

3                     *(i) any increase in benefits,*

4                     *(ii) any change in the accrual of bene-*  
 5                     *fits, or*

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

9           (4) *EXCEPTION FOR IMPUTED DISABILITY SERV-*  
 10          *ICE.—Paragraphs (2) and (3) shall not apply to any*  
 11          *accrual or increase with respect to imputed service*  
 12          *provided to a participant during any period of the*  
 13          *participant's disability occurring on or after the effec-*  
 14          *tive date of the plan amendment providing the re-*  
 15          *strictions under paragraph (2) if the participant—*

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

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

21          (c) *ELECTIONS AND RELATED TERMS.—*

22                    (1) *IN GENERAL.—A plan sponsor shall make the*  
 23                    *election under subsection (a) at such time and in such*  
 24                    *manner as the Secretary of the Treasury may pre-*  
 25                    *scribe. Except as provided in subsection (h)(5), such*

election, once made, may be revoked only with the consent of such Secretary.

(2) YEARS FOR WHICH ELECTION MADE.—

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

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

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

(d) MINIMUM REQUIRED CONTRIBUTION.—

(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in



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

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

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

15           (A) *UNFUNDED LIABILITY.—The term “un-*  
 16     *funded liability” means the unfunded accrued li-*  
 17     *ability under the plan, determined under the*  
 18     *unit credit funding method.*

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

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

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

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

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

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

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

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

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

1        *plicable plan year and direct the appropriate re-*  
 2        *allocation between the plans of any contributions for*  
 3        *the applicable plan year.*

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

11       *(f) AMENDMENTS TO OTHER PROVISIONS.—*

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

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

24        *“(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN*  
 25        *FUNDING REQUIREMENTS.—During any period in which*

1 *an election by a plan under section 403 of the Pension Secu-*  
 2 *rity and Transparency Act of 2005 is in effect, then this*  
 3 *section and section 4044(a)(3) shall be applied by treating*  
 4 *the first day of the first applicable plan year as the termi-*  
 5 *nation date of the plan. This subsection shall not apply to*  
 6 *any plan for which an election under section 403(h) of such*  
 7 *Act is in effect.”.*

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

16           (4) *NOTICE.—In the case of a plan amendment*  
 17 *adopted in order to comply with this section, any no-*  
 18 *tice required under section 204(h) of such Act or sec-*  
 19 *tion 4980F(e) of such Code shall be provided within*  
 20 *15 days of the effective date of such plan amendment.*  
 21 *This subsection shall not apply to any plan unless*  
 22 *such plan is maintained pursuant to one or more col-*  
 23 *lective bargaining agreements between employee rep-*  
 24 *resentatives and 1 or more employers.*

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

8           (1) *make a determination under section*  
9 *4041(c)(4) or 4042(i) of such Act whether the termi-*  
10 *nation would be necessary if the Secretary of the*  
11 *Treasury were to enter into an agreement under sec-*  
12 *tion 4047(a) of such Act which provides an alter-*  
13 *native funding agreement to replace the amortization*  
14 *schedule under this section, and*

15           (2) *if the Corporation determines such an agree-*  
16 *ment would make such termination unnecessary, take*  
17 *all necessary actions to ensure the agreement is en-*  
18 *tered into.*

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

1        *(h) CERTAIN BENEFIT ACCRUALS AND INCREASES AL-*  
 2 *LOWED IF ADDITIONAL CONTRIBUTIONS MADE TO COVER*  
 3 *COSTS.—*

4            *(1) IN GENERAL.—If an employer elects the ap-*  
 5 *plication of this subsection—*

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

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

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

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

23                    *(A) any benefit accrual, or benefit increase*  
 24 *taking effect, during the plan year by reason of*

1        *this subsection were treated as having been ac-*  
 2        *crued or earned during the plan year, and*

3                *(B) the plan were treated as if it were in*  
 4        *at-risk status.*

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

10                *(A) the funding target were determined by*  
 11        *only taking into account benefits to which para-*  
 12        *graph (2) applied for preceding plan years,*

13                *(B) the only assets taken into account were*  
 14        *the contributions required under this paragraph*  
 15        *and paragraph (2) for preceding plan years*  
 16        *(and any earnings thereon),*

17                *(C) the amortization period included only*  
 18        *the plan year,*

19                *(D) the transition rule under section*  
 20        *303(c)(4)(B) of such Act and section*  
 21        *430(c)(4)(B) of such Code did not apply, and*

22                *(E) the plan were treated as if it were in*  
 23        *at-risk status.*

24                *(4) SPECIAL RULES FOR YEARS BEFORE 2007.—*  
 25        *Notwithstanding any other provision of this Act, in*

1     *the case of an applicable plan year of an eligible plan*  
 2     *to which this subsection applies which begins before*  
 3     *January 1, 2007, in determining the amounts de-*  
 4     *scribed in paragraphs (2) and (3) for such plan*  
 5     *year—*

6             *(A) the provisions of, and amendments*  
 7             *made by, sections 101, 102, 111, and 112 shall*  
 8             *apply to such plan year, except that*

9             *(B) the interest rate used under section 303*  
 10            *of such Act and section 430 of such Code for pur-*  
 11            *poses of applying paragraphs (2) and (3) to such*  
 12            *plan year shall be the interest rate determined*  
 13            *under section 302(b)(5) of such Act and section*  
 14            *412(b)(5) of such Code, as in effect for plan*  
 15            *years beginning in 2005.*

16            *(5) ELECTION OUT OF SECTION.—An employer*  
 17            *maintaining an eligible plan to which this subsection*  
 18            *applies may make a one-time election with respect to*  
 19            *any applicable plan year not to have this section*  
 20            *apply to such plan year and all subsequent plan*  
 21            *years. Subject to subsection (d)(2), the minimum re-*  
 22            *quired contribution under section 303 of such Act and*  
 23            *430 of such Code for all such plan years shall be de-*  
 24            *termined without regard to this section.*



1       (i) *EXCLUSION OF CERTAIN EMPLOYEES FROM MIN-*  
 2 *IMUM COVERAGE REQUIREMENTS.*—

3           (1) *IN GENERAL.*—Section 410(b)(3) of such  
 4 Code is amended by striking the last sentence and in-  
 5 serting the following: “For purposes of subparagraph  
 6 (B), management pilots who are not represented in  
 7 accordance with title II of the Railway Labor Act  
 8 shall be treated as covered by a collective bargaining  
 9 agreement described in such subparagraph if the  
 10 management pilots manage the flight operations of  
 11 air pilots who are so represented and the management  
 12 pilots are, pursuant to the terms of the agreement, in-  
 13 cluded in the group of employees benefitting under the  
 14 trust described in such subparagraph. Subparagraph  
 15 (B) shall not apply in the case of a plan which pro-  
 16 vides contributions or benefits for employees whose  
 17 principal duties are not customarily performed  
 18 aboard an aircraft in flight (other than management  
 19 pilots described in the preceding sentence).”

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

23           (j) *EFFECTIVE DATE.*—Except as otherwise provided  
 24 in this section, the amendments made by this section shall

1 *apply to plan years ending after the date of the enactment*  
 2 *of this Act.*

3 **SEC. 404. LIMITATION ON PBGC GUARANTEE OF SHUTDOWN**  
 4 **AND OTHER BENEFITS.**

5 *(a) IN GENERAL.—Section 4022(b) of the Employee*  
 6 *Retirement Income Security Act of 1974 (29 U.S.C.*  
 7 *1322(b)) is amended by adding at the end the following:*

8 *“(8) If a benefit is payable by reason of—*

9 *“(A) a plant shutdown or similar event; or*

10 *“(B) any event other than attainment of*  
 11 *any age, performance of any service, receipt or*  
 12 *derivation of any compensation, or the occur-*  
 13 *rence of death or disability,*

14 *this section shall be applied as if a plan amendment*  
 15 *had been adopted on the date such event occurred that*  
 16 *provides for the payment of such benefit.”.*

17 *(b) EFFECTIVE DATE.—The amendment made by this*  
 18 *section shall apply to benefits that become payable as a re-*  
 19 *sult of a plant shutdown or other similar event, as such*  
 20 *terms are used in the amendment made by subsection (a),*  
 21 *that occurs after July 26, 2005.*

22 **SEC. 405. RULES RELATING TO BANKRUPTCY OF EM-**  
 23 **PLOYER.**

24 *(a) GUARANTEE.—Section 4022 of the Employee Re-*  
 25 *tirement Income Security Act of 1974 (29 U.S.C. 1322),*

1 *as amended by this Act, is amended by adding at the end*  
 2 *the following:*

3       “(i) *BANKRUPTCY FILING SUBSTITUTED FOR TERMI-*  
 4 *NATION DATE.*—*If a contributing sponsor of a plan has*  
 5 *filed or has had filed against such person a petition seeking*  
 6 *liquidation or reorganization in a case under title 11,*  
 7 *United States Code, or under any similar Federal law or*  
 8 *law of a State or political subdivision, and the case has*  
 9 *not been dismissed as of the termination date, then this sec-*  
 10 *tion shall be applied by treating the date such petition was*  
 11 *filed as the termination date of the plan.”.*

12       (b) *ALLOCATION OF ASSETS AMONG PRIORITY GROUPS*  
 13 *IN BANKRUPTCY PROCEEDINGS.*—*Section 4044 of the Em-*  
 14 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*  
 15 *1344) is amended by adding at the end the following:*

16       “(e) *BANKRUPTCY FILING SUBSTITUTED FOR TERMI-*  
 17 *NATION DATE.*—*If a contributing sponsor of a plan has*  
 18 *filed or has had filed against such person a petition seeking*  
 19 *liquidation or reorganization in a case under title 11,*  
 20 *United States Code, or under any similar Federal law or*  
 21 *law of a State or political subdivision, and the case has*  
 22 *not been dismissed as of the termination date, then sub-*  
 23 *section (a)(3) shall be applied by treating the date such pe-*  
 24 *tition was filed as the termination date of the plan.”.*

1       (c) *EFFECTIVE DATE.*—*The amendments made this*  
 2 *section shall apply with respect to proceedings initiated*  
 3 *under title 11, United States Code, or under any similar*  
 4 *Federal law or law of a State or political subdivision, on*  
 5 *or after the date that is 30 days after the date of enactment*  
 6 *of this Act.*

7       **SEC. 406. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**  
 8                                   **PLOYERS.**

9       (a) *IN GENERAL.*—*Subparagraph (A) of section*  
 10 *4006(a)(3) of the Employee Retirement Income Security*  
 11 *Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—*

12               (1) *in clause (i), by inserting “other than a new*  
 13 *single-employer plan (as defined in subparagraph*  
 14 *(F)) maintained by a small employer (as so de-*  
 15 *defined),” after “single-employer plan,”*

16               (2) *in clause (iii), by striking the period at the*  
 17 *end and inserting “, and”, and*

18               (3) *by adding at the end the following new*  
 19 *clause:*

20               “(v) *in the case of a new single-employer plan*  
 21 *(as defined in subparagraph (F)) maintained by a*  
 22 *small employer (as so defined) for the plan year, \$5*  
 23 *for each individual who is a participant in such plan*  
 24 *during the plan year.”*

1       (b) *DEFINITION OF NEW SINGLE-EMPLOYER PLAN.*—  
2   Section 4006(a)(3) of the *Employee Retirement Income Se-*  
3   *curity Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by*  
4   *adding at the end the following new subparagraph:*

5       “(F)(i) *For purposes of this paragraph, a single-em-*  
6   *ployer plan maintained by a contributing sponsor shall be*  
7   *treated as a new single-employer plan for each of its first*  
8   *5 plan years if, during the 36-month period ending on the*  
9   *date of the adoption of such plan, the sponsor or any mem-*  
10   *ber of such sponsor’s controlled group (or any predecessor*  
11   *of either) did not establish or maintain a plan to which*  
12   *this title applies with respect to which benefits were accrued*  
13   *for substantially the same employees as are in the new sin-*  
14   *gle-employer plan.*

15       “(ii)(I) *For purposes of this paragraph, the term*  
16   *‘small employer’ means an employer which on the first day*  
17   *of any plan year has, in aggregation with all members of*  
18   *the controlled group of such employer, 100 or fewer employ-*  
19   *ees.*

20       “(II) *In the case of a plan maintained by two or more*  
21   *contributing sponsors that are not part of the same con-*  
22   *trolled group, the employees of all contributing sponsors and*  
23   *controlled groups of such sponsors shall be aggregated for*  
24   *purposes of determining whether any contributing sponsor*  
25   *is a small employer.”*

1       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
 2 *section shall apply to plans first effective after December*  
 3 *31, 2005.*

4 **SEC. 407. PBGC PREMIUMS FOR SMALL AND NEW PLANS.**

5       (a) *NEW PLANS.*—*Subparagraph (E) of section*  
 6 *4006(a)(3) of the Employee Retirement Income Security*  
 7 *Act of 1974 (29 U.S.C. 1306(a)(3)), as amended by this*  
 8 *Act, is amended by adding at the end the following new*  
 9 *clause:*

10       “(iv) *In the case of a new defined benefit plan, the*  
 11 *amount determined under clause (ii) for any plan year*  
 12 *shall be an amount equal to the product of the amount de-*  
 13 *termined under clause (ii) and the applicable percentage.*  
 14 *For purposes of this clause, the term ‘applicable percentage’*  
 15 *means—*

16               “(I) 0 percent, for the first plan year.

17               “(II) 20 percent, for the second plan year.

18               “(III) 40 percent, for the third plan year.

19               “(IV) 60 percent, for the fourth plan year.

20               “(V) 80 percent, for the fifth plan year.

21 *For purposes of this clause, a defined benefit plan (as de-*  
 22 *finied in section 3(35)) maintained by a contributing spon-*  
 23 *sor shall be treated as a new defined benefit plan for each*  
 24 *of its first 5 plan years if, during the 36-month period end-*  
 25 *ing on the date of the adoption of the plan, the sponsor*

1 *and each member of any controlled group including the*  
 2 *sponsor (or any predecessor of either) did not establish or*  
 3 *maintain a plan to which this title applies with respect*  
 4 *to which benefits were accrued for substantially the same*  
 5 *employees as are in the new plan.”*

6 (b) *SMALL PLANS.—Paragraph (3) of section 4006(a)*  
 7 *of the Employee Retirement Income Security Act of 1974*  
 8 *(29 U.S.C. 1306(a)), is amended—*

9 (1) *by striking “The” in subparagraph (E)(i)*  
 10 *and inserting “Except as provided in subparagraph*  
 11 *(G), the”, and*

12 (2) *by inserting after subparagraph (F) the fol-*  
 13 *lowing new subparagraph:*

14 “(G)(i) *In the case of an employer who has 25 or fewer*  
 15 *employees on the first day of the plan year, the additional*  
 16 *premium determined under subparagraph (E) for each par-*  
 17 *ticipant shall not exceed \$5 multiplied by the number of*  
 18 *participants in the plan as of the close of the preceding plan*  
 19 *year.*

20 “(ii) *For purposes of clause (i), whether an employer*  
 21 *has 25 or fewer employees on the first day of the plan year*  
 22 *is determined by taking into consideration all of the em-*  
 23 *ployees of all members of the contributing sponsor’s con-*  
 24 *trolled group. In the case of a plan maintained by two or*  
 25 *more contributing sponsors, the employees of all contrib-*

1 *uting sponsors and their controlled groups shall be aggre-*  
 2 *gated for purposes of determining whether the 25-or-fewer-*  
 3 *employees limitation has been satisfied.”*

4 *(c) EFFECTIVE DATES.—*

5 *(1) SUBSECTION (a).—The amendments made by*  
 6 *subsection (a) shall apply to plans first effective after*  
 7 *December 31, 2005.*

8 *(2) SUBSECTION (b).—The amendments made by*  
 9 *subsection (b) shall apply to plan years beginning*  
 10 *after December 31, 2005.*

11 **SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**  
 12 **PREMIUM OVERPAYMENT REFUNDS.**

13 *(a) IN GENERAL.—Section 4007(b) of the Employment*  
 14 *Retirement Income Security Act of 1974 (29 U.S.C.*  
 15 *1307(b)) is amended—*

16 *(1) by striking “(b)” and inserting “(b)(1)”, and*  
 17 *(2) by inserting at the end the following new*  
 18 *paragraph:*

19 *“(2) The corporation is authorized to pay, subject to*  
 20 *regulations prescribed by the corporation, interest on the*  
 21 *amount of any overpayment of premium refunded to a des-*  
 22 *ignated payor. Interest under this paragraph shall be cal-*  
 23 *culated at the same rate and in the same manner as interest*  
 24 *is calculated for underpayments under paragraph (1).”*



1       (b) *EFFECTIVE DATE.*—*The amendments made by sub-*  
 2 *section (a) shall apply to interest accruing for periods be-*  
 3 *ginning not earlier than the date of the enactment of this*  
 4 *Act.*

5       **SEC. 409. RULES FOR SUBSTANTIAL OWNER BENEFITS IN**  
 6                               **TERMINATED PLANS.**

7       (a) *MODIFICATION OF PHASE-IN OF GUARANTEE.*—  
 8 *Section 4022(b)(5) of the Employee Retirement Income Se-*  
 9 *curity Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to*  
 10 *read as follows:*

11       “(5)(A) *For purposes of this paragraph, the term ‘ma-*  
 12 *jority owner’ means an individual who, at any time during*  
 13 *the 60-month period ending on the date the determination*  
 14 *is being made—*

15               “(i) *owns the entire interest in an unincor-*  
 16 *porated trade or business,*

17               “(ii) *in the case of a partnership, is a partner*  
 18 *who owns, directly or indirectly, 50 percent or more*  
 19 *of either the capital interest or the profits interest in*  
 20 *such partnership, or*

21               “(iii) *in the case of a corporation, owns, directly*  
 22 *or indirectly, 50 percent or more in value of either the*  
 23 *voting stock of that corporation or all the stock of that*  
 24 *corporation.*

1 *For purposes of clause (iii), the constructive ownership*  
 2 *rules of section 1563(e) of the Internal Revenue Code of*  
 3 *1986 (other than paragraph (3)(C) thereof) shall apply, in-*  
 4 *cluding the application of such rules under section 414(c)*  
 5 *of such Code.*

6 “(B) *In the case of a participant who is a majority*  
 7 *owner, the amount of benefits guaranteed under this section*  
 8 *shall equal the product of—*

9 “(i) *a fraction (not to exceed 1) the numerator*  
 10 *of which is the number of years from the later of the*  
 11 *effective date or the adoption date of the plan to the*  
 12 *termination date, and the denominator of which is*  
 13 *10, and*

14 “(ii) *the amount of benefits that would be guar-*  
 15 *anteed under this section if the participant were not*  
 16 *a majority owner.”*

17 (b) *MODIFICATION OF ALLOCATION OF ASSETS.—*

18 (1) *Section 4044(a)(4)(B) of the Employee Re-*  
 19 *irement Income Security Act of 1974 (29 U.S.C.*  
 20 *1344(a)(4)(B)) is amended by striking “section*  
 21 *4022(b)(5)” and inserting “section 4022(b)(5)(B)”.*

22 (2) *Section 4044(b) of such Act (29 U.S.C.*  
 23 *1344(b)) is amended—*

24 (A) *by striking “(5)” in paragraph (2) and*  
 25 *inserting “(4), (5),”, and*

1                   (B) by redesignating paragraphs (3)  
 2                   through (6) as paragraphs (4) through (7), re-  
 3                   spectively, and by inserting after paragraph (2)  
 4                   the following new paragraph:

5                   “(3) If assets available for allocation under  
 6                   paragraph (4) of subsection (a) are insufficient to sat-  
 7                   isfy in full the benefits of all individuals who are de-  
 8                   scribed in that paragraph, the assets shall be allocated  
 9                   first to benefits described in subparagraph (A) of that  
 10                  paragraph. Any remaining assets shall then be allo-  
 11                  cated to benefits described in subparagraph (B) of  
 12                  that paragraph. If assets allocated to such subpara-  
 13                  graph (B) are insufficient to satisfy in full the bene-  
 14                  fits described in that subparagraph, the assets shall be  
 15                  allocated pro rata among individuals on the basis of  
 16                  the present value (as of the termination date) of their  
 17                  respective benefits described in that subparagraph.”

18                  (c) CONFORMING AMENDMENTS.—

19                  (1) Section 4021 of the Employee Retirement In-  
 20                  come Security Act of 1974 (29 U.S.C. 1321) is  
 21                  amended—

22                         (A) in subsection (b)(9), by striking “as de-  
 23                         fined in section 4022(b)(6)”, and

24                         (B) by adding at the end the following new  
 25                         subsection:

1       “(d) For purposes of subsection (b)(9), the term ‘sub-  
 2       stantial owner’ means an individual who, at any time dur-  
 3       ing the 60-month period ending on the date the determina-  
 4       tion is being made—

5               “(1) owns the entire interest in an unincor-  
 6       porated trade or business,

7               “(2) in the case of a partnership, is a partner  
 8       who owns, directly or indirectly, more than 10 per-  
 9       cent of either the capital interest or the profits inter-  
 10      est in such partnership, or

11              “(3) in the case of a corporation, owns, directly  
 12      or indirectly, more than 10 percent in value of either  
 13      the voting stock of that corporation or all the stock of  
 14      that corporation.

15      For purposes of paragraph (3), the constructive ownership  
 16      rules of section 1563(e) of the Internal Revenue Code of  
 17      1986 (other than paragraph (3)(C) thereof) shall apply, in-  
 18      cluding the application of such rules under section 414(c)  
 19      of such Code.”

20              (2) Section 4043(c)(7) of such Act (29 U.S.C.  
 21      1343(c)(7)) is amended by striking “section  
 22      4022(b)(6)” and inserting “section 4021(d)”.

23      (d) *EFFECTIVE DATES.*—

1           (1) *IN GENERAL.*—*Except as provided in para-*  
 2           *graph (2), the amendments made by this section shall*  
 3           *apply to plan terminations—*

4                   (A) *under section 4041(c) of the Employee*  
 5                   *Retirement Income Security Act of 1974 (29*  
 6                   *U.S.C. 1341(c)) with respect to which notices of*  
 7                   *intent to terminate are provided under section*  
 8                   *4041(a)(2) of such Act (29 U.S.C. 1341(a)(2))*  
 9                   *after December 31, 2005, and*

10                   (B) *under section 4042 of such Act (29*  
 11                   *U.S.C. 1342) with respect to which proceedings*  
 12                   *are instituted by the corporation after such date.*

13           (2) *CONFORMING AMENDMENTS.*—*The amend-*  
 14           *ments made by subsection (c) shall take effect on Jan-*  
 15           *uary 1, 2006.*

16 **SEC. 410. ACCELERATION OF PBGC COMPUTATION OF BEN-**  
 17 **EFITS ATTRIBUTABLE TO RECOVERIES FROM**  
 18 **EMPLOYERS.**

19           (a) *MODIFICATION OF AVERAGE RECOVERY PERCENT-*  
 20 *AGE OF OUTSTANDING AMOUNT OF BENEFIT LIABILITIES*  
 21 *PAYABLE BY CORPORATION TO PARTICIPANTS AND BENE-*  
 22 *FICIARIES.*—*Section 4022(c)(3)(B)(ii) of the Employee Re-*  
 23 *tirement Income Security Act of 1974 (29 U.S.C.*  
 24 *1322(c)(3)(B)(ii)) is amended to read as follows:*

1                   “(ii) notices of intent to terminate  
 2                   were provided (or in the case of a termi-  
 3                   nation by the corporation, a notice of deter-  
 4                   mination under section 4042 was issued)  
 5                   during the 5-Federal fiscal year period end-  
 6                   ing with the third fiscal year preceding the  
 7                   fiscal year in which occurs the date of the  
 8                   notice of intent to terminate (or the notice  
 9                   of determination under section 4042) with  
 10                  respect to the plan termination for which  
 11                  the recovery ratio is being determined.”

12           (b) VALUATION OF SECTION 4062(c) LIABILITY FOR  
 13 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
 14 PARTICIPANTS AND BENEFICIARIES.—

15           (1) SINGLE-EMPLOYER PLAN BENEFITS GUARAN-  
 16 TEED.—Section 4022(c)(3)(A) of the Employee Re-  
 17 tirement Income Security Act of 1974 (29 U.S.C. 13)  
 18 is amended to read as follows:

19                   “(A) IN GENERAL.—Except as provided in  
 20                   subparagraph (C), the term ‘recovery ratio’  
 21                   means the ratio which—

22                           “(i) the sum of the values of all recov-  
 23                           eries under section 4062, 4063, or 4064, de-  
 24                           termined by the corporation in connection

1                   *with plan terminations described under sub-*  
 2                   *paragraph (B), bears to*

3                   “(ii) *the sum of all unfunded benefit li-*  
 4                   *abilities under such plans as of the termi-*  
 5                   *nation date in connection with any such*  
 6                   *prior termination.*”.

7                   (2) *ALLOCATION OF ASSETS.—Section 4044 of*  
 8                   *the Employee Retirement Income Security Act of*  
 9                   *1974 (29 U.S.C. 1362) is amended by adding at the*  
 10                  *end the following new subsection:*

11                  “(e) *VALUATION OF SECTION 4062(c) LIABILITY FOR*  
 12                  *DETERMINING AMOUNTS PAYABLE BY CORPORATION TO*  
 13                  *PARTICIPANTS AND BENEFICIARIES.—*

14                  “(1) *IN GENERAL.—In the case of a terminated*  
 15                  *plan, the value of the recovery of liability under sec-*  
 16                  *tion 4062(c) allocable as a plan asset under this sec-*  
 17                  *tion for purposes of determining the amount of bene-*  
 18                  *fits payable by the corporation shall be determined by*  
 19                  *multiplying—*

20                  “(A) *the amount of liability under section*  
 21                  *4062(c) as of the termination date of the plan,*  
 22                  *by*

23                  “(B) *the applicable section 4062(c) recovery*  
 24                  *ratio.*

1           “(2) *SECTION 4062(c) RECOVERY RATIO.*—*For*  
2           *purposes of this subsection—*

3           “(A) *IN GENERAL.*—*Except as provided in*  
4           *subparagraph (C), the term ‘section 4062(c) re-*  
5           *covery ratio’ means the ratio which—*

6                   “(i) *the sum of the values of all recov-*  
7                   *eries under section 4062(c) determined by*  
8                   *the corporation in connection with plan ter-*  
9                   *minations described under subparagraph*  
10                  *(B), bears to*

11                  “(ii) *the sum of all the amounts of li-*  
12                  *ability under section 4062(c) with respect to*  
13                  *such plans as of the termination date in*  
14                  *connection with any such prior termi-*  
15                  *nation.*

16           “(B) *PRIOR TERMINATIONS.*—*A plan termi-*  
17           *nation described in this subparagraph is a ter-*  
18           *mination with respect to which—*

19                   “(i) *the value of recoveries under sec-*  
20                   *tion 4062(c) have been determined by the*  
21                   *corporation, and*

22                   “(ii) *notices of intent to terminate*  
23                   *were provided (or in the case of a termi-*  
24                   *nation by the corporation, a notice of deter-*  
25                   *mination under section 4042 was issued)*



1           *during the 5-Federal fiscal year period end-*  
 2           *ing with the third fiscal year preceding the*  
 3           *fiscal year in which occurs the date of the*  
 4           *notice of intent to terminate (or the notice*  
 5           *of determination under section 4042) with*  
 6           *respect to the plan termination for which*  
 7           *the recovery ratio is being determined.*

8           “(C) *EXCEPTION.—In the case of a termi-*  
 9           *nated plan with respect to which the outstanding*  
 10           *amount of benefit liabilities exceeds \$20,000,000,*  
 11           *the term ‘section 4062(c) recovery ratio’ means,*  
 12           *with respect to the termination of such plan, the*  
 13           *ratio of—*

14                   “(i) *the value of the recoveries on be-*  
 15                   *half of the plan under section 4062(c), to*

16                   “(ii) *the amount of the liability owed*  
 17                   *under section 4062(c) as of the date of plan*  
 18                   *termination to the trustee appointed under*  
 19                   *section 4042 (b) or (c).*

20           “(3) *SUBSECTION NOT TO APPLY.—This sub-*  
 21           *section shall not apply with respect to the determina-*  
 22           *tion of—*

23                   “(A) *whether the amount of outstanding*  
 24                   *benefit liabilities exceeds \$20,000,000, or*

1                   “(B) the amount of any liability under sec-  
 2                   tion 4062 to the corporation or the trustee ap-  
 3                   pointed under section 4042 (b) or (c).

4                   “(4) DETERMINATIONS.—Determinations under  
 5                   this subsection shall be made by the corporation. Such  
 6                   determinations shall be binding unless shown by clear  
 7                   and convincing evidence to be unreasonable.”

8                   (c) EFFECTIVE DATE.—The amendments made by this  
 9                   section shall apply for any termination for which notices  
 10                  of intent to terminate are provided (or in the case of a ter-  
 11                  mination by the corporation, a notice of determination  
 12                  under section 4042 under the Employee Retirement Income  
 13                  Security Act of 1974 is issued) on or after the date which  
 14                  is 30 days after the date of enactment of this section.

15   **SEC. 411. TREATMENT OF CERTAIN PLANS WHERE CES-**  
 16                   **SATION OR CHANGE IN MEMBERSHIP OF A**  
 17                   **CONTROLLED GROUP.**

18                  (a) IN GENERAL.—Section 4041(b) of the Employee  
 19                  Retirement Income Security Act of 1974 (29 U.S.C.  
 20                  1341(b)) is amended by adding at the end the following new  
 21                  paragraph:

22                   “(5) SPECIAL RULE FOR CERTAIN PLANS WHERE  
 23                   CESSATION OR CHANGE IN MEMBERSHIP OF A CON-  
 24                   TROLLED GROUP.—

1           “(A) *IN GENERAL.*—*Except as provided in*  
2           *subparagraph (B), if—*

3                   “(i) *there is transaction or series of*  
4                   *transactions which result in a single-em-*  
5                   *ployer plan which is a defined benefit plan*  
6                   *being maintained by an employer which is*  
7                   *not a member of the same controlled group*  
8                   *of which the employer maintaining the plan*  
9                   *before such transaction or series of trans-*  
10                   *actions was a member,*

11                   “(ii) *the corporation treats the trans-*  
12                   *action or series of transactions as resulting*  
13                   *in a standard termination to which this*  
14                   *subsection applies, and*

15                   “(iii) *the plan is fully funded,*  
16           *then the interest rate used in determining wheth-*  
17           *er the plan is sufficient for benefit liabilities for*  
18           *purposes of this subsection shall be the interest*  
19           *rate used in determining whether the plan is*  
20           *fully funded.*

21           “(B) *LIMITATIONS.*—*Subparagraph (A)*  
22           *shall not apply to any transaction or series of*  
23           *transactions unless—*

1           “(i) any employer maintaining the  
2           plan immediately before or after such trans-  
3           action or series of transactions—

4                   “(I) has an outstanding senior  
5                   unsecured debt instrument which is  
6                   rated investment grade by each of the  
7                   nationally recognized statistical rating  
8                   organizations for corporate bonds that  
9                   has issued a credit rating for such in-  
10                  strument, or

11                  “(II) if no such debt instrument  
12                  of such employer has been rated by  
13                  such an organization but 1 or more of  
14                  such organizations has made an issuer  
15                  credit rating for such employer, all  
16                  such organizations which have so rated  
17                  the employer have rated such employer  
18                  investment grade, and

19           “(ii) the employer maintaining the  
20           plan after the transaction or series of trans-  
21           actions employs at least 30 percent of the  
22           employees located in the United States who  
23           were employed by such employer imme-  
24           diately before the transaction or series of  
25           transactions.

1           “(C) *FULLY FUNDED.*—For purposes of sub-  
 2           paragraph (A), a plan shall be treated as fully  
 3           funded with respect to any transaction or series  
 4           of transactions if—

5                   “(i) in the case of a transaction or se-  
 6                   ries of transactions which occur in a plan  
 7                   year beginning before January 1, 2007, the  
 8                   funded current liability percentage deter-  
 9                   mined under section 302(d) for the plan  
 10                  year is at least 100 percent, and

11                   “(ii) in the case of a transaction or se-  
 12                   ries of transactions which occur in a plan  
 13                   year beginning on or after such date, the  
 14                   funding target attainment percentage deter-  
 15                   mined under section 303 is, as of the valu-  
 16                   ation date for such plan year, at least 100  
 17                  percent.”

18           (b) *EFFECTIVE DATE.*—The amendments made by this  
 19           section shall apply to any transaction or series of trans-  
 20           actions occurring on and after the date of the enactment  
 21           of this Act.

22   **SEC. 412. EFFECT OF TITLE.**

23           *The decreases in Federal outlays resulting from the en-*  
 24           *actment of this title, and the amendments made by this*

1 *title, shall be treated as in lieu of the decreases in Federal*  
 2 *outlays which—*

3 *(1) resulted from amendments made to title IV*  
 4 *of the Employee Retirement Income Security Act of*  
 5 *1974 (29 U.S.C. 1301 et seq.); and*

6 *(2) were contained in an Act enacted pursuant*  
 7 *to the concurrent resolution on the budget for fiscal*  
 8 *year 2006.*

9 **SEC. 413. AGE REQUIREMENT FOR EMPLOYERS.**

10 *(a) SINGLE-EMPLOYER PLAN BENEFITS GUARAN-*  
 11 *TEED.—Section 4022(b) of the Employee Retirement In-*  
 12 *come Security Act of 1974 (29 U.S.C. 1322(b)) is amended*  
 13 *in the flush matter following paragraph (3), by adding at*  
 14 *the end the following: “If, at the time of termination of a*  
 15 *plan under this title, regulations prescribed by the Federal*  
 16 *Aviation Administration require an individual to separate*  
 17 *from service as a commercial airline pilot after attaining*  
 18 *any age before age 65, paragraph (3) shall be applied to*  
 19 *an individual who is a participant in the plan by reason*  
 20 *of such service by substituting such age for age 65.”.*

21 *(b) MULTIEMPLOYER PLAN BENEFITS GUARAN-*  
 22 *TEED.—Section 4022B(a) of the Employee Retirement In-*  
 23 *come Security Act of 1974 (29 U.S.C. 1322b(a)) is amended*  
 24 *by adding at the end the following: “If, at the time of termi-*  
 25 *nation of a plan under this title, regulations prescribed by*

1 *the Federal Aviation Administration require an individual*  
 2 *to separate from service as a commercial airline pilot after*  
 3 *attaining any age before age 65, this subsection shall be*  
 4 *applied to an individual who is a participant in the plan*  
 5 *by reason of such service by substituting such age for age*  
 6 *65.”.*

7 (c) *EFFECTIVE DATE.*—*The amendments made by this*  
 8 *section shall apply to benefits payable on or after the date*  
 9 *of enactment of this Act.*

## 10 ***TITLE V—DISCLOSURE***

### 11 ***SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.***

12 (a) *IN GENERAL.*—*Section 101(f) of the Employee Re-*  
 13 *tirement Income Security Act of 1974 (29 U.S.C. 1021(f))*  
 14 *is amended to read as follows:*

15 “(f) *DEFINED BENEFIT PLAN FUNDING NOTICES.*—

16 “(1) *IN GENERAL.*—*The administrator of a de-*  
 17 *fin**ed benefit plan shall for each plan year provide a*  
 18 *plan funding notice to the Pension Benefit Guaranty*  
 19 *Corporation, to each plan participant and bene-*  
 20 *ficiary, to each labor organization representing such*  
 21 *participants or beneficiaries, and, in the case of a*  
 22 *multiemployer plan, to each employer that has an ob-*  
 23 *ligation to contribute to the plan.*

24 “(2) *INFORMATION CONTAINED IN NOTICES.*—

1           “(A) *IDENTIFYING INFORMATION.*—Each no-  
 2           *tice required under paragraph (1) shall contain*  
 3           *identifying information, including the name of*  
 4           *the plan, the address and phone number of the*  
 5           *plan administrator and the plan’s principal ad-*  
 6           *ministrative officer, each plan sponsor’s em-*  
 7           *ployer identification number, and the plan num-*  
 8           *ber of the plan.*

9           “(B) *SPECIFIC INFORMATION.*—A plan  
 10          *funding notice under paragraph (1) shall*  
 11          *include—*

12               “(i)(I) *in the case of a single-employer*  
 13               *plan, a statement as to whether the plan’s*  
 14               *funding target attainment percentage (as*  
 15               *defined in section 303(d)(2)) for the plan*  
 16               *year to which the notice relates, and for the*  
 17               *2 preceding plan years, is at least 100 per-*  
 18               *cent (and, if not, the actual percentages), or*

19               “(II) *in the case of a multiemployer*  
 20               *plan, a statement as to whether the plan’s*  
 21               *funded percentage (as defined in section*  
 22               *305(i)) for the plan year to which the notice*  
 23               *relates, and for the 2 preceding plan years,*  
 24               *is at least 100 percent (and, if not, the ac-*  
 25               *tual percentages),*



1           “(ii)(I) in the case of a single-employer  
 2           plan, a statement of the value of the plan’s  
 3           assets and liabilities for the plan year to  
 4           which the notice relates as of the last day  
 5           of the plan year to which the notice relates  
 6           determined using the asset valuation under  
 7           subclause (I) of section 4006(a)(3)(E)(iii)  
 8           and the interest rate under subclause (II) of  
 9           such section, and

10           “(II) in the case of a multiemployer  
 11           plan, a statement of the value of the plan’s  
 12           assets and liabilities for the plan year to  
 13           which the notice relates as the last day of  
 14           such plan year,

15           “(iii) a statement of the number of  
 16           participants who are—

17                   “(I) retired or separated from  
 18                   service and are receiving benefits,

19                   “(II) retired or separated partici-  
 20                   pants entitled to future benefits, and

21                   “(III) active participants under  
 22                   the plan,

23           “(iv) a statement setting forth the  
 24           funding policy of the plan and the asset al-  
 25           location of investments under the plan (ex-

1           *pressed as percentages of total assets) as of*  
2           *the end of the plan year to which the notice*  
3           *relates,*

4           “(v) *in the case of a multiemployer*  
5           *plan, whether the plan was in critical or*  
6           *endangered status under section 305 for*  
7           *such plan year and, if so—*

8                     “(I) *a list of the actions taken by*  
9                     *the plan to improve its funding status,*  
10                    *and*

11                   “(II) *a statement describing how*  
12                    *a person may obtain a copy of the*  
13                    *plan’s improvement or rehabilitation*  
14                    *plan, as appropriate, adopted under*  
15                    *section 305 and the actuarial and fi-*  
16                    *nancial data that demonstrate any ac-*  
17                    *tion taken by the plan toward fiscal*  
18                    *improvement,*

19                   “(vi) *a summary of any funding im-*  
20                    *provement plan, rehabilitation plan, or*  
21                    *modification thereof adopted under section*  
22                    *305 during the plan year to which the no-*  
23                    *tice relates,*

24                   “(vii) *in the case of any plan amend-*  
25                    *ments, scheduled benefit increase or reduc-*

1            *tion, or other known event taking effect in*  
2            *the current plan year and having a mate-*  
3            *rial effect on plan liabilities or assets for*  
4            *the year (as defined in regulations by the*  
5            *Secretary), an explanation of the amend-*  
6            *ment, schedule increase or reduction, or*  
7            *event, and a projection to the end of such*  
8            *plan year of the effect of the amendment,*  
9            *scheduled increase or reduction, or event on*  
10           *plan liabilities,*

11           “(viii)(I) *in the case of a single-em-*  
12           *ployer plan, a summary of the rules gov-*  
13           *erning termination of single-employer plans*  
14           *under subtitle C of title IV, or*

15           “(II) *in the case of a multiemployer*  
16           *plan, a summary of the rules governing re-*  
17           *organization or insolvency, including the*  
18           *limitations on benefit payments and any*  
19           *potential benefit reductions and suspensions*  
20           *(and the potential effects of such limita-*  
21           *tions, reductions, and suspensions on the*  
22           *plan), and*

23           “(ix) *a general description of the bene-*  
24           *fits under the plan which are eligible to be*  
25           *guaranteed by the Pension Benefit Guar-*

1            *anty Corporation, along with an expla-*  
 2            *nation of the limitations on the guarantee*  
 3            *and the circumstances under which such*  
 4            *limitations apply.*

5            “(C) *OTHER INFORMATION.*—*Each notice*  
 6            *under paragraph (1) shall include—*

7                    “(i) *in the case of a multiemployer*  
 8                    *plan, a statement that the plan adminis-*  
 9                    *trator shall provide, upon written request,*  
 10                   *to any labor organization representing plan*  
 11                   *participants and beneficiaries and any em-*  
 12                   *ployer that has an obligation to contribute*  
 13                   *to the plan, a copy of the annual report*  
 14                   *filed with the Secretary under section*  
 15                   *104(a), and*

16                   “(ii) *any additional information*  
 17                   *which the plan administrator elects to in-*  
 18                   *clude to the extent not inconsistent with reg-*  
 19                   *ulations prescribed by the Secretary.*

20            “(3) *TIME FOR PROVIDING NOTICE.*—

21                   “(A) *IN GENERAL.*—*Any notice under para-*  
 22                   *graph (1) shall be provided not later than 90*  
 23                   *days after the end of the plan year to which the*  
 24                   *notice relates.*

1           “(B) *EXCEPTION FOR SMALL PLANS.*—*In*  
 2           *the case of a small plan (as such term is used*  
 3           *under section 303(g)(2)(B)) any notice under*  
 4           *paragraph (1) shall be provided upon filing of*  
 5           *the annual report under section 104(a).*

6           “(4) *FORM AND MANNER.*—*Any notice under*  
 7           *paragraph (1)—*

8                   “(A) *shall be provided in a form and man-*  
 9                   *ner prescribed in regulations of the Secretary,*

10                   “(B) *shall be written in a manner so as to*  
 11                   *be understood by the average plan participant,*  
 12                   *and*

13                   “(C) *may be provided in written, electronic,*  
 14                   *or other appropriate form to the extent such form*  
 15                   *is reasonably accessible to persons to whom the*  
 16                   *notice is required to be provided.”.*

17           (b) *MODEL NOTICE.*—*Not later than 180 days after*  
 18           *the date of the enactment of this Act, the Secretary of Labor*  
 19           *shall publish a model version of the notice required by sec-*  
 20           *tion 101(f) of the Employee Retirement Income Security*  
 21           *Act of 1974. The Secretary of Labor may promulgate any*  
 22           *interim final rules as the Secretary determines appropriate*  
 23           *to carry out the provisions of this subsection.*

1       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
 2 *section shall apply to plan years beginning after December*  
 3 *31, 2005.*

4       **SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN IN-**  
 5               **FORMATION.**

6       (a) *FINANCIAL INFORMATION WITH RESPECT TO MUL-*  
 7 *TIEMPLOYER PLANS.*—

8               (1) *IN GENERAL.*—*Section 101 of the Employee*  
 9 *Retirement Income Security Act of 1974 (29 U.S.C.*  
 10 *1021) is amended—*

11                       (A) *by redesignating subsection (k) as sub-*  
 12 *section (l); and*

13                       (B) *by inserting after subsection (j) the fol-*  
 14 *lowing new subsection:*

15       “(k) *MULTIEMPLOYER PLAN INFORMATION MADE*  
 16 *AVAILABLE ON REQUEST.*—

17               “(1) *IN GENERAL.*—*Each administrator of a*  
 18 *multiemployer plan shall, upon written request, fur-*  
 19 *nish to any plan participant or beneficiary, employee*  
 20 *representative, or any employer that has an obliga-*  
 21 *tion to contribute to the plan—*

22                       “(A) *a copy of any periodic actuarial re-*  
 23 *port (including sensitivity testing) received by*  
 24 *the plan for any plan year which has been in the*  
 25 *plan’s possession for at least 30 days, and*

1           “(B)(i) a copy of any quarterly, semi-an-  
 2           nual, or annual financial report prepared for the  
 3           plan by any plan investment manager or advi-  
 4           sor or other fiduciary which has been in the  
 5           plan’s possession for at least 30 days, or

6           “(ii) at the discretion of the person submit-  
 7           ting the written request, a copy of a quarterly  
 8           summary of the financial reports described  
 9           clause (i).

10          “(2) COMPLIANCE.—Information required to be  
 11          provided under paragraph (1) —

12           “(A) shall be provided to the requesting par-  
 13           ticipant, beneficiary, or employer within 30 days  
 14           after the request in a form and manner pre-  
 15           scribed in regulations of the Secretary,

16           “(B) may be provided in written, electronic,  
 17           or other appropriate form to the extent such form  
 18           is reasonably accessible to persons to whom the  
 19           information is required to be provided, and

20           “(C) shall not—

21           “(i) include any individually identifi-  
 22           able information regarding any plan par-  
 23           ticipant, beneficiary, employee, fiduciary,  
 24           or contributing employer, or

1                   “(ii) reveal any proprietary informa-  
 2                   tion regarding the plan, any contributing  
 3                   employer, or entity providing services to the  
 4                   plan.

5                   “(3) *LIMITATIONS.*—In no case shall a partici-  
 6                   pant, beneficiary, or employer be entitled under this  
 7                   subsection to receive more than one copy of any report  
 8                   described in paragraph (1) during any one 12-month  
 9                   period. The administrator may make a reasonable  
 10                  charge to cover copying, mailing, and other costs of  
 11                  furnishing copies of information pursuant to para-  
 12                  graph (1). The Secretary may by regulations pre-  
 13                  scribe the maximum amount which will constitute a  
 14                  reasonable charge under the preceding sentence.”.

15                  (2) *ENFORCEMENT.*—Section 502(c)(4) of such  
 16                  Act (29 U.S.C. 1132(c)(4)) is amended by striking  
 17                  “section 101(j)” and inserting “subsection (j) or (k)  
 18                  of section 101”.

19                  (3) *REGULATIONS.*—The Secretary shall pre-  
 20                  scribe regulations under section 101(k)(2) of the Em-  
 21                  ployee Retirement Income Security Act of 1974  
 22                  (added by paragraph (1)) not later than 270 days  
 23                  after the date of the enactment of this Act.

24                  (b) *NOTICE OF POTENTIAL WITHDRAWAL LIABILITY*  
 25                  *TO MULTIPLE EMPLOYER PLANS.*—



1           (1) *IN GENERAL.*—Section 101 of such Act (as  
2           amended by subsection (a)) is amended—

3                   (A) by redesignating subsection (l) as sub-  
4           section (m); and

5                   (B) by inserting after subsection (k) the fol-  
6           lowing new subsection:

7           “(l) *NOTICE OF POTENTIAL WITHDRAWAL LIABIL-*  
8           *ITY.*—

9                   “(1) *IN GENERAL.*—The plan sponsor or admin-  
10           istrator of a multiemployer plan shall, upon written  
11           request, furnish to any employer who has an obliga-  
12           tion to contribute to the plan a notice of—

13                   “(A) the estimated amount which would be  
14           the amount of such employer’s withdrawal liabil-  
15           ity under part 1 of subtitle E of title IV if such  
16           employer withdrew on the last day of the plan  
17           year preceding the date of the request, and

18                   “(B) an explanation of how such estimated  
19           liability amount was determined, including the  
20           actuarial assumptions and methods used to de-  
21           termine the value of the plan liabilities and as-  
22           sets, the data regarding employer contributions,  
23           unfunded vested benefits, annual changes in the  
24           plan’s unfunded vested benefits, and the applica-

1            *tion of any relevant limitations on the estimated*  
 2            *withdrawal liability.*

3            *For purposes of subparagraph (B), the term ‘employer*  
 4            *contribution’ means, in connection with a partici-*  
 5            *pant, a contribution made by an employer as an em-*  
 6            *ployer of such participant.*

7            *“(2) COMPLIANCE.—Any notice required to be*  
 8            *provided under paragraph (1)—*

9                    *“(A) shall be provided to the requesting em-*  
 10                  *ployer within—*

11                          *“(i) 180 days after the request in a*  
 12                          *form and manner prescribed in regulations*  
 13                          *of the Secretary, or*

14                          *“(ii) subject to regulations of the Sec-*  
 15                          *retary, such longer time as may be nec-*  
 16                          *essary in the case of a plan that determines*  
 17                          *withdrawal liability based on any method*  
 18                          *described under paragraph (4) or (5) of sec-*  
 19                          *tion 4211(c); and*

20                          *“(B) may be provided in written, electronic,*  
 21                          *or other appropriate form to the extent such form*  
 22                          *is reasonably accessible to employers to whom the*  
 23                          *information is required to be provided.*

24            *“(3) LIMITATIONS.—In no case shall an em-*  
 25            *ployer be entitled under this subsection to receive*

1        *more than one notice described in paragraph (1) dur-*  
 2        *ing any one 12-month period. The person required to*  
 3        *provide such notice may make a reasonable charge to*  
 4        *cover copying, mailing, and other costs of furnishing*  
 5        *such notice pursuant to paragraph (1). The Secretary*  
 6        *may by regulations prescribe the maximum amount*  
 7        *which will constitute a reasonable charge under the*  
 8        *preceding sentence.”.*

9            (2) *ENFORCEMENT.*—Section 502(c)(4) of such  
 10        *Act (29 U.S.C. 1132(c)(4)) is amended by striking*  
 11        *“section 101(j) or (k)” and inserting “subsection (j),*  
 12        *(k), or (l) of section 101”.*

13        (c) *NOTICE OF AMENDMENT REDUCING FUTURE AC-*  
 14        *CRUALS.*—Section 204(h)(1) of such Act (29 U.S.C.  
 15        *1054(h)(1)) is amended by inserting at the end before the*  
 16        *period “and to each employer who has an obligation to con-*  
 17        *tribute to the plan.”.*

18        (d) *EFFECTIVE DATE.*—The amendments made by this  
 19        *section shall apply to plan years beginning after December*  
 20        *31, 2005.*

21        **SEC. 503. ADDITIONAL ANNUAL REPORTING REQUIRE-**  
 22        **MENTS.**

23        (a) *ADDITIONAL ANNUAL REPORTING REQUIREMENTS*  
 24        *WITH RESPECT TO DEFINED BENEFIT PLANS.*—

1           (1) *IN GENERAL.*—Section 103 of the Employee  
 2           *Retirement Income Security Act of 1974 (29 U.S.C.*  
 3           *1023) is amended—*

4                     (A) *in subsection (a)(1)(B), by striking*  
 5                     *“subsections (d) and (e)” and inserting “sub-*  
 6                     *sections (d), (e), and (f)”;* and

7                     (B) *by adding at the end the following new*  
 8                     *subsection:*

9           “(f) *ADDITIONAL INFORMATION WITH RESPECT TO*  
 10          *DEFINED BENEFIT PLANS.*—

11                    “(1) *GENERAL INFORMATION.*—*With respect to*  
 12                    *any defined benefit plan, an annual report under this*  
 13                    *section for a plan year shall include the following:*

14                           “(A) *In any case in which any liabilities to*  
 15                           *participants or their beneficiaries under such*  
 16                           *plan as of the end of such plan year consist (in*  
 17                           *whole or in part) of liabilities to such partici-*  
 18                           *pants and beneficiaries under 2 or more pension*  
 19                           *plans as of immediately before such plan year,*  
 20                           *the funded percentage of each of such 2 or more*  
 21                           *pension plans as of the last day of such plan*  
 22                           *year and the funded percentage of the plan with*  
 23                           *respect to which the annual report is filed as of*  
 24                           *the last day of such plan year.*

1           “(B) For purposes of this paragraph, the  
2           term ‘funded percentage’—

3                   “(i) in the case of a single-employer  
4                   plan, means the funding target attainment  
5                   percentage, as defined in section 303(d)(2),  
6                   and

7                   “(ii) in the case of a multiemployer  
8                   plan, has the meaning given such term in  
9                   section 305(i)(2).

10           “(2) *ADDITIONAL INFORMATION FOR MULTIEMPLOYER PLANS.*—With respect to any defined benefit  
11           plan which is a multiemployer plan, an annual re-  
12           port under this section for a plan year shall include,  
13           in addition to the information required under para-  
14           graph (1), the following, as of the end of the plan year  
15           to which the notice relates:  
16

17                   “(A) The number of employers obligated to  
18                   contribute to the plan.

19                   “(B) A list of the employers that contrib-  
20                   uted more than 5 percent of the total contribu-  
21                   tions to the plan during such plan year.

22                   “(C) The number of participants under the  
23                   plan on whose behalf no employer contributions  
24                   have been made to the plan for such plan year  
25                   and for each of the 2 preceding plan years. For

1        *purposes of this subparagraph, the term ‘em-*  
2        *ployer contribution’ means, in connection with a*  
3        *participant, a contribution made by an em-*  
4        *ployer as an employer of such participant.*

5                *“(D) The ratio of—*

6                        *“(i) the number of participants under*  
7                        *the plan on whose behalf no employer had*  
8                        *an obligation to make an employer con-*  
9                        *tribution during the plan year, to*

10                      *“(ii) the number of participants under*  
11                      *the plan on whose behalf no employer had*  
12                      *an obligation to make an employer con-*  
13                      *tribution during each of the 2 preceding*  
14                      *plan years.*

15                *“(E) Whether the plan received an amorti-*  
16                *zation extension under section 304(d) or section*  
17                *431(d) of the Internal Revenue Code of 1986 for*  
18                *such plan year and, if so, the amount of the dif-*  
19                *ference between the minimum required contribu-*  
20                *tion for the year and the minimum required con-*  
21                *tribution which would have been required with-*  
22                *out regard to the extension, and the period of*  
23                *such extension.*

24                *“(F) Whether the plan used the shortfall*  
25                *funding method (as such term is used in section*

1       305) for such plan year and, if so, the amount  
2       of the difference between the minimum required  
3       contribution for the year and the minimum re-  
4       quired contribution which would have been re-  
5       quired without regard to the use of such method,  
6       and the period of use of such method.

7               “(G) Whether the plan was in critical or  
8       endangered status under section 305 for such  
9       plan year, and if so, a summary of any funding  
10      improvement or rehabilitation plan (or modi-  
11      fication thereto) adopted during the plan year,  
12      and the funding ratio of the plan.

13              “(H) The number of employers that with-  
14      drew from the plan during the preceding plan  
15      year and the aggregate amount of withdrawal li-  
16      ability assessed, or estimated to be assessed,  
17      against such withdrawn employers.

18              “(I) In the case of a multiemployer plan  
19      that has merged with another plan or to which  
20      assets and liabilities have been transferred, the  
21      actuarial valuation of the assets and liabilities of  
22      each affected plan during the year preceding the  
23      effective date of the merger or transfer, based  
24      upon the most recent data available as of the day  
25      before the first day of the plan year, or other

valuation method performed under standards and procedures as the Secretary may prescribe by regulation.”.

(2) *GUIDANCE BY SECRETARY OF LABOR.*—

(A) *IN GENERAL.*—Not later than 180 days after the date of enactment of this Act, the Secretary of Labor shall publish guidance to assist multiemployer defined benefit plans to—

(i) identify and enumerate plan participants for whom there is no employer with an obligation to make an employer contribution under the plan; and

(ii) report such information under section 103(f)(2)(D) of the Employee Retirement Income Security Act of 1974 (as added by this section).

(B) *WAIVER OF REQUIREMENT.*—The Secretary of Labor shall waive the requirement under section 103(f)(2)(D) of such Act (as added by this section) for the construction and entertainment industries.

(b) *ADDITIONAL INFORMATION IN ANNUAL ACTUARIAL STATEMENT REGARDING PLAN RETIREMENT PROJECTIONS.*—Section 103(d) of such Act (29 U.S.C. 1023(d)) is amended—



1           (1) *by redesignating paragraphs (12) and (13)*  
 2           *as paragraphs (13) and (14), respectively; and*

3           (2) *by inserting after paragraph (11) the fol-*  
 4           *lowing new paragraph:*

5           “(12) *A statement explaining the actuarial as-*  
 6           *sumptions and methods used in projecting future re-*  
 7           *tirements and forms of benefit distributions under the*  
 8           *plan.”.*

9           (c) *FORM AND MANNER OF REPORT.*—Section  
 10          104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended  
 11          by—

12           (1) *striking “(3) Within” and inserting—*

13                   “(A) *IN GENERAL.*—*Within*”; and

14           (2) *adding at the end the following:*

15                   “(B) *FORM OF REPORT.*—*The material pro-*  
 16                   *vided pursuant to subparagraph (A) to summa-*  
 17                   *rize the latest annual report shall be written in*  
 18                   *a manner calculated to be understood by the av-*  
 19                   *erage plan participant.*

20           (d) *FURNISHING SUMMARY PLAN INFORMATION TO*  
 21          *EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF MULTI-*  
 22          *EMPLOYER PLANS.*—

23           (1) *IN GENERAL.*—Section 104 of such Act (29  
 24          U.S.C. 1024) is amended—

1           (A) in the header, by striking “PARTICI-  
 2           PANTS” and inserting “PARTICIPANTS AND CER-  
 3           TAIN EMPLOYERS”;

4           (B) redesignating subsection (d) as sub-  
 5           section (e); and

6           (C) inserting after subsection (c) the fol-  
 7           lowing:

8           “(d) FURNISHING SUMMARY PLAN INFORMATION TO  
 9           EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF MULTI-  
 10          EMPLOYER PLANS.—

11           “(1) IN GENERAL.—With respect to a multiem-  
 12          ployer plan subject to this section, within 30 days  
 13          after the due date under subsection (a)(1) for the fil-  
 14          ing of the annual report for the fiscal year of the  
 15          plan, the administrators shall furnish to each em-  
 16          ployee organization, employer with an obligation to  
 17          contribute to the plan, and the Pension Benefit Guar-  
 18          anty Corporation, a report that contains—

19           “(A) a description of the contribution sched-  
 20          ules and benefit formulas under the plan, and  
 21          any modification to such schedules and formulas,  
 22          during such plan year;

23           “(B) the number of employers obligated to  
 24          contribute to the plan;

1           “(C) a list of the employers that contributed  
2           more than 5 percent of the total contributions to  
3           the plan during such plan year;

4           “(D) the number of participants under the  
5           plan on whose behalf no employer contributions  
6           (which, for purposes of this paragraph, means,  
7           in connection with a participant, a contribution  
8           made by an employer as an employer of such  
9           participant) have been made to the plan for such  
10          plan year and for each of the 2 preceding plan  
11          years;

12          “(E) whether the plan was in critical or en-  
13          dangered status under section 305 for such plan  
14          year and, if so, include—

15               “(i) a list of the actions taken by the  
16               plan to improve its funding status; and

17               “(ii) a statement describing how a per-  
18               son may obtain a copy of the plan’s im-  
19               provement or rehabilitation plan, as appro-  
20               priate, adopted under section 305 and the  
21               actuarial and financial data that dem-  
22               onstrate any action taken by the plan to-  
23               ward fiscal improvement;

24          “(H) the number of employers that with-  
25          drew from the plan during the preceding plan

1       year and the aggregate amount of withdrawal li-  
2       ability assessed, or estimated to be assessed,  
3       against such withdrawn employers, as reported  
4       on the annual report for the plan year to which  
5       the report under this subsection relates;

6               “(I) in the case of a multiemployer plan  
7       that has merged with another plan or to which  
8       assets and liabilities have been transferred, the  
9       actuarial valuation of the assets and liabilities of  
10      each affected plan during the year preceding the  
11      effective date of the merger or transfer, based  
12      upon the most recent data available as of the day  
13      before the first day of the plan year, or other  
14      valuation method performed under standards  
15      and procedures as the Secretary may prescribe  
16      by regulation;

17              “(J) a description as to whether the plan—

18                      “(i) sought or received an amortization  
19                      extension under section 304(d) or section  
20                      431(d) of the Internal Revenue Code of 1986  
21                      for such plan year;

22                      “(ii) used the shortfall funding method  
23                      (as such term is used in section 305) for  
24                      such plan year; or

1                   “(iii) was in critical or endangered  
 2                   status under section 305 for such plan year;  
 3                   and

4                   “(K) notification of the right under this sec-  
 5                   tion of the recipient to a copy of the annual re-  
 6                   port filed with the Secretary under subsection  
 7                   (a), summary annual report, summary plan de-  
 8                   scription, summary of any material modifica-  
 9                   tion of the plan, upon written request, but  
 10                  that—

11                  “(i) in no case shall a recipient be en-  
 12                  titled to receive more than one copy of any  
 13                  such report described during any one 12-  
 14                  month period; and

15                  “(ii) the administrator may make a  
 16                  reasonable charge to cover copying, mailing,  
 17                  and other costs of furnishing copies of infor-  
 18                  mation pursuant to this subparagraph.

19                  “(2) EFFECT OF SECTION.—Nothing in this sec-  
 20                  tion waives any other provision under this title re-  
 21                  quiring plan administrators to provide, upon request,  
 22                  information to employers that have an obligation to  
 23                  contribution under the plan.”.

24                  (e) MODEL FORM.—Not later than 270 days after the  
 25                  date of the enactment of this Act, the Secretary of Labor

1 *shall publish a model form for providing the statements,*  
 2 *schedules, and other material required to be provided under*  
 3 *section 104(b)(3) of the Employee Retirement Income Secu-*  
 4 *rity Act of 1974, as amended by this section. The Secretary*  
 5 *of Labor may promulgate any interim final rules as the*  
 6 *Secretary determines appropriate to carry out the provi-*  
 7 *sions of this subsection.*

8       (f) *FIVE-YEAR REPORT WITH RESPECT TO MULTIEM-*  
 9 *PLOYER PLANS.*—Section 4022A(f) of such Act (29 U.S.C.  
 10 1322a(f)) is amended by adding at the end the following:

11               “(6) Not later than 5 years after the date of the  
 12       enactment of the Pension Security and Transparency  
 13       Act of 2005, and at least every fifth year thereafter,  
 14       the corporation shall submit to Congress a report that  
 15       contains a description of the fiscal conditions of the  
 16       multiemployer pension plan system as of the date of  
 17       such report based on the information submitted to the  
 18       corporation under section 104(d).”.

19       (g) *CONFORMING AMENDMENT.*—Title IV of such Act  
 20 (29 U.S.C. 1301 et seq.) is amended by striking section  
 21 4011.

22       (h) *EFFECTIVE DATES.*—

23               (1) *IN GENERAL.*—The amendments made by  
 24       this section shall apply to plan years beginning after  
 25       December 31, 2005.

1           (2) *SPECIAL RULE.*—Notwithstanding the provi-  
 2           sions of paragraph (1), the requirement under section  
 3           103(f)(2)(D) of the Employee Retirement Income Se-  
 4           curity Act (as added by this section) shall apply to  
 5           plan years beginning after December 31, 2007.

6 **SEC. 504. TIMING OF ANNUAL REPORTING REQUIREMENTS.**

7           (a) *FILING AFTER 285 DAYS AFTER PLAN YEAR ONLY*  
 8 *IN CASES OF HARDSHIP.*—Section 104(a)(1) of such Act  
 9 (29 U.S.C. 1024(a)(1)) is amended by inserting after the  
 10 first sentence the following new sentence: “In the case of  
 11 a pension plan, the Secretary may extend the deadline for  
 12 filing the annual report for any plan year past 285 days  
 13 after the close of the plan year only on a case by case basis  
 14 and only in cases of hardship, in accordance with regula-  
 15 tions which shall be prescribed by the Secretary.”.

16           (b) *INTERNET DISPLAY OF INFORMATION.*—Section  
 17 104(b) of such Act (29 U.S.C. 1024(b)) is amended by add-  
 18 ing at the end the following:

19           “(5) Identification and basic plan information and ac-  
 20 tual information included in the annual report for any  
 21 plan year shall be filed with the Secretary in an electronic  
 22 format which accommodates display on the Internet, in ac-  
 23 cordance with regulations which shall be prescribed by the  
 24 Secretary. The Secretary shall provide for display of such  
 25 information included in the annual report, within 90 days

1 *after the date of the filing of the annual report, on an Inter-*  
 2 *net website maintained by the Secretary and other appro-*  
 3 *priate media. Such information shall also be displayed on*  
 4 *any Internet website maintained by the plan sponsor (or*  
 5 *by the plan administrator on behalf of the plan sponsor),*  
 6 *in accordance with regulations which shall be prescribed by*  
 7 *the Secretary.”.*

8 *(c) SUMMARY ANNUAL REPORT FILED WITHIN 30*  
 9 *DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-*  
 10 *PORT.—Section 104(b)(3) of such Act (29 U.S.C.*  
 11 *1024(b)(3)), as amended by section 503, is amended by—*

12 *(1) striking “(3)(A) Within 210 days after the*  
 13 *close of the fiscal year,” and inserting “(3)(A) Within*  
 14 *30 days after the due date under subsection (a)(1) for*  
 15 *the filing of the annual report for the fiscal year of*  
 16 *the plan”;*

17 *(2) striking “the latest” and inserting “such”;*  
 18 *and*

19 *(3) adding at the end the following*

20 *“(C) DATE OF INTERNET DISPLAY.—Dis-*  
 21 *play of the summary annual report on the Inter-*  
 22 *net website maintained by the plan sponsor (or*  
 23 *by the plan administrator on behalf of the plan*  
 24 *sponsor) by the date required under subpara-*  
 25 *graph (A) shall be treated as furnishing such re-*



1           port to each participant and beneficiary receiv-  
 2           ing benefits under the plan by such date, except  
 3           that such report shall be furnished to each such  
 4           participant and beneficiary as soon as prac-  
 5           ticable thereafter, and in no event later the 30  
 6           days after such date.”.

7           (d) *EFFECTIVE DATE.*—The amendments made by this  
 8           section shall apply to plan years beginning after December  
 9           31, 2005.

10   **SEC. 505. SECTION 4010 FILINGS WITH THE PBGC.**

11           (a) *CHANGE IN CRITERIA FOR PERSONS REQUIRED TO*  
 12           *PROVIDE INFORMATION TO PBGC.*—Section 4010(b) of the  
 13           *Employee Retirement Income Security Act of 1974* (29  
 14           *U.S.C. 1310(b))* is amended—

15                   (1) in paragraph (1)—

16                           (A) by striking “(1) the aggregate” and in-  
 17                           serting “(1)(A) the aggregate”;

18                           (B) by striking the semicolon and inserting  
 19                           “; and”;

20                           (C) by inserting after subparagraph (A) the  
 21                           following:

22                                   “(B)(i) the aggregate funding targets attainment  
 23                                   percentage of the plan (as defined in subsection (d))  
 24                                   is less than 90 percent; or

1           “(ii) any debt instrument of the plan sponsor or  
 2           the plan sponsor has received a rating described in  
 3           subclause (I) or (II) of section 303(i)(5)(A)(i);” and  
 4           (2) by redesignating paragraphs (2) and (3) as  
 5           paragraphs (4) and (5), respectively, and by inserting  
 6           before paragraph (4) (as so redesignated) the fol-  
 7           lowing new paragraphs:

8           “(2) the aggregate funding targets attainment  
 9           percentage of the plan (as defined in subsection (d))  
 10          is less than 60 percent;

11          “(3)(A) the aggregate funding targets attainment  
 12          percentage of the plan (as defined in subsection (d))  
 13          is less than 75 percent, and

14          “(B) the plan sponsor is in an industry with re-  
 15          spect to which the corporation determines that there  
 16          is substantial unemployment or underemployment  
 17          and the sales and profits are depressed or declining;”.

18          (b) *ADDITIONAL INFORMATION REQUIRED.*—Section  
 19          4010 of the Employee Retirement Income Security Act of  
 20          1974 (29 U.S.C. 1310) is amended by adding at the end  
 21          the following new subsection:

22          “(d) *ADDITIONAL INFORMATION REQUIRED.*—

23                  “(1) *IN GENERAL.*—The information submitted  
 24                  to the corporation under subsection (a) shall  
 25                  include—

1           “(A) the amount of benefit liabilities under  
2           the plan determined using the assumptions used  
3           by the corporation in determining liabilities;

4           “(B) the funding target of the plan deter-  
5           mined as if the plan has been in at-risk status  
6           for at least 5 plan years; and

7           “(C) the funding target attainment percent-  
8           age of the plan.

9           “(2) DEFINITIONS.—For purposes of this sub-  
10          section:

11           “(A) VALUE OF PLAN ASSETS.—The term  
12           ‘value of plan assets’ means the value of plan as-  
13           sets, as determined under section 303(g)(3).

14           “(B) FUNDING TARGET.—The term ‘funding  
15           target’ has the meaning provided under section  
16           303(d)(1).

17           “(C) FUNDING TARGET ATTAINMENT PER-  
18           CENTAGE.—The term ‘funding target attainment  
19           percentage’ has the meaning provided in section  
20           303(d)(2).

21           “(D) AGGREGATE FUNDING TARGETS AT-  
22           TAINMENT PERCENTAGE.—The term ‘aggregate  
23           funding targets attainment percentage’ means,  
24           with respect to a contributing sponsor for a plan  
25           year, the percentage, taking into account all

1           plans maintained by the contributing sponsor  
 2           and the members of its controlled group as of the  
 3           end of such plan year, which—

4                   “(i) the aggregate total of the values of  
 5                   plan assets, as of the end of such plan year,  
 6                   of such plans, is of

7                   “(ii) the aggregate total of the funding  
 8                   targets of such plans, as of the end of such  
 9                   plan year, taking into account only benefits  
 10                  to which participants and beneficiaries have  
 11                  a nonforfeitable right.

12                  “(E) *AT-RISK STATUS*.—The term ‘at-risk  
 13                  status’ has the meaning provided in section  
 14                  303(i)(4).

15                  “(e) *NOTICE TO CONGRESS*.—The Corporation shall,  
 16                  on an annual basis, submit to the Committee on Health,  
 17                  Education, Labor, and Pensions of the Senate and the Com-  
 18                  mittee on Education and the Workforce of the House of Rep-  
 19                  resentatives, a summary report of the information sub-  
 20                  mitted to the Corporation under this section.”.

21                  “(c) *EFFECTIVE DATE*.—The amendment made by this  
 22                  section shall apply with respect to plan years beginning  
 23                  after 2006.

1 **SEC. 506. DISCLOSURE OF TERMINATION INFORMATION TO**  
 2 **PLAN PARTICIPANTS.**

3 *(a) DISTRESS TERMINATIONS.—*

4 *(1) IN GENERAL.—Section 4041(c)(2) of the Em-*  
 5 *ployee Retirement Income Security Act of 1974 (29*  
 6 *U.S.C. 1341(c)(2)) is amended by adding at the end*  
 7 *the following:*

8 *“(D) DISCLOSURE OF TERMINATION INFOR-*  
 9 *MATION.—*

10 *“(i) IN GENERAL.—A plan adminis-*  
 11 *trator that has filed a notice of intent to*  
 12 *terminate under subsection (a)(2) shall pro-*  
 13 *vide to an affected party any information*  
 14 *provided to the corporation under para-*  
 15 *graph (2) not later than 15 days after—*

16 *“(I) receipt of a request from the*  
 17 *affected party for the information; or*

18 *“(II) the provision of new infor-*  
 19 *mation to the corporation relating to*  
 20 *the previous request.*

21 *“(ii) CONFIDENTIALITY.—*

22 *“(I) IN GENERAL.—The plan ad-*  
 23 *ministrator shall not provide informa-*  
 24 *tion under clause (i) in a form that in-*  
 25 *cludes any information that may di-*  
 26 *rectly or indirectly be associated with,*

1           or otherwise identify, an individual  
2           participant or beneficiary.

3           “(II) *LIMITATION.*—A court may  
4           limit disclosure under this subpara-  
5           graph of confidential information de-  
6           scribed in section 552(b) of title 5,  
7           United States Code, to any authorized  
8           representative of the participants or  
9           beneficiaries that agrees to ensure the  
10          confidentiality of such information.

11          “(iii) *FORM AND MANNER OF INFORMA-*  
12          *TION; CHARGES.*—

13          “(I) *FORM AND MANNER.*—The  
14          corporation may prescribe the form  
15          and manner of the provision of infor-  
16          mation under this subparagraph,  
17          which shall include delivery in written,  
18          electronic, or other appropriate form to  
19          the extent that such form is reasonably  
20          accessible to individuals to whom the  
21          information is required to be provided.

22          “(II) *REASONABLE CHARGES.*—A  
23          plan sponsor may charge a reasonable  
24          fee for any information provided under

1                    *this subparagraph in other than elec-*  
 2                    *tronic form.*

3                    “(iv) *AUTHORIZED REPRESENTA-*  
 4                    *TIVE.—For purposes of this subparagraph,*  
 5                    *the term ‘authorized representative’ means*  
 6                    *any employee organization representing*  
 7                    *participants in the pension plan.”.*

8                    (2) *CONFORMING AMENDMENT.—Section*  
 9                    *4041(c)(1) of the Employee Retirement Income Secu-*  
 10                    *rity Act of 1974 (29 U.S.C. 1341(c)(1)) is amended*  
 11                    *in subparagraph (C) by striking “subparagraph (B)”*  
 12                    *and inserting “subparagraphs (B) and (D)”.*

13                    (b) *INVOLUNTARY TERMINATIONS.—*

14                    (1) *IN GENERAL.—Section 4042(c) of the Em-*  
 15                    *ployee Retirement Income Security Act of 1974 (29*  
 16                    *U.S.C. 1342(c)) is amended by—*

17                    (A) *striking “(c) If the” and inserting*  
 18                    *“(c)(1) If the”;*

19                    (B) *redesignating paragraph (3) as para-*  
 20                    *graph (2); and*

21                    (C) *adding at the end the following:*

22                    “(3) *DISCLOSURE OF TERMINATION INFORMA-*  
 23                    *TION.—*

24                    “(A) *IN GENERAL.—*

1                   “(i) *INFORMATION FROM PLAN SPON-*  
 2                   *SOR OR ADMINISTRATOR.*—*A plan sponsor*  
 3                   *or plan administrator of a single-employer*  
 4                   *plan that has received a notice from the cor-*  
 5                   *poration of a determination that the plan*  
 6                   *should be terminated under this section*  
 7                   *shall provide to an affected party any infor-*  
 8                   *mation provided to the corporation in con-*  
 9                   *junction with the plan termination.*

10                   “(ii) *INFORMATION FROM CORPORA-*  
 11                   *TION.*—*The corporation shall provide a*  
 12                   *copy of the administrative record, including*  
 13                   *the trusteeship decision record of a termi-*  
 14                   *nation of a plan described under clause (i).*

15                   “(B) *TIMING OF DISCLOSURE.*—*The plan*  
 16                   *sponsor, plan administrator, or the corporation,*  
 17                   *as applicable, shall provide the information de-*  
 18                   *scribed in subparagraph (A) not later than 15*  
 19                   *days after—*

20                   “(i) *receipt of a request from an af-*  
 21                   *ected party for such information; or*

22                   “(ii) *in the case of information de-*  
 23                   *scribed under subparagraph (A)(i), the pro-*  
 24                   *vision of any new information to the cor-*



poration relating to a previous request by  
an affected party.

“(C) *CONFIDENTIALITY.*—

“(i) *IN GENERAL.*—The plan administrator and plan sponsor shall not provide information under subparagraph (A)(i) in a form which includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

“(ii) *LIMITATION.*—A court may limit disclosure under this paragraph of confidential information described in section 552(b) of title 5, United States Code, to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv)) of the participants or beneficiaries that agree to ensure the confidentiality of such information.

“(D) *FORM AND MANNER OF INFORMATION; CHARGES.*—

“(i) *FORM AND MANNER.*—The corporation may prescribe the form and manner of the provision of information under this paragraph, which shall include delivery in written, electronic, or other appropriate

1                   *form to the extent that such form is reason-*  
 2                   *ably accessible to individuals to whom the*  
 3                   *information is required to be provided.*

4                   “(ii) *REASONABLE CHARGES.*—A plan  
 5                   *sponsor may charge a reasonable fee for any*  
 6                   *information provided under this paragraph*  
 7                   *in other than electronic form.”.*

8           (c) *EFFECTIVE DATE.*—The amendments made by this  
 9   section shall apply to any plan termination under title IV  
 10 of the *Employee Retirement Income Security Act of 1974*  
 11 (29 U.S.C. 1301 et seq.) with respect to which the notice  
 12 of intent to terminate (or in the case of a termination by  
 13 the *Pension Benefit Guaranty Corporation*, a notice of de-  
 14 termination under section 4042 of such Act (29 U.S.C.  
 15 1342)) occurs after the date of enactment of this Act.

16 **SEC. 507. BENEFIT SUSPENSION NOTICE.**

17       (a) *MODIFICATION OF REGULATION.*—The Secretary of  
 18 Labor shall modify the regulation under subparagraph (B)  
 19 of section 203(a)(3) of the *Employee Retirement Income Se-*  
 20 *curity Act of 1974* (29 U.S.C. 1053(a)(3)(B)) to provide  
 21 that the notification required by such regulation in connec-  
 22 tion with any suspension of benefits described in such  
 23 subparagraph—

24               (1) *in the case of an employee who returns to*  
 25       *service described in section 203(a)(3)(B) (i) or (ii) of*

1        *such Act after commencement of payment of benefits*  
 2        *under the plan, shall be made during the first cal-*  
 3        *endar month or the first 4- or 5-week payroll period*  
 4        *ending in a calendar month in which the plan with-*  
 5        *holds payments, and*

6            *(2) in the case of any employee who is not de-*  
 7        *scribed in paragraph (1)—*

8            *(A) may be included in the summary plan*  
 9        *description for the plan furnished in accordance*  
 10       *with section 104(b) of such Act (29 U.S.C.*  
 11       *1024(b)), rather than in a separate notice, and*

12           *(B) need not include a copy of the relevant*  
 13       *plan provisions.*

14        *(b) EFFECTIVE DATE.—The modification made under*  
 15       *this section shall apply to plan years beginning after De-*  
 16       *cember 31, 2005.*

17       **SEC. 508. STUDY AND REPORT BY GOVERNMENT ACCOUNT-**  
 18       **ABILITY OFFICE.**

19        *(a) IN GENERAL.—The Comptroller General of the*  
 20       *United States shall conduct a study to determine the effec-*  
 21       *tiveness of the enforcement of provisions in the Employee*  
 22       *Retirement Income Security Act of 1974 (29 U.S.C. 1001*  
 23       *et seq.) and in other Federal laws designed to protect pen-*  
 24       *sion plans and the assets and participants of such plan*  
 25       *from fraud and mismanagement, including excessive invest-*

1 *ment management fees, violations of fiduciary duties under*  
2 *Title I of such Act, and the quality of plan assets.*

3 (b) *CONTENT OF STUDY.*—*The study described in sub-*  
4 *section (a) shall include:*

5 (1) *An identification of which Federal depart-*  
6 *ments and agencies have responsibility for enforce-*  
7 *ment of these provisions, including the recovery of lost*  
8 *plan assets due to fraud and mismanagement.*

9 (2) *Identification of all administrative enforce-*  
10 *ment powers, procedures, and strategies used by the*  
11 *Securities and Exchange Commission that have the*  
12 *potential to improve the Department of Labor’s en-*  
13 *forcement of the fiduciary provisions of the Employee*  
14 *Retirement Income Security Act of 1974 (29 U.S.C.*  
15 *1001 et seq.).*

16 (3) *Identification of any statutory or other bar-*  
17 *riers that restrict the Department of Labor’s author-*  
18 *ity to use such powers, procedures, and strategies*  
19 *identified in paragraph (2).*

20 (4) *An evaluation of whether giving additional*  
21 *investigative or enforcement authority to the Pension*  
22 *Benefit Guaranty Corporation or the Securities and*  
23 *Exchange Commission would significantly improve*  
24 *enforcement of those provisions.*

1           (5) *An evaluation of the current authority of the*  
 2           *Pension Benefit Guaranty Corporation to bring ac-*  
 3           *tions to recover any funds lost by pension plans due*  
 4           *to violations of any fiduciary standards under Title*  
 5           *I of such Act or other Federal statutes.*

6           (6) *The impact that expanding any such author-*  
 7           *ity by the Pension Benefit Guaranty Corporation to*  
 8           *bring such actions would have on the Corporation's*  
 9           *solvency.*

10          (c) *REPORT.*—*Not later than 6 months after the enact-*  
 11          *ment of this Act, the Comptroller General shall submit a*  
 12          *report to Congress on the study conducted under subsection*  
 13          (i) *that includes such recommendations for legislation or*  
 14          *administrative action as the Comptroller General deter-*  
 15          *mines are appropriate.*

16       ***TITLE VI—TREATMENT OF CASH***  
 17       ***BALANCE AND OTHER HYBRID***  
 18       ***DEFINED BENEFIT PENSION***  
 19       ***PLANS***

20       ***SEC. 601. PROSPECTIVE APPLICATION OF AGE DISCRIMINA-***  
 21       ***TION, CONVERSION, AND PRESENT VALUE AS-***  
 22       ***SUMPTION RULES.***

23          (a) *APPLICATION OF AGE DISCRIMINATION PROHIBI-*  
 24          *TIONS.*—

1           (1) *AMENDMENT OF ERISA.*—Section 204(b) of  
 2           the *Employee Retirement Income Security Act of*  
 3           1974 (29 U.S.C. 1054(b)) is amended by adding at  
 4           the end the following:

5           “(5) *SPECIAL RULES FOR CASH BALANCE AND*  
 6           *OTHER HYBRID DEFINED BENEFIT PLANS.*—

7           “(A) *IN GENERAL.*—A qualified cash bal-  
 8           ance plan shall not be treated as violating the re-  
 9           quirements of paragraph (1)(H) merely because  
 10          it may reasonably be expected that the period  
 11          over which interest credits will be made to a par-  
 12          ticipant’s accumulation account (or its equiva-  
 13          lent) is longer for a younger participant. This  
 14          paragraph shall not apply to any plan if the  
 15          rate of any pay credit or interest credit to such  
 16          an account under the plan decreases by reason of  
 17          the participant’s attainment of any age.

18          “(B) *QUALIFIED CASH BALANCE PLAN.*—  
 19          For purposes of this paragraph—

20          “(i) *IN GENERAL.*—The term ‘qualified  
 21          cash balance plan’ means a cash balance  
 22          plan which meets the vesting requirement  
 23          under clause (ii) and the interest credit re-  
 24          quirement under clause (iii).

1           “(ii) *VESTING REQUIREMENTS.*—A  
 2           *plan meets the requirements of this clause if*  
 3           *an employee who has completed at least 3*  
 4           *years of service has a nonforfeitable right to*  
 5           *100 percent of the employee’s accrued ben-*  
 6           *efit derived from employer contributions.*

7           “(iii) *INTEREST CREDITS.*—A *plan*  
 8           *meets the requirements of this clause if the*  
 9           *terms of the plan provide that any interest*  
 10           *credit (or equivalent amount) for any plan*  
 11           *year shall be at a rate which—*

12                   “(I) *is not less than the applicable*  
 13                   *Federal mid-term interest rate (as de-*  
 14                   *termined under section 1274(d)(1) of*  
 15                   *the Internal Revenue Code of 1986),*  
 16                   *and*

17                   “(II) *is not greater than the*  
 18                   *greater of the rate determined under*  
 19                   *subclause (I) or a rate equal to the rate*  
 20                   *of interest on amounts invested con-*  
 21                   *servatively in long-term investment*  
 22                   *grade corporate bonds.*

23           “(iv) *DETERMINATION OF RATES.*—*For*  
 24           *purposes of clause (iii)(II), the rate of inter-*  
 25           *est on amounts invested conservatively in*

1            *long-term investment grade corporate bonds*  
 2            *shall be determined by the Secretary of the*  
 3            *Treasury on the basis of 2 or more indices*  
 4            *that are selected periodically by the Sec-*  
 5            *retary of the Treasury. The Secretary of the*  
 6            *Treasury shall make publicly available the*  
 7            *indices and methodology used to determine*  
 8            *the rate.*

9            “(v) *VARIABLE RATE OF INTEREST.—If*  
 10           *the interest credit rate under the plan is a*  
 11           *variable rate, the plan shall provide that,*  
 12           *upon the termination of the plan, the rate*  
 13           *of interest used to determine accrued bene-*  
 14           *fits under the plan shall be equal to the av-*  
 15           *erage of the rates of interest used under the*  
 16           *plan during the 5-year period ending on the*  
 17           *termination date.*

18           “(C) *CASH BALANCE PLAN.—For purposes*  
 19           *of this paragraph, the term ‘cash balance plan’*  
 20           *means a defined benefit plan under which—*

21           “(i) *the accrued benefit is determined*  
 22           *by reference to the balance of a hypothetical*  
 23           *accumulation account, and*

24           “(ii) *pay credits and interest credits*  
 25           *are credited to such account.*



1                   “(D) *REGULATIONS TO INCLUDE SIMILAR*  
 2                   *OR OTHER HYBRID PLANS.*—

3                   “(i) *CASH BALANCE PLAN.*—*The Sec-*  
 4                   *retary of the Treasury shall issue regula-*  
 5                   *tions which include in the definition of cash*  
 6                   *balance plan any defined benefit plan (or*  
 7                   *any portion of such a plan) which has an*  
 8                   *effect similar to a cash balance plan. Such*  
 9                   *regulations may provide that if a plan*  
 10                   *sponsor represents in communications to*  
 11                   *participants and beneficiaries that a plan*  
 12                   *amendment results in a plan being de-*  
 13                   *scribed in the preceding sentence, such plan*  
 14                   *shall be treated as a cash balance plan.*

15                   “(ii) *QUALIFIED CASH BALANCE*  
 16                   *PLAN.*—*The Secretary of the Treasury may*  
 17                   *in the regulations issued under clause (i)*  
 18                   *provide for the treatment of a cash balance*  
 19                   *plan as a qualified cash balance plan in*  
 20                   *cases where the cash balance plan has an ef-*  
 21                   *fect similar to the qualified cash balance*  
 22                   *plan.”.*

23                   (2) *AGE DISCRIMINATION IN EMPLOYMENT*  
 24                   *ACT.*—*Section 4(i)(2) of the Age Discrimination of*

1       *Employment Act of 1967 (29 U.S.C. 623(i)(2)) is*  
 2       *amended—*

3               *(A) by inserting “(A)” after “(2)”, and*

4               *(B) by adding at the end the following new*  
 5       *subparagraph:*

6       *“(B) A defined benefit plan which is treated as a*  
 7       *qualified cash balance plan for purposes of section 204(b)(5)*  
 8       *of the Employee Retirement Income Security Act of 1974*  
 9       *shall not be treated as violating the requirements of para-*  
 10       *graph (1)(A) merely because it may reasonably be expected*  
 11       *that the period over which interest credits will be made*  
 12       *under the plan to a participant’s accumulation account (or*  
 13       *its equivalent) is longer for a younger participant. This*  
 14       *subparagraph shall not apply to any plan if the rate of*  
 15       *any pay credit or interest credit to such an account under*  
 16       *the plan decreases by reason of the participant’s attainment*  
 17       *of any age.”.*

18               (3) *AMENDMENT OF INTERNAL REVENUE*  
 19       *CODE.—Section 411(b) of the Internal Revenue Code*  
 20       *of 1986 (relating to accrued benefit requirements) is*  
 21       *amended by adding at the end the following:*

22               “(5) *SPECIAL RULES FOR CASH BALANCE AND*  
 23       *OTHER HYBRID DEFINED BENEFIT PLANS.—*

24               “(A) *IN GENERAL.—A qualified cash bal-*  
 25       *ance plan shall not be treated as violating the re-*

quirements of paragraph (1)(H) merely because it may reasonably be expected that the period over which interest credits will be made to a participant's accumulation account (or its equivalent) is longer for a younger participant. This paragraph shall not apply to any plan if the rate of any pay credit or interest credit to such an account under the plan decreases by reason of the participant's attainment of any age.

“(B) *QUALIFIED CASH BALANCE PLAN.*—

*For purposes of this paragraph—*

“(i) *IN GENERAL.*—The term ‘qualified cash balance plan’ means a cash balance plan which meets the vesting requirement under clause (ii) and the interest credit requirement under clause (iii).

“(ii) *VESTING REQUIREMENTS.*—A plan meets the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

“(iii) *INTEREST CREDITS.*—A plan meets the requirements of this clause if the terms of the plan provide that any interest

1           *credit (or equivalent amount) for any plan*  
2           *year shall be at a rate which—*

3                     *“(I) is not less than the applicable*  
4                     *Federal mid-term interest rate (as de-*  
5                     *termined under section 1274(d)(1)),*  
6                     *and*

7                     *“(II) is not greater than the*  
8                     *greater of the rate determined under*  
9                     *subclause (I) or a rate equal to the rate*  
10                    *of interest on amounts invested con-*  
11                    *servatively in long-term investment*  
12                    *grade corporate bonds.*

13                    *“(iv) DETERMINATION OF RATES.—For*  
14                    *purposes of clause (iii)(II), the rate of inter-*  
15                    *est on amounts invested conservatively in*  
16                    *long-term investment grade corporate bonds*  
17                    *shall be determined by the Secretary on the*  
18                    *basis of 2 or more indices that are selected*  
19                    *periodically by the Secretary. The Secretary*  
20                    *shall make publicly available the indices*  
21                    *and methodology used to determine the rate.*

22                    *“(v) VARIABLE RATE OF INTEREST.—If*  
23                    *the interest credit rate under the plan is a*  
24                    *variable rate, the plan shall provide that,*  
25                    *upon the termination of the plan, the rate*

1           *of interest used to determine accrued bene-*  
 2           *fits under the plan shall be equal to the av-*  
 3           *erage of the rates of interest used under the*  
 4           *plan during the 5-year period ending on the*  
 5           *termination date.*

6           “(C) *CASH BALANCE PLAN.*—*For purposes*  
 7           *of this paragraph, the term ‘cash balance plan’*  
 8           *means a defined benefit plan under which—*

9                   “(i) *the accrued benefit is determined*  
 10                  *by reference to the balance of a hypothetical*  
 11                  *accumulation account, and*

12                  “(ii) *pay credits and interest credits*  
 13                  *are credited to such account.*

14           “(D) *REGULATIONS TO INCLUDE SIMILAR*  
 15           *OR OTHER HYBRID PLANS.*—

16                  “(i) *CASH BALANCE PLAN.*—*The Sec-*  
 17                  *retary shall issue regulations which include*  
 18                  *in the definition of cash balance plan any*  
 19                  *defined benefit plan (or any portion of such*  
 20                  *a plan) which has an effect similar to a*  
 21                  *cash balance plan. Such regulations may*  
 22                  *provide that if a plan sponsor represents in*  
 23                  *communications to participants and bene-*  
 24                  *ficiaries that a plan amendment results in*  
 25                  *a plan being described in the preceding sen-*

1            *tence, such plan shall be treated as a cash*  
 2            *balance plan.*

3            “(ii) *QUALIFIED CASH BALANCE*  
 4            *PLAN.—The Secretary may in the regula-*  
 5            *tions issued under clause (i) provide for the*  
 6            *treatment of a cash balance plan as a quali-*  
 7            *fied cash balance plan in cases where the*  
 8            *cash balance plan has an effect similar to*  
 9            *the qualified cash balance plan.”.*

10        (b) *RULES APPLICABLE TO ACCRUED BENEFITS*  
 11        *UNDER CONVERTED PLANS.—*

12            (1) *AMENDMENT OF ERISA.—Section 204(g) of*  
 13            *the Employee Retirement Income Security Act of*  
 14            *1974 (29 U.S.C. 1054(g)) is amended by adding at*  
 15            *the end the following new paragraph:*

16            “(6) *TREATMENT OF CONVERSIONS TO CASH BAL-*  
 17            *ANCE OR OTHER HYBRID PLANS.—*

18            “(A) *IN GENERAL.—For purposes of this*  
 19            *subsection, an applicable plan amendment shall*  
 20            *be treated as reducing the accrued benefit of a*  
 21            *participant if, under the terms of the plan as in*  
 22            *effect after the amendment, the accrued benefit of*  
 23            *any participant who was a participant as of the*  
 24            *effective date of the amendment may at any time*  
 25            *be less than the accrued benefit determined under*

1       the method under subparagraph (B), (C), or (D)  
2       which is specified in the plan and applies uni-  
3       formly to all participants. An applicable plan  
4       amendment shall in no event be treated as meet-  
5       ing the requirements of any such subparagraph  
6       if the conversion described in subparagraph  
7       (G)(i) is into a cash balance plan other than a  
8       qualified cash balance plan (as defined in sub-  
9       section (b)(5)(B)).

10       “(B) NO WEARAWAY.—

11       “(i) IN GENERAL.—The accrued benefit  
12       determined under this subparagraph is the  
13       sum of—

14       “(I) the participant’s accrued ben-  
15       efit for years of service before the effec-  
16       tive date of the amendment, determined  
17       under the terms of the plan as in effect  
18       before the amendment, plus

19       “(II) except as provided in clause  
20       (ii), the participant’s accrued benefit  
21       for years of service after the effective  
22       date of the amendment, determined  
23       under the terms of the plan as in effect  
24       after the amendment.

1                   “(ii) *REQUIRED AMOUNTS FOR CER-*  
2                   *TAIN PERIODS.*—*Notwithstanding clause*  
3                   *(i)(II), the plan shall provide that either—*

4                   “(I) *the accrued benefit of all par-*  
5                   *ticipants for each of the first 5 plan*  
6                   *years to which the amendment applies*  
7                   *shall be equal to the greater of the ac-*  
8                   *crued benefit determined under the*  
9                   *terms of the plan as in effect both be-*  
10                  *fore and after the amendment, or*

11                  “(II) *the accrued benefit for peri-*  
12                  *ods after the effective date of the*  
13                  *amendment of all participants who, as*  
14                  *of the effective date of the amendment,*  
15                  *had attained the age of 40 and had a*  
16                  *combined age and years of service*  
17                  *under the plan of not less than 55 shall*  
18                  *be determined under either of the meth-*  
19                  *ods described in clause (iii) which is*  
20                  *selected by the plan and which is speci-*  
21                  *fied in the amendment.*

22                  “(iii) *APPLICABLE METHOD.*—*For pur-*  
23                  *poses of clause (ii)(II), the plan shall select*  
24                  *1 of the following methods:*



1                   “(I) *The accrued benefit shall be*  
2                   *equal to the greater of the accrued ben-*  
3                   *efit determined under the terms of the*  
4                   *plan as in effect both before and after*  
5                   *the amendment.*

6                   “(II) *At the election of the partici-*  
7                   *pant, the accrued benefit shall be deter-*  
8                   *mined under the terms of the plan as*  
9                   *in effect either before or after the*  
10                  *amendment.*

11                  “(C) *GREATER OF OLD OR NEW OR ELEC-*  
12                  *TION OF EITHER.—The accrued benefit deter-*  
13                  *mined under this subparagraph is the accrued*  
14                  *benefit determined under 1 of the following meth-*  
15                  *ods which is selected by the plan and which is*  
16                  *specified in the amendment:*

17                  “(i) *The accrued benefit shall be equal*  
18                  *to the greater of the accrued benefit deter-*  
19                  *mined under the terms of the plan as in ef-*  
20                  *fect both before and after the amendment.*

21                  “(ii) *At the election of the participant,*  
22                  *the accrued benefit shall be determined*  
23                  *under the terms of the plan as in effect ei-*  
24                  *ther before or after the amendment.*

1           “(D) *METHOD PRESCRIBED BY SEC-*  
 2           *RETARY.—The accrued benefit determined under*  
 3           *this subparagraph shall be determined under reg-*  
 4           *ulations prescribed by the Secretary which are*  
 5           *consistent with the purposes of this paragraph*  
 6           *and which may require a plan to provide a cred-*  
 7           *it of additional amounts or increases in initial*  
 8           *account balances in amounts substantially equiv-*  
 9           *alent to the benefits that would be required to be*  
 10           *provided to meet the requirements of subpara-*  
 11           *graphs (B) or (C).*

12           “(E) *INCLUSION OF PRIOR ACCRUED BEN-*  
 13           *EFIT INTO INITIAL ACCOUNT BALANCE.—*

14           “(i) *IN GENERAL.—If, for purposes of*  
 15           *subparagraphs (B), (C), or (D), an applica-*  
 16           *ble plan amendment provides that an*  
 17           *amount will be initially credited to a par-*  
 18           *ticipant’s accumulation account (or its*  
 19           *equivalent) on the effective date of the*  
 20           *amendment with respect to the participant’s*  
 21           *accrued benefit for periods before such date,*  
 22           *the requirements of such subparagraph shall*  
 23           *be treated as met with respect to such ac-*  
 24           *crued benefit if the amount initially cred-*  
 25           *ited is not less than the present value of the*

1            *participant’s accrued benefit determined by*  
 2            *using the applicable mortality table and the*  
 3            *lower of the applicable interest rate under*  
 4            *section 205(g)(3)(A), or the interest rate*  
 5            *used to credit interest under the plan, as of*  
 6            *such date.*

7            “(ii) *ADJUSTMENTS FOR CERTAIN SUB-*  
 8            *SIDIZED BENEFITS.*—*For purposes of sub-*  
 9            *paragraph (B), if any early retirement ben-*  
 10            *efit or retirement-type subsidy (within the*  
 11            *meaning of paragraph (6)(B)(i)) is not in-*  
 12            *cluded in the initial account balance under*  
 13            *clause (i), the plan shall credit the accumu-*  
 14            *lation account with the amount of such ben-*  
 15            *efit or subsidy for the plan year in which*  
 16            *the participant retires if, as of such time,*  
 17            *the participant has met the age, years of*  
 18            *service, and other requirements under the*  
 19            *plan for entitlement to such benefit or sub-*  
 20            *sidy.*

21            “(F) *REQUIREMENTS WHERE PARTICIPANT*  
 22            *OFFERED CHOICE.*—*If a plan provides a partici-*  
 23            *pant with an election described in subparagraph*  
 24            *(B)(iii)(II) or (C)(ii), the following rules shall*  
 25            *apply:*

1           “(i) *NOTICE.*—*The plan shall not be*  
 2           *treated as meeting the requirements of either*  
 3           *such subparagraph unless the plan provides*  
 4           *the participant a notice of the right to make*  
 5           *such election which includes information*  
 6           *(meeting such requirements as may be pre-*  
 7           *scribed by the Secretary of the Treasury)—*

8                   “(I) *by which the participant*  
 9                   *may project benefits under the for-*  
 10                   *mulas from which the participant may*  
 11                   *choose and may model the impact of*  
 12                   *any such choice, and*

13                   “(II) *with respect to cir-*  
 14                   *cumstances under which a participant*  
 15                   *may not receive the projected accrued*  
 16                   *benefits by reason of a plan termi-*  
 17                   *nation or otherwise.*

18           “(ii) *SIGNIFICANT REDUCTION OF RATE*  
 19           *OF ACCRUAL.*—*The plan shall provide that*  
 20           *if, during any of the first 5 plan years dur-*  
 21           *ing which such an election is in effect, the*  
 22           *plan adopts an amendment which results in*  
 23           *a significant reduction in the rate of future*  
 24           *benefit accrual (within the meaning of sec-*  
 25           *tion 204(h)), the accrued benefit of the par-*

1            *ticipant shall be determined as if the par-*  
 2            *ticipant had made the election which re-*  
 3            *sulted in the greatest accrued benefit.*

4            “(iii) *BENEFITS MUST NOT BE CONTIN-*  
 5            *GENT ON ELECTION.—The plan shall not be*  
 6            *treated as meeting the requirements of either*  
 7            *such subparagraph if any other benefit is*  
 8            *conditioned (directly or indirectly) on such*  
 9            *election.*

10           “(G) *APPLICABLE PLAN AMENDMENT.—For*  
 11           *purposes of this paragraph—*

12           “(i) *IN GENERAL.—The term ‘applica-*  
 13           *ble plan amendment’ means an amendment*  
 14           *to a defined benefit plan which has the ef-*  
 15           *fect of converting the plan to a cash balance*  
 16           *plan.*

17           “(ii) *SPECIAL RULE FOR COORDINATED*  
 18           *BENEFITS.—If the benefits of 2 or more de-*  
 19           *defined benefit plans established or main-*  
 20           *tained by an employer are coordinated in*  
 21           *such a manner as to have the effect of the*  
 22           *adoption of an amendment described in*  
 23           *clause (i), the sponsor of the defined benefit*  
 24           *plan or plans providing for such coordina-*  
 25           *tion shall be treated as having adopted such*

1            *a plan amendment as of the date such co-*  
 2            *ordination begins.*

3            “(iii) *MULTIPLE AMENDMENTS.*—*The*  
 4            *Secretary of the Treasury shall issue regula-*  
 5            *tions to prevent the avoidance of the pur-*  
 6            *poses of this paragraph through the use of*  
 7            *2 or more plan amendments rather than a*  
 8            *single amendment.*

9            “(iv) *CASH BALANCE PLAN.*—*For pur-*  
 10           *poses of this paragraph, the term ‘cash bal-*  
 11           *ance plan’ has the meaning given such term*  
 12           *by subsection (b)(5)(C).*

13           “(v) *COORDINATION WITH ACCRUAL*  
 14           *RULES.*—*If a plan amendment is treated as*  
 15           *meeting the requirements of this paragraph*  
 16           *with respect to any participant because*  
 17           *such participant is eligible to continue to*  
 18           *accrue benefits in the same manner as*  
 19           *under the terms of the plan in effect before*  
 20           *the amendment, the Secretary of the Treas-*  
 21           *ury shall prescribe regulations under which*  
 22           *the plan shall not be treated as failing to*  
 23           *meet the requirements of subparagraph (A),*  
 24           *(B), or (C) of section 204(b)(1) if the re-*  
 25           *quirements of this paragraph are met.*

1           “(H) *APPLICATION OF CERTAIN RULES TO*  
 2           *EARLY-RETIREMENT BENEFITS.—Rules similar*  
 3           *to the rules of clauses (i), (ii), and (iii) of sub-*  
 4           *paragraph (B) and subparagraph (C) shall*  
 5           *apply in the case of any early retirement benefit*  
 6           *or retirement-type subsidy (within the meaning*  
 7           *of section 204(g)(2)(A)).”.*

8           (2) *AMENDMENT OF INTERNAL REVENUE*  
 9           *CODE.—Section 411(d) of the Internal Revenue Code*  
 10           *of 1986 (relating to special rules) is amended by add-*  
 11           *ing at the end the following new paragraph:*

12           “(7) *TREATMENT OF CONVERSIONS TO CASH BAL-*  
 13           *ANCE OR OTHER HYBRID PLANS.—*

14           “(A) *IN GENERAL.—For purposes of para-*  
 15           *graph (6), an applicable plan amendment shall*  
 16           *be treated as reducing the accrued benefit of a*  
 17           *participant if, under the terms of the plan as in*  
 18           *effect after the amendment, the accrued benefit of*  
 19           *any participant who was a participant as of the*  
 20           *effective date of the amendment may at any time*  
 21           *be less than the accrued benefit determined under*  
 22           *the method under subparagraph (B), (C), or (D)*  
 23           *which is specified in the plan and applies uni-*  
 24           *formly to all participants. An applicable plan*  
 25           *amendment shall in no event be treated as meet-*

ing the requirements of any such subparagraph if the conversion described in subparagraph (G)(i) is into a cash balance plan other than a qualified cash balance plan (as defined in subsection (b)(5)(B)).

“(B) NO WEARAWAY.—

“(i) IN GENERAL.—The accrued benefit determined under this subparagraph is the sum of—

“(I) the participant’s accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

“(II) except as provided in clause (ii), the participant’s accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

A similar rule shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)).



1                   “(ii) *REQUIRED AMOUNTS FOR CER-*  
2                   *TAIN PERIODS.*—*Notwithstanding clause*  
3                   *(i)(II), the plan shall provide that either—*

4                   “(I) *the accrued benefit of all par-*  
5                   *ticipants for each of the first 5 plan*  
6                   *years to which the amendment applies*  
7                   *shall be equal to the greater of the ac-*  
8                   *crued benefit determined under the*  
9                   *terms of the plan as in effect both be-*  
10                  *fore and after the amendment, or*

11                  “(II) *the accrued benefit for peri-*  
12                  *ods after the effective date of the*  
13                  *amendment of all participants who, as*  
14                  *of the effective date of the amendment,*  
15                  *had attained the age of 40 and had a*  
16                  *combined age and years of service*  
17                  *under the plan of not less than 55 shall*  
18                  *be determined under either of the meth-*  
19                  *ods described in clause (iii) which is*  
20                  *selected by the plan and which is speci-*  
21                  *fied in the amendment.*

22                  “(iii) *APPLICABLE METHOD.*—*For pur-*  
23                  *poses of clause (ii)(II), the plan shall select*  
24                  *1 of the following methods:*

1                   “(I) *The accrued benefit shall be*  
2                   *equal to the greater of the accrued ben-*  
3                   *efit determined under the terms of the*  
4                   *plan as in effect both before and after*  
5                   *the amendment.*

6                   “(II) *At the election of the partici-*  
7                   *pant, the accrued benefit shall be deter-*  
8                   *mined under the terms of the plan as*  
9                   *in effect either before or after the*  
10                  *amendment.*

11                  “(C) *GREATER OF OLD OR NEW OR ELEC-*  
12                  *TION OF EITHER.—The accrued benefit deter-*  
13                  *mined under this subparagraph is the accrued*  
14                  *benefit determined under 1 of the following meth-*  
15                  *ods which is selected by the plan and which is*  
16                  *specified in the amendment:*

17                  “(i) *The accrued benefit shall be equal*  
18                  *to the greater of the accrued benefit deter-*  
19                  *mined under the terms of the plan as in ef-*  
20                  *fect both before and after the amendment.*

21                  “(ii) *At the election of the participant,*  
22                  *the accrued benefit shall be determined*  
23                  *under the terms of the plan as in effect ei-*  
24                  *ther before or after the amendment.*

1           “(D) *METHOD PRESCRIBED BY SEC-*  
 2           *RETARY.—The accrued benefit determined under*  
 3           *this subparagraph shall be determined under reg-*  
 4           *ulations prescribed by the Secretary which are*  
 5           *consistent with the purposes of this paragraph*  
 6           *and which may require a plan to provide a cred-*  
 7           *it of additional amounts or increases in initial*  
 8           *account balances in amounts substantially equiv-*  
 9           *alent to the benefits that would be required to be*  
 10          *provided to meet the requirements of subpara-*  
 11          *graphs (B) or (C).*

12           “(E) *INCLUSION OF PRIOR ACCRUED BEN-*  
 13          *EFIT INTO INITIAL ACCOUNT BALANCE.—*

14           “(i) *IN GENERAL.—If, for purposes of*  
 15           *subparagraphs (B), (C), or (D), an applica-*  
 16           *ble plan amendment provides that an*  
 17           *amount will be initially credited to a par-*  
 18           *ticipant’s accumulation account (or its*  
 19           *equivalent) on the effective date of the*  
 20           *amendment with respect to the participant’s*  
 21           *accrued benefit for periods before such date,*  
 22           *the requirements of such subparagraph shall*  
 23           *be treated as met with respect to such ac-*  
 24           *crued benefit if the amount initially cred-*  
 25           *ited is not less than the present value of the*

1            *participant’s accrued benefit determined by*  
 2            *using the applicable mortality table and the*  
 3            *lower of the applicable interest rate under*  
 4            *section 417(e)(3)(A), or the interest rate*  
 5            *used to credit interest under the plan, as of*  
 6            *such date.*

7            “(ii) *ADJUSTMENTS FOR CERTAIN SUB-*  
 8            *SIDIZED BENEFITS.*—*For purposes of sub-*  
 9            *paragraph (B), if any early retirement ben-*  
 10            *efit or retirement-type subsidy (within the*  
 11            *meaning of paragraph (6)(B)(i)) is not in-*  
 12            *cluded in the initial account balance under*  
 13            *clause (i), the plan shall credit the accumu-*  
 14            *lation account with the amount of such ben-*  
 15            *efit or subsidy for the plan year in which*  
 16            *the participant retires if, as of such time,*  
 17            *the participant has met the age, years of*  
 18            *service, and other requirements under the*  
 19            *plan for entitlement to such benefit or sub-*  
 20            *sidy.*

21            “(F) *REQUIREMENTS WHERE PARTICIPANT*  
 22            *OFFERED CHOICE.*—*If a plan provides a partici-*  
 23            *pant with an election described in subparagraph*  
 24            *(B)(iii)(II) or (C)(ii), the following rules shall*  
 25            *apply:*

1           “(i) *NOTICE.*—*The plan shall not be*  
 2           *treated as meeting the requirements of either*  
 3           *such subparagraph unless the plan provides*  
 4           *the participant a notice of the right to make*  
 5           *such election which includes information*  
 6           *(meeting such requirements as may be pre-*  
 7           *scribed by the Secretary)*—

8                   “(I) *by which the participant*  
 9                   *may project benefits under the for-*  
 10                   *mulas from which the participant may*  
 11                   *choose and may model the impact of*  
 12                   *any such choice, and*

13                   “(II) *with respect to cir-*  
 14                   *cumstances under which a participant*  
 15                   *may not receive the projected accrued*  
 16                   *benefits by reason of a plan termi-*  
 17                   *nation or otherwise.*

18           “(ii) *SIGNIFICANT REDUCTION OF RATE*  
 19           *OF ACCRUAL.*—*The plan shall provide that*  
 20           *if, during any of the first 5 plan years dur-*  
 21           *ing which such an election is in effect, the*  
 22           *plan adopts an amendment which results in*  
 23           *a significant reduction in the rate of future*  
 24           *benefit accrual (within the meaning of sec-*  
 25           *tion 4980F(e)), the accrued benefit of the*

1            *participant shall be determined as if the*  
 2            *participant had made the election which re-*  
 3            *sulted in the greatest accrued benefit.*

4            “(iii) *BENEFITS MUST NOT BE CONTIN-*  
 5            *GENT ON ELECTION.—The plan shall not be*  
 6            *treated as meeting the requirements of either*  
 7            *such subparagraph if any other benefit is*  
 8            *conditioned (directly or indirectly) on such*  
 9            *election.*

10           “(G) *APPLICABLE PLAN AMENDMENT.—For*  
 11           *purposes of this paragraph—*

12           “(i) *IN GENERAL.—The term ‘applica-*  
 13           *ble plan amendment’ means an amendment*  
 14           *to a defined benefit plan which has the ef-*  
 15           *fect of converting the plan to a cash balance*  
 16           *plan.*

17           “(ii) *SPECIAL RULE FOR COORDINATED*  
 18           *BENEFITS.—If the benefits of 2 or more de-*  
 19           *defined benefit plans established or main-*  
 20           *tained by an employer are coordinated in*  
 21           *such a manner as to have the effect of the*  
 22           *adoption of an amendment described in*  
 23           *clause (i), the sponsor of the defined benefit*  
 24           *plan or plans providing for such coordina-*  
 25           *tion shall be treated as having adopted such*

1           *a plan amendment as of the date such co-*  
 2           *ordination begins.*

3           “(iii) *MULTIPLE AMENDMENTS.—The*  
 4           *Secretary shall issue regulations to prevent*  
 5           *the avoidance of the purposes of this para-*  
 6           *graph through the use of 2 or more plan*  
 7           *amendments rather than a single amend-*  
 8           *ment.*

9           “(iv) *CASH BALANCE PLAN.—For pur-*  
 10          *poses of this paragraph, the term ‘cash bal-*  
 11          *ance plan’ has the meaning given such term*  
 12          *by subsection (b)(5)(C).*

13          “(v) *COORDINATION WITH ACCRUAL*  
 14          *AND NONDISCRIMINATION RULES.—If a plan*  
 15          *amendment is treated as meeting the re-*  
 16          *quirements of this paragraph with respect*  
 17          *to any participant because such participant*  
 18          *is eligible to continue to accrue benefits in*  
 19          *the same manner as under the terms of the*  
 20          *plan in effect before the amendment, the*  
 21          *Secretary shall prescribe regulations under*  
 22          *which—*

23                 *“(I) the plan shall not be treated*  
 24                 *as failing to meet the requirements of*  
 25                 *subparagraph (A), (B), or (C) of sec-*

1                   tion 411(b)(1) if the requirements of  
2                   this paragraph are met, and

3                   “(II) the plan shall, subject to  
4                   such terms and conditions as may be  
5                   provided in such regulations, not be  
6                   treated as failing to meet the require-  
7                   ments of section 401(a)(4) merely be-  
8                   cause the plan provides any accrual or  
9                   benefit which is required to be provided  
10                  under subparagraph (B), (C), or (D)  
11                  or because only participants as of the  
12                  effective date of the amendment are so  
13                  eligible, except that this subclause shall  
14                  only apply if the plan met the require-  
15                  ments of section 401(a)(4) under the  
16                  terms of the plan as in effect before the  
17                  amendment.

18                  “(H) APPLICATION OF CERTAIN RULES TO  
19                  EARLY-RETIREMENT BENEFITS.—Rules similar  
20                  to the rules of clauses (i), (ii), and (iii) of sub-  
21                  paragraph (B) and subparagraph (C) shall  
22                  apply in the case of any early retirement benefit  
23                  or retirement-type subsidy (within the meaning  
24                  of section 411(d)(6)(B)(i)).”.



1       (c) *ASSUMPTIONS USED IN COMPUTING PRESENT*  
 2 *VALUE OF ACCRUED BENEFIT.*—

3           (1) *AMENDMENT OF ERISA.*—Section 205(g)(3) of  
 4 *such Act (29 U.S.C. 1055(g)(3)), is amended—*

5           (A) *by striking “or (B)” in subparagraph*  
 6 *(A)(i) and inserting “, (B), or (C)”*, and

7           (B) *by adding at the end the following new*  
 8 *subparagraph:*

9           “(C) *PRESENT VALUE OF ACCRUED BENEFIT*  
 10 *UNDER CASH BALANCE PLAN.*—Except as pro-  
 11 *vided in regulations, in the case of a qualified*  
 12 *cash balance plan (as defined in section*  
 13 *204(g)(6)(B)), the present value of the accrued*  
 14 *benefit of any participant shall, for purposes of*  
 15 *paragraphs (1) and (2), be equal to the balance*  
 16 *in the participant’s accumulation account (or its*  
 17 *equivalent) as of the time the present value deter-*  
 18 *mination is being made.”.*

19           (2) *AMENDMENT OF INTERNAL REVENUE*  
 20 *CODE.*—Section 417(e)(3) of *such Code, is amended—*

21           (A) *by striking “or (B)” in subparagraph*  
 22 *(A)(i) and inserting “, (B), or (C)”*, and

23           (B) *by adding at the end the following new*  
 24 *subparagraph:*

1                   “(C) *PRESENT VALUE OF ACCRUED BENEFIT*  
 2                   *UNDER CASH BALANCE PLAN.*—*Except as pro-*  
 3                   *vided in regulations, in the case of a qualified*  
 4                   *cash balance plan (as defined in section*  
 5                   *411(d)(7)(B)), the present value of the accrued*  
 6                   *benefit of any participant shall, for purposes of*  
 7                   *paragraphs (1) and (2), be equal to the balance*  
 8                   *in the participant’s accumulation account (or its*  
 9                   *equivalent) as of the time the present value deter-*  
 10                   *mination is being made.”*

11           (d) *NO INFERENCE.*—*Nothing in the amendments*  
 12           *made by this section shall be construed to infer the proper*  
 13           *treatment of cash balance plans or conversions to cash bal-*  
 14           *ance plans under sections 204(b)(1)(H) of the Employee Re-*  
 15           *tirement Income Security Act of 1974, 4(i)(1) of the Age*  
 16           *Discrimination in Employment Act of 1967, and*  
 17           *411(b)(1)(H) of the Internal Revenue Code of 1986, as in*  
 18           *effect before such amendments.*

19           (e) *EFFECTIVE DATES.*—

20                   (1) *AGE DISCRIMINATION AND LUMP-SUM DIS-*  
 21                   *TRIBUTIONS.*—

22                           (A) *IN GENERAL.*—*The amendments made*  
 23                           *by subsections (a) and (c) shall apply to periods*  
 24                           *after July 31, 2005.*

1           (B) *VESTING AND INTEREST CREDIT RE-*  
2           *QUIREMENTS.—In the case of a plan in existence*  
3           *on July 31, 2005, the requirements of clauses (ii)*  
4           *and (iii) of section 411(b)(5)(B) of the Internal*  
5           *Revenue Code of 1986, and of clauses (ii) and*  
6           *(iii) of 204(b)(5)(B) of the Employee Retirement*  
7           *Income Security Act of 1974 shall, for purposes*  
8           *of applying the amendments made by subsections*  
9           *(a) and (c), apply to years beginning after De-*  
10           *cember 31, 2006, unless the plan sponsor elects*  
11           *the application of such requirements for any pe-*  
12           *riod after July 31, 2005, and before the first*  
13           *year beginning after December 31, 2006.*

14           (C) *SPECIAL RULE FOR COLLECTIVELY BAR-*  
15           *GAINED PLANS.—In the case of a plan main-*  
16           *tained pursuant to 1 or more collective bar-*  
17           *gaining agreements between employee representa-*  
18           *tives and 1 or more employers ratified on or be-*  
19           *fore the date of the enactment of this Act, the re-*  
20           *quirements described in subparagraph (B) shall,*  
21           *for purposes of applying the amendments made*  
22           *by subsections (a) and (c), not apply to plan*  
23           *years beginning before—*

24                   *(i) the earlier of—*

1                   (I) the date on which the last of  
 2                   such collective bargaining agreements  
 3                   terminates (determined without regard  
 4                   to any extension thereof on or after  
 5                   such date of enactment), or

6                   (II) January 1, 2007, or

7                   (ii) January 1, 2009.

8                   (2) *CONVERSIONS.*—The amendments made by  
 9                   subsection (b) shall apply to plan amendments adopt-  
 10                  ed after, and taking effect after, July 31, 2005, except  
 11                  that the plan sponsor may elect to have such amend-  
 12                  ments apply to plan amendments adopted before, and  
 13                  taking effect after, such date.

14 **SEC. 602. REGULATIONS RELATING TO MERGERS AND AC-**  
 15 **QUISITIONS.**

16                  The Secretary of the Treasury or his delegate shall, not  
 17                  later than 12 months after the date of the enactment of this  
 18                  Act, prescribe regulations for the application of the amend-  
 19                  ments made by, and the provisions of, this title in cases  
 20                  where the conversion of a plan to a cash balance plan is  
 21                  made with respect to a group of employees who become em-  
 22                  ployees by reason of a merger, acquisition, or similar trans-  
 23                  action.

1 **TITLE VII—DIVERSIFICATION**  
 2 **RIGHTS AND OTHER PARTICI-**  
 3 **PANT PROTECTIONS UNDER**  
 4 **DEFINED CONTRIBUTION**  
 5 **PLANS**

6 **SEC. 701. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 7 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**  
 8 **VEST THEIR PLAN ASSETS.**

9 *(a) AMENDMENTS OF INTERNAL REVENUE CODE.—*

10 *(1) QUALIFICATION REQUIREMENT.—Section*  
 11 *401(a) of the Internal Revenue Code of 1986 (relating*  
 12 *to qualified pension, profit-sharing, and stock bonus*  
 13 *plans), as amended by section 115 of this Act, is*  
 14 *amended by inserting after paragraph (34) the fol-*  
 15 *lowing new paragraph:*

16 *“(35) DIVERSIFICATION REQUIREMENTS FOR*  
 17 *CERTAIN DEFINED CONTRIBUTION PLANS.—*

18 *“(A) IN GENERAL.—A trust which is part of*  
 19 *an applicable defined contribution plan shall not*  
 20 *be treated as a qualified trust unless the plan*  
 21 *meets the diversification requirements of sub-*  
 22 *paragraphs (B), (C), and (D).*

23 *“(B) EMPLOYEE CONTRIBUTIONS AND ELEC-*  
 24 *TIVE DEFERRALS INVESTED IN EMPLOYER SECU-*  
 25 *RITIES OR REAL PROPERTY.—In the case of the*

1        *portion of an applicable individual's account at-*  
 2        *tributable to employee contributions and elective*  
 3        *deferrals which is invested in employer securities*  
 4        *or employer real property, a plan meets the re-*  
 5        *quirements of this subparagraph if the applicable*  
 6        *individual may elect to direct the plan to divest*  
 7        *any such securities or real property and to rein-*  
 8        *vest an equivalent amount in other investment*  
 9        *options meeting the requirements of subpara-*  
 10       *graph (D).*

11                “(C) *EMPLOYER CONTRIBUTIONS INVESTED*  
 12        *IN EMPLOYER SECURITIES OR REAL PROP-*  
 13        *ERTY.—In the case of the portion of the account*  
 14        *attributable to employer contributions other than*  
 15        *elective deferrals which is invested in employer*  
 16        *securities or employer real property, a plan*  
 17        *meets the requirements of this subparagraph if*  
 18        *each applicable individual who—*

19                        “(i) *is a participant who has com-*  
 20                        *pleted at least 3 years of service, or*

21                        “(ii) *is a beneficiary of a participant*  
 22                        *described in clause (i) or of a deceased par-*  
 23                        *ticipant,*

24        *may elect to direct the plan to divest any such*  
 25        *securities or real property and to reinvest an*

1           *equivalent amount in other investment options*  
 2           *meeting the requirements of subparagraph (D).*

3           “(D) *INVESTMENT OPTIONS.*—

4                   “(i) *IN GENERAL.*—*The requirements*  
 5                   *of this subparagraph are met if the plan of-*  
 6                   *fers not less than 3 investment options,*  
 7                   *other than employer securities or employer*  
 8                   *real property, to which an applicable indi-*  
 9                   *vidual may direct the proceeds from the di-*  
 10                   *vestment of employer securities or employer*  
 11                   *real property pursuant to this paragraph,*  
 12                   *each of which is diversified and has materi-*  
 13                   *ally different risk and return characteris-*  
 14                   *tics.*

15                   “(ii) *TREATMENT OF CERTAIN RE-*  
 16                   *STRICTIONS AND CONDITIONS.*—

17                           “(I) *TIME FOR MAKING INVEST-*  
 18                           *MENT CHOICES.*—*A plan shall not be*  
 19                           *treated as failing to meet the require-*  
 20                           *ments of this subparagraph merely be-*  
 21                           *cause the plan limits the time for di-*  
 22                           *vestment and reinvestment to periodic,*  
 23                           *reasonable opportunities occurring no*  
 24                           *less frequently than quarterly.*

1                   “(II) *CERTAIN RESTRICTIONS AND*  
 2                   *CONDITIONS NOT ALLOWED.*—*Except as*  
 3                   *provided in regulations, a plan shall*  
 4                   *not meet the requirements of this sub-*  
 5                   *paragraph if the plan imposes restric-*  
 6                   *tions or conditions with respect to the*  
 7                   *investment of employer securities or*  
 8                   *employer real property which are not*  
 9                   *imposed on the investment of other as-*  
 10                   *sets of the plan. This subclause shall*  
 11                   *not apply to any restrictions or condi-*  
 12                   *tions imposed by reason of the applica-*  
 13                   *tion of securities laws.*

14                   “(E) *APPLICABLE DEFINED CONTRIBUTION*  
 15                   *PLAN.*—*For purposes of this paragraph—*

16                   “(i) *IN GENERAL.*—*The term ‘applica-*  
 17                   *ble defined contribution plan’ means any*  
 18                   *defined contribution plan which holds any*  
 19                   *publicly traded employer securities.*

20                   “(ii) *EXCEPTION FOR CERTAIN*  
 21                   *ESOPS.*—*Such term does not include an em-*  
 22                   *ployee stock ownership plan if—*

23                   “(I) *there are no contributions to*  
 24                   *such plan (or earnings thereunder)*  
 25                   *which are held within such plan and*



1           are subject to subsection (k) or (m),  
 2           and

3           “(II) such plan is a separate plan  
 4           for purposes of section 414(l) with re-  
 5           spect to any other defined benefit plan  
 6           or defined contribution plan main-  
 7           tained by the same employer or em-  
 8           ployers.

9           “(iii) *EXCEPTION FOR ONE PARTICI-*  
 10          *PANT PLANS.*—Such term does not include a  
 11          one-participant retirement plan.

12          “(iv) *ONE-PARTICIPANT RETIREMENT*  
 13          *PLAN.*—For purposes of clause (iii), the  
 14          term ‘one-participant retirement plan’  
 15          means a retirement plan that—

16               “(I) on the first day of the plan  
 17               year covered only one individual (or  
 18               the individual and the individual’s  
 19               spouse) and the individual owned 100  
 20               percent of the plan sponsor (whether or  
 21               not incorporated), or covered only one  
 22               or more partners (or partners and  
 23               their spouses) in the plan sponsor,

24               “(II) meets the minimum coverage  
 25               requirements of section 410(b) without

1           *being combined with any other plan of*  
2           *the business that covers the employees*  
3           *of the business,*

4           “(III) *does not provide benefits to*  
5           *anyone except the individual (and the*  
6           *individual’s spouse) or the partners*  
7           *(and their spouses),*

8           “(IV) *does not cover a business*  
9           *that is a member of an affiliated serv-*  
10          *ice group, a controlled group of cor-*  
11          *porations, or a group of businesses*  
12          *under common control, and*

13          “(V) *does not cover a business*  
14          *that uses the services of leased employ-*  
15          *ees (within the meaning of section*  
16          *414(n)).*

17          *For purposes of this clause, the term ‘part-*  
18          *ner’ includes a 2-percent shareholder (as de-*  
19          *fin ed in section 1372(b)) of an S corpora-*  
20          *tion.*

21          “(F) *CERTAIN PLANS TREATED AS HOLDING*  
22          *PUBLICLY TRADED EMPLOYER SECURITIES.—*

23          “(i) *IN GENERAL.—Except as provided*  
24          *in regulations or in clause (ii), a plan hold-*  
25          *ing employer securities which are not pub-*

1            *licly traded employer securities shall be*  
2            *treated as holding publicly traded employer*  
3            *securities if any employer corporation, or*  
4            *any member of a controlled group of cor-*  
5            *porations which includes such employer cor-*  
6            *poration, has issued a class of stock which*  
7            *is a publicly traded employer security.*

8            “(ii) *EXCEPTION FOR CERTAIN CON-*  
9            *TROLLED GROUPS WITH PUBLICLY TRADED*  
10           *SECURITIES.—Clause (i) shall not apply to*  
11           *a plan if—*

12                    “(I) *no employer corporation, or*  
13                    *parent corporation of an employer cor-*  
14                    *poration, has issued any publicly trad-*  
15                    *ed employer security, and*

16                    “(II) *no employer corporation, or*  
17                    *parent corporation of an employer cor-*  
18                    *poration, has issued any special class*  
19                    *of stock which grants particular rights*  
20                    *to, or bears particular risks for, the*  
21                    *holder or issuer with respect to any*  
22                    *corporation described in clause (i)*  
23                    *which has issued any publicly traded*  
24                    *employer security.*

1 “(iii) *DEFINITIONS.*—For purposes of  
2 this subparagraph, the term—

3 “(I) ‘controlled group of corpora-  
4 tions’ has the meaning given such term  
5 by section 1563(a), except that ‘50 per-  
6 cent’ shall be substituted for ‘80 per-  
7 cent’ each place it appears,

8 “(II) ‘employer corporation’  
9 means a corporation which is an em-  
10 ployer maintaining the plan, and

11 “(III) ‘parent corporation’ has the  
12 meaning given such term by section  
13 424(e).

14 “(G) *OTHER DEFINITIONS.*—For purposes  
15 of this paragraph—

16 “(i) *APPLICABLE INDIVIDUAL.*—The  
17 term ‘applicable individual’ means—

18 “(I) any participant in the plan,  
19 and

20 “(II) any beneficiary who has an  
21 account under the plan with respect to  
22 which the beneficiary is entitled to ex-  
23 ercise the rights of a participant.

1           “(ii) *ELECTIVE DEFERRAL*.—The term  
2           ‘elective deferral’ means an employer con-  
3           tribution described in section 402(g)(3)(A).

4           “(iii) *EMPLOYER SECURITY*.—The  
5           term ‘employer security’ has the meaning  
6           given such term by section 407(d)(1) of the  
7           Employee Retirement Income Security Act  
8           of 1974.

9           “(iv) *EMPLOYER REAL PROPERTY*.—  
10          The term ‘employer real property’ has the  
11          meaning given such term by section  
12          407(d)(2) of the Employee Retirement In-  
13          come Security Act of 1974.

14          “(v) *EMPLOYEE STOCK OWNERSHIP*  
15          *PLAN*.—The term ‘employee stock ownership  
16          plan’ has the meaning given such term by  
17          section 4975(e)(7).

18          “(vi) *PUBLICLY TRADED EMPLOYER*  
19          *SECURITIES*.—The term ‘publicly traded  
20          employer securities’ means employer securi-  
21          ties which are readily tradable on an estab-  
22          lished securities market.

23          “(vii) *YEAR OF SERVICE*.—The term  
24          ‘year of service’ has the meaning given such  
25          term by section 411(a)(5).

1           “(H) *TRANSITION RULE FOR SECURITIES*  
 2           *OR REAL PROPERTY ATTRIBUTABLE TO EM-*  
 3           *PLOYER CONTRIBUTIONS.—*

4           “(i) *RULES PHASED IN OVER 3*  
 5           *YEARS.—*

6           “(I) *IN GENERAL.—In the case of*  
 7           *the portion of an account to which sub-*  
 8           *paragraph (C) applies and which con-*  
 9           *sists of employer securities or employer*  
 10           *real property acquired in a plan year*  
 11           *beginning before January 1, 2006, sub-*  
 12           *paragraph (C) shall only apply to the*  
 13           *applicable percentage of such securities*  
 14           *or real property. This subparagraph*  
 15           *shall be applied separately with respect*  
 16           *to each class of securities and employer*  
 17           *real property.*

18           “(II) *EXCEPTION FOR CERTAIN*  
 19           *PARTICIPANTS AGED 55 OR OVER.—*  
 20           *Subclause (I) shall not apply to an ap-*  
 21           *plicable individual who is a partici-*  
 22           *pant who has attained age 55 and*  
 23           *completed at least 3 years of service be-*  
 24           *fore the first plan year beginning after*  
 25           *December 31, 2005.*

1                   “(ii) *APPLICABLE PERCENTAGE.*—For  
 2                   purposes of clause (i), the applicable per-  
 3                   centage shall be determined as follows:

<b><i>Plan year to which subparagraph (C) applies:</i></b>	<b><i>The applicable percentage is:</i></b>
<i>1st</i> .....	<i>33</i>
<i>2d</i> .....	<i>66</i>
<i>3d and following</i> .....	<i>100.”.</i>

4                   (2) *CONFORMING AMENDMENTS.*—

5                   (A) *Section 401(a)(28)(B) of such Code (re-*  
 6                   *lating to additional requirements relating to em-*  
 7                   *ployee stock ownership plans) is amended by*  
 8                   *adding at the end the following new clause:*

9                   “(v) *EXCEPTION.*—*This subparagraph*  
 10                  *shall not apply to an applicable defined*  
 11                  *contribution plan (as defined in paragraph*  
 12                  *(35)(E)).”*

13                  (B) *Section 409(h)(7) of such Code is*  
 14                  *amended by inserting “or subparagraph (B) or*  
 15                  *(C) of section 401(a)(35)” before the period at*  
 16                  *the end.*

17                  (C) *Section 4980(c)(3)(A) of such Code is*  
 18                  *amended by striking “if—” and all that follows*  
 19                  *and inserting “if the requirements of subpara-*  
 20                  *graphs (B), (C), and (D) are met.”*

21                  (b) *AMENDMENTS OF ERISA.*—

22                  (1) *IN GENERAL.*—*Section 204 of the Employee*  
 23                  *Retirement Income Security Act of 1974 (29 U.S.C.*

1       1054) is amended by redesignating subsection (j) as  
 2       subsection (k) and by inserting after subsection (i) the  
 3       following new subsection:

4       “(j) *DIVERSIFICATION REQUIREMENTS FOR CERTAIN*  
 5       *INDIVIDUAL ACCOUNT PLANS.*—

6               “(1) *IN GENERAL.*—An applicable individual ac-  
 7       count plan shall meet the diversification requirements  
 8       of paragraphs (2), (3), and (4).

9               “(2) *EMPLOYEE CONTRIBUTIONS AND ELECTIVE*  
 10       *DEFERRALS INVESTED IN EMPLOYER SECURITIES OR*  
 11       *REAL PROPERTY.*—In the case of the portion of an  
 12       applicable individual’s account attributable to em-  
 13       ployee contributions and elective deferrals which is  
 14       invested in employer securities or employer real prop-  
 15       erty, a plan meets the requirements of this paragraph  
 16       if the applicable individual may elect to direct the  
 17       plan to divest any such securities or real property  
 18       and to reinvest an equivalent amount in other invest-  
 19       ment options meeting the requirements of paragraph  
 20       (4).

21               “(3) *EMPLOYER CONTRIBUTIONS INVESTED IN*  
 22       *EMPLOYER SECURITIES OR REAL PROPERTY.*—In the  
 23       case of the portion of the account attributable to em-  
 24       ployer contributions other than elective deferrals  
 25       which is invested in employer securities or employer



1        *real property, a plan meets the requirements of this*  
 2        *paragraph if each applicable individual who—*

3                *“(A) is a participant who has completed at*  
 4                *least 3 years of service, or*

5                *“(B) is a beneficiary of a participant de-*  
 6                *scribed in subparagraph (A) or of a deceased*  
 7                *participant,*

8        *may elect to direct the plan to divest any such securi-*  
 9        *ties or real property and to reinvest an equivalent*  
 10        *amount in other investment options meeting the re-*  
 11        *quirements of paragraph (4).*

12                *“(4) INVESTMENT OPTIONS.—*

13                *“(A) IN GENERAL.—The requirements of*  
 14                *this paragraph are met if the plan offers not less*  
 15                *than 3 investment options, other than employer*  
 16                *securities or employer real property, to which an*  
 17                *applicable individual may direct the proceeds*  
 18                *from the divestment of employer securities or em-*  
 19                *ployer real property pursuant to this subsection,*  
 20                *each of which is diversified and has materially*  
 21                *different risk and return characteristics.*

22                *“(B) TREATMENT OF CERTAIN RESTRIC-*  
 23                *TIONS AND CONDITIONS.—*

24                *“(i) TIME FOR MAKING INVESTMENT*  
 25                *CHOICES.—A plan shall not be treated as*

1           *failing to meet the requirements of this*  
 2           *paragraph merely because the plan limits*  
 3           *the time for divestment and reinvestment to*  
 4           *periodic, reasonable opportunities occurring*  
 5           *no less frequently than quarterly.*

6           “(ii) *CERTAIN RESTRICTIONS AND CON-*  
 7           *DITIONS NOT ALLOWED.—Except as pro-*  
 8           *vided in regulations, a plan shall not meet*  
 9           *the requirements of this paragraph if the*  
 10           *plan imposes restrictions or conditions with*  
 11           *respect to the investment of employer securi-*  
 12           *ties or employer real property which are not*  
 13           *imposed on the investment of other assets of*  
 14           *the plan. This subparagraph shall not*  
 15           *apply to any restrictions or conditions im-*  
 16           *posed by reason of the application of securi-*  
 17           *ties laws.*

18           “(5) *APPLICABLE INDIVIDUAL ACCOUNT PLAN.—*

19           *For purposes of this subsection—*

20           “(A) *IN GENERAL.—The term ‘applicable*  
 21           *individual account plan’ means any individual*  
 22           *account plan (as defined in section 3(34)) which*  
 23           *holds any publicly traded employer securities.*

1           “(B) *EXCEPTION FOR CERTAIN ESOPS.*—

2           *Such term does not include an employee stock*  
 3           *ownership plan if—*

4                   “(i) *there are no contributions to such*  
 5                   *plan (or earnings thereunder) which are*  
 6                   *held within such plan and are subject to*  
 7                   *subsection (k) or (m) of section 401 of the*  
 8                   *Internal Revenue Code of 1986, and*

9                   “(ii) *such plan is a separate plan (for*  
 10                   *purposes of section 414(l) of such Code)*  
 11                   *with respect to any other defined benefit*  
 12                   *plan or individual account plan main-*  
 13                   *tained by the same employer or employers.*

14           “(C) *EXCEPTION FOR ONE PARTICIPANT*  
 15           *PLANS.*—*Such term shall not include a one-par-*  
 16           *ticipant retirement plan (as defined in section*  
 17           *101(i)(8)(B)).*

18           “(D) *CERTAIN PLANS TREATED AS HOLDING*  
 19           *PUBLICLY TRADED EMPLOYER SECURITIES.*—

20                   “(i) *IN GENERAL.*—*Except as provided*  
 21                   *in regulations or in clause (ii), a plan hold-*  
 22                   *ing employer securities which are not pub-*  
 23                   *licly traded employer securities shall be*  
 24                   *treated as holding publicly traded employer*  
 25                   *securities if any employer corporation, or*

1           *any member of a controlled group of cor-*  
 2           *porations which includes such employer cor-*  
 3           *poration, has issued a class of stock which*  
 4           *is a publicly traded employer security.*

5           “(ii) *EXCEPTION FOR CERTAIN CON-*  
 6           *TROLLED GROUPS WITH PUBLICLY TRADED*  
 7           *SECURITIES.—Clause (i) shall not apply to*  
 8           *a plan if—*

9                     “(I) *no employer corporation, or*  
 10                    *parent corporation of an employer cor-*  
 11                    *poration, has issued any publicly trad-*  
 12                    *ed employer security, and*

13                   “(II) *no employer corporation, or*  
 14                    *parent corporation of an employer cor-*  
 15                    *poration, has issued any special class*  
 16                    *of stock which grants particular rights*  
 17                    *to, or bears particular risks for, the*  
 18                    *holder or issuer with respect to any*  
 19                    *corporation described in clause (i)*  
 20                    *which has issued any publicly traded*  
 21                    *employer security.*

22           “(iii) *DEFINITIONS.—For purposes of*  
 23           *this subparagraph, the term—*

24                    “(I) *‘controlled group of corpora-*  
 25                    *tions’ has the meaning given such term*

1                    *by section 1563(a) of the Internal Rev-*  
 2                    *enue Code of 1986, except that ‘50 per-*  
 3                    *cent’ shall be substituted for ‘80 per-*  
 4                    *cent’ each place it appears,*

5                    *“(II) ‘employer corporation’*  
 6                    *means a corporation which is an em-*  
 7                    *ployer maintaining the plan, and*

8                    *“(III) ‘parent corporation’ has the*  
 9                    *meaning given such term by section*  
 10                   *424(e) of such Code.*

11                   *“(6) OTHER DEFINITIONS.—For purposes of this*  
 12                   *paragraph—*

13                   *“(A) APPLICABLE INDIVIDUAL.—The term*  
 14                   *‘applicable individual’ means—*

15                   *“(i) any participant in the plan, and*

16                   *“(ii) any beneficiary who has an ac-*  
 17                   *count under the plan with respect to which*  
 18                   *the beneficiary is entitled to exercise the*  
 19                   *rights of a participant.*

20                   *“(B) ELECTIVE DEFERRAL.—The term ‘elec-*  
 21                   *tive deferral’ means an employer contribution*  
 22                   *described in section 402(g)(3)(A) of the Internal*  
 23                   *Revenue Code of 1986.*

1           “(C) *EMPLOYER SECURITY*.—The term ‘em-  
 2           ployer security’ has the meaning given such term  
 3           by section 407(d)(1).

4           “(D) *EMPLOYER REAL PROPERTY*.—The  
 5           term ‘employer real property’ has the meaning  
 6           given such term by section 407(d)(2).

7           “(E) *EMPLOYEE STOCK OWNERSHIP*  
 8           *PLAN*.—The term ‘employee stock ownership  
 9           plan’ has the meaning given such term by sec-  
 10          tion 4975(e)(7) of such Code.

11          “(F) *PUBLICLY TRADED EMPLOYER SECURI-*  
 12          *TIES*.—The term ‘publicly traded employer secu-  
 13          rities’ means employer securities which are read-  
 14          ily tradable on an established securities market.

15          “(G) *YEAR OF SERVICE*.—The term ‘year of  
 16          service’ has the meaning given such term by sec-  
 17          tion 203(b)(2).

18          “(7) *TRANSITION RULE FOR SECURITIES OR*  
 19          *REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-*  
 20          *TRIBUTIONS*.—

21          “(A) *RULES PHASED IN OVER 3 YEARS*.—

22                 “(i) *IN GENERAL*.—In the case of the  
 23                 portion of an account to which paragraph  
 24                 (3) applies and which consists of employer  
 25                 securities or employer real property ac-

quired in a plan year beginning before January 1, 2006, paragraph (3) shall only apply to the applicable percentage of such securities or real property. This subparagraph shall be applied separately with respect to each class of securities and employer real property.

“(ii) *EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.*—Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

“(B) *APPLICABLE PERCENTAGE.*—For purposes of subparagraph (A), the applicable percentage shall be determined as follows:

<i>Plan year to which paragraph (3) applies:</i>	<i>The applicable percentage is:</i>
1st .....	33
2d .....	66
3d and following .....	100.”.

(2) *CONFORMING AMENDMENT.*—Section 407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is amended by adding at the end the following:

**“(D) For diversification requirements for qualifying employer securities and qualifying real property held in certain individual account plans, see section 204(j).”**

(c) *EFFECTIVE DATES.*—

1           (1) *IN GENERAL.*—*Except as provided in para-*  
 2           *graphs (2) and (3), the amendments made by this sec-*  
 3           *tion shall apply to plan years beginning after Decem-*  
 4           *ber 31, 2005.*

5           (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*  
 6           *GAINED AGREEMENTS.*—*In the case of a plan main-*  
 7           *tained pursuant to 1 or more collective bargaining*  
 8           *agreements between employee representatives and 1 or*  
 9           *more employers ratified on or before the date of the*  
 10           *enactment of this Act, paragraph (1) shall be applied*  
 11           *to benefits pursuant to, and individuals covered by,*  
 12           *any such agreement by substituting for “December 31,*  
 13           *2005” the earlier of—*

14                   (A) *the later of—*

15                           (i) *December 31, 2006, or*

16                           (ii) *the date on which the last of such*  
 17                           *collective bargaining agreements terminates*  
 18                           *(determined without regard to any exten-*  
 19                           *sion thereof after such date of enactment),*  
 20                           *or*

21                   (B) *December 31, 2007.*

22           (3) *SPECIAL RULE FOR CERTAIN EMPLOYER SE-*  
 23           *CURITIES HELD IN AN ESOP.*—

24                   (A) *IN GENERAL.*—*In the case of employer*  
 25                   *securities to which this paragraph applies, the*



1        *amendments made by this section shall apply to*  
 2        *plan years beginning after the earlier of—*

3                *(i) December 31, 2006, or*

4                *(ii) the first date on which the fair*  
 5                *market value of such securities exceeds the*  
 6                *guaranteed minimum value described in*  
 7                *subparagraph (B)(ii).*

8                *(B) APPLICABLE SECURITIES.—This para-*  
 9                *graph shall apply to employer securities which*  
 10               *are attributable to employer contributions other*  
 11               *than elective deferrals, and which, on September*  
 12               *17, 2003—*

13               *(i) consist of preferred stock, and*

14               *(ii) are within an employee stock own-*  
 15               *ership plan (as defined in section*  
 16               *4975(e)(7) of the Internal Revenue Code of*  
 17               *1986), the terms of which provide that the*  
 18               *value of the securities cannot be less than*  
 19               *the guaranteed minimum value specified by*  
 20               *the plan on such date.*

21               *(C) COORDINATION WITH TRANSITION*  
 22               *RULE.—In applying section 401(a)(35)(H) of the*  
 23               *Internal Revenue Code of 1986 and section*  
 24               *204(j)(7) of the Employee Retirement Income Se-*  
 25               *curity Act of 1974 (as added by this section) to*

1           *employer securities to which this paragraph ap-*  
 2           *plies, the applicable percentage shall be deter-*  
 3           *mined without regard to this paragraph.*

4   **SEC. 702. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**  
 5           **CURITIES OR REAL PROPERTY.**

6           *(a) IN GENERAL.—Section 101 of the Employee Retire-*  
 7           *ment Income Security Act of 1974 (29 U.S.C. 1021), as*  
 8           *amended by this Act, is amended by redesignating sub-*  
 9           *section (m) as subsection (n) and by inserting after sub-*  
 10          *section (l) the following:*

11          *“(m) NOTICE OF RIGHT TO DIVEST.—Not later than*  
 12          *30 days before the first date on which an applicable indi-*  
 13          *vidual of an applicable individual account plan is eligible*  
 14          *to exercise the right under section 204(j) to direct the pro-*  
 15          *ceeds from the divestment of employer securities or employer*  
 16          *real property with respect to any type of contribution, the*  
 17          *administrator shall provide to such individual a notice—*

18                 *“(1) setting forth such right under such section,*  
 19          *and*

20                 *“(2) describing the importance of diversifying*  
 21          *the investment of retirement account assets.*

22          *The notice required by this subsection shall be written in*  
 23          *a manner calculated to be understood by the average plan*  
 24          *participant and may be delivered in written, electronic, or*

1 *other appropriate form to the extent that such form is rea-*  
 2 *sonably accessible to the recipient.”*

3 (b) *PENALTIES.*—Section 502(c)(7) of the Employee  
 4 Retirement Income Security Act of 1974 (29 U.S.C.  
 5 1132(c)(7)) is amended by striking “section 101(i)” and in-  
 6 serting “subsection (i) or (m) of section 101”.

7 (c) *MODEL NOTICE.*—The Secretary of the Treasury  
 8 shall, within 180 days after the date of the enactment of  
 9 this subsection, prescribe a model notice for purposes of sat-  
 10 isfying the requirements of the amendments made by this  
 11 section.

12 (d) *EFFECTIVE DATES.*—

13 (1) *IN GENERAL.*—The amendments made by  
 14 this section shall apply to plan years beginning after  
 15 December 31, 2005.

16 (2) *TRANSITION RULE.*—If notice under section  
 17 101(m) of the Employee Retirement Income Security  
 18 Act of 1974 (as added by this section) would otherwise  
 19 be required to be provided before the 90th day after  
 20 the date of the enactment of this Act, such notice shall  
 21 not be required to be provided until such 90th day.

22 **SEC. 703. PERIODIC PENSION BENEFIT STATEMENTS.**

23 (a) *AMENDMENTS OF ERISA.*—

1           (1) *IN GENERAL.*—Section 105(a) of the *Em-*  
 2           *ployee Retirement Income Security Act of 1974* (29  
 3           *U.S.C. 1025(a)*) is amended to read as follows:

4           “(a) *REQUIREMENTS TO PROVIDE PENSION BENEFIT*  
 5           *STATEMENTS.*—

6           “(1) *REQUIREMENTS.*—

7                   “(A) *INDIVIDUAL ACCOUNT PLAN.*—The ad-  
 8                   *ministrator of an individual account plan (other*  
 9                   *than a one-participant retirement plan described*  
 10                   *in section 101(i)(8)(B)) shall furnish a pension*  
 11                   *benefit statement—*

12                           “(i) *at least once each calendar quarter*  
 13                           *to a participant or beneficiary who has the*  
 14                           *right to direct the investment of assets in*  
 15                           *his or her account under the plan,*

16                           “(ii) *at least once each calendar year*  
 17                           *to a participant or beneficiary who has his*  
 18                           *or her own account under the plan but does*  
 19                           *not have the right to direct the investment*  
 20                           *of assets in that account, and*

21                           “(iii) *upon written request to a plan*  
 22                           *beneficiary not described in clause (i) or*  
 23                           *(ii).*

24                   “(B) *DEFINED BENEFIT PLAN.*—The ad-  
 25                   *ministrator of a defined benefit plan (other than*

1        *a one-participant retirement plan described in*  
 2        *section 101(i)(8)(B)) shall furnish a pension ben-*  
 3        *efit statement—*

4                *“(i) at least once every 3 years to each*  
 5                *participant with a nonforfeitable accrued*  
 6                *benefit and who is employed by the em-*  
 7                *ployer maintaining the plan at the time the*  
 8                *statement is to be furnished, and*

9                *“(ii) to a participant or beneficiary of*  
 10                *the plan upon written request.*

11        *Information furnished under clause (i) to a par-*  
 12        *ticipant may be based on reasonable estimates*  
 13        *determined under regulations prescribed by the*  
 14        *Secretary, in consultation with the Pension Ben-*  
 15        *efit Guaranty Corporation.*

16        *“(2) STATEMENTS.—*

17                *“(A) IN GENERAL.—A pension benefit state-*  
 18                *ment under paragraph (1)—*

19                *“(i) shall indicate, on the basis of the*  
 20                *latest available information—*

21                        *“(I) the total benefits accrued,*  
 22                        *and*

23                        *“(II) the nonforfeitable pension*  
 24                        *benefits, if any, which have accrued, or*

1           *the earliest date on which benefits will*  
2           *become nonforfeitable,*

3           “(ii) shall include an explanation of  
4           any permitted disparity under section  
5           401(l) of the Internal Revenue Code of 1986  
6           or any floor-offset arrangement that may be  
7           applied in determining any accrued benefits  
8           described in clause (i),

9           “(iii) shall be written in a manner cal-  
10          culated to be understood by the average plan  
11          participant, and

12          “(iv) may be delivered in written, elec-  
13          tronic, or other appropriate form to the ex-  
14          tent such form is reasonably accessible to  
15          the participant or beneficiary.

16          “(B) *ADDITIONAL INFORMATION.*—In the  
17          case of an individual account plan, any pension  
18          benefit statement under clause (i) or (ii) of para-  
19          graph (1)(A) shall include—

20               “(i) the value of each investment to  
21               which assets in the individual account have  
22               been allocated, determined as of the most re-  
23               cent valuation date under the plan, includ-  
24               ing the value of any assets held in the form  
25               of employer securities or employer real

1           *property, without regard to whether such se-*  
 2           *curities or real property were contributed*  
 3           *by the plan sponsor or acquired at the di-*  
 4           *rection of the plan or of the participant or*  
 5           *beneficiary, and*

6           “(ii) *in the case of a pension benefit*  
 7           *statement under paragraph (1)(A)(i)—*

8                   “(I) *an explanation of any limi-*  
 9                   *tations or restrictions on any right of*  
 10                  *the participant or beneficiary under*  
 11                  *the plan to direct an investment, and*

12                  “(II) *a notice that investments in*  
 13                  *any individual account may not be*  
 14                  *adequately diversified if the value of*  
 15                  *any investment in the account exceeds*  
 16                  *20 percent of the fair market value of*  
 17                  *all investments in the account.*

18           “(C) *ALTERNATIVE NOTICE.—The require-*  
 19           *ments of subparagraph (A)(i)(II) are met if, at*  
 20           *least annually and in accordance with require-*  
 21           *ments of the Secretary, the plan—*

22                   “(i) *updates the information described*  
 23                   *in such paragraph which is provided in the*  
 24                   *pension benefit statement, or*

1                   “(ii) provides in a separate statement  
 2                   such information as is necessary to enable  
 3                   a participant or beneficiary to determine  
 4                   their nonforfeitable vested benefits.

5                   “(3) *DEFINED BENEFIT PLANS.*—

6                   “(A) *ALTERNATIVE NOTICE.*—In the case of  
 7                   a defined benefit plan, the requirements of para-  
 8                   graph (1)(B)(i) shall be treated as met with re-  
 9                   spect to a participant if at least once each year  
 10                  the administrator provides to the participant no-  
 11                  tice of the availability of the pension benefit  
 12                  statement and the ways in which the participant  
 13                  may obtain such statement. Such notice may be  
 14                  delivered in written, electronic, or other appro-  
 15                  priate form to the extent such form is reasonably  
 16                  accessible to the participant.

17                  “(B) *YEARS IN WHICH NO BENEFITS AC-*  
 18                  *CRUE.*—The Secretary may provide that years in  
 19                  which no employee or former employee benefits  
 20                  (within the meaning of section 410(b) of the In-  
 21                  ternal Revenue Code of 1986) under the plan  
 22                  need not be taken into account in determining  
 23                  the 3-year period under paragraph (1)(B)(i).”

24                  “(2) *CONFORMING AMENDMENTS.*—



1           (A) *Section 105 of the Employee Retirement*  
 2           *Income Security Act of 1974 (29 U.S.C. 1025) is*  
 3           *amended by striking subsection (d).*

4           (B) *Section 105(b) of such Act (29 U.S.C.*  
 5           *1025(b)) is amended to read as follows:*

6           “(b) *LIMITATION ON NUMBER OF STATEMENTS.—In*  
 7           *no case shall a participant or beneficiary of a plan be enti-*  
 8           *tled to more than 1 statement described in subparagraph*  
 9           *(A)(iii) or (B)(ii) of subsection (a)(1), whichever is applica-*  
 10          *ble, in any 12-month period.”*

11          (C) *Section 502(c)(1) of such Act (29 U.S.C.*  
 12          *1132(c)(1)) is amended by striking “or section*  
 13          *101(f)” and inserting “section 101(f), or section*  
 14          *105(a)”.*

15          (b) *MODEL STATEMENTS.—*

16           (1) *IN GENERAL.—The Secretary of Labor shall,*  
 17           *within 180 days after the date of the enactment of*  
 18           *this section, develop 1 or more model benefit state-*  
 19           *ments that are written in a manner calculated to be*  
 20           *understood by the average plan participant and that*  
 21           *may be used by plan administrators in complying*  
 22           *with the requirements of section 105 of the Employee*  
 23           *Retirement Income Security Act of 1974.*

24           (2) *INTERIM FINAL RULES.—The Secretary of*  
 25           *Labor may promulgate any interim final rules as the*

1     *Secretary determines appropriate to carry out the*  
 2     *provisions of this subsection.*

3     *(d) EFFECTIVE DATE.—*

4             *(1) IN GENERAL.—The amendments made by*  
 5     *this section shall apply to plan years beginning after*  
 6     *December 31, 2006.*

7             *(2) SPECIAL RULE FOR COLLECTIVELY BAR-*  
 8     *GAINED AGREEMENTS.—In the case of a plan main-*  
 9     *tained pursuant to 1 or more collective bargaining*  
 10    *agreements between employee representatives and 1 or*  
 11    *more employers ratified on or before the date of the*  
 12    *enactment of this Act, paragraph (1) shall be applied*  
 13    *to benefits pursuant to, and individuals covered by,*  
 14    *any such agreement by substituting for “December 31,*  
 15    *2006” the earlier of—*

16             *(A) the later of—*

17                 *(i) December 31, 2007, or*

18                 *(ii) the date on which the last of such*  
 19     *collective bargaining agreements terminates*  
 20     *(determined without regard to any exten-*  
 21     *sion thereof after such date of enactment),*

22             *or*

23             *(B) December 31, 2008.*

1 **SEC. 704. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**  
 2 **BLACKOUT PERIODS.**

3 (a) *AMENDMENTS OF ERISA.*—

4 (1) *IN GENERAL.*—Section 101(i) of the Em-  
 5 ployee Retirement Income Security Act of 1974 (29  
 6 U.S.C. 1021(i)) is amended—

7 (A) by striking clauses (i) through (iv) of  
 8 paragraph (8)(B) and inserting:

9 “(i) on the first day of the plan year—

10 “(I) covered only one individual  
 11 (or the individual and the individual’s  
 12 spouse) and the individual (or the in-  
 13 dividual and the individual’s spouse)  
 14 owned 100 percent of the plan sponsor  
 15 (whether or not incorporated), or

16 “(II) covered only one or more  
 17 partners (or partners and their  
 18 spouses) in the plan sponsor, and”,  
 19 and

20 (B) in paragraph (8)(B), by redesignating  
 21 clause (v) as clause (ii).

22 (2) *EFFECTIVE DATE.*—The amendments made  
 23 by this subsection shall take effect as if included in  
 24 the provisions of section 306 of Public Law 107–204  
 25 (116 Stat. 745 et seq.).

1 **SEC. 705. ALLOWANCE OF, AND CREDIT FOR, ADDITIONAL**  
 2 **IRA PAYMENTS IN CERTAIN BANKRUPTCY**  
 3 **CASES.**

4 (a) *ALLOWANCE OF CONTRIBUTIONS.*—Section  
 5 219(b)(5) of the Internal Revenue Code of 1986 (relating  
 6 to deductible amount) is amended by redesignating sub-  
 7 paragraph (C) as subparagraph (D) and by inserting after  
 8 subparagraph (B) the following new subparagraph:

9 “(C) *CATCHUP CONTRIBUTIONS FOR CER-*  
 10 *TAIN INDIVIDUALS.*—

11 “(i) *IN GENERAL.*—In the case of an  
 12 applicable individual who elects to make a  
 13 qualified retirement contribution in addi-  
 14 tion to the deductible amount determined  
 15 under subparagraph (A)—

16 “(I) *the deductible amount for*  
 17 *any taxable year shall be increased by*  
 18 *an amount equal to 3 times the appli-*  
 19 *cable amount determined under sub-*  
 20 *paragraph (B) for such taxable year,*  
 21 *and*

22 “(II) *subparagraph (B) shall not*  
 23 *apply.*

24 “(ii) *APPLICABLE INDIVIDUAL.*—For  
 25 purposes of this subparagraph, the term  
 26 ‘applicable individual’ means, with respect

1           to any taxable year, any individual who  
 2           was a qualified participant in a qualified  
 3           cash or deferred arrangement (as defined in  
 4           section 401(k)) of an employer described in  
 5           clause (iii) under which the employer  
 6           matched at least 50 percent of the employ-  
 7           ee’s contributions to such arrangement with  
 8           stock of such employer.

9           “(iii) *EMPLOYER DESCRIBED.*—An em-  
 10          ployer is described in this clause if, in any  
 11          taxable year preceding the taxable year de-  
 12          scribed in clause (ii)—

13               “(I) such employer (or any con-  
 14               trolling corporation of such employer)  
 15               was a debtor in a case under title 11  
 16               of the United States Code, or similar  
 17               Federal or State law, and

18               “(II) such employer (or any other  
 19               person) was subject to an indictment  
 20               or conviction resulting from business  
 21               transactions related to such case.

22           “(iv) *QUALIFIED PARTICIPANT.*—For  
 23          purposes of clause (ii), the term ‘qualified  
 24          participant’ means any applicable indi-  
 25          vidual who was a participant in the cash or

1                   *deferred arrangement described in clause (i)*  
 2                   *on the date that is 6 months before the fil-*  
 3                   *ing of the case described in clause (iii).*

4                   “(v) *TERMINATION.*—*This subpara-*  
 5                   *graph shall not apply to taxable years be-*  
 6                   *ginning after December 31, 2009.*”

7           (b) *SAVER’S CREDIT EXPANDED TO INCLUDE CATCH-*  
 8 *UP CONTRIBUTIONS.*—

9                   (1) *IN GENERAL.*—*Section 25B of the Internal*  
 10 *Revenue Code of 1986 (relating to credit for elective*  
 11 *deferrals and IRA contributions by certain individ-*  
 12 *uals) is amended by redesignating subsection (h) as*  
 13 *subsection (i) and by inserting after subsection (g) the*  
 14 *following new subsection:*

15           “(h) *ADDITIONAL CREDIT FOR CERTAIN CATCHUP*  
 16 *CONTRIBUTIONS.*—

17                   “(1) *IN GENERAL.*—*In the case of an eligible in-*  
 18 *dividual who is an applicable individual under sec-*  
 19 *tion 219(b)(5)(C) for any taxable year, the amount of*  
 20 *the credit allowable under subsection (a) for the tax-*  
 21 *able year shall be increased by 50 percent of so much*  
 22 *of the qualified retirement contributions (as defined*  
 23 *in section 219(e)) of the individual for the taxable*  
 24 *year as exceeds the deductible amount for the taxable*

1       year under section 219(b)(5) (without regard to sub-  
2       paragraphs (B) and (C) thereof).

3               “(2) COORDINATION WITH OTHER CONTRIBU-  
4       TIONS.—For purposes of this section—

5               “(A) any contribution to which this sub-  
6       section applies shall not be taken into account in  
7       determining the amount of the credit allowable  
8       under subsection (a) without regard to this sub-  
9       section, and

10              “(B) in applying any reduction in qualified  
11       retirement savings contributions under sub-  
12       section (d)(2), the reduction shall be applied first  
13       to qualified retirement savings contributions  
14       other than contributions to which this subsection  
15       applies.”.

16              (2) EXTENSION OF TERMINATION DATE FOR  
17       CATCHUP CREDIT.—Section 25B(i) of such Code, as  
18       redesignated by paragraph (1), is amended by insert-  
19       ing “(December 31, 2007, in the case of the portion  
20       of the credit allowed under subsection (h))” after  
21       “2006”.

22              (c) EFFECTIVE DATE.—The amendments made by this  
23       section shall apply to taxable years beginning after Decem-  
24       ber 31, 2004.

1 **SEC. 706. INAPPLICABILITY OF RELIEF FROM FIDUCIARY LI-**  
 2 **ABILITY DURING SUSPENSION OF ABILITY OF**  
 3 **PARTICIPANT OR BENEFICIARY TO DIRECT**  
 4 **INVESTMENTS.**

5 (a) *IN GENERAL.*—Section 404(c)(1) of the Employee  
 6 Retirement Income Security Act of 1974 (29 U.S.C.  
 7 1104(c)(1)) is amended—

8 (1) by redesignating subparagraphs (A) and (B)  
 9 as clauses (i) and (ii), respectively, and by inserting  
 10 “(A)” after “(c)(1)”,

11 (2) in subparagraph (A)(ii) (as redesignated by  
 12 paragraph (1)), by inserting before the period the fol-  
 13 lowing: “, except that this clause shall not apply in  
 14 connection with such participant or beneficiary for  
 15 any blackout period during which the ability of such  
 16 participant or beneficiary to direct the investment of  
 17 the assets in his or her account is suspended by a  
 18 plan sponsor or fiduciary”, and

19 (3) by adding at the end the following new sub-  
 20 paragraphs:

21 “(B)(i) If a person referred to in subparagraph (A)(ii)  
 22 meets the requirements of this title in connection with au-  
 23 thorizing and implementing the blackout period, any person  
 24 who is otherwise a fiduciary shall not be liable under this  
 25 title for any loss occurring during such period as a result  
 26 of any exercise by the participant or beneficiary of control



1 *over assets in his or her account before the period. Matters*  
2 *to be considered in determining whether such person has*  
3 *satisfied the requirements of this title include, but are not*  
4 *limited to, whether such person—*

5           “(I) *has considered the reasonableness of the ex-*  
6           *pected blackout period,*

7           “(II) *has provided the notice required under sec-*  
8           *tion 101(i)(1), and*

9           “(III) *has acted in accordance with the require-*  
10          *ments of subsection (a) in determining whether to*  
11          *enter into the blackout period.*

12          “(ii) *For purposes of this subsection, if a blackout pe-*  
13          *riod arises in connection with a change in the investment*  
14          *options offered under the plan, a participant or beneficiary*  
15          *shall be deemed to have exercised control over the assets in*  
16          *his or her account prior to the blackout period if, after no-*  
17          *tice of the change in investment options is given to such*  
18          *participant or beneficiary, assets in the account of the par-*  
19          *ticipant or beneficiary are transferred—*

20               “(I) *to plan investment options in accordance*  
21               *with the affirmative election of the participant or*  
22               *beneficiary; or*

23               “(II) *in the absence of such an election and in*  
24               *the case in which fiduciary relief was provided under*  
25               *this subsection for the prior investment options, to*

1        *plan investment options in the manner set forth in*  
2        *such notice.*

3        “(C) *For purposes of this paragraph, the term ‘black-*  
4        *out period’ has the meaning given such term by section*  
5        *101(i)(7).”*

6        (b) *GUIDANCE.—Not later than 180 days after the date*  
7        *of enactment of this Act, the Secretary of Labor, in con-*  
8        *sultation with the Secretary of the Treasury, shall issue in-*  
9        *terim final regulations providing guidance, including safe*  
10       *harbors, on how plan sponsors or any other affected fidu-*  
11       *ciaries can satisfy their fiduciary responsibilities during*  
12       *any blackout period during which the ability of a partici-*  
13       *pant or beneficiary to direct the investment of assets in his*  
14       *or her individual account is suspended.*

15       (c) *EFFECTIVE DATE.—*

16            (1) *IN GENERAL.—The amendments made by*  
17        *this section shall apply to plan years beginning after*  
18        *December 31, 2005.*

19            (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*  
20        *GAINED AGREEMENTS.—In the case of a plan main-*  
21        *tained pursuant to 1 or more collective bargaining*  
22        *agreements between employee representatives and 1 or*  
23        *more employers ratified on or before the date of the*  
24        *enactment of this Act, paragraph (1) shall be applied*  
25        *to benefits pursuant to, and individuals covered by,*

1        *any such agreement by substituting for “December 31,*  
2        *2005” the earlier of—*

3                *(A) the later of—*

4                        *(i) December 31, 2006, or*

5                        *(ii) the date on which the last of such*  
6        *collective bargaining agreements terminates*  
7        *(determined without regard to any exten-*  
8        *sion thereof after such date of enactment),*  
9        *or*

10                *(B) December 31, 2007.*

11    **SEC. 707. INCREASE IN MAXIMUM BOND AMOUNT.**

12        *(a) IN GENERAL.—Section 412(a) of the Employee Re-*  
13        *tirement Income Security Act of 1974 (29 U.S.C. 1112) is*  
14        *amended by adding at the end the following: “In the case*  
15        *of a plan that holds employer securities (within the mean-*  
16        *ing of section 407(d)(1)), this subsection shall be applied*  
17        *by substituting ‘\$1,000,000’ for ‘\$500,000’ each place it ap-*  
18        *pears.”*

19        *(b) EFFECTIVE DATE.—The amendment made by this*  
20        *section shall apply to plan years beginning after December*  
21        *31, 2005.*

1 **TITLE VIII—INFORMATION TO**  
 2 **ASSIST PENSION PLAN PAR-**  
 3 **TICIPANTS**

4 **SEC. 801. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 5 **PROVIDE ADEQUATE INVESTMENT EDU-**  
 6 **CATION TO PARTICIPANTS.**

7 *(a) ADEQUATE INVESTMENT EDUCATION.—*

8 *(1) IN GENERAL.—Section 101 of the Employee*  
 9 *Retirement Income Security Act of 1974 (29 U.S.C.*  
 10 *1024), as amended by this Act, is amended by redes-*  
 11 *ignating subsection (n) as subsection (o) and by in-*  
 12 *serting after subsection (m) the following:*

13 *“(n) BASIC INVESTMENT GUIDELINES.—*

14 *“(1) IN GENERAL.—The administrator of an in-*  
 15 *dividual account plan (other than a one-participant*  
 16 *retirement plan described in subsection (i)(8)(B))*  
 17 *shall furnish at least once each year to each partici-*  
 18 *phant or beneficiary who has the right to direct the in-*  
 19 *vestment of assets in his or her account the model*  
 20 *form relating to basic investment guidelines which is*  
 21 *described in paragraph (2).*

22 *“(2) MODEL FORM.—*

23 *“(A) IN GENERAL.—The Secretary shall, in*  
 24 *consultation with the Secretary of Treasury, de-*  
 25 *velop and make available to individual account*

1        *plans for distribution under paragraph (1) a*  
2        *model form containing basic guidelines for in-*  
3        *vesting for retirement. Except as otherwise pro-*  
4        *vided by the Secretary, such guidelines shall*  
5        *include—*

6                *“(i) information on the benefits of di-*  
7                *versification,*

8                *“(ii) information on the essential dif-*  
9                *ferences, in terms of risk and return, of pen-*  
10              *sion plan investments, including stocks,*  
11              *bonds, mutual funds, and money market in-*  
12              *vestments,*

13              *“(iii) information on how an individ-*  
14              *ual’s pension plan investment allocations*  
15              *may differ depending on the individual’s*  
16              *age and years to retirement and on other*  
17              *factors determined by the Secretary,*

18              *“(iv) sources of information where in-*  
19              *dividuals may learn more about pension*  
20              *rights, individual investing, and investment*  
21              *advice, and*

22              *“(v) such other information related to*  
23              *individual investing as the Secretary deter-*  
24              *mines appropriate.*

1           “(B) *CALCULATION INFORMATION.*—*The*  
 2           *model form under subparagraph (A) shall in-*  
 3           *clude addresses for Internet sites, and a work-*  
 4           *sheet, which a participant or beneficiary may*  
 5           *use to calculate—*

6                     “(i) *the retirement age value of the*  
 7                     *participant’s or beneficiary’s nonforfeitable*  
 8                     *pension benefits under the plan (expressed*  
 9                     *as an annuity amount and determined by*  
 10                    *reference to varied historical annual rates of*  
 11                    *return and annuity interest rates), and*

12                    “(ii) *other important amounts relating*  
 13                    *to retirement savings, including the amount*  
 14                    *which a participant or beneficiary would be*  
 15                    *required to save annually to provide a re-*  
 16                    *tirement income equal to various percent-*  
 17                    *ages of their current salary (adjusted for ex-*  
 18                    *pected growth prior to retirement).*

19           *The Secretary shall develop an Internet site*  
 20           *which an individual may use in making such*  
 21           *calculations and the address for such site shall be*  
 22           *included with the form.*

23           “(C) *PUBLIC COMMENT.*—*The Secretary of*  
 24           *Labor shall provide at least 90 days for public*

1           *comment before publishing final notice of the*  
 2           *model form.*

3           “(3) *RULES RELATING TO FORM AND STATE-*  
 4           *MENT.—The model form under paragraph (2)—*

5                   “(A) *shall be written in a manner cal-*  
 6                   *culated to be understood by the average plan*  
 7                   *participant, and*

8                   “(B) *may be delivered in written, electronic,*  
 9                   *or other appropriate form to the extent such form*  
 10                   *is reasonably accessible to participants and bene-*  
 11                   *ficiaries.”*

12           (2) *ENFORCEMENT.—Section 502(c)(7) of such*  
 13           *Act (29 U.S.C. 1132(c)(7)), as amended by this Act,*  
 14           *is amended by striking “or (l)” and inserting “, (l),*  
 15           *or (n)”.*

16           (c) *EFFECTIVE DATE.—*

17                   (1) *IN GENERAL.—The amendments made by*  
 18                   *this section shall apply to plan years beginning after*  
 19                   *December 31, 2006.*

20                   (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*  
 21                   *GAINED AGREEMENTS.—In the case of a plan main-*  
 22                   *tained pursuant to 1 or more collective bargaining*  
 23                   *agreements between employee representatives and 1 or*  
 24                   *more employers ratified on or before the date of the*  
 25                   *enactment of this Act, paragraph (1) shall be applied*

1       to benefits pursuant to, and individuals covered by,  
 2       any such agreement by substituting for “December 31,  
 3       2006” the earlier of—

4               (A) the later of—

5                       (i) December 31, 2007, or

6                       (ii) the date on which the last of such  
 7       collective bargaining agreements terminates  
 8       (determined without regard to any exten-  
 9       sion thereof after such date of enactment),

10              or

11              (B) December 31, 2008.

12   **SEC. 802. INDEPENDENT INVESTMENT ADVICE PROVIDED**  
 13       **TO PLAN PARTICIPANTS.**

14       (a) *IN GENERAL.*—Section 404 of the Employee Re-  
 15   tirement Income Security Act of 1974 (29 U.S.C. 1104) is  
 16   amended by adding at the end the following new subsection:

17       “(e) *INDEPENDENT INVESTMENT ADVISER.*—

18               “(1) *IN GENERAL.*—In the case of an individual  
 19   account plan which permits a plan participant or  
 20   beneficiary to direct the investment of the assets in  
 21   his or her account, if a plan sponsor or other person  
 22   who is a fiduciary designates and monitors a quali-  
 23   fied investment adviser pursuant to the requirements  
 24   of paragraph (3), such fiduciary—



1           “(A) shall be deemed to have satisfied the  
 2           requirements under this section for the prudent  
 3           designation and periodic review of an investment  
 4           adviser with whom the plan sponsor or other  
 5           person who is a fiduciary enters into an ar-  
 6           rangement for the provision of advice referred to  
 7           in section 3(21)(A)(ii),

8           “(B) shall not be liable under this section  
 9           for any loss, or by reason of any breach, with re-  
 10          spect to the provision of investment advice given  
 11          by such adviser to any plan participant or bene-  
 12          ficiary, and

13          “(C) shall not be liable for any co-fiduciary  
 14          liability under subsections (a)(2) and (b) of sec-  
 15          tion 405 with respect to the provision of invest-  
 16          ment advice given by such adviser to any plan  
 17          participant or beneficiary.

18          “(2) *QUALIFIED INVESTMENT ADVISER.*—

19                 “(A) *IN GENERAL.*—For purposes of this  
 20                 subsection, the term ‘qualified investment ad-  
 21                 viser’ means, with respect to a plan, a person—

22                         “(i) who is a fiduciary of the plan by  
 23                         reason of the provision of investment advice  
 24                         by such person to a plan participant or  
 25                         beneficiary;

1 “(ii) who—

2 “(I) is registered as an investment  
3 adviser under the Investment Advisers  
4 Act of 1940 (15 U.S.C. 80b–1 et seq.),

5 “(II) is registered as an invest-  
6 ment adviser under the laws of the  
7 State in which such adviser maintains  
8 the principal office and place of busi-  
9 ness of such adviser, but only if such  
10 State laws are consistent with section  
11 203A of the Investment Advisers Act of  
12 1940 (15 U.S.C. 80b–3a),

13 “(III) is a bank or similar finan-  
14 cial institution referred to in section  
15 408(b)(4),

16 “(IV) is an insurance company  
17 qualified to do business under the laws  
18 of a State, or

19 “(V) is any other comparably  
20 qualified entity which satisfies such  
21 criteria as the Secretary determines  
22 appropriate, consistent with the pur-  
23 poses of this subsection, and

24 “(iii) who meets the requirements of  
25 subparagraph (B).

1           “(B) *ADVISER REQUIREMENTS.*—*The re-*  
 2           *quirements of this subparagraph are met if every*  
 3           *individual employed (or otherwise compensated)*  
 4           *by a person described in subparagraph (A)(ii)*  
 5           *who provides investment advice on behalf of such*  
 6           *person to any plan participant or beneficiary*  
 7           *is—*

8                   “(i) *an individual described in sub-*  
 9                   *clause (I) of subparagraph (A)(ii),*

10                   “(ii) *an individual described in sub-*  
 11                   *clause (II) of subparagraph (A)(ii), but*  
 12                   *only if such State has an examination re-*  
 13                   *quirement to qualify for registration,*

14                   “(iii) *registered as a broker or dealer*  
 15                   *under the Securities Exchange Act of 1934*  
 16                   *(15 U.S.C. 78a et seq.),*

17                   “(iv) *a registered representative as de-*  
 18                   *scribed in section 3(a)(18) of the Securities*  
 19                   *Exchange Act of 1934 (15 U.S.C.*  
 20                   *78c(a)(18)) or section 202(a)(17) of the In-*  
 21                   *vestment Advisers Act of 1940 (15 U.S.C.*  
 22                   *80b–2(a)(17)), or*

23                   “(v) *any other comparably qualified*  
 24                   *individual who satisfies such criteria as the*

1            *Secretary determines appropriate, con-*  
2            *sistent with the purposes of this subsection.*

3            “(3) *VERIFICATION REQUIREMENTS.—The re-*  
4            *quirements of this paragraph are met if—*

5            “(A) *the plan sponsor or other person who*  
6            *is a fiduciary in designating a qualified invest-*  
7            *ment adviser receives at the time of the designa-*  
8            *tion, and annually thereafter, a written*  
9            *verification from the qualified investment ad-*  
10           *viser that the investment adviser—*

11           “(i) *is and remains a qualified invest-*  
12           *ment adviser,*

13           “(ii) *acknowledges that the investment*  
14           *adviser is a fiduciary with respect to the*  
15           *plan and is solely responsible for its invest-*  
16           *ment advice,*

17           “(iii) *has reviewed the plan documents*  
18           *(including investment options) and has de-*  
19           *termined that its relationship with the plan*  
20           *and the investment advice provided to any*  
21           *plan participant or beneficiary, including*  
22           *any fees or other compensation it will re-*  
23           *ceive, will not constitute a violation of sec-*  
24           *tion 406,*

1           “(iv) will, in providing investment ad-  
2           vice to any participant or beneficiary, con-  
3           sider any employer securities or employer  
4           real property allocated to his or her ac-  
5           count, and

6           “(v) has the necessary insurance cov-  
7           erage (as determined by the Secretary) for  
8           any claim by any plan participant or bene-  
9           ficiary,

10          “(B) the plan sponsor or other person who  
11          is a fiduciary in designating a qualified invest-  
12          ment adviser reviews the documents described in  
13          paragraph (4) provided by such adviser and de-  
14          termines that there is no material reason not to  
15          enter into an arrangement for the provision of  
16          advice by such qualified investment adviser, and

17          “(C) the plan sponsor or other person who  
18          is a fiduciary in designating a qualified invest-  
19          ment adviser, within 30 days of having informa-  
20          tion brought to its attention that the investment  
21          adviser is no longer qualified or that a substan-  
22          tial number of plan participants or beneficiaries  
23          have raised concerns about the services being  
24          provided by the investment adviser—

1                   “(i) investigates such information and  
2                   concerns, and

3                   “(ii) determines that there is no mate-  
4                   rial reason not to continue the designation  
5                   of the adviser as a qualified investment ad-  
6                   viser.

7                   “(4) *DOCUMENTATION*.—A qualified investment  
8                   adviser shall provide the following documents to the  
9                   plan sponsor or other person who is a fiduciary in  
10                  designating the adviser:

11                  “(A) *The contract with the plan sponsor or*  
12                  *other person who is a fiduciary for the services*  
13                  *to be provided by the investment adviser to the*  
14                  *plan participants and beneficiaries.*

15                  “(B) *A disclosure as to any fees or other*  
16                  *compensation that will be received by the invest-*  
17                  *ment adviser for the provision of such investment*  
18                  *advice and as to any fees and other compensa-*  
19                  *tion that will be received as a result of a partici-*  
20                  *pant’s investment election.*

21                  “(C) *The Uniform Application for Invest-*  
22                  *ment Adviser Registration as filed with the Secu-*  
23                  *rities and Exchange Commission or a substan-*  
24                  *tially similar disclosure application as deter-*  
25                  *mined by and filed with the Secretary.*

1           “(5) *TREATMENT AS FIDUCIARY.*—Any qualified  
 2           investment adviser that acknowledges it is a fiduciary  
 3           pursuant to paragraph (3)(A)(ii) shall be deemed a  
 4           fiduciary under this part with respect to the provi-  
 5           sion of investment advice to a plan participant or  
 6           beneficiary.”

7           (b) *FIDUCIARY LIABILITY.*—Section 404(c)(1)(B) of  
 8           such Act is amended by inserting “(other than a qualified  
 9           investment adviser)” after “fiduciary”.

10          (c) *EFFECTIVE DATE.*—The amendments made by this  
 11          section shall apply with respect to investment advisers des-  
 12          ignated after the date of the enactment of this Act.

13       **SEC. 803. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
 14               **NING SERVICES.**

15          (a) *IN GENERAL.*—Subsection (m) of section 132 of the  
 16          Internal Revenue Code of 1986 (defining qualified retire-  
 17          ment services) is amended by adding at the end the fol-  
 18          lowing new paragraph:

19               “(4) *NO CONSTRUCTIVE RECEIPT.*—

20               “(A) *IN GENERAL.*—No amount shall be in-  
 21               cluded in the gross income of any employee solely  
 22               because the employee may choose between any  
 23               qualified retirement planning services provided  
 24               by an eligible investment advisor and compensa-  
 25               tion which would otherwise be includible in the

gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

“(B) *LIMITATION.*—The maximum amount which may be excluded under subparagraph (A) with respect to any employee for any taxable year shall not exceed \$1,000.

“(C) *ELIGIBLE INVESTMENT ADVISER.*—For purposes of this paragraph, the term ‘eligible investment adviser’ means, with respect to a plan, a person—

“(i) *who—*

“(I) *is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),*

“(II) *is registered as an investment adviser under the laws of the State in which such adviser maintains the principal office and place of business of such adviser, but only if such*



1           *State laws are consistent with section*  
2           *203A of the Investment Advisers Act of*  
3           *1940 (15 U.S.C. 80b–3a),*

4           *“(III) is a bank or similar finan-*  
5           *cial institution referred to in section*  
6           *408(b)(4),*

7           *“(IV) is an insurance company*  
8           *qualified to do business under the laws*  
9           *of a State, or*

10          *“(V) is any other comparably*  
11          *qualified entity which satisfies such*  
12          *criteria as the Secretary determines*  
13          *appropriate, consistent with the pur-*  
14          *poses of this subsection, and*

15          *“(ii) who meets the requirements of*  
16          *subparagraph (D).*

17          *“(D) ADVISER REQUIREMENTS.—The re-*  
18          *quirements of this subparagraph are met if every*  
19          *individual employed (or otherwise compensated)*  
20          *by a person described in subparagraph (C)(i)*  
21          *who provides investment advice on behalf of such*  
22          *person to any plan participant or beneficiary*  
23          *is—*

24          *“(i) an individual described in sub-*  
25          *clause (I) of subparagraph (C)(i),*

1           “(ii) an individual described in sub-  
 2           clause (II) of subparagraph (C)(i), but only  
 3           if such State has an examination require-  
 4           ment to qualify for registration,

5           “(iii) registered as a broker or dealer  
 6           under the Securities Exchange Act of 1934  
 7           (15 U.S.C. 78a et seq.),

8           “(iv) a registered representative as de-  
 9           scribed in section 3(a)(18) of the Securities  
 10          Exchange Act of 1934 (15 U.S.C.  
 11          78c(a)(18)) or section 202(a)(17) of the In-  
 12          vestment Advisers Act of 1940 (15 U.S.C.  
 13          80b-2(a)(17)), or

14          “(v) any other comparably qualified  
 15          individual who satisfies such criteria as the  
 16          Secretary determines appropriate, con-  
 17          sistent with the purposes of this paragraph.

18          “(E) TERMINATION.—This paragraph shall  
 19          not apply to taxable years beginning after De-  
 20          cember 31, 2010.”.

21          (b) CONFORMING AMENDMENTS.—

22               (1) Section 403(b)(3)(B) of such Code is amend-  
 23          ed by inserting “132(m)(4),” after “132(f)(4),”.

24               (2) Section 414(s)(2) of such Code is amended by  
 25          inserting “132(m)(4),” after “132(f)(4),”.

1           (3) Section 415(c)(3)(D)(ii) of such Code is  
 2           amended by inserting “132(m)(4),” after “132(f)(4),”.

3           (c) *EFFECTIVE DATE.*—The amendments made by this  
 4           section shall apply to taxable years beginning after Decem-  
 5           ber 31, 2005.

6           **SEC. 804. INCREASE IN PENALTIES FOR COERCIVE INTER-**  
 7                                   **REFERENCE WITH EXERCISE OF ERISA RIGHTS.**

8           (a) *IN GENERAL.*—Section 511 of the Employment Re-  
 9           tirement Income Security Act of 1974 (29 U.S.C. 1141) is  
 10          amended—

11           (1) by striking “\$10,000” and inserting  
 12           “\$100,000”, and

13           (2) by striking “one year” and inserting “10  
 14           years”.

15           (b) *EFFECTIVE DATE.*—The amendments made by this  
 16           section shall apply to violations occurring on and after the  
 17           date of the enactment of this Act.

18           **SEC. 805. ADMINISTRATIVE PROVISION.**

19           The Secretary of the Treasury shall have the authority  
 20           to prescribe rules applicable to the statements required  
 21           under sections 101(j) and 101(m) of the Employee Retire-  
 22           ment Income Security Act of 1974 (as added by this Act).

1 ***TITLE IX—PROVISIONS RELAT-***  
 2 ***ING TO SPOUSAL PENSION***  
 3 ***PROTECTION***

4 ***SEC. 901. REGULATIONS ON TIME AND ORDER OF ISSUANCE***  
 5 ***OF DOMESTIC RELATIONS ORDERS.***

6 *Not later than 1 year after the date of the enactment*  
 7 *of this Act, the Secretary of Labor shall issue regulations*  
 8 *under section 206(d)(3) of the Employee Retirement Secu-*  
 9 *rity Act of 1974 and section 414(p) of the Internal Revenue*  
 10 *Code of 1986 which clarify that—*

11 *(1) a domestic relations order otherwise meeting*  
 12 *the requirements to be a qualified domestic relations*  
 13 *order, including the requirements of section*  
 14 *206(d)(3)(D) of such Act and section 414(p)(3) of*  
 15 *such Code, shall not fail to be treated as a qualified*  
 16 *domestic relations order solely because—*

17 *(A) the order is issued after, or revises, an-*  
 18 *other domestic relations order or qualified do-*  
 19 *mestic relations order; or*

20 *(B) of the time at which it is issued; and*

21 *(2) any order described in paragraph (1) shall*  
 22 *be subject to the same requirements and protections*  
 23 *which apply to qualified domestic relations orders, in-*  
 24 *cluding the provisions of section 206(d)(3)(H) of such*  
 25 *Act and section 414(p)(7) of such Code.*

1 **SEC. 902. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**  
 2 **ROAD RETIREMENT ANNUITIES INDE-**  
 3 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**  
 4 **PLOYEE.**

5 (a) *IN GENERAL.*—Section 2 of the Railroad Retire-  
 6 ment Act of 1974 (45 U.S.C. 231a) is amended—

7 (1) in subsection (c)(4)(i), by striking “(A) is en-  
 8 titled to an annuity under subsection (a)(1) and  
 9 (B)”;

10 (2) in subsection (e)(5), by striking “or divorced  
 11 wife” the second place it appears.

12 (b) *EFFECTIVE DATE.*—The amendments made by this  
 13 section shall take effect 1 year after the date of the enact-  
 14 ment of this Act.

15 **SEC. 903. EXTENSION OF TIER II RAILROAD RETIREMENT**  
 16 **BENEFITS TO SURVIVING FORMER SPOUSES**  
 17 **PURSUANT TO DIVORCE AGREEMENTS.**

18 (a) *IN GENERAL.*—Section 5 of the Railroad Retire-  
 19 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
 20 at the end the following:

21 “(d) Notwithstanding any other provision of law, the  
 22 payment of any portion of an annuity computed under sec-  
 23 tion 3(b) to a surviving former spouse in accordance with  
 24 a court decree of divorce, annulment, or legal separation  
 25 or the terms of any court-approved property settlement inci-  
 26 dent to any such court decree shall not be terminated upon

1 *the death of the individual who performed the service with*  
 2 *respect to which such annuity is so computed unless such*  
 3 *termination is otherwise required by the terms of such court*  
 4 *decree.”*

5 *(b) EFFECTIVE DATE.—The amendment made by this*  
 6 *section shall take effect 1 year after the date of the enact-*  
 7 *ment of this Act.*

8 **SEC. 904. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**  
 9 **NUITY OPTION.**

10 *(a) AMENDMENTS TO INTERNAL REVENUE CODE.—*

11 *(1) ELECTION OF SURVIVOR ANNUITY.—Section*  
 12 *417(a)(1)(A) of the Internal Revenue Code of 1986 is*  
 13 *amended—*

14 *(A) in clause (i), by striking “, and” and*  
 15 *inserting a comma;*

16 *(B) by redesignating clause (ii) as clause*  
 17 *(iii); and*

18 *(C) by inserting after clause (i) the fol-*  
 19 *lowing:*

20 *“(ii) if the participant elects a waiver*  
 21 *under clause (i), may elect the qualified optional*  
 22 *survivor annuity at any time during the appli-*  
 23 *cable election period, and”.*

24 *(2) DEFINITION.—Section 417 of such Code is*  
 25 *amended by adding at the end the following:*

1       “(g) *DEFINITION OF QUALIFIED OPTIONAL SURVIVOR*  
 2 *ANNUITY.*—

3               “(1) *IN GENERAL.*—*For purposes of this section,*  
 4 *the term ‘qualified optional survivor annuity’ means*  
 5 *an annuity—*

6                       “(A) *for the life of the participant with a*  
 7 *survivor annuity for the life of the spouse which*  
 8 *is equal to the applicable percentage of the*  
 9 *amount of the annuity which is payable during*  
 10 *the joint lives of the participant and the spouse,*  
 11 *and*

12                       “(B) *which is the actuarial equivalent of a*  
 13 *single annuity for the life of the participant.*

14 *Such term also includes any annuity in a form hav-*  
 15 *ing the effect of an annuity described in the preceding*  
 16 *sentence.*

17               “(2) *APPLICABLE PERCENTAGE.*—

18                       “(A) *IN GENERAL.*—*For purposes of para-*  
 19 *graph (1), if the survivor annuity percentage—*

20                               “(i) *is less than 75 percent, the appli-*  
 21 *cable percentage is 75 percent, and*

22                               “(ii) *is greater than or equal to 75 per-*  
 23 *cent, the applicable percentage is 50 per-*  
 24 *cent.*

1           “(B) *SURVIVOR ANNUITY PERCENTAGE.*—

2           *For purposes of subparagraph (A), the term ‘sur-*  
 3           *vivor annuity percentage’ means the percentage*  
 4           *which the survivor annuity under the plan’s*  
 5           *qualified joint and survivor annuity bears to the*  
 6           *annuity payable during the joint lives of the*  
 7           *participant and the spouse.”.*

8           (3) *NOTICE.*—Section 417(a)(3)(A)(i) of such  
 9           Code is amended by inserting “and of the qualified  
 10          optional survivor annuity” after “annuity”.

11          (b) *AMENDMENTS TO ERISA.*—

12           (1) *ELECTION OF SURVIVOR ANNUITY.*—Section  
 13          205(c)(1)(A) of the Employee Retirement Income Se-  
 14          curity Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is  
 15          amended—

16                  (A) in clause (i), by striking “, and” and  
 17                  inserting a comma;

18                  (B) by redesignating clause (ii) as clause  
 19                  (iii); and

20                  (C) by inserting after clause (i) the fol-  
 21                  lowing:

22                          “(ii) if the participant elects a waiver  
 23                          under clause (i), may elect the qualified optional  
 24                          survivor annuity at any time during the appli-  
 25                          cable election period, and”.



1           (2) *DEFINITION.*—Section 205(d) of such Act (29  
2       *U.S.C. 1055(d)) is amended—*

3                     (A) *by inserting “(1)” after “(d)”;*

4                     (B) *by redesignating paragraphs (1) and*  
5                     (2) *as subparagraphs (A) and (B), respectively;*  
6                     *and*

7                     (C) *by adding at the end the following:*

8                     “(2)(A) *For purposes of this section, the term ‘qualified*  
9       *optional survivor annuity’ means an annuity—*

10                    “(i) *for the life of the participant with a sur-*  
11                    *vivor annuity for the life of the spouse which is equal*  
12                    *to the applicable percentage of the amount of the an-*  
13                    *nuity which is payable during the joint lives of the*  
14                    *participant and the spouse, and*

15                    “(ii) *which is the actuarial equivalent of a single*  
16                    *annuity for the life of the participant.*

17       *Such term also includes any annuity in a form having the*  
18       *effect of an annuity described in the preceding sentence.*

19                    “(B)(i) *For purposes of subparagraph (A), if the sur-*  
20       *vivor annuity percentage—*

21                    “(I) *is less than 75 percent, the applicable per-*  
22                    *centage is 75 percent, and*

23                    “(II) *is greater than or equal to 75 percent, the*  
24                    *applicable percentage is 50 percent.*

1       “(ii) *For purposes of clause (i), the term ‘survivor an-*  
 2 *nuity percentage’ means the percentage which the survivor*  
 3 *annuity under the plan’s qualified joint and survivor annu-*  
 4 *ity bears to the annuity payable during the joint lives of*  
 5 *the participant and the spouse.*”.

6           (3) *NOTICE.*—Section 205(c)(3)(A)(i) of such Act  
 7       (29 U.S.C. 1055(c)(3)(A)(i)) is amended by inserting  
 8       “and of the qualified optional survivor annuity” after  
 9       “annuity”.

10       (c) *EFFECTIVE DATES.*—

11           (1) *IN GENERAL.*—The amendments made by  
 12       this section shall apply to plan years beginning after  
 13       December 31, 2005.

14           (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*  
 15 *GAINED PLANS.*—In the case of a plan maintained  
 16       pursuant to 1 or more collective bargaining agree-  
 17       ments between employee representatives and 1 or  
 18       more employers ratified on or before the date of the  
 19       enactment of this Act, the amendments made by this  
 20       section shall apply to the first plan year beginning on  
 21       or after the earlier of—

22                   (A) *the later of—*

23                           (i) *January 1, 2006, or*

24                           (ii) *the date on which the last of such*  
 25       *collective bargaining agreements terminates*

1                   *(determined without regard to any exten-*  
 2                   *sion thereof after the date of enactment of*  
 3                   *this Act), or*

4                   *(B) January 1, 2007.*

5   ***TITLE    X—IMPROVEMENTS    IN***  
 6       ***PORTABILITY AND DISTRIBUTION RULES***

8   ***SEC. 1001. CLARIFICATIONS REGARDING PURCHASE OF***  
 9       ***PERMISSIVE SERVICE CREDIT.***

10       *(a) IN GENERAL.—Section 415(n) of the Internal Rev-*  
 11       *enue Code of 1986 (relating to special rules for the purchase*  
 12       *of permissive service credit) is amended—*

13               *(1) by striking “an employee” in paragraph (1)*  
 14       *and inserting “a participant”, and*

15               *(2) by adding at the end of paragraph (3)(A) the*  
 16       *following new flush sentence:*

17               *“Such term may include service credit for peri-*  
 18               *ods for which there is no performance of service,*  
 19               *and notwithstanding clause (ii), may include*  
 20               *service credited in order to provide an increased*  
 21               *benefit for service credit which a participant is*  
 22               *receiving under the plan.”*

23       ***(b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE***  
 24       ***TRANSFERS.—Section 415(n)(3) of such Code is amended***  
 25       *by adding at the end the following new subparagraph:*

“(D) *SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE TRANSFERS.*—*In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—*

“(i) *the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and*

“(ii) *the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.*”.

(c) *NONQUALIFIED SERVICE.*—*Section 415(n)(3) of such Code is amended—*

(1) *by striking “permissive service credit attributable to nonqualified service” each place it appears in subparagraph (B) and inserting “nonqualified service credit”,*

(2) *by striking so much of subparagraph (C) as precedes clause (i) and inserting:*

1                   “(C) *NONQUALIFIED SERVICE CREDIT*.—For  
 2                   purposes of subparagraph (B), the term ‘non-  
 3                   qualified service credit’ means permissive service  
 4                   credit other than that allowed with respect to—  
 5                   ”, and

6                   (3) by striking “elementary or secondary edu-  
 7                   cation (through grade 12), as determined under State  
 8                   law” and inserting “elementary or secondary edu-  
 9                   cation (through grade 12), or a comparable level of  
 10                  education, as determined under the applicable law of  
 11                  the jurisdiction in which the service was performed”.

12                  (d) *EFFECTIVE DATES*.—

13                  (1) *IN GENERAL*.—The amendments made by  
 14                  subsections (a) and (c) shall take effect as if included  
 15                  in the amendments made by section 1526 of the Tax-  
 16                  payer Relief Act of 1997.

17                  (2) *SUBSECTION (b)*.—The amendments made by  
 18                  subsection (b) shall take effect as if included in the  
 19                  amendments made by section 647 of the Economic  
 20                  Growth and Tax Relief Reconciliation Act of 2001.

21   **SEC. 1002. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**  
 22                   **ANNUITY CONTRACTS.**

23                  (a) *IN GENERAL*.—Subparagraph (A) of section  
 24                  402(c)(2) (relating to the maximum amount which may be  
 25                  rolled over) is amended—

1           (1) *by striking “which is part of a plan which*  
 2           *is a defined contribution plan and which agrees to*  
 3           *separately account” and inserting “or to an annuity*  
 4           *contract described in section 403(b) and such trust or*  
 5           *contract provides for separate accounting”; and*

6           (2) *by inserting “(and earnings thereon)” after*  
 7           *“so transferred”.*

8           (b) *EFFECTIVE DATE.*—*The amendment made by sub-*  
 9           *section (a) shall apply to taxable years beginning after De-*  
 10          *cember 31, 2005.*

11   **SEC. 1003. CLARIFICATION OF MINIMUM DISTRIBUTION**  
 12                           **RULES FOR GOVERNMENTAL PLANS.**

13          *The Secretary of the Treasury shall issue regulations*  
 14          *under which a governmental plan (as defined in section*  
 15          *414(d) of the Internal Revenue Code of 1986) shall, for all*  
 16          *years to which section 401(a)(9) of such Code applies to*  
 17          *such plan, be treated as having complied with such section*  
 18          *401(a)(9) if such plan complies with a reasonable good faith*  
 19          *interpretation of such section 401(a)(9).*

20   **SEC. 1004. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**  
 21                           **PENALTY TAX ON CERTAIN DISTRIBUTIONS**  
 22                           **OF PENSION PLANS FOR PUBLIC SAFETY EM-**  
 23                           **PLOYEES.**

24          (a) *IN GENERAL.*—*Section 72(t) of the Internal Rev-*  
 25          *enue Code of 1986 (relating to subsection not to apply to*

1 *certain distributions) is amended by adding at the end the*  
 2 *following new paragraph:*

3           “(10) *DISTRIBUTIONS TO QUALIFIED PUBLIC*  
 4 *SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—*

5           “(A) *IN GENERAL.—In the case of a dis-*  
 6 *tribution to a qualified public safety employee*  
 7 *from a governmental plan (within the meaning*  
 8 *of section 414(d)) which is a defined benefit*  
 9 *plan, paragraph (2)(A)(v) shall be applied by*  
 10 *substituting ‘age 50’ for ‘age 55’.*

11           “(B) *QUALIFIED PUBLIC SAFETY EM-*  
 12 *PLOYEE.—For purposes of this paragraph, the*  
 13 *term ‘qualified public safety employee’ means*  
 14 *any employee of a State or political subdivision*  
 15 *of a State who provides police protection, fire-*  
 16 *fighting services, or emergency medical services*  
 17 *for any area within the jurisdiction of such*  
 18 *State or political subdivision.”*

19           “(b) *EFFECTIVE DATE.—The amendment made by this*  
 20 *section shall apply to distributions after the date of the en-*  
 21 *actment of this Act.*

22 **SEC. 1005. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
 23 **FICIARIES OF CERTAIN RETIREMENT PLAN**  
 24 **DISTRIBUTIONS.**

25           “(a) *IN GENERAL.—*

1           (1) *QUALIFIED PLANS*.—Section 402(c) of the In-  
 2           ternal Revenue Code of 1986 (relating to rollovers  
 3           from exempt trusts) is amended by adding at the end  
 4           the following new paragraph:

5           “(11) *DISTRIBUTIONS TO INHERITED INDIVIDUAL*  
 6           *RETIREMENT PLAN OF NONSPOUSE BENEFICIARY*.—

7           “(A) *IN GENERAL*.—If, with respect to any  
 8           portion of a distribution from an eligible retire-  
 9           ment plan of a deceased employee, a direct trust-  
 10          ee-to-trustee transfer is made to an individual  
 11          retirement plan described in clause (i) or (ii) of  
 12          paragraph (8)(B) established for the purposes of  
 13          receiving the distribution on behalf of an indi-  
 14          vidual who is a designated beneficiary (as de-  
 15          fined by section 401(a)(9)(E)) of the employee  
 16          and who is not the surviving spouse of the  
 17          employee—

18               “(i) the transfer shall be treated as an  
 19               eligible rollover distribution for purposes of  
 20               this subsection,

21               “(ii) the individual retirement plan  
 22               shall be treated as an inherited individual  
 23               retirement account or individual retirement  
 24               annuity (within the meaning of section  
 25               408(d)(3)(C)) for purposes of this title, and



1                   “(iii) section 401(a)(9)(B) (other than  
2                   clause (iv) thereof) shall apply to such plan.

3                   “(B) CERTAIN TRUSTS TREATED AS BENE-  
4                   FICIARIES.—For purposes of this paragraph, to  
5                   the extent provided in rules prescribed by the  
6                   Secretary, a trust maintained for the benefit of  
7                   one or more designated beneficiaries shall be  
8                   treated in the same manner as a designated ben-  
9                   eficiary.”.

10                  (2) SECTION 403(a) PLANS.—Subparagraph (B)  
11                  of section 403(a)(4) of such Code (relating to rollover  
12                  amounts) is amended by striking “and (9)” and in-  
13                  serting “, (9), and (11)”.

14                  (3) SECTION 403(b) PLANS.—Subparagraph (B)  
15                  of section 403(b)(8) of such Code (relating to rollover  
16                  amounts) is amended by striking “and (9)” and in-  
17                  serting “, (9), and (11)”.

18                  (4) SECTION 457 PLANS.—Subparagraph (B) of  
19                  section 457(e)(16) of such Code (relating to rollover  
20                  amounts) is amended by striking “and (9)” and in-  
21                  serting “, (9), and (11)”.

22                  (b) EFFECTIVE DATE.—The amendments made by this  
23                  section shall apply to distributions after December 31, 2005.

1 **SEC. 1006. FASTER VESTING OF EMPLOYER NONELECTIVE**  
 2 **CONTRIBUTIONS.**

3 *(a) AMENDMENTS TO THE INTERNAL REVENUE CODE*  
 4 *OF 1986.—*

5 *(1) IN GENERAL.—Paragraph (2) of section*  
 6 *411(a) of the Internal Revenue Code of 1986 (relating*  
 7 *to employer contributions) is amended to read as fol-*  
 8 *lows:*

9 *“(2) EMPLOYER CONTRIBUTIONS.—*

10 *“(A) DEFINED BENEFIT PLANS.—*

11 *“(i) IN GENERAL.—In the case of a de-*  
 12 *defined benefit plan, a plan satisfies the re-*  
 13 *quirements of this paragraph if it satisfies*  
 14 *the requirements of clause (ii) or (iii).*

15 *“(ii) 5-YEAR VESTING.—A plan satis-*  
 16 *fies the requirements of this clause if an em-*  
 17 *ployee who has completed at least 5 years of*  
 18 *service has a nonforfeitable right to 100 per-*  
 19 *cent of the employee’s accrued benefit de-*  
 20 *rived from employer contributions.*

21 *“(iii) 3 TO 7 YEAR VESTING.—A plan*  
 22 *satisfies the requirements of this clause if an*  
 23 *employee has a nonforfeitable right to a per-*  
 24 *centage of the employee’s accrued benefit de-*  
 25 *rived from employer contributions deter-*  
 26 *mined under the following table:*

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

“(B) *DEFINED CONTRIBUTION PLANS.*—

“(i) *IN GENERAL.*—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) *3-YEAR VESTING.*—A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.

“(iii) *2 TO 6 YEAR VESTING.*—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

1           (2) *CONFORMING AMENDMENT.*—Section 411(a)  
 2       of such Code (relating to general rule for minimum  
 3       vesting standards) is amended by striking paragraph  
 4       (12).

5       (b) *AMENDMENTS TO THE EMPLOYEE RETIREMENT*  
 6 *INCOME SECURITY ACT OF 1974.*—

7           (1) *IN GENERAL.*—Paragraph (2) of section  
 8       203(a) of the *Employee Retirement Income Security*  
 9       *Act of 1974* (29 U.S.C. 1053(a)(2)) is amended to  
 10      read as follows:

11           “(2)(A)(i) *In the case of a defined benefit plan,*  
 12      *a plan satisfies the requirements of this paragraph if*  
 13      *it satisfies the requirements of clause (ii) or (iii).*

14           “(ii) *A plan satisfies the requirements of this*  
 15      *clause if an employee who has completed at least 5*  
 16      *years of service has a nonforfeitable right to 100 per-*  
 17      *cent of the employee’s accrued benefit derived from*  
 18      *employer contributions.*

19           “(iii) *A plan satisfies the requirements of this*  
 20      *clause if an employee has a nonforfeitable right to a*  
 21      *percentage of the employee’s accrued benefit derived*  
 22      *from employer contributions determined under the fol-*  
 23      *lowing table:*

<b>“Years of service:</b>	<b><i>The nonforfeitable percentage is:</i></b>
3 .....	20
4 .....	40
5 .....	60

6 .....	80
7 or more .....	100.

“(B)(i) *In the case of an individual account plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).*

“(ii) *A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.*

“(iii) *A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:*

<b>“Years of service:</b>	<b><i>The nonforfeitable percentage is:</i></b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

(2) *CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).*

(c) *EFFECTIVE DATES.—*

(1) *IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2005.*

1           (2) *COLLECTIVE BARGAINING AGREEMENTS.*—*In*  
 2           *the case of a plan maintained pursuant to one or*  
 3           *more collective bargaining agreements between em-*  
 4           *ployee representatives and one or more employers*  
 5           *ratified before the date of the enactment of this Act,*  
 6           *the amendments made by this section shall not apply*  
 7           *to contributions on behalf of employees covered by any*  
 8           *such agreement for plan years beginning before the*  
 9           *earlier of—*

10                   (A) *the later of—*

11                           (i) *the date on which the last of such*  
 12                           *collective bargaining agreements terminates*  
 13                           *(determined without regard to any exten-*  
 14                           *sion thereof on or after such date of the en-*  
 15                           *actment); or*

16                           (ii) *January 1, 2006; or*

17                   (B) *January 1, 2008.*

18           (3) *SERVICE REQUIRED.*—*With respect to any*  
 19           *plan, the amendments made by this section shall not*  
 20           *apply to any employee before the date that such em-*  
 21           *ployee has 1 hour of service under such plan in any*  
 22           *plan year to which the amendments made by this sec-*  
 23           *tion apply.*

24           (4) *SPECIAL RULE FOR STOCK OWNERSHIP*  
 25           *PLANS.*—*Notwithstanding paragraph (1) or (2), in*

1        *the case of an employee stock ownership plan (as de-*  
 2        *finied in section 4975(e)(7) of the Internal Revenue*  
 3        *Code of 1986) which had outstanding on September*  
 4        *26, 2005, a loan incurred for the purpose of acquiring*  
 5        *qualifying employer securities (as defined in section*  
 6        *4975(e)(8) of such Code), the amendments made by*  
 7        *this section shall not apply to any plan year begin-*  
 8        *ning before the earlier of—*

9                    *(A) the date on which the loan is fully re-*  
 10                  *paid, or*

11                   *(B) the date on which the loan was, as of*  
 12                  *September 26, 2005, scheduled to be fully repaid.*

13    **SEC. 1007. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
 14                    **PLANS TO ROTH IRAS.**

15        *(a) IN GENERAL.—Subsection (e) of section 408A of*  
 16        *the Internal Revenue Code of 1986 (defining qualified roll-*  
 17        *over contribution) is amended to read as follows:*

18            *“(e) QUALIFIED ROLLOVER CONTRIBUTION.—For pur-*  
 19        *poses of this section, the term ‘qualified rollover contribu-*  
 20        *tion’ means a rollover contribution—*

21                    *“(1) to a Roth IRA from another such account,*

22                    *“(2) from an eligible retirement plan, but only*  
 23        *if—*

1           “(A) in the case of an individual retirement  
2           plan, such rollover contribution meets the re-  
3           quirements of section 408(d)(3), and

4           “(B) in the case of any eligible retirement  
5           plan (as defined in section 402(c)(8)(B) other  
6           than clauses (i) and (ii) thereof), such rollover  
7           contribution meets the requirements of section  
8           402(c), 403(b)(8), or 457(e)(16), as applicable.

9   For purposes of section 408(d)(3)(B), there shall be dis-  
10 regarded any qualified rollover contribution from an indi-  
11 vidual retirement plan (other than a Roth IRA) to a Roth  
12 IRA.”

13       (b) CONFORMING AMENDMENTS.—

14           (1) Section 408A(c)(3)(B) of such Code is  
15       amended—

16           (A) in the text by striking “individual re-  
17           tirement plan” and inserting “an eligible retire-  
18           ment plan (as defined by section 402(c)(8)(B))”,  
19           and

20           (B) in the heading by striking “IRA” and  
21           inserting “ELIGIBLE RETIREMENT PLAN”.

22           (2) Section 408A(d)(3) of such Code is  
23       amended—



4 (B) in subparagraph (B), by striking “indi-  
5 vidual retirement plan” and inserting “eligible  
6 retirement plan (as defined by section  
7 402(c)(8)(B))”,

8 (C) in subparagraph (D), by inserting “or  
9 6047” after “408(i),”

10 (D) in subparagraph (D), by striking “or  
11 both” and inserting “persons subject to section  
12 6047(d)(1), or all of the foregoing persons”, and

13 (E) in the heading, by striking “IRA” and  
14 inserting “ELIGIBLE RETIREMENT PLAN”.

15 (c) *EFFECTIVE DATE.*—The amendments made by this  
16 section shall apply to distributions after December 31, 2005.

17 *SEC. 1008. ELIMINATION OF HIGHER PENALTY ON CERTAIN*  
18 *SIMPLE PLAN DISTRIBUTIONS.*

(a) *IN GENERAL.*—Subsection (t) of section 72 of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans), as amended by section 1004, is amended by striking paragraph (6) and redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

25 (b) *CONFORMING AMENDMENTS.*—

1           (1) Section 72(t)(2)(E) of such Code is amended  
 2       by striking “paragraph (7)” and inserting “para-  
 3       graph (6)”.

4           (2) Section 72(t)(2)(F) of such Code is amended  
 5       by striking “paragraph (8)” and inserting “para-  
 6       graph (7)”.

7           (3) Section 408(d)(3)(G) of such Code is amend-  
 8       ed by striking “applies” and inserting “applied on  
 9       the day before the date of the enactment of the Pen-  
 10      sion Security and Transparency Act of 2005”).

11          (4) Section 457(a)(2) of such Code is amended  
 12      by striking “section 72(t)(9)” and inserting “section  
 13      72(t)(8)”.

14      (c) *EFFECTIVE DATE.*—The amendments made by this  
 15   section shall apply to years beginning after December 31,  
 16   2005.

17   **SEC. 1009. SIMPLE PLAN PORTABILITY.**

18      (a) *REPEAL OF LIMITATION.*—Paragraph (3) of sec-  
 19   tion 408(d) of the Internal Revenue Code of 1986 (relating  
 20   to rollover contributions), as amended by this Act, is  
 21   amended by striking subparagraph (G) and redesignating  
 22   subparagraphs (H) and (I) as subparagraphs (G) and (H),  
 23   respectively.

1       (b) *EFFECTIVE DATE.*—*The amendment made by this*  
 2 *section shall apply to years beginning after December 31,*  
 3 *2005.*

4 **SEC. 1010. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
 5 **MENT PLANS.**

6       *An individual shall not be precluded from partici-*  
 7 *pating in an eligible deferred compensation plan by reason*  
 8 *of having received a distribution under section 457(e)(9) of*  
 9 *the Internal Revenue Code of 1986, as in effect prior to the*  
 10 *enactment of the Small Business Job Protection Act of 1996.*

11 **SEC. 1011. TRANSFERS TO THE PBGC.**

12       (a) *MANDATORY DISTRIBUTIONS TO PBGC.*—*Clause*  
 13 *(i) of section 401(a)(31)(B) of the Internal Revenue Code*  
 14 *of 1986 (relating to general rule for certain mandatory dis-*  
 15 *tributions) is amended by inserting “to the Pension Benefit*  
 16 *Guaranty Corporation in accordance with section 4050(e)*  
 17 *of the Employee Retirement Income Security Act of 1974*  
 18 *or” after “such transfer”.*

19       (b) *TAX TREATMENT OF DISTRIBUTIONS.*—*Subpara-*  
 20 *graph (B) of section 401(a)(31) of such Code is amended*  
 21 *by adding at the end the following new clause:*

22                       “(iii) *INCOME TAX TREATMENT OF*  
 23 *TRANSFERS TO PBGC.*—*For purposes of de-*  
 24 *termining the income tax treatment relating*

1           to transfers to the Pension Benefit Guar-  
2           anty Corporation under clause (i)—

3                       “(I) the transfer of amounts to the  
4                       Pension Benefit Guaranty Corporation  
5                       pursuant to clause (i) shall be treated  
6                       as a transfer to an individual retire-  
7                       ment plan under such clause, and

8                       “(II) the distribution of such  
9                       amounts from the Pension Benefit  
10                      Guaranty Corporation shall be treated  
11                      as a distribution from an individual  
12                      retirement plan.”.

13       (c) *MISSING PARTICIPANTS AND BENEFICIARIES.*—

14   Section 4050 of the Employee Retirement Income Security  
15   Act of 1974 (29 U.S.C. 1350), as amended by section 1012,  
16   is amended by redesignating subsection (e) as subsection (g)  
17   and by inserting after subsection (d) the following new sub-  
18   sections:

19       “(e) *INVOLUNTARY CASHOUTS.*—

20               “(1) *PAYMENT BY THE CORPORATION.*—If bene-  
21               fits under a plan described in paragraph (3) were  
22               transferred to the corporation under section  
23               401(a)(31)(B) of the Internal Revenue Code of 1986,  
24               the corporation shall, upon application filed by the  
25               participant or beneficiary with the corporation in

1        *such form and manner as may be prescribed in regu-*  
 2        *lations of the corporation, pay to the participant or*  
 3        *beneficiary the amount transferred (or the appro-*  
 4        *priate survivor benefit) either—*

5                *“(A) in a single sum (plus interest), or*

6                *“(B) in such other form as is specified in*  
 7                *regulations of the corporation.*

8                *“(2) INFORMATION TO THE CORPORATION.—To*  
 9        *the extent provided in regulations, the plan adminis-*  
 10        *trator of a plan described in paragraph (3) shall,*  
 11        *upon a transfer of benefits to the corporation under*  
 12        *section 401(a)(31)(B) of such Code, provide the cor-*  
 13        *poration information with respect to benefits of the*  
 14        *participant or beneficiary so transferred.*

15                *“(3) PLANS DESCRIBED.—A plan is described in*  
 16        *this paragraph if the plan is a pension plan (within*  
 17        *the meaning of section 3(2))—*

18                *“(A) which provides for mandatory dis-*  
 19        *tributions under section 401(a)(31)(B) of the In-*  
 20        *ternal Revenue Code of 1986, and*

21                *“(B) which is not a plan described in para-*  
 22        *graphs (2) through (11) of section 4021(b).*

23                *“(4) CERTAIN PROVISIONS NOT TO APPLY.—Sub-*  
 24        *sections (a)(1) and (a)(3) shall not apply to a plan*  
 25        *described in paragraph (3).*

1       “(f) *AUTHORITY TO CHARGE FEE.*—*The corporation*  
 2   *may charge a reasonable fee for costs incurred in connection*  
 3   *with the transfer and management of amounts transferred*  
 4   *to the corporation under this section. Such fee may be im-*  
 5   *posed on the transferor and may be deducted from amounts*  
 6   *so transferred.”.*

7       (d) *EFFECTIVE DATES.*—

8           (1) *INTERNAL REVENUE CODE PROVISIONS.*—*The*  
 9   *amendments made by subsections (a) and (b) shall*  
 10   *take effect as if included in the amendments made by*  
 11   *section 657 of the Economic Growth and Tax Relief*  
 12   *Reconciliation Act of 2001.*

13          (2) *EMPLOYEE RETIREMENT INCOME SECURITY*  
 14   *ACT OF 1974 PROVISIONS.*—*The amendments made by*  
 15   *subsection (c) shall apply to distributions made after*  
 16   *final regulations implementing subsections (e) and (f)*  
 17   *of section 4050 of the Employee Retirement Income*  
 18   *Security Act of 1974 (as added by subsection (c)) are*  
 19   *prescribed.*

20          (3) *REGULATIONS.*—*The Pension Benefit Guar-*  
 21   *anty Corporation shall issue regulations necessary to*  
 22   *carry out the amendments made by subsection (c) not*  
 23   *later than December 31, 2006.*

1 **SEC. 1012. MISSING PARTICIPANTS.**

2       (a) *IN GENERAL.*—Section 4050 of the *Employee Re-*  
 3 *tirement Income Security Act of 1974 (29 U.S.C. 1350)* is  
 4 *amended by redesignating subsection (c) as subsection (e)*  
 5 *and by inserting after subsection (b) the following new sub-*  
 6 *sections:*

7       “(c) *MULTIEMPLOYER PLANS.*—*The corporation shall*  
 8 *prescribe rules similar to the rules in subsection (a) for mul-*  
 9 *tiemployer plans covered by this title that terminate under*  
 10 *section 4041A.*

11       “(d) *PLANS NOT OTHERWISE SUBJECT TO TITLE.*—

12               “(1) *TRANSFER TO CORPORATION.*—*The plan ad-*  
 13 *ministrator of a plan described in paragraph (4) may*  
 14 *elect to transfer a missing participant’s benefits to the*  
 15 *corporation upon termination of the plan.*

16               “(2) *INFORMATION TO THE CORPORATION.*—*To*  
 17 *the extent provided in regulations, the plan adminis-*  
 18 *trator of a plan described in paragraph (4) shall,*  
 19 *upon termination of the plan, provide the corporation*  
 20 *information with respect to benefits of a missing par-*  
 21 *ticipant if the plan transfers such benefits—*

22                       “(A) *to the corporation, or*

23                       “(B) *to an entity other than the corporation*  
 24 *or a plan described in paragraph (4)(B)(ii).*

25               “(3) *PAYMENT BY THE CORPORATION.*—*If bene-*  
 26 *fits of a missing participant were transferred to the*

1       corporation under paragraph (1), the corporation  
2       shall, upon location of the participant or beneficiary,  
3       pay to the participant or beneficiary the amount  
4       transferred (or the appropriate survivor benefit)  
5       either—

6               “(A) in a single sum (plus interest), or

7               “(B) in such other form as is specified in  
8       regulations of the corporation.

9               “(4) *PLANS DESCRIBED.*—A plan is described in  
10      this paragraph if—

11              “(A) the plan is a pension plan (within the  
12      meaning of section 3(2))—

13              “(i) to which the provisions of this sec-  
14      tion do not apply (without regard to this  
15      subsection), and

16              “(ii) which is not a plan described in  
17      paragraphs (2) through (11) of section  
18      4021(b), and

19              “(B) at the time the assets are to be distrib-  
20      uted upon termination, the plan—

21              “(i) has missing participants, and

22              “(ii) has not provided for the transfer  
23      of assets to pay the benefits of all missing  
24      participants to another pension plan (with-  
25      in the meaning of section 3(2)).



1           “(5) *CERTAIN PROVISIONS NOT TO APPLY.*—Sub-  
 2           sections (a)(1) and (a)(3) shall not apply to a plan  
 3           described in paragraph (4).”.

4           (b) *CONFORMING AMENDMENTS.*—Section 206(f) of  
 5           such Act (29 U.S.C. 1056(f)) is amended—

6           (1) by striking “title IV” and inserting “section  
 7           4050”; and

8           (2) by striking “the plan shall provide that,”.

9           (c) *EFFECTIVE DATE.*—The amendments made by this  
 10          section shall apply to distributions made after final regula-  
 11          tions implementing subsections (c) and (d) of section 4050  
 12          of the Employee Retirement Income Security Act of 1974  
 13          (as added by subsection (a)), respectively, are prescribed.

14       **SEC. 1013. MODIFICATIONS OF RULES GOVERNING HARD-**  
 15                               **SHIPS AND UNFORSEEN FINANCIAL EMER-**  
 16                               **GENCIES.**

17          Within 180 days after the date of the enactment of this  
 18          Act, the Secretary of the Treasury shall modify the rules  
 19          for determining whether a participant has had a hardship  
 20          for purposes of section 401(k)(2)(B)(i)(IV) of the Internal  
 21          Revenue Code of 1986 to provide that if an event (including  
 22          the occurrence of a medical expense) would constitute a  
 23          hardship under the plan if it occurred with respect to the  
 24          participant’s spouse or dependent (as defined in section 152  
 25          of such Code), such event shall, to the extent permitted

1 *under a plan, constitute a hardship if it occurs with respect*  
 2 *to a person who is a beneficiary under the plan with respect*  
 3 *to the participant. The Secretary of the Treasury shall issue*  
 4 *similar rules for purposes of determining whether a partici-*  
 5 *pant has had—*

6           (1) *a hardship for purposes of section*  
 7 *403(b)(11)(B) of such Code; or*

8           (2) *an unforeseen financial emergency for pur-*  
 9 *poses of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii),*  
 10 *and 457(d)(1)(A)(iii) of such Code.*

## 11 ***TITLE XI—ADMINISTRATIVE*** 12 ***PROVISIONS***

### 13 ***SEC. 1101. EMPLOYEE PLANS COMPLIANCE RESOLUTION*** 14 ***SYSTEM.***

15       (a) *IN GENERAL.*—*The Secretary of the Treasury shall*  
 16 *have full authority to establish and implement the Em-*  
 17 *ployee Plans Compliance Resolution System (or any suc-*  
 18 *cessor program) and any other employee plans correction*  
 19 *policies, including the authority to waive income, excise,*  
 20 *or other taxes to ensure that any tax, penalty, or sanction*  
 21 *is not excessive and bears a reasonable relationship to the*  
 22 *nature, extent, and severity of the failure.*

23       (b) *IMPROVEMENTS.*—*The Secretary of the Treasury*  
 24 *shall continue to update and improve the Employee Plans*

1 *Compliance Resolution System (or any successor program),*  
 2 *giving special attention to—*

3           (1) *increasing the awareness and knowledge of*  
 4           *small employers concerning the availability and use*  
 5           *of the program;*

6           (2) *taking into account special concerns and cir-*  
 7           *cumstances that small employers face with respect to*  
 8           *compliance and correction of compliance failures;*

9           (3) *extending the duration of the self-correction*  
 10          *period under the Self-Correction Program for signifi-*  
 11          *cant compliance failures;*

12          (4) *expanding the availability to correct insig-*  
 13          *nificant compliance failures under the Self-Correction*  
 14          *Program during audit; and*

15          (5) *assuring that any tax, penalty, or sanction*  
 16          *that is imposed by reason of a compliance failure is*  
 17          *not excessive and bears a reasonable relationship to*  
 18          *the nature, extent, and severity of the failure.*

19 **SEC. 1102. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
 20 **TRIBUTIONS.**

21       (a) *EXPANSION OF PERIOD.—*

22           (1) *AMENDMENT OF INTERNAL REVENUE*  
 23       *CODE.—*

1           (A) *IN GENERAL.*—Section 417(a)(6)(A) of  
 2           the Internal Revenue Code of 1986 is amended  
 3           by striking “90-day” and inserting “180-day”.

4           (B) *MODIFICATION OF REGULATIONS.*—The  
 5           Secretary of the Treasury shall modify the regu-  
 6           lations under sections 402(f), 411(a)(11), and  
 7           417 of the Internal Revenue Code of 1986 by sub-  
 8           stituting “180 days” for “90 days” each place it  
 9           appears in Treasury Regulations sections  
 10          1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

11          (2) *AMENDMENT OF ERISA.*—

12           (A) *IN GENERAL.*—Section 205(c)(7)(A) of  
 13           the Employee Retirement Income Security Act of  
 14           1974 (29 U.S.C. 1055(c)(7)(A)) is amended by  
 15           striking “90-day” and inserting “180-day”.

16           (B) *MODIFICATION OF REGULATIONS.*—The  
 17           Secretary of the Treasury shall modify the regu-  
 18           lations under part 2 of subtitle B of title I of the  
 19           Employee Retirement Income Security Act of  
 20           1974 relating to sections 203(e) and 205 of such  
 21           Act by substituting “180 days” for “90 days”  
 22           each place it appears.

23           (3) *EFFECTIVE DATE.*—The amendments and  
 24           modifications made or required by this subsection

1      *shall apply to years beginning after December 31,*  
 2      *2005.*

3      *(b) NOTIFICATION OF RIGHT TO DEFER.—*

4            *(1) IN GENERAL.—The Secretary of the Treasury*  
 5      *shall modify the regulations under section 411(a)(11)*  
 6      *of the Internal Revenue Code of 1986 and under sec-*  
 7      *tion 205 of the Employee Retirement Income Security*  
 8      *Act of 1974 to provide that the description of a par-*  
 9      *ticipant's right, if any, to defer receipt of a distribu-*  
 10     *tion shall also describe the consequences of failing to*  
 11     *defer such receipt.*

12           *(2) EFFECTIVE DATE.—*

13            *(A) IN GENERAL.—The modifications re-*  
 14     *quired by paragraph (1) shall apply to years be-*  
 15     *ginning after December 31, 2005.*

16            *(B) REASONABLE NOTICE.—A plan shall*  
 17     *not be treated as failing to meet the requirements*  
 18     *of section 411(a)(11) of such Code or section 205*  
 19     *of such Act with respect to any description of*  
 20     *consequences described in paragraph (1) made*  
 21     *within 90 days after the Secretary of the Treas-*  
 22     *ury issues the modifications required by para-*  
 23     *graph (1) if the plan administrator makes a rea-*  
 24     *sonable attempt to comply with such require-*  
 25     *ments.*

1 **SEC. 1103. REPORTING SIMPLIFICATION.**

2 (a) *SIMPLIFIED ANNUAL FILING REQUIREMENT FOR*  
 3 *OWNERS AND THEIR SPOUSES.—*

4 (1) *IN GENERAL.—The Secretary of the Treasury*  
 5 *shall modify the requirements for filing annual re-*  
 6 *turns with respect to one-participant retirement plans*  
 7 *to ensure that such plans with assets of \$250,000 or*  
 8 *less as of the close of the plan year need not file a*  
 9 *return for that year.*

10 (2) *ONE-PARTICIPANT RETIREMENT PLAN DE-*  
 11 *FINED.—For purposes of this subsection, the term*  
 12 *“one-participant retirement plan” means a retire-*  
 13 *ment plan with respect to which the following require-*  
 14 *ments are met:*

15 (A) *on the first day of the plan year—*

16 (i) *the plan covered only one indi-*  
 17 *vidual (or the individual and the individ-*  
 18 *ual’s spouse) and the individual owned 100*  
 19 *percent of the plan sponsor (whether or not*  
 20 *incorporated), or*

21 (ii) *the plan covered only one or more*  
 22 *partners (or partners and their spouses) in*  
 23 *the plan sponsor;*

24 (B) *the plan meets the minimum coverage*  
 25 *requirements of section 410(b) of the Internal*  
 26 *Revenue Code of 1986 without being combined*

1           *with any other plan of the business that covers*  
 2           *the employees of the business;*

3           (C) *the plan does not provide benefits to*  
 4           *anyone except the individual (and the individ-*  
 5           *ual's spouse) or the partners (and their spouses);*

6           (D) *the plan does not cover a business that*  
 7           *is a member of an affiliated service group, a con-*  
 8           *trolled group of corporations, or a group of busi-*  
 9           *nesses under common control; and*

10          (E) *the plan does not cover a business that*  
 11          *uses the services of leased employees (within the*  
 12          *meaning of section 414(n) of such Code).*

13          *For purposes of this paragraph, the term "partner"*  
 14          *includes a 2-percent shareholder (as defined in section*  
 15          *1372(b) of such Code) of an S corporation.*

16          (3) *OTHER DEFINITIONS.—Terms used in para-*  
 17          *graph (2) which are also used in section 414 of the*  
 18          *Internal Revenue Code of 1986 shall have the respec-*  
 19          *tive meanings given such terms by such section.*

20          (4) *EFFECTIVE DATE.—The provisions of this*  
 21          *subsection shall apply to plan years beginning on or*  
 22          *after January 1, 2006.*

23          (b) *SIMPLIFIED ANNUAL FILING REQUIREMENT FOR*  
 24          *PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the case*  
 25          *of plan years beginning after December 31, 2006, the Sec-*

1 *retary of the Treasury and the Secretary of Labor shall pro-*  
 2 *vide for the filing of a simplified annual return for any*  
 3 *retirement plan which covers less than 25 participants on*  
 4 *the first day of a plan year and which meets the require-*  
 5 *ments described in subparagraphs (B), (D), and (E) of sub-*  
 6 *section (a)(2).*

7 **SEC. 1104. VOLUNTARY EARLY RETIREMENT INCENTIVE**  
 8 **AND EMPLOYMENT RETENTION PLANS MAIN-**  
 9 **TAINED BY LOCAL EDUCATIONAL AGENCIES**  
 10 **AND OTHER ENTITIES.**

11 *(a) VOLUNTARY EARLY RETIREMENT INCENTIVE*  
 12 *PLANS.—*

13 *(1) TREATMENT AS PLAN PROVIDING SEVERANCE*  
 14 *PAY.—Section 457(e)(11) of the Internal Revenue*  
 15 *Code of 1986 (relating to certain plans excluded) is*  
 16 *amended by adding at the end the following new sub-*  
 17 *paragraph:*

18 *“(D) CERTAIN VOLUNTARY EARLY RETIRE-*  
 19 *MENT INCENTIVE PLANS.—*

20 *“(i) IN GENERAL.—If an applicable*  
 21 *voluntary early retirement incentive plan—*

22 *“(I) makes payments or supple-*  
 23 *ments as an early retirement benefit, a*  
 24 *retirement-type subsidy, or a benefit*



1                   *described in the last sentence of section*  
 2                   *411(a)(9), and*

3                   “(II) *such payments or supple-*  
 4                   *ments are made in coordination with a*  
 5                   *defined benefit plan which is described*  
 6                   *in section 401(a) and includes a trust*  
 7                   *exempt from tax under section 501(a)*  
 8                   *and which is maintained by an eligible*  
 9                   *employer described in paragraph*  
 10                  *(1)(A) or by an education association*  
 11                  *described in clause (ii)(II),*

12                  *such applicable plan shall be treated for*  
 13                  *purposes of subparagraph (A)(i) as a bona*  
 14                  *fide severance pay plan with respect to such*  
 15                  *payments or supplements to the extent such*  
 16                  *payments or supplements could otherwise*  
 17                  *have been provided under such defined ben-*  
 18                  *efit plan (determined as if section 411 ap-*  
 19                  *plied to such defined benefit plan).*

20                  “(ii) *APPLICABLE VOLUNTARY EARLY*  
 21                  *RETIREMENT INCENTIVE PLAN.—For pur-*  
 22                  *poses of this subparagraph, the term ‘appli-*  
 23                  *cable voluntary early retirement incentive*  
 24                  *plan’ means a voluntary early retirement*  
 25                  *incentive plan maintained by—*

1                   “(I) a local educational agency  
 2                   (as defined in section 9101 of the Ele-  
 3                   mentary and Secondary Education Act  
 4                   of 1965 (20 U.S.C. 7801)), or

5                   “(II) an education association  
 6                   which principally represents employees  
 7                   of 1 or more agencies described in sub-  
 8                   clause (I) and which is described in  
 9                   section 501(c) (5) or (6) and exempt  
 10                  from tax under section 501(a).”

11               (2) AGE DISCRIMINATION IN EMPLOYMENT  
 12               ACT.—Section 4(l)(1) of the Age Discrimination in  
 13               Employment Act of 1967 (29 U.S.C. 623(l)(1)) is  
 14               amended—

15                   (A) by inserting “(A)” after “(1)”,

16                   (B) by redesignating subparagraphs (A)  
 17                   and (B) as clauses (i) and (ii), respectively,

18                   (C) by redesignating clauses (i) and (ii) of  
 19                   subparagraph (B) (as in effect before the amend-  
 20                   ments made by subparagraph (B)) as subclauses  
 21                   (I) and (II), respectively, and

22                   (D) by adding at the end the following:

23                   “(B) A voluntary early retirement incentive plan  
 24                  that—

25                   “(i) is maintained by—

1           “(I) a local educational agency (as de-  
2           fined in section 9101 of the *Elementary and*  
3           *Secondary Education Act of 1965* (20  
4           *U.S.C. 7801*), or

5           “(II) an education association which  
6           principally represents employees of 1 or  
7           more agencies described in subclause (I) and  
8           which is described in section 501(c) (5) or  
9           (6) of the *Internal Revenue Code of 1986*  
10          and exempt from taxation under section  
11          501(a) of such Code, and

12          “(ii) makes payments or supplements de-  
13          scribed in subclauses (I) and (II) of subpara-  
14          graph (A)(ii) in coordination with a defined  
15          benefit plan (as so defined) maintained by an el-  
16          igible employer described in section 457(e)(1)(A)  
17          of such Code or by an education association de-  
18          scribed in clause (i)(II),

19          shall be treated solely for purposes of subparagraph  
20          (A)(ii) as if it were a part of the defined benefit plan  
21          with respect to such payments or supplements. Pay-  
22          ments or supplements under such a voluntary early  
23          retirement incentive plan shall not constitute sever-  
24          ance pay for purposes of section 4(l)(2) of the *Age*

1     *Discrimination in Employment Act* (29 U.S.C.  
2     623(l)(2)).”.

3     (b) *EMPLOYMENT RETENTION PLANS.*—

4             (1) *IN GENERAL.*—Section 457(f)(2) of the *Inter-*  
5     *nal Revenue Code of 1986 (relating to exceptions)* is  
6     *amended by striking “and” at the end of subpara-*  
7     *graph (D), by striking the period at the end of sub-*  
8     *paragraph (E) and inserting “, and”, and by adding*  
9     *at the end the following:*

10             “(F) that portion of any applicable employ-  
11             ment retention plan described in paragraph (4)  
12             with respect to any participant.”

13             (2) *DEFINITIONS AND RULES RELATING TO EM-*  
14     *PLOYMENT RETENTION PLANS.*—Section 457(f) of such  
15     *Code is amended by adding at the end the following*  
16     *new paragraph:*

17             “(4) *EMPLOYMENT RETENTION PLANS.*—For pur-  
18             poses of paragraph (2)(F)—

19             “(A) *IN GENERAL.*—The portion of an ap-  
20             plicable employment retention plan described in  
21             this paragraph with respect to any participant  
22             is that portion of the plan which provides bene-  
23             fits payable to the participant not in excess of  
24             twice the applicable dollar limit determined  
25             under subsection (e)(15).

1 “(B) *OTHER RULES.*—

2 “(i) *LIMITATION.*—*Paragraph (2)(F)*  
 3 *shall only apply to the portion of the plan*  
 4 *described in subparagraph (A) for years*  
 5 *preceding the year in which such portion is*  
 6 *paid or otherwise made available to the*  
 7 *participant.*

8 “(ii) *TREATMENT.*—*A plan shall not*  
 9 *be treated for purposes of this title as pro-*  
 10 *viding for the deferral of compensation for*  
 11 *any year with respect to the portion of the*  
 12 *plan described in subparagraph (A).*

13 “(C) *APPLICABLE EMPLOYMENT RETENTION*  
 14 *PLAN.*—*The term ‘applicable employment reten-*  
 15 *tion plan’ means an employment retention plan*  
 16 *maintained by—*

17 “(i) *a local educational agency (as de-*  
 18 *finied in section 9101 of the Elementary and*  
 19 *Secondary Education Act of 1965 (20*  
 20 *U.S.C. 7801), or*

21 “(ii) *an education association which*  
 22 *principally represents employees of 1 or*  
 23 *more agencies described in clause (i) and*  
 24 *which is described in section 501(c) (5) or*

1                   (6) and exempt from taxation under section  
2                   501(a).

3                   “(D) *EMPLOYMENT RETENTION PLAN*.—The  
4                   term ‘employment retention plan’ means a plan  
5                   to pay, upon termination of employment, com-  
6                   pensation to an employee of a local educational  
7                   agency or education association described in sub-  
8                   paragraph (C) for purposes of—

9                   “(i) retaining the services of the em-  
10                  ployee, or

11                  “(ii) rewarding such employee for the  
12                  employee’s service with 1 or more such  
13                  agencies or associations.”.

14           (c) *COORDINATION WITH ERISA*.—Section 3(2)(B) of  
15   the *Employee Retirement Income Security Act of 1974* (29  
16   U.S.C. 1002(2)(B)) is amended by adding at the end the  
17   following: “An applicable voluntary early retirement incen-  
18   tive plan (as defined in section 457(e)(11)(D)(ii) of the In-  
19   ternal Revenue Code of 1986) making payments or supple-  
20   ments described in section 457(e)(11)(D)(i) of such Code,  
21   and an applicable employment retention plan (as defined  
22   in section 457(f)(4)(C) of such Code) making payments of  
23   benefits described in section 457(f)(4)(A) of such Code, shall,  
24   for purposes of this title, be treated as a welfare plan (and

1 *not a pension plan) with respect to such payments and sup-*  
 2 *plements.”*

3 *(d) EFFECTIVE DATES.—*

4 *(1) IN GENERAL.—The amendments made by*  
 5 *this Act shall take effect on the date of the enactment*  
 6 *of this Act.*

7 *(2) TAX AMENDMENTS.—The amendments made*  
 8 *by subsections (a)(1) and (b) shall apply to taxable*  
 9 *years ending after the date of the enactment of this*  
 10 *Act.*

11 *(3) ERISA AMENDMENTS.—The amendment*  
 12 *made by subsection (c) shall apply to plan years end-*  
 13 *ing after the date of the enactment of this Act.*

14 *(4) CONSTRUCTION.—Nothing in the amend-*  
 15 *ments made by this section shall alter or affect the*  
 16 *construction of the Internal Revenue Code of 1986, the*  
 17 *Employee Retirement Income Security Act of 1974, or*  
 18 *the Age Discrimination in Employment Act of 1967*  
 19 *as applied to any plan, arrangement, or conduct to*  
 20 *which such amendments do not apply.*

21 **SEC. 1105. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**  
 22 **TION AS A RESULT OF PENSION ROLLOVERS.**

23 *(a) IN GENERAL.—Section 3304(a) of the Internal*  
 24 *Revenue Code of 1986 (relating to requirements for State*

1 *unemployment laws) is amended by adding at the end the*  
 2 *following new flush sentence:*

3 *“Compensation shall not be reduced under paragraph (15)*  
 4 *for any pension, retirement or retired pay, annuity, or*  
 5 *similar payment which is not includible in gross income*  
 6 *of the individual for the taxable year in which paid because*  
 7 *it was part of a rollover distribution.”.*

8 (b) *EFFECTIVE DATE.*—*The amendment made by this*  
 9 *section shall apply to weeks beginning on or after the date*  
 10 *of the enactment of this Act.*

11 **SEC. 1106. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**  
 12 **ERNMENTAL SECTION 457 PLANS.**

13 (a) *IN GENERAL.*—*Section 641(f) of the Economic*  
 14 *Growth and Tax Relief Reconciliation Act of 2001 is*  
 15 *amended by adding at the end the following new paragraph:*

16 “(4) *TRANSITION RULE FOR CERTAIN GOVERN-*  
 17 *MENTAL PLANS.*—*In the case of distributions from an*  
 18 *eligible deferred compensation plan of an employer*  
 19 *described in section 457(e)(1)(A) of the Internal Rev-*  
 20 *enue Code of 1986 which are made after December 31,*  
 21 *2001, and which are part of a series of distributions*  
 22 *which—*

23 “(A) *began before January 1, 2002, and*

24 “(B) *are payable for 10 years or less, the*  
 25 *Internal Revenue Code of 1986 may be applied*



1           to such distributions without regard to the  
2           amendments made by subsection (a)(1)(D).”.

3           (b) *EFFECTIVE DATE.*—The amendment made by sub-  
4   section (a) shall take effect as if included in the provisions  
5   of section 641 of the Economic Growth and Tax Relief Rec-  
6   onciliation Act of 2001.

7   **SEC. 1107. TREATMENT OF DEFINED BENEFIT PLAN AS GOV-**  
8                           **ERNMENTAL PLAN.**

9           (a) *IN GENERAL.*—For purposes of the Internal Rev-  
10   enue Code of 1986 and the Employee Retirement Income  
11   Security Act of 1974, an eligible defined benefit plan shall  
12   be treated as a governmental plan (within the meaning of  
13   section 414(d) of such Code and section 3(32) of such Act).

14          (b) *ELIGIBLE DEFINED BENEFIT PLAN.*—For pur-  
15   poses of this section, an eligible defined benefit plan is a  
16   defined benefit plan maintained by a nonprofit corporation  
17   which was—

18               (1) incorporated on September 16, 1998, under  
19   a State nonprofit corporation statute; and

20               (2) organized for the express purpose of sup-  
21   porting the missions and goals of a public corpora-  
22   tion which—

23                       (A) was created by a State statute effective  
24                       on July 1, 1995;

1                   (B) is a governmental entity under State  
2                   law; and

3                   (C) is a member of the nonprofit corpora-  
4                   tion.

5           (c) *EFFECTIVE DATE.*—The amendments made by this  
6 section shall apply to any year beginning before, on, or after  
7 the date of the enactment of this Act.

8   **SEC. 1108. INCREASING PARTICIPATION IN CASH OR DE-**  
9                   **FERRED PLANS THROUGH AUTOMATIC CON-**  
10                  **TRIBUTION ARRANGEMENTS.**

11           (a) *IN GENERAL.*—Section 401(k) of the Internal Rev-  
12 enue Code of 1986 (relating to cash or deferred arrange-  
13 ment) is amended by adding at the end the following new  
14 paragraph:

15                   “(13) *NONDISCRIMINATION REQUIREMENTS FOR*  
16                   *AUTOMATIC CONTRIBUTION TRUSTS.*—

17                           “(A) *IN GENERAL.*—A cash or deferred ar-  
18 rangement shall be treated as meeting the re-  
19 quirements of paragraph (3)(A)(ii) if such ar-  
20 rangement constitutes an automatic contribution  
21 trust.

22                           “(B) *AUTOMATIC CONTRIBUTION TRUST.*—

23                                   “(i) *IN GENERAL.*—For purposes of  
24 this paragraph, the term ‘automatic con-  
25 tribution trust’ means an arrangement—

1           “(I) except as provided in clauses  
2           (ii) and (iii), under which each em-  
3           ployee eligible to participate in the ar-  
4           rangement is treated as having elected  
5           to have the employer make elective con-  
6           tributions in an amount equal to the  
7           applicable percentage of the employee’s  
8           compensation, and

9           “(II) which meets the require-  
10          ments of subparagraphs (C), (D), (E),  
11          and (F).

12          “(ii) *EXCEPTION FOR EXISTING EM-*  
13          *PLOYEES.—In the case of any employee—*

14               “(I) who was eligible to partici-  
15               pate in the arrangement (or a prede-  
16               cessor arrangement) immediately before  
17               the first date on which the arrange-  
18               ment is an automatic contribution  
19               trust, and

20               “(II) whose rate of contribution  
21               immediately before such first date was  
22               less than the applicable percentage for  
23               the employee,

24          *clause (i)(I) shall not apply to such em-*  
25          *ployee until the date which is 1 year after*

1           *such first date (or such earlier date as the*  
2           *employee may elect).*

3           “(iii) *ELECTION OUT.*—*Each employee*  
4           *eligible to participate in the arrangement*  
5           *may specifically elect not to have contribu-*  
6           *tions made under clause (i), and such*  
7           *clause shall cease to apply to compensation*  
8           *paid on or after the effective date of the elec-*  
9           *tion.*

10          “(iv) *APPLICABLE PERCENTAGE.*—*For*  
11          *purposes of this subparagraph—*

12               “(I) *IN GENERAL.*—*The term ‘ap-*  
13               *plicable percentage’ means, with re-*  
14               *spect to any employee, the uniform*  
15               *percentage (not less than 3 percent) de-*  
16               *termined under the arrangement. In*  
17               *the case of an employee who was eligi-*  
18               *ble to participate in the arrangement*  
19               *(or a predecessor arrangement) imme-*  
20               *diately before the first date on which*  
21               *the arrangement is an automatic con-*  
22               *tribution trust, the initial applicable*  
23               *percentage shall in no event be less*  
24               *than the percentage in effect with re-*  
25               *spect to the employee under the ar-*

1                    *rangement immediately before the em-*  
2                    *ployee first begins participation in the*  
3                    *automatic contribution trust.*

4                    “(II) INCREASE IN PERCENT-  
5                    AGE.—In the case of the second plan  
6                    year beginning after the first date on  
7                    which the election under clause (i)(I) is  
8                    in effect with respect to the employee  
9                    and any succeeding plan year, the ap-  
10                  plicable percentage shall be a percent-  
11                  age (not greater than 10 percent or  
12                  such higher uniform percentage deter-  
13                  mined under the arrangement) equal to  
14                  the sum of the applicable percentage  
15                  for the employee as of the close of the  
16                  preceding plan year plus 1 percentage  
17                  point (or such higher percentage speci-  
18                  fied by the plan). A plan may elect to  
19                  provide that, in lieu of any increase  
20                  under the preceding sentence, the in-  
21                  crease in the applicable percentage re-  
22                  quired under this subclause shall occur  
23                  after each increase in compensation an  
24                  employee receives on or after the first  
25                  day of such second plan year and that

1           the applicable percentage after each  
2           such increase in compensation shall be  
3           equal to the applicable percentage for  
4           the employee immediately before such  
5           increase in compensation plus 1 per-  
6           centage point (or such higher percent-  
7           age specified by the plan).

8           “(C) *MATCHING OR NONELECTIVE CON-*  
9           *TRIBUTIONS.*—

10           “(i) *IN GENERAL.*—The requirements  
11           of this subparagraph are met if, under the  
12           arrangement, the employer—

13           “(I) makes matching contribu-  
14           tions on behalf of each employee who is  
15           not a highly compensated employee in  
16           an amount equal to 50 percent of the  
17           elective contributions of the employee to  
18           the extent such elective contributions do  
19           not exceed 7 percent of compensation;  
20           or

21           “(II) is required, without regard  
22           to whether the employee makes an elec-  
23           tive contribution or employee contribu-  
24           tion, to make a contribution to a de-  
25           fined contribution plan on behalf of

1           each employee who is not a highly  
 2           compensated employee and who is eli-  
 3           gible to participate in the arrangement  
 4           in an amount equal to at least 3 per-  
 5           cent of the employee's compensation,

6           The rules of clauses (ii) and (iii) of para-  
 7           graph (12)(B) shall apply for purposes of  
 8           subclause (I). The rules of paragraph  
 9           (12)(E)(ii) shall apply for purposes of sub-  
 10          clauses (I) and (II).

11          “(ii) *OTHER PLANS.*—An arrangement  
 12          shall be treated as meeting the requirements  
 13          under clause (i) if any other plan main-  
 14          tained by the employer meets such require-  
 15          ments with respect to employees eligible  
 16          under the arrangement.

17          “(D) *NOTICE REQUIREMENTS.*—

18          “(i) *IN GENERAL.*—The requirements  
 19          of this subparagraph are met if the require-  
 20          ments of clauses (ii) and (iii) are met.

21          “(ii) *REASONABLE PERIOD TO MAKE*  
 22          *ELECTION.*—The requirements of this clause  
 23          are met if each employee to whom subpara-  
 24          graph (B)(i) applies—

1                   “(I) receives a notice explaining  
2                   the employee’s right under the arrange-  
3                   ment to elect not to have elective con-  
4                   tributions made on the employee’s be-  
5                   half, and how contributions made  
6                   under the arrangement will be invested  
7                   in the absence of any investment elec-  
8                   tion by the employee, and

9                   “(II) has a reasonable period of  
10                  time after receipt of such notice and  
11                  before the first elective contribution is  
12                  made to make such election.

13               “(iii) ANNUAL NOTICE OF RIGHTS AND  
14               OBLIGATIONS.—The requirements of this  
15               clause are met if each employee eligible to  
16               participate in the arrangement is, within a  
17               reasonable period before any year (or if the  
18               plan elects to change the applicable percent-  
19               age after any increase in compensation, be-  
20               fore the increase), given notice of the em-  
21               ployee’s rights and obligations under the ar-  
22               rangement.

23               The requirements of clauses (i) and (ii) of para-  
24               graph (12)(D) shall be met with respect to the



1        *notices described in clauses (ii) and (iii) of this*  
2        *subparagraph.*

3                “(E) *PARTICIPATION, WITHDRAWAL, AND*  
4        *VESTING REQUIREMENTS.—The requirements of*  
5        *this subparagraph are met if—*

6                “(i) *the arrangement requires that each*  
7        *employee eligible to participate in the ar-*  
8        *rangement (determined without regard to*  
9        *any minimum service requirement other-*  
10       *wise applicable under section 410(a) or the*  
11       *plan) commences participation in the ar-*  
12       *rangement no later than the 1st day of the*  
13       *1st calendar quarter beginning after the*  
14       *date on which employee first becomes so eli-*  
15       *gible,*

16               “(ii) *the withdrawal requirements of*  
17       *paragraph (2)(B) are met with respect to*  
18       *all employer contributions (including*  
19       *matching and elective contributions) taken*  
20       *into account in determining whether the ar-*  
21       *rangement meets the requirements of sub-*  
22       *paragraph (C), and*

23               “(iii) *the arrangement requires that an*  
24       *employee’s right to the accrued benefit de-*  
25       *rived from employer contributions described*

1           *in clause (ii) (other than elective contribu-*  
 2           *tions) is nonforfeitable after the employee*  
 3           *has completed at least 2 years of service.*

4           “(F) CERTAIN WITHDRAWALS MUST BE AL-  
 5           LOWED.—Notwithstanding any other provision  
 6           of this subsection, the requirements of this sub-  
 7           paragraph are met if the arrangement allows  
 8           employees to elect to make permissible with-  
 9           drawals in accordance with section 414(w).”

10       (b) MATCHING CONTRIBUTIONS.—Section 401(m) of  
 11       the Internal Revenue Code of 1986 (relating to non-  
 12       discrimination test for matching contributions and em-  
 13       ployee contributions) is amended by redesignating para-  
 14       graph (12) as paragraph (13) and by inserting after para-  
 15       graph (11) the following new paragraph:

16           “(12) ALTERNATE METHOD FOR AUTOMATIC CON-  
 17       TRIBUTION TRUSTS.—A defined contribution plan  
 18       shall be treated as meeting the requirements of para-  
 19       graph (2) with respect to matching contributions if  
 20       the plan—

21           “(A) meets the contribution requirements of  
 22       subparagraphs (B)(i) and (C) of subsection  
 23       (k)(13);

24           “(B) meets the notice requirements of sub-  
 25       paragraph (D) of subsection (k)(13); and

1                   “(C) meets the requirements of paragraph  
2                   (11)(B) (ii) and (iii).”.

3           (c) *EXCLUSION FROM DEFINITION OF TOP-HEAVY*  
4 *PLANS.*—

5           (1) *ELECTIVE CONTRIBUTION RULE.*—Clause (i)  
6           of section 416(g)(4)(H) of the Internal Revenue Code  
7           of 1986 is amended by inserting “or 401(k)(13)” after  
8           “section 401(k)(12)”.

9           (2) *MATCHING CONTRIBUTION RULE.*—Clause  
10          (ii) of section 416(g)(4)(H) of such Code is amended  
11          by inserting “or 401(m)(12)” after “section  
12          401(m)(11)”.

13          (d) *SECTION 403(b) CONTRACTS.*—Paragraph (11) of  
14          section 401(m) of the Internal Revenue Code of 1986 is  
15          amended by adding at the end the following:

16                   “(C) *SECTION 403(b) CONTRACTS.*—An an-  
17                   nuity contract under section 403(b) shall be  
18                   treated as meeting the requirements of paragraph  
19                   (2) with respect to matching contributions if  
20                   such contract meets requirements similar to the  
21                   requirements under subparagraph (A).”.

22          (e) *PREEMPTION OF CONFLICTING STATE REGULA-*  
23 *TION.*—Section 514 of the Employee Retirement Income Se-  
24 *curity of 1974 (29 U.S.C. 1144) is amended by inserting*  
25 *at the end the following new subsection:*

1       “(e) *AUTOMATIC CONTRIBUTION ARRANGEMENTS.*—

2               “(1) *IN GENERAL.*—Notwithstanding any other  
3       provision of this section, any law of a State shall be  
4       superseded if it would directly or indirectly prohibit  
5       or restrict the inclusion in any plan of an eligible  
6       automatic contribution arrangement.

7               “(2) *ELIGIBLE AUTOMATIC CONTRIBUTION AR-*  
8       *RANGEMENT.*—For purposes of this subsection, the  
9       term ‘eligible automatic contribution arrangement’  
10      means an arrangement—

11              “(A) under which a participant may elect  
12      to have the employer make payments as con-  
13      tributions under the plan on behalf of the partic-  
14      ipant, or to the participant directly in cash,

15              “(B) under which the participant is treated  
16      as having elected to have the employer make such  
17      contributions in an amount equal to a uniform  
18      percentage of compensation provided under the  
19      plan until the participant specifically elects not  
20      to have such contributions made (or specifically  
21      elects to have such contributions made at a dif-  
22      ferent percentage),

23              “(C) under which contributions described in  
24      subparagraph (B) are invested in accordance

1       *with regulations prescribed by the Secretary*  
 2       *under section 404(c)(4), and*

3               *“(D) which meets the requirements of para-*  
 4       *graph (3).*

5       *“(3) NOTICE REQUIREMENTS.—*

6               *“(A) IN GENERAL.—The administrator of*  
 7       *an individual account plan shall, within a rea-*  
 8       *sonable period before each plan year, give to each*  
 9       *employee to whom an arrangement described in*  
 10       *paragraph (2) applies for such plan year notice*  
 11       *of the employee’s rights and obligations under*  
 12       *the arrangement which—*

13               *“(i) is sufficiently accurate and com-*  
 14       *prehensive to apprise the employee of such*  
 15       *rights and obligations, and*

16               *“(ii) is written in a manner calculated*  
 17       *to be understood by the average employee to*  
 18       *whom the arrangement applies.*

19               *“(B) TIME AND FORM OF NOTICE.—A notice*  
 20       *shall not be treated as meeting the requirements*  
 21       *of subparagraph (A) with respect to an employee*  
 22       *unless—*

23               *“(i) the notice includes a notice ex-*  
 24       *plaining the employee’s right under the ar-*  
 25       *rangement to elect not to have elective con-*

1            *tributions made on the employee’s behalf (or*  
 2            *to elect to have such contributions made at*  
 3            *a different percentage),*

4            *“(ii) the employee has a reasonable pe-*  
 5            *riod of time after receipt of the notice de-*  
 6            *scribed in clause (i) and before the first elec-*  
 7            *tive contribution is made to make such elec-*  
 8            *tion, and*

9            *“(iii) the notice explains how contribu-*  
 10           *tions made under the arrangement will be*  
 11           *invested in the absence of any investment*  
 12           *election by the employee.”.*

13           *(f) TREATMENT OF WITHDRAWALS OF CONTRIBUTIONS*  
 14           *DURING FIRST 60 DAYS.—Section 414 of the Internal Rev-*  
 15           *enue Code of 1986 is amended by adding at the end the*  
 16           *following new subsection:*

17           *“(w) SPECIAL RULES FOR CERTAIN WITHDRAWALS*  
 18           *FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGE-*  
 19           *MENTS.—*

20           *“(1) IN GENERAL.—If an eligible automatic con-*  
 21           *tribution arrangement allows an employee to elect to*  
 22           *make permissible withdrawals—*

23           *“(A) the amount of any such withdrawal*  
 24           *shall be includible in the gross income of the em-*

1        *ployee for the taxable year of the employee in*  
 2        *which the distribution is made,*

3                *“(B) no tax shall be imposed under section*  
 4        *72(t) with respect to the distribution, and*

5                *“(C) the arrangement shall not be treated as*  
 6        *violating any restriction on distributions under*  
 7        *this title solely by reason of allowing the with-*  
 8        *drawal.*

9        *In the case of any distribution to an employee by rea-*  
 10       *son of an election under this paragraph, employer*  
 11       *matching contributions shall be forfeited or subject to*  
 12       *such other treatment as the Secretary may prescribe.*

13                *“(2) PERMISSIBLE WITHDRAWAL.—For purposes*  
 14       *of this subsection—*

15                *“(A) IN GENERAL.—The term ‘permissible*  
 16        *withdrawal’ means any withdrawal from an eli-*  
 17        *gible automatic contribution arrangement meet-*  
 18        *ing the requirements of this paragraph which—*

19                *“(i) is made pursuant to an election by*  
 20        *an employee, and*

21                *“(ii) consists of elective contributions*  
 22        *described in paragraph (3)(B) (and earn-*  
 23        *ings attributable thereto).*

24                *“(B) TIME FOR MAKING ELECTION.—Sub-*  
 25        *paragraph (A) shall not apply to an election by*

1        *an employee unless the election is made no later*  
 2        *than the date which is 60 days after the date of*  
 3        *the first elective contribution with respect to the*  
 4        *employee under the arrangement.*

5                “(C) *AMOUNT OF DISTRIBUTION.*—Subpara-  
 6        *graph (A) shall not apply to any election by an*  
 7        *employee unless the amount of any distribution*  
 8        *by reason of the election is equal to the amount*  
 9        *of elective contributions made with respect to the*  
 10       *first payroll period to which the eligible auto-*  
 11       *matic contribution arrangement applies to the*  
 12       *employee and any succeeding payroll period be-*  
 13       *ginning before the effective date of the election*  
 14       *(and earnings attributable thereto).*

15               “(3) *ELIGIBLE AUTOMATIC CONTRIBUTION AR-*  
 16       *RANGEMENT.*—For purposes of this subsection, the  
 17       *term ‘eligible automatic contribution arrangement’*  
 18       *means an arrangement—*

19               “(A) *under which a participant may elect*  
 20       *to have the employer make payments as con-*  
 21       *tributions under the plan on behalf of the partic-*  
 22       *ipant, or to the participant directly in cash,*

23               “(B) *under which the participant is treated*  
 24       *as having elected to have the employer make such*  
 25       *contributions in an amount equal to a uniform*



1       *percentage of compensation provided under the*  
2       *plan until the participant specifically elects not*  
3       *to have such contributions made (or specifically*  
4       *elects to have such contributions made at a dif-*  
5       *ferent percentage),*

6               *“(C) under which contributions described in*  
7       *subparagraph (B) are invested in accordance*  
8       *with regulations prescribed by the Secretary of*  
9       *Labor under section 404(c)(4) of the Employee*  
10       *Retirement Income Security Act of 1974, and*

11               *“(D) which meets the requirements of para-*  
12       *graph (4).*

13       *“(4) NOTICE REQUIREMENTS.—*

14               *“(A) IN GENERAL.—The administrator of a*  
15       *plan containing an arrangement described in*  
16       *paragraph (3) shall, within a reasonable period*  
17       *before each plan year, give to each employee to*  
18       *whom an arrangement described in paragraph*  
19       *(3) applies for such plan year notice of the em-*  
20       *ployee’s rights and obligations under the ar-*  
21       *rangement which—*

22               *“(i) is sufficiently accurate and com-*  
23       *prehensive to apprise the employee of such*  
24       *rights and obligations, and*

1                   “(ii) is written in a manner calculated  
2                   to be understood by the average employee to  
3                   whom the arrangement applies.

4                   “(B) *TIME AND FORM OF NOTICE.*—A notice  
5                   shall not be treated as meeting the requirements  
6                   of subparagraph (A) with respect to an employee  
7                   unless—

8                   “(i) the notice includes a notice ex-  
9                   plaining the employee’s right under the ar-  
10                  rangement to elect not to have elective con-  
11                  tributions made on the employee’s behalf (or  
12                  to elect to have such contributions made at  
13                  a different percentage),

14                  “(ii) the employee has a reasonable pe-  
15                  riod of time after receipt of the notice de-  
16                  scribed in clause (i) and before the first elec-  
17                  tive contribution is made to make such elec-  
18                  tion, and

19                  “(iii) the notice explains how contribu-  
20                  tions made under the arrangement will be  
21                  invested in the absence of any investment  
22                  election by the employee.”.

23                  (g) *EFFECTIVE DATE.*—

24                  (1) *IN GENERAL.*—Except as provided by para-  
25                  graph (2), the amendments made by this section shall

1        *apply to plan years beginning after December 31,*  
 2        *2005.*

3            (2) *SECTION 403(b) CONTRACTS.—The amend-*  
 4        *ments made by subsection (d) shall apply to years*  
 5        *ending after the date of the enactment of this Act.*

6    **SEC. 1109. TREATMENT OF INVESTMENT OF ASSETS BY**  
 7                    **PLAN WHERE PARTICIPANT FAILS TO EXER-**  
 8                    **CISE INVESTMENT ELECTION.**

9            (a) *IN GENERAL.—Section 404(c) of the Employee Re-*  
 10        *tirement Income Security Act of 1974 (29 U.S.C. 1104(c))*  
 11        *is amended by adding at the end the following new para-*  
 12        *graph:*

13                    “(4) *DEFAULT INVESTMENT ARRANGEMENTS.—*

14                            “(A) *IN GENERAL.—For purposes of para-*  
 15        *graph (1), a participant in an individual ac-*  
 16        *count plan meeting the notice requirements of*  
 17        *subparagraph (B) shall be treated as exercising*  
 18        *control over the assets in the account with re-*  
 19        *spect to the amount of contributions and earn-*  
 20        *ings which, in the absence of an investment elec-*  
 21        *tion by the participant, are invested by the plan*  
 22        *in accordance with regulations prescribed by the*  
 23        *Secretary. The regulations under this subpara-*  
 24        *graph shall provide guidance on the appropriate-*  
 25        *ness of designating default investments that in-*

1        *clude a mix of asset classes consistent with cap-*  
 2        *ital preservation, long-term capital appreciation,*  
 3        *or a blend of both.*

4            “(B) NOTICE REQUIREMENTS.—

5            “(i) IN GENERAL.—*The requirements*  
 6            *of this subparagraph are met if each*  
 7            *participant—*

8            “(I) *receives, within a reasonable*  
 9            *period of time before each plan year, a*  
 10           *notice explaining the employee’s right*  
 11           *under the plan to designate how con-*  
 12           *tributions and earnings will be in-*  
 13           *vested and explaining how, in the ab-*  
 14           *sence of any investment election by the*  
 15           *participant, such contributions and*  
 16           *earnings will be invested, and*

17           “(II) *has a reasonable period of*  
 18           *time after receipt of such notice and*  
 19           *before the beginning of the plan year to*  
 20           *make such designation.*

21           “(ii) FORM OF NOTICE.—*The require-*  
 22           *ments of clauses (i) and (ii) of section*  
 23           *401(k)(12)(D) of the Internal Revenue Code*  
 24           *of 1986 shall be met with respect to the no-*  
 25           *tices described in this subparagraph.”.*

1       (b) *EFFECTIVE DATE.*—

2               (1) *IN GENERAL.*—*The amendments made by*  
 3       *this section shall apply to plan years beginning after*  
 4       *December 31, 2005.*

5               (2) *REGULATIONS.*—*Final regulations under sec-*  
 6       *tion 404(c)(4)(A) of the Employee Retirement Income*  
 7       *Security Act of 1974 (as added by this section) shall*  
 8       *be issued no later than 6 months after the date of the*  
 9       *enactment of this Act.*

10   **SEC. 1110. CLARIFICATION OF FIDUCIARY RULES.**

11       (a) *IN GENERAL.*—*Not later than 1 year after the date*  
 12       *of the enactment of this Act, the Secretary of Labor shall*  
 13       *issue final regulations clarifying that the selection of an*  
 14       *annuity contract as an optional form of distribution from*  
 15       *an individual account plan to a participant or*  
 16       *beneficiary—*

17               (1) *is not subject to the safest available annuity*  
 18       *standard under Interpretive Bulletin 95–1 (29 C.F.R.*  
 19       *2509.95–1), and*

20               (2) *is subject to all otherwise applicable fidu-*  
 21       *ciary standards.*

22       (b) *EFFECTIVE DATE.*—*This section shall take effect*  
 23       *on the date of enactment of this Act.*

1 **TITLE XII—UNITED STATES TAX**  
 2 **COURT MODERNIZATION**

3 **SEC. 1200. AMENDMENT OF 1986 CODE.**

4 *Except as otherwise expressly provided, whenever in*  
 5 *this title an amendment or repeal is expressed in terms of*  
 6 *an amendment to, or repeal of, a section or other provision,*  
 7 *the reference shall be considered to be made to a section or*  
 8 *other provision of the Internal Revenue Code of 1986.*

9 **SEC. 1201. ANNUITIES FOR SURVIVORS OF TAX COURT**  
 10 **JUDGES WHO ARE ASSASSINATED.**

11 *(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-*  
 12 *TION.—Subsection (h) of section 7448 (relating to annuities*  
 13 *to surviving spouses and dependent children of judges) is*  
 14 *amended to read as follows:*

15 *“(h) ENTITLEMENT TO ANNUITY.—*

16 *“(1) IN GENERAL.—*

17 *“(A) ANNUITY TO SURVIVING SPOUSE.—If a*  
 18 *judge described in paragraph (2) is survived by*  
 19 *a surviving spouse but not by a dependent child,*  
 20 *there shall be paid to such surviving spouse an*  
 21 *annuity beginning with the day of the death of*  
 22 *the judge or following the surviving spouse’s at-*  
 23 *tainment of the age of 50 years, whichever is the*  
 24 *later, in an amount computed as provided in*  
 25 *subsection (m).*

1           “(B) *ANNUITY TO CHILD.*—If such a judge  
 2           is survived by a surviving spouse and a depend-  
 3           ent child or children, there shall be paid to such  
 4           surviving spouse an immediate annuity in an  
 5           amount computed as provided in subsection (m),  
 6           and there shall also be paid to or on behalf of  
 7           each such child an immediate annuity equal to  
 8           the lesser of—

9                   “(i) 10 percent of the average annual  
 10                  salary of such judge (determined in accord-  
 11                  ance with subsection (m)), or

12                  “(ii) 20 percent of such average annual  
 13                  salary, divided by the number of such chil-  
 14                  dren.

15           “(C) *ANNUITY TO SURVIVING DEPENDENT*  
 16           *CHILDREN.*—If such a judge leaves no surviving  
 17           spouse but leaves a surviving dependent child or  
 18           children, there shall be paid to or on behalf of  
 19           each such child an immediate annuity equal to  
 20           the lesser of—

21                   “(i) 20 percent of the average annual  
 22                  salary of such judge (determined in accord-  
 23                  ance with subsection (m)), or

1                   “(ii) 40 percent of such average annual  
2                   salary, divided by the number of such chil-  
3                   dren.

4                   “(2) COVERED JUDGES.—Paragraph (1) applies  
5                   to any judge electing under subsection (b)—

6                   “(A) who dies while a judge after having  
7                   rendered at least 5 years of civilian service com-  
8                   puted as prescribed in subsection (n), for the last  
9                   5 years of which the salary deductions provided  
10                  for by subsection (c)(1) or the deposits required  
11                  by subsection (d) have actually been made or the  
12                  salary deductions required by the civil service re-  
13                  tirement laws have actually been made, or

14                  “(B) who dies by assassination after having  
15                  rendered less than 5 years of civilian service  
16                  computed as prescribed in subsection (n) if, for  
17                  the period of such service, the salary deductions  
18                  provided for by subsection (c)(1) or the deposits  
19                  required by subsection (d) have actually been  
20                  made.

21                  “(3) TERMINATION OF ANNUITY.—

22                  “(A) IN THE CASE OF A SURVIVING  
23                  SPOUSE.—The annuity payable to a surviving  
24                  spouse under this subsection shall be terminable  
25                  upon such surviving spouse’s death or such sur-



1        *living spouse's remarriage before attaining age*  
2        *55.*

3                “(B) *IN THE CASE OF A CHILD.—The annu-*  
4        *ity payable to a child under this subsection shall*  
5        *be terminable upon (i) the child attaining the*  
6        *age of 18 years, (ii) the child's marriage, or (iii)*  
7        *the child's death, whichever first occurs, except*  
8        *that if such child is incapable of self-support by*  
9        *reason of mental or physical disability the*  
10       *child's annuity shall be terminable only upon*  
11       *death, marriage, or recovery from such dis-*  
12       *ability.*

13               “(C) *IN THE CASE OF A DEPENDENT CHILD*  
14       *AFTER DEATH OF SURVIVING SPOUSE.—In case*  
15       *of the death of a surviving spouse of a judge*  
16       *leaving a dependent child or children of the*  
17       *judge surviving such spouse, the annuity of such*  
18       *child or children shall be recomputed and paid*  
19       *as provided in paragraph (1)(C).*

20               “(D) *RECOMPUTATION.—In any case in*  
21       *which the annuity of a dependent child is termi-*  
22       *nated under this subsection, the annuities of any*  
23       *remaining dependent child or children, based*  
24       *upon the service of the same judge, shall be re-*  
25       *computed and paid as though the child whose*

1           *annuity was so terminated had not survived*  
 2           *such judge.*

3           “(4) *SPECIAL RULE FOR ASSASSINATED*  
 4           *JUDGES.—In the case of a survivor or survivors of a*  
 5           *judge described in paragraph (2)(B), there shall be*  
 6           *deducted from the annuities otherwise payable under*  
 7           *this section an amount equal to—*

8                   “(A) *the amount of salary deductions pro-*  
 9                   *vided for by subsection (c)(1) that would have*  
 10                  *been made if such deductions had been made for*  
 11                  *5 years of civilian service computed as pre-*  
 12                  *scribed in subsection (n) before the judge’s death,*  
 13                  *reduced by*

14                   “(B) *the amount of such salary deductions*  
 15                  *that were actually made before the date of the*  
 16                  *judge’s death.’.*’

17           (b) *DEFINITION OF ASSASSINATION.—Section 7448(a)*  
 18           *(relating to definitions) is amended by adding at the end*  
 19           *the following new paragraph:*

20                   “(8) *The terms ‘assassinated’ and ‘assassination’*  
 21                  *mean the killing of a judge that is motivated by the*  
 22                  *performance by that judge of his or her official du-*  
 23                  *ties.’.*”

24           (c) *DETERMINATION OF ASSASSINATION.—Subsection*  
 25           *(i) of section 7448 is amended—*

1           (1) *by striking the subsection heading and in-*  
 2           *serting the following:*

3           “(i) *DETERMINATIONS BY CHIEF JUDGE.—*

4           *“(1) DEPENDENCY AND DISABILITY.—”,*

5           *(2) by moving the text 2 ems to the right, and*

6           *(3) by adding at the end the following new para-*  
 7           *graph:*

8           “(2) *ASSASSINATION.—The chief judge shall de-*  
 9           *termine whether the killing of a judge was an assas-*  
 10           *sination, subject to review only by the Tax Court. The*  
 11           *head of any Federal agency that investigates the kill-*  
 12           *ing of a judge shall provide information to the chief*  
 13           *judge that would assist the chief judge in making such*  
 14           *a determination.”.*

15          (d) *COMPUTATION OF ANNUITIES.—Subsection (m) of*  
 16          *section 7448 is amended—*

17           (1) *by striking the subsection heading and in-*  
 18           *serting the following:*

19           “(m) *COMPUTATION OF ANNUITIES.—*

20           *“(1) IN GENERAL.—”,*

21           *(2) by moving the text 2 ems to the right, and*

22           *(3) by adding at the end the following new para-*  
 23           *graph:*

24           “(2) *ASSASSINATED JUDGES.—In the case of a*  
 25           *judge who is assassinated and who has served less*

1       *than 3 years, the annuity of the surviving spouse of*  
 2       *such judge shall be based upon the average annual*  
 3       *salary received by such judge for judicial service.”.*

4       *(e) OTHER BENEFITS.—Section 7448 is amended by*  
 5       *adding at the end the following:*

6       *“(u) OTHER BENEFITS.—In the case of a judge who*  
 7       *is assassinated, an annuity shall be paid under this section*  
 8       *notwithstanding a survivor’s eligibility for or receipt of*  
 9       *benefits under chapter 81 of title 5, United States Code,*  
 10       *except that the annuity for which a surviving spouse is eli-*  
 11       *gible under this section shall be reduced to the extent that*  
 12       *the total benefits paid under this section and chapter 81*  
 13       *of that title for any year would exceed the current salary*  
 14       *for that year of the office of the judge.”.*

15       **SEC. 1202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
 16               **JUDICIAL SURVIVOR ANNUITIES.**

17       *(a) IN GENERAL.—Subsection (s) of section 7448 (re-*  
 18       *lating to annuities to surviving spouses and dependent chil-*  
 19       *dren of judges) is amended to read as follows:*

20       *“(s) INCREASES IN SURVIVOR ANNUITIES.—Each time*  
 21       *that an increase is made under section 8340(b) of title 5,*  
 22       *United States Code, in annuities payable under subchapter*  
 23       *III of chapter 83 of that title, each annuity payable from*  
 24       *the survivors annuity fund under this section shall be in-*

1 creased at the same time by the same percentage by which  
 2 annuities are increased under such section 8340(b).”.

3 (b) *EFFECTIVE DATE.*—The amendment made by this  
 4 section shall apply with respect to increases made under  
 5 section 8340(b) of title 5, United States Code, in annuities  
 6 payable under subchapter III of chapter 83 of that title,  
 7 taking effect after the date of the enactment of this Act.

8 **SEC. 1203. LIFE INSURANCE COVERAGE FOR TAX COURT**  
 9 **JUDGES.**

10 (a) *IN GENERAL.*—Section 7447 (relating to retire-  
 11 ment of judges) is amended by adding at the end the fol-  
 12 lowing new subsection:

13 “(j) *LIFE INSURANCE COVERAGE.*—For purposes of  
 14 chapter 87 of title 5, United States Code (relating to life  
 15 insurance), any individual who is serving as a judge of the  
 16 Tax Court or who is retired under this section is deemed  
 17 to be an employee who is continuing in active employ-  
 18 ment.”.

19 (b) *EFFECTIVE DATE.*—The amendment made by this  
 20 section shall apply to any individual serving as a judge  
 21 of the United States Tax Court or to any retired judge of  
 22 the United States Tax Court on the date of the enactment  
 23 of this Act.

1 **SEC. 1204. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
 2 **COURT JUDGES AGE 65 OR OVER.**

3 *Section 7472 (relating to expenditures) is amended by*  
 4 *inserting after the first sentence the following new sentence:*  
 5 *“Notwithstanding any other provision of law, the Tax*  
 6 *Court is authorized to pay on behalf of its judges, age 65*  
 7 *or over, any increase in the cost of Federal Employees’*  
 8 *Group Life Insurance imposed after April 24, 1999, includ-*  
 9 *ing any expenses generated by such payments, as authorized*  
 10 *by the chief judge in a manner consistent with such pay-*  
 11 *ments authorized by the Judicial Conference of the United*  
 12 *States pursuant to section 604(a)(5) of title 28, United*  
 13 *States Code.”*

14 **SEC. 1205. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
 15 **MENT OF JUDGES’ ACCRUED ANNUAL LEAVE.**

16 *(a) IN GENERAL.—Section 7443 (relating to member-*  
 17 *ship of the Tax Court) is amended by adding at the end*  
 18 *the following new subsection:*

19 *“(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED AN-*  
 20 *NUAL LEAVE.—Notwithstanding the provisions of sections*  
 21 *5551 and 6301 of title 5, United States Code, when an indi-*  
 22 *vidual subject to the leave system provided in chapter 63*  
 23 *of that title is appointed by the President to be a judge*  
 24 *of the Tax Court, the individual shall be entitled to receive,*  
 25 *upon appointment to the Tax Court, a lump-sum payment*  
 26 *from the Tax Court of the accumulated and accrued current*

1 *annual leave standing to the individual's credit as certified*  
 2 *by the agency from which the individual resigned.”.*

3 (b) *EFFECTIVE DATE.*—*The amendment made by this*  
 4 *section shall apply to any judge of the United States Tax*  
 5 *Court who has an outstanding leave balance on the date*  
 6 *of the enactment of this Act and to any individual ap-*  
 7 *pointed by the President to serve as a judge of the United*  
 8 *States Tax Court after such date.*

9 **SEC. 1206. PARTICIPATION OF TAX COURT JUDGES IN THE**  
 10 **THRIFT SAVINGS PLAN.**

11 (a) *IN GENERAL.*—*Section 7447 (relating to retire-*  
 12 *ment of judges), as amended by this Act, is amended by*  
 13 *adding at the end the following new subsection:*

14 “(k) *THRIFT SAVINGS PLAN.*—

15 “(1) *ELECTION TO CONTRIBUTE.*—

16 “(A) *IN GENERAL.*—*A judge of the Tax*  
 17 *Court may elect to contribute to the Thrift Sav-*  
 18 *ings Fund established by section 8437 of title 5,*  
 19 *United States Code.*

20 “(B) *PERIOD OF ELECTION.*—*An election*  
 21 *may be made under this paragraph only during*  
 22 *a period provided under section 8432(b) of title*  
 23 *5, United States Code, for individuals subject to*  
 24 *chapter 84 of such title.*

1           “(2) *APPLICABILITY OF TITLE 5 PROVISIONS.*—  
 2       *Except as otherwise provided in this subsection, the*  
 3       *provisions of subchapters III and VII of chapter 84*  
 4       *of title 5, United States Code, shall apply with re-*  
 5       *spect to a judge who makes an election under para-*  
 6       *graph (1).*

7           “(3) *SPECIAL RULES.*—

8               “(A) *AMOUNT CONTRIBUTED.*—*The amount*  
 9       *contributed by a judge to the Thrift Savings*  
 10       *Fund in any pay period shall not exceed the*  
 11       *maximum percentage of such judge’s basic pay*  
 12       *for such period as allowable under section 8440f*  
 13       *of title 5, United States Code. Basic pay does not*  
 14       *include any retired pay paid pursuant to this*  
 15       *section.*

16              “(B) *CONTRIBUTIONS FOR BENEFIT OF*  
 17       *JUDGE.*—*No contributions may be made for the*  
 18       *benefit of a judge under section 8432(c) of title*  
 19       *5, United States Code.*

20              “(C) *APPLICABILITY OF SECTION 8433(b) OF*  
 21       *TITLE 5 WHETHER OR NOT JUDGE RETIRES.*—  
 22       *Section 8433(b) of title 5, United States Code,*  
 23       *applies with respect to a judge who makes an*  
 24       *election under paragraph (1) and who either—*

25                   “(i) *retires under subsection (b), or*



1                   “(ii) ceases to serve as a judge of the  
2                   Tax Court but does not retire under sub-  
3                   section (b).

4                   Retirement under subsection (b) is a separation  
5                   from service for purposes of subchapters III and  
6                   VII of chapter 84 of that title.

7                   “(D) *APPLICABILITY OF SECTION 8351(b)(5)*  
8                   *OF TITLE 5.*—The provisions of section  
9                   8351(b)(5) of title 5, United States Code, shall  
10                  apply with respect to a judge who makes an elec-  
11                  tion under paragraph (1).

12                  “(E) *EXCEPTION.*—Notwithstanding sub-  
13                  paragraph (C), if any judge retires under this  
14                  section, or resigns without having met the age  
15                  and service requirements set forth under sub-  
16                  section (b)(2), and such judge’s nonforfeitable ac-  
17                  count balance is less than an amount that the  
18                  Executive Director of the Office of Personnel  
19                  Management prescribes by regulation, the Execu-  
20                  tive Director shall pay the nonforfeitable account  
21                  balance to the participant in a single payment.”.

22                  (b) *EFFECTIVE DATE.*—The amendment made by this  
23                  section shall take effect on the date of the enactment of this  
24                  Act, except that United States Tax Court judges may only

1 *begin to participate in the Thrift Savings Plan at the next*  
 2 *open season beginning after such date.*

3 **SEC. 1207. EXEMPTION OF TEACHING COMPENSATION OF**  
 4 **RETIRED JUDGES FROM LIMITATION ON OUT-**  
 5 **SIDE EARNED INCOME.**

6 (a) *IN GENERAL.*—Section 7447 (relating to retire-  
 7 ment of judges), as amended by this Act, is amended by  
 8 adding at the end the following new subsection:

9 “(l) *TEACHING COMPENSATION OF RETIRED*  
 10 *JUDGES.*—For purposes of the limitation under section  
 11 501(a) of the *Ethics in Government Act of 1978* (5 U.S.C.  
 12 App.), any compensation for teaching approved under sec-  
 13 tion 502(a)(5) of such Act shall not be treated as outside  
 14 earned income when received by a judge of the Tax Court  
 15 who has retired under subsection (b) for teaching performed  
 16 during any calendar year for which such a judge has met  
 17 the requirements of subsection (c), as certified by the chief  
 18 judge of the Tax Court.”.

19 (b) *EFFECTIVE DATE.*—The amendment made by this  
 20 section shall apply to any individual serving as a retired  
 21 judge of the United States Tax Court on or after the date  
 22 of the enactment of this Act.

1 **SEC. 1208. GENERAL PROVISIONS RELATING TO MAG-**  
 2 **ISTRATE JUDGES OF THE TAX COURT.**

3 (a) *TITLE OF SPECIAL TRIAL JUDGE CHANGED TO*  
 4 *MAGISTRATE JUDGE OF THE TAX COURT.*—*The heading of*  
 5 *section 7443A is amended to read as follows:*

6 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

7 (b) *APPOINTMENT, TENURE, AND REMOVAL.*—*Sub-*  
 8 *section (a) of section 7443A is amended to read as follows:*

9 “(a) *APPOINTMENT, TENURE, AND REMOVAL.*—

10 “(1) *APPOINTMENT.*—*The chief judge may, from*  
 11 *time to time, appoint and reappoint magistrate*  
 12 *judges of the Tax Court for a term of 8 years. The*  
 13 *magistrate judges of the Tax Court shall proceed*  
 14 *under such rules as may be promulgated by the Tax*  
 15 *Court.*

16 “(2) *REMOVAL.*—*Removal of a magistrate judge*  
 17 *of the Tax Court during the term for which he or she*  
 18 *is appointed shall be only for incompetency, mis-*  
 19 *conduct, neglect of duty, or physical or mental dis-*  
 20 *ability, but the office of a magistrate judge of the Tax*  
 21 *Court shall be terminated if the judges of the Tax*  
 22 *Court determine that the services performed by the*  
 23 *magistrate judge of the Tax Court are no longer need-*  
 24 *ed. Removal shall not occur unless a majority of all*  
 25 *the judges of the Tax Court concur in the order of re-*  
 26 *moval. Before any order of removal shall be entered,*

1        *a full specification of the charges shall be furnished*  
 2        *to the magistrate judge of the Tax Court, and he or*  
 3        *she shall be accorded by the judges of the Tax Court*  
 4        *an opportunity to be heard on the charges.”.*

5        *(c) SALARY.—Section 7443A(d) (relating to salary) is*  
 6        *amended by striking “90” and inserting “92”.*

7        *(d) EXEMPTION FROM FEDERAL LEAVE PROVI-*  
 8        *SIONS.—Section 7443A is amended by adding at the end*  
 9        *the following new subsection:*

10        *“(f) EXEMPTION FROM FEDERAL LEAVE PROVI-*  
 11        *SIONS.—*

12                *“(1) IN GENERAL.—A magistrate judge of the*  
 13        *Tax Court appointed under this section shall be ex-*  
 14        *empt from the provisions of subchapter I of chapter*  
 15        *63 of title 5, United States Code.*

16                *“(2) TREATMENT OF UNUSED LEAVE.—*

17                        *“(A) AFTER SERVICE AS MAGISTRATE*  
 18        *JUDGE.—If an individual who is exempted*  
 19        *under paragraph (1) from the subchapter re-*  
 20        *ferred to in such paragraph was previously sub-*  
 21        *ject to such subchapter and, without a break in*  
 22        *service, again becomes subject to such subchapter*  
 23        *on completion of the individual’s service as a*  
 24        *magistrate judge, the unused annual leave and*  
 25        *sick leave standing to the individual’s credit*

1        *when such individual was exempted from this*  
2        *subchapter is deemed to have remained to the in-*  
3        *dividual's credit.*

4                “(B) *COMPUTATION OF ANNUITY.—In com-*  
5        *puting an annuity under section 8339 of title 5,*  
6        *United States Code, the total service of an indi-*  
7        *vidual specified in subparagraph (A) who retires*  
8        *on an immediate annuity or dies leaving a sur-*  
9        *vivor or survivors entitled to an annuity in-*  
10       *cludes, without regard to the limitations imposed*  
11       *by subsection (f) of such section 8339, the days*  
12       *of unused sick leave standing to the individual's*  
13       *credit when such individual was exempted from*  
14       *subchapter I of chapter 63 of title 5, United*  
15       *States Code, except that these days will not be*  
16       *counted in determining average pay or annuity*  
17       *eligibility.*

18                “(C) *LUMP SUM PAYMENT.—Any accumu-*  
19        *lated and current accrued annual leave or vaca-*  
20        *tion balances credited to a magistrate judge as of*  
21        *the date of the enactment of this subsection shall*  
22        *be paid in a lump sum at the time of separation*  
23        *from service pursuant to the provisions and re-*  
24        *strictions set forth in section 5551 of title 5,*

1           *United States Code, and related provisions re-*  
2           *ferred to in such section.”.*

3           (e) *CONFORMING AMENDMENTS.—*

4           (1) *The heading of subsection (b) of section*  
5           *7443A is amended by striking “SPECIAL TRIAL*  
6           *JUDGES” and inserting “Magistrate Judges of the*  
7           *Tax Court”.*

8           (2) *Section 7443A(b) is amended by striking*  
9           *“special trial judges of the court” and inserting*  
10          *“magistrate judges of the Tax Court”.*

11          (3) *Subsections (c) and (d) of section 7443A are*  
12          *amended by striking “special trial judge” and insert-*  
13          *ing “magistrate judge of the Tax Court” each place*  
14          *it appears.*

15          (4) *Section 7443A(e) is amended by striking*  
16          *“special trial judges” and inserting “magistrate*  
17          *judges of the Tax Court”.*

18          (5) *Section 7456(a) is amended by striking “spe-*  
19          *cial trial judge” each place it appears and inserting*  
20          *“magistrate judge”.*

21          (6) *Subsection (c) of section 7471 is amended—*

22                 (A) *by striking the subsection heading and*  
23                 *inserting “MAGISTRATE JUDGES OF THE TAX*  
24                 *COURT.—”, and*

1                   (B) by striking “special trial judges” and  
 2                   inserting “magistrate judges”.

3   **SEC. 1209. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
 4                   **PENDENT CHILDREN OF MAGISTRATE**  
 5                   **JUDGES OF THE TAX COURT.**

6           (a) *DEFINITIONS.*—Section 7448(a) (relating to defini-  
 7   tions), as amended by this Act, is amended by redesignating  
 8   paragraphs (5), (6), (7), and (8) as paragraphs (7), (8),  
 9   (9), and (10), respectively, and by inserting after para-  
 10 graph (4) the following new paragraphs:

11                   “(5) The term ‘magistrate judge’ means a judi-  
 12           cial officer appointed pursuant to section 7443A, in-  
 13           cluding any individual receiving an annuity under  
 14           section 7443B, or chapters 83 or 84, as the case may  
 15           be, of title 5, United States Code, whether or not per-  
 16           forming judicial duties under section 7443C.

17                   “(6) The term ‘magistrate judge’s salary’ means  
 18           the salary of a magistrate judge received under sec-  
 19           tion 7443A(d), any amount received as an annuity  
 20           under section 7443B, or chapters 83 or 84, as the case  
 21           may be, of title 5, United States Code, and compensa-  
 22           tion received under section 7443C.”.

23           (b) *ELECTION.*—Subsection (b) of section 7448 (relat-  
 24   ing to annuities to surviving spouses and dependent chil-  
 25   dren of judges) is amended—

1           (1) *by striking the subsection heading and in-*  
 2           *serting the following:*

3           “(b) *ELECTION.*—

4                 “(1) *JUDGES.*—”,

5                 (2) *by moving the text 2 ems to the right, and*

6                 (3) *by adding at the end the following new para-*  
 7           *graph:*

8                 “(2) *MAGISTRATE JUDGES.*—*Any magistrate*  
 9           *judge may by written election filed with the chief*  
 10           *judge bring himself or herself within the purview of*  
 11           *this section. Such election shall be filed not later than*  
 12           *the later of 6 months after—*

13                         “(A) *6 months after the date of the enact-*  
 14                         *ment of this paragraph,*

15                         “(B) *the date the judge takes office, or*

16                         “(C) *the date the judge marries.*”.

17           (c) *CONFORMING AMENDMENTS.*—

18                 (1) *The heading of section 7448 is amended by*  
 19           *inserting “**AND MAGISTRATE JUDGES**” after*  
 20           *“**JUDGES**”.*

21                 (2) *The item relating to section 7448 in the table*  
 22           *of sections for part I of subchapter C of chapter 76*  
 23           *is amended by inserting “and magistrate judges”*  
 24           *after “judges”.*



1           (3) Subsections (c)(1), (d), (f), (g), (h), (j), (m),  
 2           (n), and (u) of section 7448, as amended by this Act,  
 3           are each amended—

4                   (A) by inserting “or magistrate judge” after  
 5                   “judge” each place it appears other than in the  
 6                   phrase “chief judge”, and

7                   (B) by inserting “or magistrate judge’s”  
 8                   after “judge’s” each place it appears.

9           (4) Section 7448(c) is amended—

10                   (A) in paragraph (1), by striking “Tax  
 11                   Court judges” and inserting “Tax Court judicial  
 12                   officers”,

13                   (B) in paragraph (2)—

14                           (i) in subparagraph (A), by inserting  
 15                           “and section 7443A(d)” after “(a)(4)”, and

16                           (ii) in subparagraph (B), by striking  
 17                           “subsection (a)(4)” and inserting “sub-  
 18                           sections (a)(4) and (a)(6)”.

19           (5) Section 7448(g) is amended by inserting “or  
 20           section 7443B” after “section 7447” each place it ap-  
 21           pears, and by inserting “or an annuity” after “re-  
 22           tired pay”.

23           (6) Section 7448(j)(1) is amended—

24                   (A) in subparagraph (A), by striking “serv-  
 25                   ice or retired” and inserting “service, retired”,

1           *and by inserting “, or receiving any annuity*  
 2           *under section 7443B or chapters 83 or 84 of title*  
 3           *5, United States Code,” after “section 7447”,*  
 4           *and*

5                     *(B) in the last sentence, by striking “sub-*  
 6                     *sections (a) (6) and (7)” and inserting “para-*  
 7                     *graphs (8) and (9) of subsection (a)”.*

8           *(7) Section 7448(m)(1), as amended by this Act,*  
 9           *is amended—*

10                    *(A) by inserting “or any annuity under sec-*  
 11                    *tion 7443B or chapters 83 or 84 of title 5,*  
 12                    *United States Code” after “7447(d)”, and*

13                    *(B) by inserting “or 7443B(m)(1)(B) after*  
 14                    *“7447(f)(4)”.*

15                    *(8) Section 7448(n) is amended by inserting “his*  
 16                    *years of service pursuant to any appointment under*  
 17                    *section 7443A,” after “of the Tax Court,”.*

18                    *(9) Section 3121(b)(5)(E) is amended by insert-*  
 19                    *ing “or magistrate judge” before “of the United States*  
 20                    *Tax Court”.*

21                    *(10) Section 210(a)(5)(E) of the Social Security*  
 22                    *Act is amended by inserting “or magistrate judge” be-*  
 23                    *fore “of the United States Tax Court”.*

1 **SEC. 1210. RETIREMENT AND ANNUITY PROGRAM.**

2       (a) *RETIREMENT AND ANNUITY PROGRAM.*—Part I of  
3 subchapter C of chapter 76 is amended by inserting after  
4 section 7443A the following new section:

5 **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
6 **THE TAX COURT.**

7       “(a) *RETIREMENT BASED ON YEARS OF SERVICE.*—  
8 A magistrate judge of the Tax Court to whom this section  
9 applies and who retires from office after attaining the age  
10 of 65 years and serving at least 14 years, whether continu-  
11 ously or otherwise, as such magistrate judge shall, subject  
12 to subsection (f), be entitled to receive, during the remainder  
13 of the magistrate judge’s lifetime, an annuity equal to the  
14 salary being received at the time the magistrate judge leaves  
15 office.

16       “(b) *RETIREMENT UPON FAILURE OF REAPPOINT-*  
17 *MENT.*—A magistrate judge of the Tax Court to whom this  
18 section applies who is not reappointed following the expira-  
19 tion of the term of office of such magistrate judge and who  
20 retires upon the completion of the term shall, subject to sub-  
21 section (f), be entitled to receive, upon attaining the age  
22 of 65 years and during the remainder of such magistrate  
23 judge’s lifetime, an annuity equal to that portion of the sal-  
24 ary being received at the time the magistrate judge leaves  
25 office which the aggregate number of years of service, not  
26 to exceed 14, bears to 14, if—

1           “(1) *such magistrate judge has served at least 1*  
 2       *full term as a magistrate judge, and*

3           “(2) *not earlier than 9 months before the date on*  
 4       *which the term of office of such magistrate judge ex-*  
 5       *pires, and not later than 6 months before such date,*  
 6       *such magistrate judge notified the chief judge of the*  
 7       *Tax Court in writing that such magistrate judge was*  
 8       *willing to accept reappointment to the position in*  
 9       *which such magistrate judge was serving.*

10       “(c) *SERVICE OF AT LEAST 8 YEARS.—A magistrate*  
 11       *judge of the Tax Court to whom this section applies and*  
 12       *who retires after serving at least 8 years, whether continu-*  
 13       *ously or otherwise, as such a magistrate judge shall, subject*  
 14       *to subsection (f), be entitled to receive, upon attaining the*  
 15       *age of 65 years and during the remainder of the magistrate*  
 16       *judge’s lifetime, an annuity equal to that portion of the sal-*  
 17       *ary being received at the time the magistrate judge leaves*  
 18       *office which the aggregate number of years of service, not*  
 19       *to exceed 14, bears to 14. Such annuity shall be reduced*  
 20       *by  $\frac{1}{6}$  of 1 percent for each full month such magistrate judge*  
 21       *was under the age of 65 at the time the magistrate judge*  
 22       *left office, except that such reduction shall not exceed 20*  
 23       *percent.*

24       “(d) *RETIREMENT FOR DISABILITY.—A magistrate*  
 25       *judge of the Tax Court to whom this section applies, who*

1 *has served at least 5 years, whether continuously or other-*  
 2 *wise, as such a magistrate judge and who retires or is re-*  
 3 *moved from office upon the sole ground of mental or phys-*  
 4 *ical disability shall, subject to subsection (f), be entitled to*  
 5 *receive, during the remainder of the magistrate judge's life-*  
 6 *time, an annuity equal to 40 percent of the salary being*  
 7 *received at the time of retirement or removal or, in the case*  
 8 *of a magistrate judge who has served for at least 10 years,*  
 9 *an amount equal to that proportion of the salary being re-*  
 10 *ceived at the time of retirement or removal which the aggre-*  
 11 *gate number of years of service, not to exceed 14, bears to*  
 12 *14.*

13       “(e) *COST-OF-LIVING ADJUSTMENTS.*—A magistrate  
 14 *judge of the Tax Court who is entitled to an annuity under*  
 15 *this section is also entitled to a cost-of-living adjustment*  
 16 *in such annuity, calculated and payable in the same man-*  
 17 *ner as adjustments under section 8340(b) of title 5, United*  
 18 *States Code, except that any such annuity, as increased*  
 19 *under this subsection, may not exceed the salary then pay-*  
 20 *able for the position from which the magistrate judge retired*  
 21 *or was removed.*

22       “(f) *ELECTION; ANNUITY IN LIEU OF OTHER ANNU-*  
 23 *ITIES.*—

24               “(1) *IN GENERAL.*—A magistrate judge of the  
 25 *Tax Court shall be entitled to an annuity under this*

1        *section if the magistrate judge elects an annuity*  
 2        *under this section by notifying the chief judge of the*  
 3        *Tax Court not later than the later of—*

4                *“(A) 5 years after the magistrate judge of*  
 5                *the Tax Court begins judicial service, or*

6                *“(B) 5 years after the date of the enactment*  
 7                *of this subsection.*

8        *Such notice shall be given in accordance with proce-*  
 9        *dures prescribed by the Tax Court.*

10                *“(2) ANNUITY IN LIEU OF OTHER ANNUITY.—A*  
 11        *magistrate judge who elects to receive an annuity*  
 12        *under this section shall not be entitled to receive—*

13                *“(A) any annuity to which such magistrate*  
 14                *judge would otherwise have been entitled under*  
 15                *subchapter III of chapter 83, or under chapter*  
 16                *84 (except for subchapters III and VII), of title*  
 17                *5, United States Code, for service performed as*  
 18                *a magistrate or otherwise,*

19                *“(B) an annuity or salary in senior status*  
 20                *or retirement under section 371 or 372 of title*  
 21                *28, United States Code,*

22                *“(C) retired pay under section 7447, or*

23                *“(D) retired pay under section 7296 of title*  
 24                *38, United States Code.*

1           “(3) *COORDINATION WITH TITLE 5.*—A mag-  
 2           istrate judge of the Tax Court who elects to receive an  
 3           annuity under this section—

4                   “(A) shall not be subject to deductions and  
 5                   contributions otherwise required by section  
 6                   8334(a) of title 5, United States Code,

7                   “(B) shall be excluded from the operation of  
 8                   chapter 84 (other than subchapters III and VII)  
 9                   of such title 5, and

10                   “(C) is entitled to a lump-sum credit under  
 11                   section 8342(a) or 8424 of such title 5, as the  
 12                   case may be.

13           “(g) *CALCULATION OF SERVICE.*—For purposes of cal-  
 14           culating an annuity under this section—

15                   “(1) service as a magistrate judge of the Tax  
 16                   Court to whom this section applies may be credited,  
 17                   and

18                   “(2) each month of service shall be credited as  
 19                    $\frac{1}{12}$  of a year, and the fractional part of any month  
 20                   shall not be credited.

21           “(h) *COVERED POSITIONS AND SERVICE.*—This section  
 22           applies to any magistrate judge of the Tax Court or special  
 23           trial judge of the Tax Court appointed under this sub-  
 24           chapter, but only with respect to service as such a mag-  
 25           istrate judge or special trial judge after a date not earlier

1 *than 9½ years before the date of the enactment of this sub-*  
 2 *section.*

3 “(i) *PAYMENTS PURSUANT TO COURT ORDER.*—

4 “(1) *IN GENERAL.*—*Payments under this section*  
 5 *which would otherwise be made to a magistrate judge*  
 6 *of the Tax Court based upon his or her service shall*  
 7 *be paid (in whole or in part) by the chief judge of the*  
 8 *Tax Court to another person if and to the extent ex-*  
 9 *pressly provided for in the terms of any court decree*  
 10 *of divorce, annulment, or legal separation, or the*  
 11 *terms of any court order or court-approved property*  
 12 *settlement agreement incident to any court decree of*  
 13 *divorce, annulment, or legal separation. Any payment*  
 14 *under this paragraph to a person bars recovery by*  
 15 *any other person.*

16 “(2) *REQUIREMENTS FOR PAYMENT.*—*Paragraph*  
 17 *(1) shall apply only to payments made by the chief*  
 18 *judge of the Tax Court after the date of receipt by the*  
 19 *chief judge of written notice of such decree, order, or*  
 20 *agreement, and such additional information as the*  
 21 *chief judge may prescribe.*

22 “(3) *COURT DEFINED.*—*For purposes of this sub-*  
 23 *section, the term ‘court’ means any court of any*  
 24 *State, the District of Columbia, the Commonwealth of*  
 25 *Puerto Rico, Guam, the Northern Mariana Islands, or*



1       *the Virgin Islands, and any Indian tribal court or*  
 2       *courts of Indian offense.*

3       “(j) *DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—*

4               “(1) *DEDUCTIONS.—Beginning with the next*  
 5       *pay period after the chief judge of the Tax Court re-*  
 6       *ceives a notice under subsection (f) that a magistrate*  
 7       *judge of the Tax Court has elected an annuity under*  
 8       *this section, the chief judge shall deduct and withhold*  
 9       *1 percent of the salary of such magistrate judge.*  
 10       *Amounts shall be so deducted and withheld in a man-*  
 11       *ner determined by the chief judge. Amounts deducted*  
 12       *and withheld under this subsection shall be deposited*  
 13       *in the Treasury of the United States to the credit of*  
 14       *the Tax Court Judicial Officers’ Retirement Fund.*  
 15       *Deductions under this subsection from the salary of a*  
 16       *magistrate judge shall terminate upon the retirement*  
 17       *of the magistrate judge or upon completion of 14*  
 18       *years of service for which contributions under this*  
 19       *section have been made, whether continuously or oth-*  
 20       *erwise, as calculated under subsection (g), whichever*  
 21       *occurs first.*

22               “(2) *CONSENT TO DEDUCTIONS; DISCHARGE OF*  
 23       *CLAIMS.—Each magistrate judge of the Tax Court*  
 24       *who makes an election under subsection (f) shall be*  
 25       *deemed to consent and agree to the deductions from*

1        *salary which are made under paragraph (1). Pay-*  
 2        *ment of such salary less such deductions (and any de-*  
 3        *ductions made under section 7448) is a full and com-*  
 4        *plete discharge and acquittance of all claims and de-*  
 5        *mands for all services rendered by such magistrate*  
 6        *judge during the period covered by such payment, ex-*  
 7        *cept the right to those benefits to which the magistrate*  
 8        *judge is entitled under this section (and section 7448).*

9        “(k) *DEPOSITS FOR PRIOR SERVICE.*—*Each mag-*  
 10        *istrate judge of the Tax Court who makes an election under*  
 11        *subsection (f) may deposit, for service performed before such*  
 12        *election for which contributions may be made under this*  
 13        *section, an amount equal to 1 percent of the salary received*  
 14        *for that service. Credit for any period covered by that serv-*  
 15        *ice may not be allowed for purposes of an annuity under*  
 16        *this section until a deposit under this subsection has been*  
 17        *made for that period.*

18        “(l) *INDIVIDUAL RETIREMENT RECORDS.*—*The*  
 19        *amounts deducted and withheld under subsection (j), and*  
 20        *the amounts deposited under subsection (k), shall be credited*  
 21        *to individual accounts in the name of each magistrate judge*  
 22        *of the Tax Court from whom such amounts are received,*  
 23        *for credit to the Tax Court Judicial Officers’ Retirement*  
 24        *Fund.*

25        “(m) *ANNUITIES AFFECTED IN CERTAIN CASES.*—

1           “(1) *1-YEAR FORFEITURE FOR FAILURE TO PER-*  
 2           *FORM JUDICIAL DUTIES.*—Subject to paragraph (3),  
 3           *any magistrate judge of the Tax Court who retires*  
 4           *under this section and who fails to perform judicial*  
 5           *duties required of such individual by section 7443C*  
 6           *shall forfeit all rights to an annuity under this sec-*  
 7           *tion for a 1-year period which begins on the 1st day*  
 8           *on which such individual fails to perform such duties.*

9           “(2) *PERMANENT FORFEITURE OF RETIRED PAY*  
 10           *WHERE CERTAIN NON-GOVERNMENT SERVICES PER-*  
 11           *FORMED.*—Subject to paragraph (3), *any magistrate*  
 12           *judge of the Tax Court who retires under this section*  
 13           *and who thereafter performs (or supervises or directs*  
 14           *the performance of) legal or accounting services in the*  
 15           *field of Federal taxation for the individual’s client,*  
 16           *the individual’s employer, or any of such employer’s*  
 17           *clients, shall forfeit all rights to an annuity under*  
 18           *this section for all periods beginning on or after the*  
 19           *first day on which the individual performs (or super-*  
 20           *vises or directs the performance of) such services. The*  
 21           *preceding sentence shall not apply to any civil office*  
 22           *or employment under the Government of the United*  
 23           *States.*

24           “(3) *FORFEITURES NOT TO APPLY WHERE INDIV-*  
 25           *VIDUAL ELECTS TO FREEZE AMOUNT OF ANNUITY.*—

1           “(A) *IN GENERAL.*—If a magistrate judge of  
 2           the Tax Court makes an election under this  
 3           paragraph—

4                   “(i) paragraphs (1) and (2) (and sec-  
 5                   tion 7443C) shall not apply to such mag-  
 6                   istrate judge beginning on the date such  
 7                   election takes effect, and

8                   “(ii) the annuity payable under this  
 9                   section to such magistrate judge, for periods  
 10                  beginning on or after the date such election  
 11                  takes effect, shall be equal to the annuity to  
 12                  which such magistrate judge is entitled on  
 13                  the day before such effective date.

14           “(B) *ELECTION REQUIREMENTS.*—An elec-  
 15           tion under subparagraph (A)—

16                   “(i) may be made by a magistrate  
 17                   judge of the Tax Court eligible for retire-  
 18                   ment under this section, and

19                   “(ii) shall be filed with the chief judge  
 20                   of the Tax Court.

21           Such an election, once it takes effect, shall be ir-  
 22           revocable.

23           “(C) *EFFECTIVE DATE OF ELECTION.*—Any  
 24           election under subparagraph (A) shall take effect

1           *on the first day of the first month following the*  
 2           *month in which the election is made.*

3           “(4) *ACCEPTING OTHER EMPLOYMENT.*—*Any*  
 4           *magistrate judge of the Tax Court who retires under*  
 5           *this section and thereafter accepts compensation for*  
 6           *civil office or employment under the United States*  
 7           *Government (other than for the performance of func-*  
 8           *tions as a magistrate judge of the Tax Court under*  
 9           *section 7443C) shall forfeit all rights to an annuity*  
 10           *under this section for the period for which such com-*  
 11           *penetration is received. For purposes of this paragraph,*  
 12           *the term ‘compensation’ includes retired pay or sal-*  
 13           *ary received in retired status.*

14           “(n) *LUMP-SUM PAYMENTS.*—

15           “(1) *ELIGIBILITY.*—

16           “(A) *IN GENERAL.*—*Subject to paragraph*  
 17           *(2), an individual who serves as a magistrate*  
 18           *judge of the Tax Court and—*

19           “(i) *who leaves office and is not re-*  
 20           *appointed as a magistrate judge of the Tax*  
 21           *Court for at least 31 consecutive days,*

22           “(ii) *who files an application with the*  
 23           *chief judge of the Tax Court for payment of*  
 24           *a lump-sum credit,*

1           “(iii) is not serving as a magistrate  
2           judge of the Tax Court at the time of filing  
3           of the application, and

4           “(iv) will not become eligible to receive  
5           an annuity under this section within 31  
6           days after filing the application,  
7           is entitled to be paid the lump-sum credit. Pay-  
8           ment of the lump-sum credit voids all rights to  
9           an annuity under this section based on the serv-  
10          ice on which the lump-sum credit is based, until  
11          that individual resumes office as a magistrate  
12          judge of the Tax Court.

13           “(B) PAYMENT TO SURVIVORS.—Lump-sum  
14          benefits authorized by subparagraphs (C), (D),  
15          and (E) of this paragraph shall be paid to the  
16          person or persons surviving the magistrate judge  
17          of the Tax Court and alive on the date title to  
18          the payment arises, in the order of precedence set  
19          forth in subsection (o) of section 376 of title 28,  
20          United States Code, and in accordance with the  
21          last 2 sentences of paragraph (1) of that sub-  
22          section. For purposes of the preceding sentence,  
23          the term ‘judicial official’ as used in subsection  
24          (o) of such section 376 shall be deemed to mean  
25          ‘magistrate judge of the Tax Court’ and the

1        *terms ‘Administrative Office of the United States*  
 2        *Courts’ and ‘Director of the Administrative Of-*  
 3        *fice of the United States Courts’ shall be deemed*  
 4        *to mean ‘chief judge of the Tax Court’.*

5                *“(C) PAYMENT UPON DEATH OF JUDGE BE-*  
 6        *FORE RECEIPT OF ANNUITY.—If a magistrate*  
 7        *judge of the Tax Court dies before receiving an*  
 8        *annuity under this section, the lump-sum credit*  
 9        *shall be paid.*

10               *“(D) PAYMENT OF ANNUITY REMAINDER.—*  
 11        *If all annuity rights under this section based on*  
 12        *the service of a deceased magistrate judge of the*  
 13        *Tax Court terminate before the total annuity*  
 14        *paid equals the lump-sum credit, the difference*  
 15        *shall be paid.*

16               *“(E) PAYMENT UPON DEATH OF JUDGE*  
 17        *DURING RECEIPT OF ANNUITY.—If a magistrate*  
 18        *judge of the Tax Court who is receiving an an-*  
 19        *nuity under this section dies, any accrued annu-*  
 20        *ity benefits remaining unpaid shall be paid.*

21               *“(F) PAYMENT UPON TERMINATION.—Any*  
 22        *accrued annuity benefits remaining unpaid on*  
 23        *the termination, except by death, of the annuity*  
 24        *of a magistrate judge of the Tax Court shall be*  
 25        *paid to that individual.*

1           “(G) *PAYMENT UPON ACCEPTING OTHER*  
 2           *EMPLOYMENT.*—*Subject to paragraph (2), a*  
 3           *magistrate judge of the Tax Court who forfeits*  
 4           *rights to an annuity under subsection (m)(4) be-*  
 5           *fore the total annuity paid equals the lump-sum*  
 6           *credit shall be entitled to be paid the difference*  
 7           *if the magistrate judge of the Tax Court files an*  
 8           *application with the chief judge of the Tax Court*  
 9           *for payment of that difference. A payment under*  
 10          *this subparagraph voids all rights to an annuity*  
 11          *on which the payment is based.*

12          “(2) *SPOUSES AND FORMER SPOUSES.*—

13               “(A) *IN GENERAL.*—*Payment of the lump-*  
 14               *sum credit under paragraph (1)(A) or a pay-*  
 15               *ment under paragraph (1)(G)—*

16                       “(i) *may be made only if any current*  
 17                       *spouse and any former spouse of the mag-*  
 18                       *istrate judge of the Tax Court are notified*  
 19                       *of the magistrate judge’s application, and*

20                       “(ii) *shall be subject to the terms of a*  
 21                       *court decree of divorce, annulment, or legal*  
 22                       *separation, or any court or court approved*  
 23                       *property settlement agreement incident to*  
 24                       *such decree, if—*



1           “(I) the decree, order, or agree-  
 2           ment expressly relates to any portion  
 3           of the lump-sum credit or other pay-  
 4           ment involved, and

5           “(II) payment of the lump-sum  
 6           credit or other payment would extin-  
 7           guish entitlement of the magistrate  
 8           judge’s spouse or former spouse to any  
 9           portion of an annuity under subsection  
 10          (i).

11          “(B) NOTIFICATION.—Notification of a  
 12          spouse or former spouse under this paragraph  
 13          shall be made in accordance with such proce-  
 14          dures as the chief judge of the Tax Court shall  
 15          prescribe. The chief judge may provide under  
 16          such procedures that subparagraph (A)(i) may  
 17          be waived with respect to a spouse or former  
 18          spouse if the magistrate judge establishes to the  
 19          satisfaction of the chief judge that the where-  
 20          abouts of such spouse or former spouse cannot be  
 21          determined.

22          “(C) RESOLUTION OF 2 OR MORE OR-  
 23          DERS.—The chief judge shall prescribe proce-  
 24          dures under which this paragraph shall be ap-  
 25          plied in any case in which the chief judge re-

1           ceives 2 or more orders or decrees described in  
2           subparagraph (A).

3           “(3) *DEFINITION.*—For purposes of this sub-  
4           section, the term ‘lump-sum credit’ means the  
5           unrefunded amount consisting of—

6                   “(A) retirement deductions made under this  
7                   section from the salary of a magistrate judge of  
8                   the Tax Court,

9                   “(B) amounts deposited under subsection  
10                  (k) by a magistrate judge of the Tax Court cov-  
11                  ering earlier service, and

12                  “(C) interest on the deductions and deposits  
13                  which, for any calendar year, shall be equal to  
14                  the overall average yield to the Tax Court Judi-  
15                  cial Officers’ Retirement Fund during the pre-  
16                  ceding fiscal year from all obligations purchased  
17                  by the Secretary during such fiscal year under  
18                  subsection (o); but does not include interest—

19                   “(i) if the service covered thereby ag-  
20                   gregates 1 year or less, or

21                   “(ii) for the fractional part of a month  
22                   in the total service.

23           “(o) *TAX COURT JUDICIAL OFFICERS’ RETIREMENT*  
24           *FUND.*—

1           “(1) *ESTABLISHMENT.*—*There is established in*  
 2           *the Treasury a fund which shall be known as the ‘Tax*  
 3           *Court Judicial Officers’ Retirement Fund’.* *Amounts*  
 4           *in the Fund are authorized to be appropriated for the*  
 5           *payment of annuities, refunds, and other payments*  
 6           *under this section.*

7           “(2) *INVESTMENT OF FUND.*—*The Secretary*  
 8           *shall invest, in interest bearing securities of the*  
 9           *United States, such currently available portions of the*  
 10           *Tax Court Judicial Officers’ Retirement Fund as are*  
 11           *not immediately required for payments from the*  
 12           *Fund. The income derived from these investments con-*  
 13           *stitutes a part of the Fund.*

14           “(3) *UNFUNDED LIABILITY.*—

15           “(A) *IN GENERAL.*—*There are authorized to*  
 16           *be appropriated to the Tax Court Judicial Offi-*  
 17           *cers’ Retirement Fund amounts required to re-*  
 18           *duce to zero the unfunded liability of the Fund.*

19           “(B) *UNFUNDED LIABILITY.*—*For purposes*  
 20           *of subparagraph (A), the term ‘unfunded liabil-*  
 21           *ity’ means the estimated excess, determined on*  
 22           *an annual basis in accordance with the provi-*  
 23           *sions of section 9503 of title 31, United States*  
 24           *Code, of the present value of all benefits payable*

1       *from the Tax Court Judicial Officers' Retirement*  
 2       *Fund over the sum of—*

3               “(i) *the present value of deductions to*  
 4               *be withheld under this section from the fu-*  
 5               *ture basic pay of magistrate judges of the*  
 6               *Tax Court, plus*

7               “(ii) *the balance in the Fund as of the*  
 8               *date the unfunded liability is determined.*

9       “(p) *PARTICIPATION IN THRIFT SAVINGS PLAN.—*

10           “(1) *ELECTION TO CONTRIBUTE.—*

11               “(A) *IN GENERAL.—A magistrate judge of*  
 12               *the Tax Court who elects to receive an annuity*  
 13               *under this section or under section 611 of the*  
 14               *Pension Security and Transparency Act of 2005*  
 15               *may elect to contribute an amount of such indi-*  
 16               *vidual's basic pay to the Thrift Savings Fund es-*  
 17               *tablished by section 8437 of title 5, United States*  
 18               *Code.*

19               “(B) *PERIOD OF ELECTION.—An election*  
 20               *may be made under this paragraph only during*  
 21               *a period provided under section 8432(b) of title*  
 22               *5, United States Code, for individuals subject to*  
 23               *chapter 84 of such title.*

24           “(2) *APPLICABILITY OF TITLE 5 PROVISIONS.—*

25       *Except as otherwise provided in this subsection, the*

1        *provisions of subchapters III and VII of chapter 84*  
 2        *of title 5, United States Code, shall apply with re-*  
 3        *spect to a magistrate judge who makes an election*  
 4        *under paragraph (1).*

5                “(3) *SPECIAL RULES.*—

6                “(A) *AMOUNT CONTRIBUTED.*—*The amount*  
 7        *contributed by a magistrate judge to the Thrift*  
 8        *Savings Fund in any pay period shall not ex-*  
 9        *ceed the maximum percentage of such judge’s*  
 10       *basic pay for such pay period as allowable under*  
 11       *section 8440f of title 5, United States Code.*

12               “(B) *CONTRIBUTIONS FOR BENEFIT OF*  
 13       *JUDGE.*—*No contributions may be made for the*  
 14       *benefit of a magistrate judge under section*  
 15       *8432(c) of title 5, United States Code.*

16               “(C) *APPLICABILITY OF SECTION 8433(b) OF*  
 17       *TITLE 5.*—*Section 8433(b) of title 5, United*  
 18       *States Code, applies with respect to a magistrate*  
 19       *judge who makes an election under paragraph*  
 20       *(1) and—*

21               “(i) *who retires entitled to an imme-*  
 22       *diate annuity under this section (including*  
 23       *a disability annuity under subsection (d) of*  
 24       *this section) or section 611 of the Pension*  
 25       *Security and Transparency Act of 2005,*

1           “(ii) *who retires before attaining age*  
 2           *65 but is entitled, upon attaining age 65, to*  
 3           *an annuity under this section or section*  
 4           *611 of the Pension Security and Trans-*  
 5           *parency Act of 2005, or*

6           “(iii) *who retires before becoming enti-*  
 7           *tled to an immediate annuity, or an annu-*  
 8           *ity upon attaining age 65, under this sec-*  
 9           *tion or section 611 of the Pension Security*  
 10          *and Transparency Act of 2005.*

11          “(D) *SEPARATION FROM SERVICE.—With*  
 12          *respect to a magistrate judge to whom this sub-*  
 13          *section applies, retirement under this section or*  
 14          *section 611 of the Pension Security and Trans-*  
 15          *parency Act of 2005 is a separation from service*  
 16          *for purposes of subchapters III and VII of chap-*  
 17          *ter 84 of title 5, United States Code.*

18          “(4) *DEFINITIONS.—For purposes of this sub-*  
 19          *section, the terms ‘retirement’ and ‘retire’ include re-*  
 20          *moval from office under section 7443A(a)(2) on the*  
 21          *sole ground of mental or physical disability.*

22          “(5) *OFFSET.—In the case of a magistrate judge*  
 23          *who receives a distribution from the Thrift Savings*  
 24          *Fund and who later receives an annuity under this*  
 25          *section, that annuity shall be offset by an amount*

1       equal to the amount which represents the Govern-  
 2       ment's contribution to that person's Thrift Savings  
 3       Account, without regard to earnings attributable to  
 4       that amount. Where such an offset would exceed 50  
 5       percent of the annuity to be received in the first year,  
 6       the offset may be divided equally over the first 2 years  
 7       in which that person receives the annuity.

8               “(6) *EXCEPTION.*—Notwithstanding clauses (i)  
 9       and (ii) of paragraph (3)(C), if any magistrate judge  
 10       retires under circumstances making such magistrate  
 11       judge eligible to make an election under subsection (b)  
 12       of section 8433 of title 5, United States Code, and  
 13       such magistrate judge's nonforfeitable account balance  
 14       is less than an amount that the Executive Director of  
 15       the Office of Personnel Management prescribes by reg-  
 16       ulation, the Executive Director shall pay the non-  
 17       forfeitable account balance to the participant in a  
 18       single payment.”.

19       (b) *CONFORMING AMENDMENT.*—The table of sections  
 20       for part I of subchapter C of chapter 76 is amended by  
 21       inserting after the item relating to section 7443A the fol-  
 22       lowing new item:

“Sec. 7443B. *Retirement for magistrate judges of the Tax Court.*”.

1 **SEC. 1211. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
 2 **COURT.**

3 (a) *RETIREMENT ANNUITY UNDER TITLE 5 AND SEC-*  
 4 *TION 7443B OF THE INTERNAL REVENUE CODE OF 1986.—*  
 5 *A magistrate judge of the United States Tax Court in active*  
 6 *service on the date of the enactment of this Act shall, subject*  
 7 *to subsection (b), be entitled, in lieu of the annuity other-*  
 8 *wise provided under the amendments made by this title,*  
 9 *to—*

10 (1) *an annuity under subchapter III of chapter*  
 11 *83, or under chapter 84 (except for subchapters III*  
 12 *and VII), of title 5, United States Code, as the case*  
 13 *may be, for creditable service before the date on which*  
 14 *service would begin to be credited for purposes of*  
 15 *paragraph (2), and*

16 (2) *an annuity calculated under subsection (b)*  
 17 *or (c) and subsection (g) of section 7443B of the In-*  
 18 *ternal Revenue Code of 1986, as added by this Act,*  
 19 *for any service as a magistrate judge of the United*  
 20 *States Tax Court or special trial judge of the United*  
 21 *States Tax Court but only with respect to service as*  
 22 *such a magistrate judge or special trial judge after a*  
 23 *date not earlier than 9½ years prior to the date of*  
 24 *the enactment of this Act (as specified in the election*  
 25 *pursuant to subsection (b)) for which deductions and*  
 26 *deposits are made under subsections (j) and (k) of*



1        *such section 7443B, as applicable, without regard to*  
2        *the minimum number of years of service as such a*  
3        *magistrate judge of the United States Tax Court, ex-*  
4        *cept that—*

5                *(A) in the case of a magistrate judge who*  
6                *retired with less than 8 years of service, the an-*  
7                *nuity under subsection (c) of such section 7443B*  
8                *shall be equal to that proportion of the salary*  
9                *being received at the time the magistrate judge*  
10              *leaves office which the years of service bears to*  
11              *14, subject to a reduction in accordance with*  
12              *subsection (c) of such section 7443B if the mag-*  
13              *istrate judge is under age 65 at the time he or*  
14              *she leaves office, and*

15              *(B) the aggregate amount of the annuity*  
16              *initially payable on retirement under this sub-*  
17              *section may not exceed the rate of pay for the*  
18              *magistrate judge which is in effect on the day be-*  
19              *fore the retirement becomes effective.*

20        *(b) FILING OF NOTICE OF ELECTION.—A magistrate*  
21        *judge of the United States Tax Court shall be entitled to*  
22        *an annuity under this section only if the magistrate judge*  
23        *files a notice of that election with the chief judge of the*  
24        *United States Tax Court specifying the date on which serv-*  
25        *ice would begin to be credited under section 7443B of the*

1 *Internal Revenue Code of 1986, as added by this Act, in*  
 2 *lieu of chapter 83 or chapter 84 of title 5, United States*  
 3 *Code. Such notice shall be filed in accordance with such*  
 4 *procedures as the chief judge of the United States Tax Court*  
 5 *shall prescribe.*

6       (c) *LUMP-SUM CREDIT UNDER TITLE 5.*—A mag-  
 7 *istrate judge of the United States Tax Court who makes*  
 8 *an election under subsection (b) shall be entitled to a lump-*  
 9 *sum credit under section 8342 or 8424 of title 5, United*  
 10 *States Code, as the case may be, for any service which is*  
 11 *covered under section 7443B of the Internal Revenue Code*  
 12 *of 1986, as added by this Act, pursuant to that election,*  
 13 *and with respect to which any contributions were made by*  
 14 *the magistrate judge under the applicable provisions of title*  
 15 *5, United States Code.*

16       (d) *RECALL.*—With respect to any magistrate judge of  
 17 *the United States Tax Court receiving an annuity under*  
 18 *this section who is recalled to serve under section 7443C*  
 19 *of the Internal Revenue Code of 1986, as added by this*  
 20 *Act—*

21               (1) *the amount of compensation which such re-*  
 22 *called magistrate judge receives under such section*  
 23 *7443C shall be calculated on the basis of the annuity*  
 24 *received under this section, and*

1           (2) *such recalled magistrate judge of the United*  
 2       *States Tax Court may serve as a reemployed annu-*  
 3       *itant to the extent otherwise permitted under title 5,*  
 4       *United States Code.*

5       *Section 7443B(m)(4) of the Internal Revenue Code of 1986,*  
 6       *as added by this Act, shall not apply with respect to service*  
 7       *as a reemployed annuitant described in paragraph (2).*

8       **SEC. 1212. PROVISIONS FOR RECALL.**

9       (a) *IN GENERAL.*—*Part I of subchapter C of chapter*  
 10      *76, as amended by this Act, is amended by inserting after*  
 11      *section 7443B the following new section:*

12      **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**  
 13                                      **COURT.**

14      “(a) *RECALLING OF RETIRED MAGISTRATE*  
 15      *JUDGES.*—*Any individual who has retired pursuant to sec-*  
 16      *tion 7443B or the applicable provisions of title 5, United*  
 17      *States Code, upon reaching the age and service require-*  
 18      *ments established therein, may at or after retirement be*  
 19      *called upon by the chief judge of the Tax Court to perform*  
 20      *such judicial duties with the Tax Court as may be requested*  
 21      *of such individual for any period or periods specified by*  
 22      *the chief judge; except that in the case of any such*  
 23      *individual—*

1           “(1) the aggregate of such periods in any 1 cal-  
2       endar year shall not (without such individual’s con-  
3       sent) exceed 90 calendar days, and

4           “(2) such individual shall be relieved of per-  
5       forming such duties during any period in which ill-  
6       ness or disability precludes the performance of such  
7       duties.

8       Any act, or failure to act, by an individual performing ju-  
9       dicial duties pursuant to this subsection shall have the same  
10      force and effect as if it were the act (or failure to act) of  
11      a magistrate judge of the Tax Court.

12       “(b) COMPENSATION.—For the year in which a period  
13      of recall occurs, the magistrate judge shall receive, in addi-  
14      tion to the annuity provided under the provisions of section  
15      7443B or under the applicable provisions of title 5, United  
16      States Code, an amount equal to the difference between that  
17      annuity and the current salary of the office to which the  
18      magistrate judge is recalled. The annuity of the magistrate  
19      judge who completes that period of service, who is not re-  
20      called in a subsequent year, and who retired under section  
21      7443B, shall be equal to the salary in effect at the end of  
22      the year in which the period of recall occurred for the office  
23      from which such individual retired.

1       “(c) *RULEMAKING AUTHORITY.*—*The provisions of this*  
 2 *section may be implemented under such rules as may be*  
 3 *promulgated by the Tax Court.*”

4       (b) *CONFORMING AMENDMENT.*—*The table of sections*  
 5 *for part I of subchapter C of chapter 76, as amended by*  
 6 *this Act, is amended by inserting after the item relating*  
 7 *to section 7443B the following new item:*

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

8       **SEC. 1213. EFFECTIVE DATE.**

9       *Except as otherwise provided, the amendments made*  
 10 *by this subtitle shall take effect on the date of the enactment*  
 11 *of this Act.*

12       **TITLE XIII—OTHER PROVISIONS**  
 13               **Subtitle A—Administrative**  
 14                       **Provision**

15       **SEC. 1301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

16       (a) *IN GENERAL.*—*If this section applies to any plan*  
 17 *or contract amendment—*

18               (1) *such plan or contract shall be treated as*  
 19 *being operated in accordance with the terms of the*  
 20 *plan during the period described in subsection*

21               (b)(2)(A), *and*

22               (2) *except as provided by the Secretary of the*  
 23 *Treasury, such plan shall not fail to meet the require-*  
 24 *ments of section 411(d)(6) of the Internal Revenue*  
 25 *Code of 1986 and section 204(g) of the Employee Re-*

1        *tirement Income Security Act of 1974 by reason of*  
 2        *such amendment.*

3        *(b) AMENDMENTS TO WHICH SECTION APPLIES.—*

4                *(1) IN GENERAL.—This section shall apply to*  
 5        *any amendment to any plan or annuity contract*  
 6        *which is made—*

7                        *(A) pursuant to any amendment made by*  
 8        *this Act or the Economic Growth and Tax Relief*  
 9        *Reconciliation Act of 2001, or pursuant to any*  
 10        *regulation issued by the Secretary of the Treas-*  
 11        *ury or the Secretary of Labor under such Acts,*  
 12        *and*

13                        *(B) on or before the last day of the first*  
 14        *plan year beginning on or after January 1,*  
 15        *2007, or such later date as the Secretary of the*  
 16        *Treasury may prescribe.*

17        *In the case of a governmental plan (as defined in sec-*  
 18        *tion 414(d) of the Internal Revenue Code of 1986),*  
 19        *subparagraph (B) shall be applied by substituting the*  
 20        *date which is 2 years after the date otherwise applied*  
 21        *under subparagraph (B).*

22                *(2) CONDITIONS.—This section shall not apply to*  
 23        *any amendment unless—*

24                        *(A) during the period—*

1                   (i) beginning on the date the legislative  
 2                   or regulatory amendment described in para-  
 3                   graph (1)(A) takes effect (or in the case of  
 4                   a plan or contract amendment not required  
 5                   by such legislative or regulatory amend-  
 6                   ment, the effective date specified by the  
 7                   plan), and

8                   (ii) ending on the date described in  
 9                   paragraph (1)(B) (or, if earlier, the date the  
 10                  plan or contract amendment is adopted),  
 11                  the plan or contract is operated as if such plan  
 12                  or contract amendment were in effect; and

13                  (B) such plan or contract amendment ap-  
 14                  plies retroactively for such period.

15 **SEC. 1302. AUTHORITY TO THE SECRETARY OF LABOR, SEC-**  
 16 **RETARY OF THE TREASURY, AND THE PEN-**  
 17 **SION BENEFIT GUARANTY CORPORATION TO**  
 18 **POSTPONE CERTAIN DEADLINES.**

19           *The Secretary of Labor, the Secretary of the Treasury,*  
 20 *and the Executive Director of the Pension Benefit Guaranty*  
 21 *Corporation shall exercise their authority under section 518*  
 22 *of the Employee Retirement Income Security Act of 1974*  
 23 *(29 U.S.C. 1148) and section 7508A of the Internal Revenue*  
 24 *Code of 1986 to postpone certain deadlines by reason of the*  
 25 *Presidentially declared disaster areas in Louisiana, Mis-*

1 *issippi, Alabama, Texas, Florida, or elsewhere, due to the*  
 2 *effect of Hurricane Katrina, Rita, or Wilma. The Secre-*  
 3 *taries and the Executive Director of the Corporation shall*  
 4 *issue guidance as soon as is practicable to plan sponsors*  
 5 *and participants regarding extension of deadlines and rules*  
 6 *applicable to these extraordinary circumstances. Nothing in*  
 7 *this section shall be construed to relieve any plan sponsor*  
 8 *from any requirement to pay benefits or make contributions*  
 9 *under the plan of the sponsor.*

## 10 ***Subtitle B—Governmental Pension*** 11 ***Plan Equalization***

### 12 ***SEC. 1311. DEFINITION OF GOVERNMENTAL PLAN.***

13 *(a) AMENDMENT TO INTERNAL REVENUE CODE OF*  
 14 *1986.—Section 414(d) of the Internal Revenue Code of 1986*  
 15 *(definition of governmental plan) is amended by adding at*  
 16 *the end the following: “The term ‘governmental plan’ in-*  
 17 *cludes a plan established or maintained for its employees*  
 18 *by an Indian tribal government (as defined in section*  
 19 *7701(a)(40)), a subdivision of an Indian tribal government*  
 20 *(determined in accordance with section 7871(d)), an agency*  
 21 *instrumentality (or subdivision) of an Indian tribal govern-*  
 22 *ment, or an entity established under Federal, State, or trib-*  
 23 *al law which is wholly owned or controlled by any of the*  
 24 *foregoing.”.*



1       (b) *AMENDMENT TO EMPLOYEE RETIREMENT INCOME*  
2       *SECURITY ACT OF 1974.*—Section 3(32) of the Employee  
3       *Retirement Income Security Act of 1974 (29 U.S.C.*  
4       *1002(32)) is amended by adding at the end the following:*  
5       *“The term ‘governmental plan’ includes a plan established*  
6       *or maintained for its employees by an Indian tribal govern-*  
7       *ment (as defined in section 7701(a)(40)), a subdivision of*  
8       *an Indian tribal government (determined in accordance*  
9       *with section 7871(d)), an agency instrumentality (or sub-*  
10       *division) of an Indian tribal government, or an entity es-*  
11       *tablished under Federal, State, or tribal law that is wholly*  
12       *owned or controlled by any of the foregoing.”.*

13       **SEC. 1312. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
14                               **CURRENT MORATORIUM ON APPLICATION OF**  
15                               **CERTAIN NONDISCRIMINATION RULES APPLI-**  
16                               **CABLE TO STATE AND LOCAL PLANS.**

17       (a) *IN GENERAL.*—

18               (1) Subparagraph (G) of section 401(a)(5) and  
19       subparagraph (G) of section 401(a)(26) of the *Inter-*  
20       *nal Revenue Code of 1986 are each amended by strik-*  
21       *ing “section 414(d))” and all that follows and insert-*  
22       *ing “section 414(d)).”.*

23               (2) Subparagraph (G) of section 401(k)(3) of  
24       such Code and paragraph (2) of section 1505(d) of the  
25       *Taxpayer Relief Act of 1997 (Public Law 105–34;*

1     *111 Stat. 1063) are each amended by striking “main-*  
 2     *tained by a State or local government or political*  
 3     *subdivision thereof (or agency or instrumentality*  
 4     *thereof)”.*

5     ***(b) CONFORMING AMENDMENTS.—***

6             *(1) The heading of subparagraph (G) of section*  
 7     *401(a)(5) of the Internal Revenue Code of 1986 is*  
 8     *amended by striking “STATE AND LOCAL GOVERN-*  
 9     *MENTAL” and inserting “GOVERNMENTAL”.*

10            *(2) The heading of subparagraph (G) of section*  
 11     *401(a)(26) of such Code is amended by striking “EX-*  
 12     *CEPTION FOR STATE AND LOCAL” and inserting “EX-*  
 13     *CEPTION FOR”.*

14            *(3) Section 401(k)(3)(G) of such Code is amend-*  
 15     *ed by inserting “GOVERNMENTAL PLAN.—” after*  
 16     *“(G)”.*

17     ***SEC. 1313. CLARIFICATION THAT TRIBAL GOVERNMENTS***  
 18             ***ARE SUBJECT TO THE SAME DEFINED BEN-***  
 19             ***EFIT PLAN RULES AND REGULATIONS AP-***  
 20             ***PLIED TO STATE AND OTHER LOCAL GOVERN-***  
 21             ***MENTS, THEIR POLICE AND FIREFIGHTERS.***

22     ***(a) AMENDMENTS TO INTERNAL REVENUE CODE OF***  
 23     ***1986.—***

1           (1) *POLICE AND FIREFIGHTERS*.—Subparagraph  
 2           (H) section 415(b)(2) of the Internal Revenue Code of  
 3           1986 (defining participant) is amended—

4                   (A) in clause (i), by striking “State or po-  
 5                   litical subdivision” and inserting “State, Indian  
 6                   tribal government (as defined in section  
 7                   7701(a)(40)), or any political subdivision”; and

8                   (B) in clause (ii)(I), by striking “State or  
 9                   political subdivision” each place it appears and  
 10                  inserting “State, Indian tribal government (as so  
 11                  defined), or any political subdivision”.

12          (2) *STATE AND LOCAL GOVERNMENT PLANS*.—

13               (A) *IN GENERAL*.—Subparagraph (A) of  
 14               section 415(b)(10) of such Code (relating to limi-  
 15               tation to equal accrued benefit) is amended—

16                   (i) by inserting “, Indian tribal gov-  
 17                   ernment (as defined in section  
 18                   7701(a)(40)),” after “State”;

19                   (ii) by inserting “any” before “polit-  
 20                   ical subdivision”; and

21                   (iii) by inserting “any of” before “the  
 22                   foregoing”.

23               (B) *CONFORMING AMENDMENT*.—The head-  
 24               ing of paragraph (1) of section 415(b) of such  
 25               Code is amended by striking “SPECIAL RULE

1           *FOR STATE AND*” and inserting “*SPECIAL RULE*  
 2           *FOR STATE, INDIAN TRIBAL, AND*”.

3           (3) *GOVERNMENT PICK UP CONTRIBUTIONS.*—  
 4           *Paragraph (2) of section 414(h) of such Code (relat-*  
 5           *ing to designation by units of government) is amend-*  
 6           *ed by striking “State or political subdivision” and*  
 7           *inserting “State, Indian tribal government (as de-*  
 8           *fined in section 7701(a)(40)), or any political sub-*  
 9           *division”.*

10          (b) *AMENDMENTS TO EMPLOYEE RETIREMENT INCOME*  
 11          *SECURITY ACT OF 1974.*—*Section 4021(b) of the Employee*  
 12          *Retirement Income Security Act of 1974 (29 U.S.C.*  
 13          *1321(b)) is amended—*

14               (1) *in paragraph (12), by striking “or” at the*  
 15               *end;*

16               (2) *in paragraph (13), by striking “plan.” and*  
 17               *inserting “plan; or”; and*

18               (3) *by adding at the end the following:*

19               “(14) *established and maintained for its employ-*  
 20               *ees by an Indian tribal government (as defined in sec-*  
 21               *tion 7701(a)(40) of the Internal Revenue Code of*  
 22               *1986), a subdivision of an Indian tribal government*  
 23               *(determined in accordance with section 7871(d) of*  
 24               *such Code), an agency or instrumentality of an In-*  
 25               *dian tribal government or subdivision thereof, or an*

1        *entity established under Federal, State, or tribal law*  
 2        *that is wholly owned or controlled by any of the fore-*  
 3        *going.”.*

4    **SEC. 1314. EFFECTIVE DATE.**

5        *The amendments made by this subtitle shall apply to*  
 6        *any year beginning before, on, or after the date of the enact-*  
 7        *ment of this Act.*

8                    ***Subtitle C—Miscellaneous***  
 9                    ***Provisions***

10    **SEC. 1321. TRANSFER OF EXCESS FUNDS FROM BLACK**  
 11                    ***LUNG DISABILITY TRUSTS TO UNITED MINE***  
 12                    ***WORKERS OF AMERICA COMBINED BENEFIT***  
 13                    ***FUND.***

14        *(a) IN GENERAL.—So much of section 501(c)(21)(C)*  
 15        *of the Internal Revenue Code of 1986 (relating to black lung*  
 16        *disability trusts) as precedes the last sentence is amended*  
 17        *to read as follows:*

18                    *“(C) Payments described in subparagraph*  
 19                    *(A)(i)(IV) may be made from such trust during*  
 20                    *a taxable year only to the extent that the aggre-*  
 21                    *gate amount of such payments during such tax-*  
 22                    *able year does not exceed the excess (if any), as*  
 23                    *of the close of the preceding taxable year, of—*

24                    *“(i) the fair market value of the assets*  
 25                    *of the trust, over*

1                   “(ii) 110 percent of the present value  
 2                   of the liability described in subparagraph  
 3                   (A)(i)(I) of such person.”

4           (b) *TRANSFER*.—Section 9705 of such Code (relating  
 5 to transfer) is amended by adding at the end the following  
 6 new subsection:

7           “(c) *TRANSFER FROM BLACK LUNG DISABILITY*  
 8 *TRUSTS*.—

9                   “(1) *IN GENERAL*.—The Secretary shall transfer  
 10 each fiscal year to the Fund from the general fund of  
 11 the Treasury an amount which the Secretary esti-  
 12 mates to be the additional amounts received in the  
 13 Treasury for that fiscal year by reason of the amend-  
 14 ment made by section 1321(a) of the Pension Security  
 15 and Transparency Act of 2005. The Secretary shall  
 16 adjust the amount transferred for any year to the ex-  
 17 tent necessary to correct errors in any estimate for  
 18 any prior year.

19                   “(2) *USE OF FUNDS*.—Any amount transferred  
 20 to the Combined Fund under paragraph (1) shall be  
 21 used to proportionately reduce the unassigned bene-  
 22 ficiary premium under section 9704(a)(3) of each as-  
 23 signed operator for any plan year beginning after De-  
 24 cember 31, 2002.”.

1       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
 2 *section shall apply to taxable years beginning after Decem-*  
 3 *ber 31, 2002.*

4 **SEC. 1322. TREATMENT OF DEATH BENEFITS FROM COR-**  
 5 **PORATE-OWNED LIFE INSURANCE.**

6       (a) *IN GENERAL.*—*Section 101 of the Internal Revenue*  
 7 *Code of 1986 (relating to certain death benefits) is amended*  
 8 *by adding at the end the following new subsection:*

9       “(j) *TREATMENT OF CERTAIN EMPLOYER-OWNED LIFE*  
 10 *INSURANCE CONTRACTS.*—

11               “(1) *GENERAL RULE.*—*In the case of an em-*  
 12 *ployer-owned life insurance contract, the amount ex-*  
 13 *cluded from gross income of an applicable policy-*  
 14 *holder by reason of paragraph (1) of subsection (a)*  
 15 *shall not exceed an amount equal to the sum of the*  
 16 *premiums and other amounts paid by the policy-*  
 17 *holder for the contract.*

18               “(2) *EXCEPTIONS.*—*In the case of an employer-*  
 19 *owned life insurance contract with respect to which*  
 20 *the notice and consent requirements of paragraph (4)*  
 21 *are met, paragraph (1) shall not apply to any of the*  
 22 *following:*

23                       “(A) *EXCEPTIONS BASED ON INSURED’S*  
 24 *STATUS.*—*Any amount received by reason of the*

1           *death of an insured who, with respect to an ap-*  
 2           *plicable policyholder—*

3                   “(i) *was an employee at any time dur-*  
 4                   *ing the 12-month period before the insured’s*  
 5                   *death, or*

6                   “(ii) *is, at the time the contract is*  
 7                   *issued—*

8                           “(I) *a director,*

9                           “(II) *a highly compensated em-*  
 10                           *ployee within the meaning of section*  
 11                           *414(q) (without regard to paragraph*  
 12                           *(1)(B)(ii) thereof), or*

13                           “(III) *a highly compensated indi-*  
 14                           *vidual within the meaning of section*  
 15                           *105(h)(5), except that ‘35 percent’ shall*  
 16                           *be substituted for ‘25 percent’ in sub-*  
 17                           *paragraph (C) thereof.*

18                   “(B) *EXCEPTION FOR AMOUNTS PAID TO IN-*  
 19                   *SURED’S HEIRS.—Any amount received by rea-*  
 20                   *son of the death of an insured to the extent—*

21                           “(i) *the amount is paid to a member*  
 22                           *of the family (within the meaning of section*  
 23                           *267(c)(4)) of the insured, any individual*  
 24                           *who is the designated beneficiary of the in-*  
 25                           *sured under the contract (other than the ap-*



1            *plicable policyholder), a trust established for*  
 2            *the benefit of any such member of the fam-*  
 3            *ily or designated beneficiary, or the estate of*  
 4            *the insured, or*

5            *“(ii) the amount is used to purchase*  
 6            *an equity (or capital or profits) interest in*  
 7            *the applicable policyholder from any person*  
 8            *described in clause (i).*

9            *“(3) EMPLOYER-OWNED LIFE INSURANCE CON-*  
 10          *TRACT.—*

11           *“(A) IN GENERAL.—For purposes of this*  
 12           *subsection, the term ‘employer-owned life insur-*  
 13           *ance contract’ means a life insurance contract*  
 14           *which—*

15           *“(i) is owned by a person engaged in*  
 16           *a trade or business and under which such*  
 17           *person (or a related person described in sub-*  
 18           *paragraph (B)(ii)) is directly or indirectly*  
 19           *a beneficiary under the contract, and*

20           *“(ii) covers the life of an insured who*  
 21           *is an employee with respect to the trade or*  
 22           *business of the applicable policyholder on*  
 23           *the date the contract is issued.*

24           *For purposes of the preceding sentence, if cov-*  
 25           *erage for each insured under a master contract*

1        *is treated as a separate contract for purposes of*  
 2        *sections 817(h), 7702, and 7702A, coverage for*  
 3        *each such insured shall be treated as a separate*  
 4        *contract.*

5                “(B) *APPLICABLE POLICYHOLDER.*—*For*  
 6        *purposes of this subsection—*

7                    “(i) *IN GENERAL.*—*The term ‘applica-*  
 8                    *ble policyholder’ means, with respect to any*  
 9                    *employer-owned life insurance contract, the*  
 10                   *person described in subparagraph (A)(i)*  
 11                   *which owns the contract.*

12                  “(ii) *RELATED PERSONS.*—*The term*  
 13                  *‘applicable policyholder’ includes any per-*  
 14                  *son which—*

15                    “(I) *bears a relationship to the*  
 16                    *person described in clause (i) which is*  
 17                    *specified in section 267(b) or*  
 18                    *707(b)(1), or*

19                    “(II) *is engaged in trades or busi-*  
 20                    *nesses with such person which are*  
 21                    *under common control (within the*  
 22                    *meaning of subsection (a) or (b) of sec-*  
 23                    *tion 52).*

24                  “(4) *NOTICE AND CONSENT REQUIREMENTS.*—

25        *The notice and consent requirements of this para-*

1       graph are met if, before the issuance of the contract,  
2       the employee—

3               “(A) is notified in writing that the applica-  
4               ble policyholder intends to insure the employee’s  
5               life and the maximum face amount for which the  
6               employee could be insured at the time the con-  
7               tract was issued,

8               “(B) provides written consent to being in-  
9               sured under the contract and that such coverage  
10              may continue after the insured terminates em-  
11              ployment, and

12              “(C) is informed in writing that an appli-  
13              cable policyholder will be a beneficiary of any  
14              proceeds payable upon the death of the employee.

15              “(5) *DEFINITIONS.*—For purposes of this  
16              subsection—

17                      “(A) *EMPLOYEE.*—The term ‘employee’ in-  
18                      cludes an officer, director, and highly com-  
19                      pensated employee (within the meaning of sec-  
20                      tion 414(q)).

21                      “(B) *INSURED.*—The term ‘insured’ means,  
22                      with respect to an employer-owned life insurance  
23                      contract, an individual covered by the contract  
24                      who is a United States citizen or resident. In the  
25                      case of a contract covering the joint lives of 2 in-

1           

dividuals, references to an insured include both

  
 2           

of the individuals.”.

3           (b) *REPORTING REQUIREMENTS.*—Subpart A of part  
 4 *III* of subchapter A of chapter 61 of the Internal Revenue  
 5 Code of 1986 (relating to information concerning persons  
 6 subject to special provisions) is amended by inserting after  
 7 section 6039H the following new section:

8           **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**  
 9                               **EMPLOYER-OWNED LIFE INSURANCE CON-**  
 10                              **TRACTS.**

11           “(a) *IN GENERAL.*—Every applicable policyholder  
 12 owning 1 or more employer-owned life insurance contracts  
 13 issued after the date of the enactment of this section shall  
 14 file a return (at such time and in such manner as the Sec-  
 15 retary shall by regulations prescribe) showing for each year  
 16 such contracts are owned—

17                   “(1) the number of employees of the applicable  
 18                   policyholder at the end of the year,

19                   “(2) the number of such employees insured under  
 20                   such contracts at the end of the year,

21                   “(3) the total amount of insurance in force at the  
 22                   end of the year under such contracts,

23                   “(4) the name, address, and taxpayer identifica-  
 24                   tion number of the applicable policyholder and the

1       *type of business in which the policyholder is engaged,*  
 2       *and*

3               “(5) *that the applicable policyholder has a valid*  
 4       *consent for each insured employee (or, if all such con-*  
 5       *sents are not obtained, the number of insured employ-*  
 6       *ees for whom such consent was not obtained).*

7       “(b) *RECORDKEEPING REQUIREMENT.—Each applica-*  
 8       *ble policyholder owning 1 or more employer-owned life in-*  
 9       *surance contracts during any year shall keep such records*  
 10       *as may be necessary for purposes of determining whether*  
 11       *the requirements of this section and section 101(j) are met.*

12       “(c) *DEFINITIONS.—Any term used in this section*  
 13       *which is used in section 101(j) shall have the same meaning*  
 14       *given such term by section 101(j).”.*

15       (c) *CONFORMING AMENDMENTS.—*

16               (1) *Paragraph (1) of section 101(a) of the Inter-*  
 17       *nal Revenue Code of 1986 is amended by striking*  
 18       *“and subsection (f)” and inserting “subsection (f),*  
 19       *and subsection (j)”.*

20               (2) *The table of sections for subpart A of part III*  
 21       *of subchapter A of chapter 61 of such Code is amend-*  
 22       *ed by inserting after the item relating to section*  
 23       *6039H the following new item:*

      “Sec. 6039I. *Returns and records with respect to employer-owned life insurance contracts.”.*

1       (d) *EFFECTIVE DATE.*—The amendments made by this  
 2 section shall apply to life insurance contracts issued after  
 3 the date of the enactment of this Act, except for a contract  
 4 issued after such date pursuant to an exchange described  
 5 in section 1035 of the Internal Revenue Code of 1986 for  
 6 a contract issued on or prior to that date. For purposes  
 7 of the preceding sentence, any material increase in the  
 8 death benefit or other material change shall cause the con-  
 9 tract to be treated as a new contract except that, in the  
 10 case of a master contract (within the meaning of section  
 11 264(f)(4)(E) of such Code), the addition of covered lives  
 12 shall be treated as a new contract only with respect to such  
 13 additional covered lives.

14       ***Subtitle D—Other Related Pension***  
 15                               ***Provisions***

16       ***PART I—HEALTH AND MEDICAL BENEFITS***

17       ***SEC. 1331. USE OF EXCESS PENSION ASSETS FOR FUTURE***  
 18                               ***RETIREE HEALTH BENEFITS.***

19       (a) *IN GENERAL.*—Section 420 of the Internal Revenue  
 20 Code of 1986 (relating to transfers of excess pension assets  
 21 to retiree health accounts), as amended by this Act, is  
 22 amended by adding at the end the following new subsection:

23       “(f) *QUALIFIED TRANSFER TO COVER FUTURE RE-*  
 24 *TIREE HEALTH COSTS.*—

1           “(1) *IN GENERAL*.—An employer maintaining a  
 2       defined benefit plan (other than a multiemployer  
 3       plan) may elect for any taxable year to have the plan  
 4       make a qualified future transfer rather than a quali-  
 5       fied transfer for the taxable year. Except as provided  
 6       in this subsection, a qualified future transfer shall be  
 7       treated for purposes of this title and the Employee  
 8       Retirement Income Security Act of 1974 as if it were  
 9       a qualified transfer.

10           “(2) *QUALIFIED FUTURE TRANSFER*.—For pur-  
 11       poses of this subsection—

12           “(A) *IN GENERAL*.—The term ‘qualified fu-  
 13       ture transfer’ means a transfer which meets all  
 14       of the requirements for a qualified transfer, ex-  
 15       cept that—

16           “(i) the determination of excess pen-  
 17       sion assets shall be made under subpara-  
 18       graph (B),

19           “(ii) the limitation on the amount  
 20       transferred shall be made under subpara-  
 21       graph (C), and

22           “(iii) the minimum cost requirements  
 23       of subsection (c)(3) shall be modified as pro-  
 24       vided under subparagraph (D).

25           “(B) *EXCESS PENSION ASSETS*.—

1           “(i) *IN GENERAL.*—*In determining ex-*  
 2           *cess pension assets for purposes of this sub-*  
 3           *section, subsection (e)(2) shall be applied by*  
 4           *substituting ‘115 percent’ for ‘125 percent’.*

5           “(ii) *REQUIREMENT TO MAINTAIN*  
 6           *FUNDED STATUS.*—*If, as of any valuation*  
 7           *date of any plan year in the transfer pe-*  
 8           *riod, the amount determined under sub-*  
 9           *section (e)(2)(B) (after application of clause*  
 10           *(i)) exceeds the amount determined under*  
 11           *subsection (e)(2)(A), either—*

12                   “(I) *the employer maintaining the*  
 13                   *plan shall make contributions to the*  
 14                   *plan in an amount not less than the*  
 15                   *amount required to reduce such excess*  
 16                   *to zero as of such date, or*

17                   “(II) *there is transferred from the*  
 18                   *health benefits account to the plan an*  
 19                   *amount not less than the amount re-*  
 20                   *quired to reduce such excess to zero as*  
 21                   *of such date.*

22           “(C) *LIMITATION ON AMOUNT TRANS-*  
 23           *FERRED.*—*Notwithstanding subsection (b)(3), the*  
 24           *amount of the excess pension assets which may*



1        *be transferred in a qualified future transfer shall*  
 2        *be equal to the sum of—*

3                *“(i) if the transfer period includes the*  
 4                *taxable year of the transfer, the amount de-*  
 5                *termined under subsection (b)(3) for such*  
 6                *taxable year, plus*

7                *“(ii) in the case of all other taxable*  
 8                *years in the transfer period, the sum of the*  
 9                *qualified current retiree health liabilities*  
 10                *which the plan reasonably estimates, in ac-*  
 11                *cordance with guidance issued by the Sec-*  
 12                *retary, will be incurred for each of such*  
 13                *years.*

14                *“(D) MINIMUM COST REQUIREMENTS.—*

15                *“(i) IN GENERAL.—The requirements*  
 16                *of subsection (c)(3) shall be treated as met*  
 17                *if each group health plan or arrangement*  
 18                *under which applicable health benefits are*  
 19                *provided provides applicable health benefits*  
 20                *during the period beginning with the first*  
 21                *year of the transfer period and ending with*  
 22                *the last day of the 4th year following the*  
 23                *transfer period such that the annual aver-*  
 24                *age amount of such benefits provided during*  
 25                *such period is not less than the applicable*

1            *employer cost determined under subsection*  
 2            *(c)(3)(A) with respect to the transfer.*

3            “(ii) *ELECTION TO MAINTAIN BENE-*  
 4            *FITS.—An employer may elect, in lieu of*  
 5            *the requirements of clause (i), to meet the*  
 6            *requirements of subsection (c)(3) by meeting*  
 7            *the requirements of such subsection (as in*  
 8            *effect before the amendments made by sec-*  
 9            *tion 535 of the Tax Relief Extension Act of*  
 10           *1999) for each of the years described in the*  
 11           *period under clause (i).*

12           “(3) *COORDINATION WITH OTHER TRANSFERS.—*  
 13           *In applying subsection (b)(3) to any subsequent*  
 14           *transfer during a taxable year in a transfer period,*  
 15           *qualified current retiree health liabilities shall be re-*  
 16           *duced by any such liabilities taken into account with*  
 17           *respect to the qualified future transfer to which such*  
 18           *period relates.*

19           “(4) *TRANSFER PERIOD.—For purposes of this*  
 20           *subsection, the term ‘transfer period’ means, with re-*  
 21           *spect to any transfer, a period of consecutive taxable*  
 22           *years specified in the election under paragraph (1)*  
 23           *which begins and ends during the 10-taxable-year pe-*  
 24           *riod beginning with the taxable year of the transfer.”.*

1       (b) *EFFECTIVE DATE.*—*The amendments made by this*  
 2 *section shall apply to transfers after the date of the enact-*  
 3 *ment of this Act.*

4 **SEC. 1332. SPECIAL RULES FOR FUNDING OF COLLEC-**  
 5 **TIVELY BARGAINED RETIREE HEALTH BENE-**  
 6 **FITS.**

7       (a) *COLLECTIVELY BARGAINED TRANSFER TREATED*  
 8 *AS A QUALIFIED TRANSFER.*—

9               (1) *IN GENERAL.*—*Section 420(b) of the Internal*  
 10 *Revenue Code of 1986 (defining qualified transfer) is*  
 11 *amended by redesignating paragraph (5) as para-*  
 12 *graph (6) and by inserting after paragraph (4) the*  
 13 *following new paragraph:*

14               “(5) A collectively bargained transfer (as defined  
 15 in subsection (e)(5)) shall be treated as a qualified  
 16 transfer.”.

17               (2) *CONFORMING AMENDMENTS.*—

18               (A) *Subparagraph (B) of section 420(b)(2)*  
 19 *of such Code is amended by inserting “or a col-*  
 20 *lectively bargained transfer” after “paragraph*  
 21 *(4)”.*

22               (B) *Paragraph (3) of section 420(b) of such*  
 23 *Code is amended to read as follows:*

24               “(3) *LIMITATION ON AMOUNT TRANSFERRED.*—

1           “(A) *IN GENERAL.*—The amount of excess  
2           pension assets which may be transferred in a  
3           qualified transfer (other than a collectively bar-  
4           gained transfer) shall not exceed the amount  
5           which is reasonably estimated to be the amount  
6           the employer maintaining the plan will pay  
7           (whether directly or through reimbursement) out  
8           of such account during the taxable year of the  
9           transfer for qualified current retiree health li-  
10          abilities.

11          “(B) *EXCEPTION FOR COLLECTIVELY BAR-*  
12          *GAINED TRANSFERS.*—The amount of excess pen-  
13          sion assets which may be transferred in a collec-  
14          tively bargained transfer shall not exceed the  
15          amount which is reasonably estimated, in ac-  
16          cordance with the provisions of the collective bar-  
17          gaining agreement and generally accepted ac-  
18          counting principles, to be the amount the em-  
19          ployer maintaining the plan will pay (whether  
20          directly or through reimbursement) out of such  
21          account during the collectively bargained cost  
22          maintenance period for collectively bargained re-  
23          tiree health liabilities.”.

24          (b) *REQUIREMENTS OF PLANS MAKING COLLECTIVELY*  
25          *BARGAINED TRANSFERS.*—

1           (1) *IN GENERAL.*—Paragraph (1) of section  
 2           420(c) of the Internal Revenue Code of 1986 (relating  
 3           to requirements of plan transferring assets) is amend-  
 4           ed to read as follows:

5           “(1) *USE OF TRANSFERRED ASSETS.*—

6           “(A) *IN GENERAL.*—Except in the case of a  
 7           collectively bargained transfer, any assets trans-  
 8           ferred to a health benefits account in a qualified  
 9           transfer (and any income allocable thereto) shall  
 10          be used only to pay qualified current retiree  
 11          health liabilities (other than liabilities of key em-  
 12          ployees not taken into account under subsection  
 13          (e)(1)(D)) for the taxable year of the transfer  
 14          (whether directly or through reimbursement).

15          “(B) *COLLECTIVELY BARGAINED TRANS-*  
 16          *FER.*—Any assets transferred to a health benefits  
 17          account in a collectively bargained transfer (and  
 18          any income allocable thereto) shall be used only  
 19          to pay collectively bargained retiree health liabil-  
 20          ities (other than liabilities of key employees not  
 21          taken into account under subsection (e)(6)(D))  
 22          for the taxable year of the transfer or for any  
 23          subsequent taxable year during the collectively  
 24          bargained cost maintenance period (whether di-  
 25          rectly or through reimbursement).

1           “(C) AMOUNTS NOT USED TO PAY FOR  
2           HEALTH BENEFITS.—

3           “(i) IN GENERAL.—Any assets trans-  
4           ferred to a health benefits account in a  
5           qualified transfer (and any income allocable  
6           thereto) which are not used as provided in  
7           subparagraph (A) (in the case of a qualified  
8           transfer other than a collectively bargained  
9           transfer) or cannot be used as provided in  
10          subparagraph (B) (in the case of a collec-  
11          tively bargained transfer) shall be trans-  
12          ferred out of the account to the transferor  
13          plan.

14          “(ii) TAX TREATMENT OF AMOUNTS.—  
15          Any amount transferred out of an account  
16          under clause (i)—

17                 “(I) shall not be includible in the  
18                 gross income of the employer, but

19                 “(II) shall be treated as an em-  
20                 ployer reversion for purposes of section  
21                 4980 (without regard to subsection (d)  
22                 thereof).

23          “(D) ORDERING RULE.—For purposes of  
24          this section, any amount paid out of a health  
25          benefits account shall be treated as paid first out

1       *of the assets and income described in subpara-*  
 2       *graph (A) (in the case of a qualified transfer*  
 3       *other than a collectively bargained transfer) or*  
 4       *subparagraph (B) (in the case of a collectively*  
 5       *bargained transfer).”.*

6       (2) *CONFORMING AMENDMENTS.—*

7               *(A) Subparagraph (A) of section 420(c)(3)*  
 8       *of such Code is amended to read as follows:*

9               “(A) *IN GENERAL.—The requirements of*  
 10       *this paragraph are met if—*

11               “(i) *except as provided in clause (ii),*  
 12       *each group health plan or arrangement*  
 13       *under which applicable health benefits are*  
 14       *provided provides that the applicable em-*  
 15       *ployer cost for each taxable year during the*  
 16       *cost maintenance period shall not be less*  
 17       *than the higher of the applicable employer*  
 18       *costs for each of the 2 taxable years imme-*  
 19       *diately preceding the taxable year of the*  
 20       *qualified transfer, and*

21               “(ii) *in the case of a collectively bar-*  
 22       *gained transfer, each collectively bargained*  
 23       *group health plan under which collectively*  
 24       *bargained health benefits are provided pro-*  
 25       *vides that the collectively bargained em-*

1            *ployer cost for each taxable year during the*  
 2            *collectively bargained cost maintenance pe-*  
 3            *riod shall not be less than the amount speci-*  
 4            *fied by the collective bargaining agree-*  
 5            *ment.”.*

6            *(B) Section 420(c)(3) of such Code is*  
 7            *amended by redesignating subparagraphs (C),*  
 8            *(D), and (E) as subparagraphs (D), (E), and*  
 9            *(F), respectively, and by inserting after subpara-*  
 10          *graph (B) the following new subparagraph:*

11            *“(C) COLLECTIVELY BARGAINED EMPLOYER*  
 12          *COST.—For purposes of this paragraph, the term*  
 13          *‘collectively bargained employer cost’ means the*  
 14          *average cost per covered individual of providing*  
 15          *collectively bargained retiree health benefits as*  
 16          *determined in accordance with the applicable*  
 17          *collective bargaining agreement. Such agreement*  
 18          *may provide for an appropriate reduction in the*  
 19          *collectively bargained employer cost to take into*  
 20          *account any portion of the collectively bargained*  
 21          *retiree health benefits that is provided or fi-*  
 22          *nanced by a government program or other*  
 23          *source.”.*



1           (C) Subparagraph (E) of section 420(c)(3)  
 2           of such Code (as redesignated by subparagraph  
 3           (B)) is amended to read as follows:

4           “(E) MAINTENANCE PERIOD.—For purposes  
 5           of this paragraph—

6           “(i) COST MAINTENANCE PERIOD.—The  
 7           term ‘cost maintenance period’ means the  
 8           period of 5 taxable years beginning with the  
 9           taxable year in which the qualified transfer  
 10          occurs. If a taxable year is in 2 or more  
 11          overlapping cost maintenance periods, this  
 12          paragraph shall be applied by taking into  
 13          account the highest applicable employer cost  
 14          required to be provided under subparagraph  
 15          (A)(i) for such taxable year.

16          “(ii) COLLECTIVELY BARGAINED COST  
 17          MAINTENANCE PERIOD.—The term ‘collec-  
 18          tively bargained cost maintenance period’  
 19          means, with respect to each covered retiree  
 20          and his covered spouse and dependents, the  
 21          shorter of—

22                 “(I) the remaining lifetime of  
 23                 such covered retiree and his covered  
 24                 spouse and dependents, or

1                   “(II) the period of coverage pro-  
 2                   vided by the collectively bargained  
 3                   health plan (determined as of the date  
 4                   of the collectively bargained transfer)  
 5                   with respect to such covered retiree and  
 6                   his covered spouse and dependents.”.

7           (c) *LIMITATIONS ON EMPLOYER.*—Subsection (d) of  
 8   section 420 of the Internal Revenue Code of 1986 is amend-  
 9   ed to read as follows:

10          “(d) *LIMITATIONS ON EMPLOYER.*—For purposes of  
 11   this title—

12               “(1) *DEDUCTION LIMITATIONS.*—No deduction  
 13   shall be allowed—

14                   “(A) for the transfer of any amount to a  
 15                   health benefits account in a qualified transfer (or  
 16                   any retransfer to the plan under subsection  
 17                   (c)(1)(C)),

18                   “(B) for qualified current retiree health li-  
 19                   abilities or collectively bargained retiree health  
 20                   liabilities paid out of the assets (and income) de-  
 21                   scribed in subsection (c)(1), or

22                   “(C) except in the case of a collectively bar-  
 23                   gained transfer, for any amounts to which sub-  
 24                   paragraph (B) does not apply and which are  
 25                   paid for qualified current retiree health liabil-

ities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

“(i) the amount determined under subparagraph (A) (and income allocable thereto), over

“(ii) the amount determined under subparagraph (B).

“(2) *OTHER LIMITATIONS.*—

“(A) *NO CONTRIBUTIONS ALLOWED.*—Except as provided in subparagraph (B), an employer may not contribute after December 31, 1990, any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree health liabilities for which transferred assets are required to be used under subsection (c)(1)(A).

“(B) *EXCEPTION.*—An employer may contribute an amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to collectively bargained retiree health liabilities for which transferred assets are required to be used under subsection (c)(1)(B), and the deductibility of any such con-

1        *tribution shall be governed by the limits applica-*  
 2        *ble to the deductibility of contributions to a wel-*  
 3        *fare benefit fund under a collective bargaining*  
 4        *agreement (as determined under section*  
 5        *419A(f)(5)(A)) without regard to whether such*  
 6        *contributions are made to a health benefits ac-*  
 7        *count or welfare benefit fund and without regard*  
 8        *to the provisions of section 404 or the other pro-*  
 9        *visions of this section. The Secretary shall pro-*  
 10       *vide rules to ensure that the application of this*  
 11       *section does not result in a deduction being al-*  
 12       *lowed more than once for the same contribution*  
 13       *or for 2 or more contributions or expenditures*  
 14       *relating to the same collectively bargained retiree*  
 15       *health liabilities.”.*

16       *(d) DEFINITIONS.—Section 420(e) of the Internal Rev-*  
 17       *enue Code of 1986 (relating to definition and special rules)*  
 18       *is amended by adding at the end the following new para-*  
 19       *graphs:*

20                *“(5) COLLECTIVELY BARGAINED TRANSFER.—*  
 21        *The term ‘collectively bargained transfer’ means a*  
 22        *transfer—*

23                        *“(A) of excess pension assets to a health*  
 24        *benefits account which is part of such plan in a*

1           *taxable year beginning after December 31, 2005,*  
2           *and*

3           *“(B) which does not contravene any other*  
4           *provision of law,*

5           *“(C) with respect to which are met in con-*  
6           *nection with the plan—*

7           *“(i) the use requirements of subsection*  
8           *(c)(1),*

9           *“(ii) the vesting requirements of sub-*  
10          *section (c)(2), and*

11          *“(iii) the minimum cost requirements*  
12          *of subsection (c)(3),*

13          *“(D) which is made in accordance with a*  
14          *collective bargaining agreement,*

15          *“(E) which, before the transfer, the em-*  
16          *ployer designates, in a written notice delivered to*  
17          *each employee organization that is a party to the*  
18          *collective bargaining agreement, as a collectively*  
19          *bargained transfer in accordance with this sec-*  
20          *tion, and*

21          *“(F) which involves—*

22                *“(i) a plan maintained by an em-*  
23                *ployer which, in its taxable year ending in*  
24                *2005, provided health benefits or coverage to*  
25                *retirees and their spouses and dependents*

under all of the benefit plans maintained by the employer, but only if the aggregate cost (including administrative expenses) of such benefits or coverage which would have been allowable as a deduction to the employer (if such benefits or coverage had been provided directly by the employer and the employer used the cash receipts and disbursements method of accounting) is at least 5 percent of the gross receipts of the employer (determined in accordance with the last sentence of subsection (c)(2)(E)(ii)(II)) for such taxable year,

“(ii) or a plan maintained by a successor to such employer.

Such term shall not include a transfer after December 31, 2013.

“(6) COLLECTIVELY BARGAINED RETIREE HEALTH LIABILITIES.—

“(A) IN GENERAL.—The term ‘collectively bargained retiree health liabilities’ means the present value, as of the beginning of a taxable year and determined in accordance with the applicable collective bargaining agreement, of all collectively bargained health benefits (including

1        *administrative expenses) for such taxable year*  
 2        *and all subsequent taxable years during the col-*  
 3        *lectively bargained cost maintenance period.*

4                “(B) *REDUCTION FOR AMOUNTS PRE-*  
 5        *VIOUSLY SET ASIDE.*—*The amount determined*  
 6        *under subparagraph (A) shall be reduced by the*  
 7        *value (as of the close of the plan year preceding*  
 8        *the year of the collectively bargained transfer) of*  
 9        *the assets in all health benefits accounts or wel-*  
 10        *fare benefit funds (as defined in section*  
 11        *419(e)(1)) set aside to pay for the collectively*  
 12        *bargained retiree health liabilities.*

13                “(C) *KEY EMPLOYEES EXCLUDED.*—*If an*  
 14        *employee is a key employee (within the meaning*  
 15        *of section 416(I)(1)) with respect to any plan*  
 16        *year ending in a taxable year, such employee*  
 17        *shall not be taken into account in computing col-*  
 18        *lectively bargained retiree health liabilities for*  
 19        *such taxable year or in calculating collectively*  
 20        *bargained employer cost under subsection*  
 21        *(c)(3)(C).*

22                “(7) *COLLECTIVELY BARGAINED HEALTH BENE-*  
 23        *FITS.*—*The term ‘collectively bargained health bene-*  
 24        *fits’ means health benefits or coverage which are pro-*  
 25        *vided to—*

1           “(A) retired employees who, immediately be-  
 2           fore the collectively bargained transfer, are enti-  
 3           tled to receive such benefits upon retirement and  
 4           who are entitled to pension benefits under the  
 5           plan, and their spouses and dependents, and

6           “(B) if specified by the provisions of the col-  
 7           lective bargaining agreement governing the col-  
 8           lectively bargained transfer, active employees  
 9           who, following their retirement, are entitled to  
 10          receive such benefits and who are entitled to pen-  
 11          sion benefits under the plan, and their spouses  
 12          and dependents.

13          “(8) COLLECTIVELY BARGAINED HEALTH  
 14          PLAN.—The term ‘collectively bargained health plan’  
 15          means a group health plan or arrangement for retired  
 16          employees and their spouses and dependents that is  
 17          maintained pursuant to 1 or more collective bar-  
 18          gaining agreements.”.

19          (e) CONFORMING AMENDMENT.—The last sentence of  
 20          section 401(h) of the Internal Revenue Code of 1986 is  
 21          amended by inserting “(other than contributions with re-  
 22          spect to collectively bargained retiree health liabilities with-  
 23          in the meaning of section 420(e)(6))” after “medical bene-  
 24          fits”.



1       (f) *EFFECTIVE DATE.*—*The amendments made by this*  
 2 *section shall apply to years beginning after December 31,*  
 3 *2004.*

4 **SEC. 1333. ALLOWANCE OF RESERVE FOR MEDICAL BENE-**  
 5 **FITS OF PLANS SPONSORED BY BONA FIDE**  
 6 **ASSOCIATIONS.**

7       (a) *IN GENERAL.*—*Section 419A(c) of the Internal*  
 8 *Revenue Code of 1986 (relating to account limit) is amend-*  
 9 *ed by adding at the end the following new paragraph:*

10               “(6) *ADDITIONAL RESERVE FOR MEDICAL BENE-*  
 11 *FITS OF BONA FIDE ASSOCIATION PLANS.*—

12               “(A) *IN GENERAL.*—*An applicable account*  
 13 *limit for any taxable year may include a reserve*  
 14 *in an amount not to exceed 35 percent of the*  
 15 *sum of—*

16                       “(i) *the qualified direct costs, and*

17                       “(ii) *the change in claims incurred but*  
 18 *unpaid,*

19 *for such taxable year with respect to medical*  
 20 *benefits (other than post-retirement medical ben-*  
 21 *efits).*

22               “(B) *APPLICABLE ACCOUNT LIMIT.*—*For*  
 23 *purposes of this subsection, the term ‘applicable*  
 24 *account limit’ means an account limit for a*  
 25 *qualified asset account with respect to medical*

1           *benefits provided through a plan maintained by*  
 2           *a bona fide association (as defined in section*  
 3           *2791(d)(3) of the Public Health Service Act (42*  
 4           *U.S.C. 300gg–91(d)(3))”.*

5           **(b) EFFECTIVE DATE.**—*The amendment made by this*  
 6           *section shall apply to taxable years ending after December*  
 7           *31, 2005.*

8           **PART II—CASH OR DEFERRED ARRANGEMENTS**

9           **SEC. 1336. TREATMENT OF ELIGIBLE COMBINED DEFINED**  
 10           **BENEFIT PLANS AND QUALIFIED CASH OR DE-**  
 11           **FERRED ARRANGEMENTS.**

12           **(a) AMENDMENTS OF INTERNAL REVENUE CODE.**—  
 13           *Section 414 of the Internal Revenue Code of 1986, as*  
 14           *amended by this Act, is amended by adding at the end the*  
 15           *following new subsection:*

16           **“(x) SPECIAL RULES FOR ELIGIBLE COMBINED DE-**  
 17           **FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-**  
 18           **FERRED ARRANGEMENTS.**—

19           **“(1) GENERAL RULE.**—*Except as provided in*  
 20           *this subsection, the requirements of this title shall be*  
 21           *applied to any defined benefit plan or applicable de-*  
 22           *finer contribution plan which are part of an eligible*  
 23           *combined plan in the same manner as if each such*  
 24           *plan were not a part of the eligible combined plan.*

1           “(2) *ELIGIBLE COMBINED PLAN*.—For purposes  
2           of this subsection—

3                   “(A) *IN GENERAL*.—The term ‘eligible com-  
4           bined plan’ means a plan—

5                           “(i) which is maintained by an em-  
6                           ployer which, at the time the plan is estab-  
7                           lished, is a small employer,

8                           “(ii) which consists of a defined benefit  
9                           plan and an applicable defined contribution  
10                          plan,

11                          “(iii) the assets of which are held in a  
12                          single trust forming part of the plan and  
13                          are clearly identified and allocated to the  
14                          defined benefit plan and the applicable de-  
15                          fined contribution plan to the extent nec-  
16                          essary for the separate application of this  
17                          title under paragraph (1), and

18                          “(iv) with respect to which the benefit,  
19                          contribution, vesting, and nondiscrimina-  
20                          tion requirements of subparagraphs (B),  
21                          (C), (D), (E), and (F) are met.

22           For purposes of this subparagraph, the term  
23           ‘small employer’ has the meaning given such  
24           term by section 4980D(d)(2), except that such

1           *section shall be applied by substituting ‘500’ for*  
 2           *‘50’ each place it appears.*

3           “(B) *BENEFIT REQUIREMENTS.*—

4                   “(i) *IN GENERAL.*—*The benefit require-*  
 5                   *ments of this subparagraph are met with re-*  
 6                   *spect to the defined benefit plan forming*  
 7                   *part of the eligible combined plan if the ac-*  
 8                   *crued benefit of each participant derived*  
 9                   *from employer contributions, when ex-*  
 10                   *pressed as an annual retirement benefit, is*  
 11                   *not less than the applicable percentage of*  
 12                   *the participant’s final average pay. For*  
 13                   *purposes of this clause, final average pay*  
 14                   *shall be determined using the period of con-*  
 15                   *secutive years (not exceeding 5) during*  
 16                   *which the participant had the greatest ag-*  
 17                   *gregate compensation from the employer.*

18                   “(ii) *APPLICABLE PERCENTAGE.*—*For*  
 19                   *purposes of clause (i), the applicable per-*  
 20                   *centage is the lesser of—*

21                           “(I) *1 percent multiplied by the*  
 22                           *number of years of service with the em-*  
 23                           *ployer, or*

24                           “(II) *20 percent.*

1                   “(iii) *SPECIAL RULE FOR CASH BAL-*  
 2                   *ANCE PLANS.—If the defined benefit plan*  
 3                   *under clause (i) is a qualified cash balance*  
 4                   *plan (within the meaning of section*  
 5                   *411(b)(5)), the plan shall be treated as*  
 6                   *meeting the requirements of clause (i) with*  
 7                   *respect to any plan year if each participant*  
 8                   *receives pay credit for the year which is not*  
 9                   *less than the percentage of compensation de-*  
 10                   *termined in accordance with the following*  
 11                   *table:*

<b><i>“If the participant’s age as of the beginning of the year is—</i></b>	<b><i>The percentage is—</i></b>
<i>30 or less .....</i>	<i>2</i>
<i>Over 30 but less than 40 .....</i>	<i>4</i>
<i>40 or over but less than 50 .....</i>	<i>6</i>
<i>50 or over .....</i>	<i>8.</i>

12                   “(iv) *YEARS OF SERVICE.—For pur-*  
 13                   *poses of this subparagraph, years of service*  
 14                   *shall be determined under the rules of para-*  
 15                   *graphs (4), (5), and (6) of section 411(a),*  
 16                   *except that the plan may not disregard any*  
 17                   *year of service because of a participant*  
 18                   *making, or failing to make, any elective de-*  
 19                   *ferral with respect to the qualified cash or*  
 20                   *deferred arrangement to which subpara-*  
 21                   *graph (C) applies.*

22                   “(C) *CONTRIBUTION REQUIREMENTS.—*

1           “(i) *IN GENERAL.*—*The contribution*  
 2           *requirements of this subparagraph with re-*  
 3           *spect to any applicable defined contribution*  
 4           *plan forming part of eligible combined plan*  
 5           *are met if—*

6                     “(I) *the qualified cash or deferred*  
 7                     *arrangement included in such plan*  
 8                     *constitutes an automatic contribution*  
 9                     *arrangement, and*

10                    “(II) *the employer is required to*  
 11                    *make matching contributions on behalf*  
 12                    *of each employee eligible to participate*  
 13                    *in the arrangement in an amount*  
 14                    *equal to 50 percent of the elective con-*  
 15                    *tributions of the employee to the extent*  
 16                    *such elective contributions do not ex-*  
 17                    *ceed 4 percent of compensation.*

18           *Rules similar to the rules of clauses (ii) and*  
 19           *(iii) of section 401(k)(12)(B) shall apply for*  
 20           *purposes of this clause.*

21                    “(ii) *NONELECTIVE CONTRIBUTIONS.*—  
 22                    *An applicable defined contribution plan*  
 23                    *shall not be treated as failing to meet the*  
 24                    *requirements of clause (i) because the em-*  
 25                    *ployer makes nonelective contributions*

1           *under the plan but such contributions shall*  
2           *not be taken into account in determining*  
3           *whether the requirements of clause (i)(II)*  
4           *are met.*

5           “(D) VESTING REQUIREMENTS.—*The vest-*  
6           *ing requirements of this subparagraph are met*  
7           *if—*

8                   “(i) *in the case of a defined benefit*  
9                   *plan forming part of an eligible combined*  
10                  *plan an employee who has completed at*  
11                  *least 3 years of service has a nonforfeitable*  
12                  *right to 100 percent of the employee’s ac-*  
13                  *crued benefit under the plan derived from*  
14                  *employer contributions, and*

15                  “(ii) *in the case of an applicable de-*  
16                  *finied contribution plan forming part of eli-*  
17                  *gible combined plan—*

18                   “(I) *an employee has a nonforfeit-*  
19                   *able right to any matching contribu-*  
20                   *tion made under the qualified cash or*  
21                   *deferred arrangement included in such*  
22                   *plan by an employer with respect to*  
23                   *any elective contribution, including*  
24                   *matching contributions in excess of the*

1                   *contributions required under subpara-*  
2                   *graph (C)(i)(II), and*

3                   “(II) *an employee who has com-*  
4                   *pleted at least 3 years of service has a*  
5                   *nonforfeitable right to 100 percent of*  
6                   *the employee’s accrued benefit derived*  
7                   *under the arrangement from nonelec-*  
8                   *tive contributions of the employer.*

9                   *For purposes of this subparagraph, the rules*  
10                  *of section 411 shall apply to the extent not*  
11                  *inconsistent with this subparagraph.*

12                  “(E) *UNIFORM PROVISION OF BENEFITS.—*  
13                  *In the case of a defined benefit plan or applica-*  
14                  *ble defined contribution plan forming part of an*  
15                  *eligible combined plan, the requirements of this*  
16                  *subparagraph are met if all benefits under each*  
17                  *such plan, and all rights and features under each*  
18                  *such plan, must be provided uniformly to all*  
19                  *participants.*

20                  “(F) *REQUIREMENTS MUST BE MET WITH-*  
21                  *OUT TAKING INTO ACCOUNT SOCIAL SECURITY*  
22                  *AND SIMILAR CONTRIBUTIONS AND BENEFITS OR*  
23                  *OTHER PLANS.—*



1           “(i) *IN GENERAL.*—*The requirements*  
 2           *of this subparagraph are met if the require-*  
 3           *ments of clauses (ii) and (iii) are met.*

4           “(ii) *SOCIAL SECURITY AND SIMILAR*  
 5           *CONTRIBUTIONS.*—*The requirements of this*  
 6           *clause are met if—*

7                     “(I) *the requirements of subpara-*  
 8                     *graphs (B) and (C) are met without*  
 9                     *regard to section 401(l), and*

10                    “(II) *the requirements of sections*  
 11                    *401(a)(4) and 410(b) are met with re-*  
 12                    *spect to both the applicable defined*  
 13                    *contribution plan and defined benefit*  
 14                    *plan forming part of an eligible com-*  
 15                    *bined plan without regard to section*  
 16                    *401(l).*

17           “(iii) *OTHER PLANS AND ARRANGE-*  
 18           *MENTS.*—*The requirements of this clause*  
 19           *are met if the applicable defined contribu-*  
 20           *tion plan and defined benefit plan forming*  
 21           *part of an eligible combined plan meet the*  
 22           *requirements of sections 401(a)(4) and*  
 23           *410(b) without being combined with any*  
 24           *other plan.*

1           “(3) *NONDISCRIMINATION REQUIREMENTS FOR*  
2           *QUALIFIED CASH OR DEFERRED ARRANGEMENT.*—

3                   “(A) *IN GENERAL.*—*A qualified cash or de-*  
4                   *ferred arrangement which is included in an ap-*  
5                   *plicable defined contribution plan forming part*  
6                   *of an eligible combined plan shall be treated as*  
7                   *meeting the requirements of section*  
8                   *401(k)(3)(A)(ii) if the requirements of paragraph*  
9                   *(2)(C) are met with respect to such arrangement.*

10                  “(B) *MATCHING CONTRIBUTIONS.*—*In ap-*  
11                  *plying section 401(m)(11) to any matching con-*  
12                  *tribution with respect to a contribution to which*  
13                  *paragraph (2)(C) applies, the contribution re-*  
14                  *quirement of paragraph (2)(C) and the notice re-*  
15                  *quirements of paragraph (5)(B) shall be sub-*  
16                  *stituted for the requirements otherwise applicable*  
17                  *under clauses (i) and (ii) of section*  
18                  *401(m)(11)(A).*

19                  “(4) *SATISFACTION OF TOP-HEAVY RULES.*—*A*  
20                  *defined benefit plan and applicable defined contribu-*  
21                  *tion plan forming part of an eligible combined plan*  
22                  *for any plan year shall be treated as meeting the re-*  
23                  *quirements of section 416 for the plan year.*

24                  “(5) *AUTOMATIC CONTRIBUTION ARRANGE-*  
25                  *MENT.*—*For purposes of this subsection—*

1           “(A) *IN GENERAL.*—A qualified cash or de-  
 2           ferred arrangement shall be treated as an auto-  
 3           matic contribution arrangement if the  
 4           arrangement—

5                   “(i) provides that each employee eligi-  
 6           ble to participate in the arrangement is  
 7           treated as having elected to have the em-  
 8           ployer make elective contributions in an  
 9           amount equal to 4 percent of the employee’s  
 10          compensation unless the employee specifi-  
 11          cally elects not to have such contributions  
 12          made or to have such contributions made at  
 13          a different rate, and

14                   “(ii) meets the notice requirements  
 15          under subparagraph (B).

16          “(B) *NOTICE REQUIREMENTS.*—

17                   “(i) *IN GENERAL.*—The requirements  
 18          of this subparagraph are met if the require-  
 19          ments of clauses (ii) and (iii) are met.

20                   “(ii) *REASONABLE PERIOD TO MAKE*  
 21          *ELECTION.*—The requirements of this clause  
 22          are met if each employee to whom subpara-  
 23          graph (A)(i) applies—

24                           “(I) receives a notice explaining  
 25                           the employee’s right under the arrange-

ment to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

“(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

“(iii) *ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.*—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

“(6) *COORDINATION WITH OTHER REQUIREMENTS.*—

“(A) *TREATMENT OF SEPARATE PLANS.*—Section 414(k) shall not apply to an eligible combined plan.

1           “(B) *REPORTING.*—*An eligible combined*  
 2           *plan shall be treated as a single plan for pur-*  
 3           *poses of sections 6058 and 6059.*

4           “(7) *APPLICABLE DEFINED CONTRIBUTION*  
 5           *PLAN.*—*For purposes of this subsection—*

6           “(A) *IN GENERAL.*—*The term ‘applicable*  
 7           *defined contribution plan’ means a defined con-*  
 8           *tribution plan which includes a qualified cash or*  
 9           *deferred arrangement.*

10           “(B) *QUALIFIED CASH OR DEFERRED AR-*  
 11           *RANGEMENT.*—*The term ‘qualified cash or de-*  
 12           *ferred arrangement’ has the meaning given such*  
 13           *term by section 401(k)(2).’.*

14           (b) *AMENDMENTS OF ERISA.*—

15           (1) *IN GENERAL.*—*Section 210 of the Employee*  
 16           *Retirement Income Security Act of 1974 is amended*  
 17           *by adding at the end the following new subsection:*

18           “(e) *SPECIAL RULES FOR ELIGIBLE COMBINED DE-*  
 19           *FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-*  
 20           *FERRED ARRANGEMENTS.*—

21           “(1) *GENERAL RULE.*—*Except as provided in*  
 22           *this subsection, this Act shall be applied to any de-*  
 23           *finied benefit plan or applicable individual account*  
 24           *plan which are part of an eligible combined plan in*

1        *the same manner as if each such plan were not a part*  
 2        *of the eligible combined plan.*

3                “(2) *ELIGIBLE COMBINED PLAN.*—*For purposes*  
 4        *of this subsection—*

5                        “(A) *IN GENERAL.*—*The term ‘eligible com-*  
 6        *bined plan’ means a plan—*

7                                “(i) *which, at the time the plan is es-*  
 8        *tablished, is maintained by a small em-*  
 9        *ployer,*

10                              “(ii) *which consists of a defined benefit*  
 11        *plan and an applicable individual account*  
 12        *plan each of which qualifies under section*  
 13        *401(a) of the Internal Revenue Code of*  
 14        *1986,*

15                              “(iii) *the assets of which are held in a*  
 16        *single trust forming part of the plan and*  
 17        *are clearly identified and allocated to the*  
 18        *defined benefit plan and the applicable in-*  
 19        *dividual account plan to the extent nec-*  
 20        *essary for the separate application of this*  
 21        *Act under paragraph (1), and*

22                              “(iv) *with respect to which the benefit,*  
 23        *contribution, vesting, and nondiscrimina-*  
 24        *tion requirements of subparagraphs (B),*  
 25        *(C), (D), (E), and (F) are met.*

1        *For purposes of this subparagraph, the term*  
 2        *‘small employer’ has the meaning given such*  
 3        *term by section 4980D(d)(2), except that such*  
 4        *section shall be applied by substituting ‘500’ for*  
 5        *‘50’ each place it appears.*

6                *“(B) BENEFIT REQUIREMENTS.—*

7                *“(i) IN GENERAL.—The benefit require-*  
 8                *ments of this subparagraph are met with re-*  
 9                *spect to the defined benefit plan forming*  
 10                *part of the eligible combined plan if the ac-*  
 11                *crued benefit of each participant derived*  
 12                *from employer contributions, when ex-*  
 13                *pressed as an annual retirement benefit, is*  
 14                *not less than the applicable percentage of*  
 15                *the participant’s final average pay. For*  
 16                *purposes of this clause, final average pay*  
 17                *shall be determined using the period of con-*  
 18                *secutive years (not exceeding 5) during*  
 19                *which the participant had the greatest ag-*  
 20                *gregate compensation from the employer.*

21                *“(ii) APPLICABLE PERCENTAGE.—For*  
 22                *purposes of clause (i), the applicable per-*  
 23                *centage is the lesser of—*

1                   “(I) 1 percent multiplied by the  
2                   number of years of service with the em-  
3                   ployer, or

4                   “(II) 20 percent.

5                   “(iii) *SPECIAL RULE FOR CASH BAL-*  
6                   *ANCE PLANS.*—If the defined benefit plan  
7                   under clause (i) is a qualified cash balance  
8                   plan (within the meaning of section  
9                   204(b)(5)), the plan shall be treated as  
10                  meeting the requirements of clause (i) with  
11                  respect to any plan year if each participant  
12                  receives pay credit for the year which is not  
13                  less than the percentage of compensation de-  
14                  termined in accordance with the following  
15                  table:

<b><i>“If the participant’s age as of the beginning of the year is—</i></b>	<b><i>The percentage is—</i></b>
<i>30 or less .....</i>	<i>2</i>
<i>Over 30 but less than 40 .....</i>	<i>4</i>
<i>40 or over but less than 50 .....</i>	<i>6</i>
<i>50 or over .....</i>	<i>8.</i>

16                  “(iv) *YEARS OF SERVICE.*—For pur-  
17                  poses of this subparagraph, years of service  
18                  shall be determined under the rules of para-  
19                  graphs (1), (2), and (3) of section 203(b),  
20                  except that the plan may not disregard any  
21                  year of service because of a participant  
22                  making, or failing to make, any elective de-



1 *ferral with respect to the qualified cash or*  
 2 *deferred arrangement to which subpara-*  
 3 *graph (C) applies.*

4 *“(C) CONTRIBUTION REQUIREMENTS.—*

5 *“(i) IN GENERAL.—The contribution*  
 6 *requirements of this subparagraph with re-*  
 7 *spect to any applicable individual account*  
 8 *plan forming part of eligible combined plan*  
 9 *are met if—*

10 *“(I) the qualified cash or deferred*  
 11 *arrangement included in such plan*  
 12 *constitutes an automatic contribution*  
 13 *arrangement, and*

14 *“(II) the employer is required to*  
 15 *make matching contributions on behalf*  
 16 *of each employee eligible to participate*  
 17 *in the arrangement in an amount*  
 18 *equal to 50 percent of the elective con-*  
 19 *tributions of the employee to the extent*  
 20 *such elective contributions do not ex-*  
 21 *ceed 4 percent of compensation.*

22 *Rules similar to the rules of clauses (ii) and*  
 23 *(iii) of section 401(k)(12)(B) of the Internal*  
 24 *Revenue Code of 1986 shall apply for pur-*  
 25 *poses of this clause.*

1 “(ii) *NONELECTIVE CONTRIBUTIONS.*—

2 *An applicable individual account plan shall*  
 3 *not be treated as failing to meet the require-*  
 4 *ments of clause (i) because the employer*  
 5 *makes nonelective contributions under the*  
 6 *plan but such contributions shall not be*  
 7 *taken into account in determining whether*  
 8 *the requirements of clause (i)(II) are met.*

9 “(D) *VESTING REQUIREMENTS.*—*The vest-*  
 10 *ing requirements of this subparagraph are met*  
 11 *if—*

12 “(i) *in the case of a defined benefit*  
 13 *plan forming part of an eligible combined*  
 14 *plan an employee who has completed at*  
 15 *least 3 years of service has a nonforfeitable*  
 16 *right to 100 percent of the employee’s ac-*  
 17 *crued benefit under the plan derived from*  
 18 *employer contributions, and*

19 “(ii) *in the case of an applicable indi-*  
 20 *vidual account plan forming part of eligible*  
 21 *combined plan—*

22 “(I) *an employee has a nonforfeit-*  
 23 *able right to any matching contribu-*  
 24 *tion made under the qualified cash or*  
 25 *deferred arrangement included in such*

1            *plan by an employer with respect to*  
2            *any elective contribution, including*  
3            *matching contributions in excess of the*  
4            *contributions required under subpara-*  
5            *graph (C)(i)(II), and*

6            *“(II) an employee who has com-*  
7            *pleted at least 3 years of service has a*  
8            *nonforfeitable right to 100 percent of*  
9            *the employee’s accrued benefit derived*  
10           *under the arrangement from nonelec-*  
11           *tive contributions of the employer.*

12           *For purposes of this subparagraph, the rules*  
13           *of section 203 shall apply to the extent not*  
14           *inconsistent with this subparagraph.*

15           *“(E) UNIFORM PROVISION OF BENEFITS.—*

16           *In the case of a defined benefit plan or applica-*  
17           *ble individual account plan forming part of an*  
18           *eligible combined plan, the requirements of this*  
19           *subparagraph are met if all benefits under each*  
20           *such plan, and all rights and features under each*  
21           *such plan, must be provided uniformly to all*  
22           *participants.*

23           *“(F) REQUIREMENTS MUST BE MET WITH-*  
24           *OUT TAKING INTO ACCOUNT SOCIAL SECURITY*

1           AND SIMILAR CONTRIBUTIONS AND BENEFITS OR  
2           OTHER PLANS.—

3                   “(i) *IN GENERAL.*—*The requirements*  
4                   *of this subparagraph are met if the require-*  
5                   *ments of clauses (ii) and (iii) are met.*

6                   “(ii) *SOCIAL SECURITY AND SIMILAR*  
7                   *CONTRIBUTIONS.*—*The requirements of this*  
8                   *clause are met if—*

9                           “(I) *the requirements of subpara-*  
10                           *graphs (B) and (C) are met without*  
11                           *regard to section 401(l) of the Internal*  
12                           *Revenue Code of 1986, and*

13                           “(II) *the requirements of sections*  
14                           *401(a)(4) and 410(b) of the Internal*  
15                           *Revenue Code of 1986 are met with re-*  
16                           *spect to both the applicable defined*  
17                           *contribution plan and defined benefit*  
18                           *plan forming part of an eligible com-*  
19                           *bined plan without regard to section*  
20                           *401(l) of the Internal Revenue Code of*  
21                           *1986.*

22                   “(iii) *OTHER PLANS AND ARRANGE-*  
23                   *MENTS.*—*The requirements of this clause*  
24                   *are met if the applicable defined contribu-*  
25                   *tion plan and defined benefit plan forming*

1           *part of an eligible combined plan meet the*  
 2           *requirements of sections 401(a)(4) and*  
 3           *410(b) of the Internal Revenue Code of 1986*  
 4           *without being combined with any other*  
 5           *plan.*

6           “(3) *NONDISCRIMINATION REQUIREMENTS FOR*  
 7           *QUALIFIED CASH OR DEFERRED ARRANGEMENT.—*

8           “(A) *IN GENERAL.—A qualified cash or de-*  
 9           *ferred arrangement which is included in an ap-*  
 10          *plicable individual account plan forming part of*  
 11          *an eligible combined plan shall be treated as*  
 12          *meeting the requirements of section*  
 13          *401(k)(3)(A)(ii) of the Internal Revenue Code of*  
 14          *1986 if the requirements of subparagraph (C) are*  
 15          *met with respect to such arrangement.*

16          “(B) *MATCHING CONTRIBUTIONS.—In ap-*  
 17          *plying section 401(m)(11) of such Code to any*  
 18          *matching contribution with respect to a con-*  
 19          *tribution to which paragraph (2)(C) applies, the*  
 20          *contribution requirement of paragraph (2)(C)*  
 21          *and the notice requirements of paragraph (5)(B)*  
 22          *shall be substituted for the requirements other-*  
 23          *wise applicable under clauses (i) and (ii) of sec-*  
 24          *tion 401(m)(11)(A) of such Code.*

1           “(4) *AUTOMATIC CONTRIBUTION ARRANGE-*  
 2           *MENT.—For purposes of this subsection—*

3           “(A) *IN GENERAL.—A qualified cash or de-*  
 4           *ferred arrangement shall be treated as an auto-*  
 5           *matic contribution arrangement if the*  
 6           *arrangement—*

7           “(i) *provides that each employee eligi-*  
 8           *ble to participate in the arrangement is*  
 9           *treated as having elected to have the em-*  
 10          *ployer make elective contributions in an*  
 11          *amount equal to 4 percent of the employee’s*  
 12          *compensation unless the employee specifi-*  
 13          *cally elects not to have such contributions*  
 14          *made or to have such contributions made at*  
 15          *a different rate, and*

16          “(ii) *meets the notice requirements*  
 17          *under subparagraph (B).*

18          “(B) *NOTICE REQUIREMENTS.—*

19          “(i) *IN GENERAL.—The requirements*  
 20          *of this subparagraph are met if the require-*  
 21          *ments of clauses (ii) and (iii) are met.*

22          “(ii) *REASONABLE PERIOD TO MAKE*  
 23          *ELECTION.—The requirements of this clause*  
 24          *are met if each employee to whom subpara-*  
 25          *graph (A)(i) applies—*

1           “(I) receives a notice explaining  
2           the employee’s right under the arrange-  
3           ment to elect not to have elective con-  
4           tributions made on the employee’s be-  
5           half or to have the contributions made  
6           at a different rate, and

7           “(II) has a reasonable period of  
8           time after receipt of such notice and  
9           before the first elective contribution is  
10          made to make such election.

11          “(iii) ANNUAL NOTICE OF RIGHTS AND  
12          OBLIGATIONS.—The requirements of this  
13          clause are met if each employee eligible to  
14          participate in the arrangement is, within a  
15          reasonable period before any year, given no-  
16          tice of the employee’s rights and obligations  
17          under the arrangement.

18          The requirements of clauses (i) and (ii) of section  
19          401(k)(12)(D) of the Internal Revenue Code of  
20          1986 shall be met with respect to the notices de-  
21          scribed in clauses (ii) and (iii) of this subpara-  
22          graph.

23          “(5) COORDINATION WITH OTHER REQUIRE-  
24          MENTS.—

1           “(A) *TREATMENT OF SEPARATE PLANS.*—  
 2           *Section 414(k) of the Internal Revenue Code of*  
 3           *1986 shall not apply to an eligible combined*  
 4           *plan.*

5           “(B) *REPORTING.*—*An eligible combined*  
 6           *plan shall be treated as a single plan for pur-*  
 7           *poses of section 103.*

8           “(6) *APPLICABLE INDIVIDUAL ACCOUNT PLAN.*—  
 9           *For purposes of this subsection—*

10           “(A) *IN GENERAL.*—*The term ‘applicable*  
 11           *individual account plan’ means an individual*  
 12           *account plan which includes a qualified cash or*  
 13           *deferred arrangement.*

14           “(B) *QUALIFIED CASH OR DEFERRED AR-*  
 15           *RANGEMENT.*—*The term ‘qualified cash or de-*  
 16           *ferred arrangement’ has the meaning given such*  
 17           *term by section 401(k)(2) of the Internal Rev-*  
 18           *enue Code of 1986.”.*

19           (2) *CONFORMING CHANGES.*—

20           (A) *The heading for section 210 of such Act*  
 21           *is amended to read as follows:*

22           **“SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPE-**  
 23           **CIAL RULES.”.**

24           (B) *The table of contents in section 1 of*  
 25           *such Act is amended by striking the item relat-*



1           *ing to section 210 and inserting the following*  
 2           *new item:*

*“Sec. 210. Multiple employer plans and other special rules”.*

3           *(c) EFFECTIVE DATE.—The amendments made by this*  
 4           *section shall apply to plan years beginning after December*  
 5           *31, 2008.*

6           **SEC. 1337. STATE AND LOCAL GOVERNMENTS ELIGIBLE TO**  
 7           **MAINTAIN SECTION 401(k) PLANS.**

8           *(a) IN GENERAL.—Clause (ii) of section 401(k)(4)(B)*  
 9           *of the Internal Revenue Code of 1986 (relating to govern-*  
 10           *ments ineligible) is amended to read as follows:*

11                   *“(ii) GOVERNMENTS ELIGIBLE.—A*  
 12                   *State or local government or political sub-*  
 13                   *division thereof, or any agency or instru-*  
 14                   *mentality thereof, may include a qualified*  
 15                   *cash or deferred arrangement as part of a*  
 16                   *plan maintained by it.”*

17           *(b) COORDINATION WITH SECTION 457 LIMITS.—Sec-*  
 18           *tion 402(g) of the Internal Revenue Code of 1986 is amend-*  
 19           *ed by adding at the end the following:*

20                   *“(9) COORDINATION OF SECTION 457 LIMITS FOR*  
 21                   *STATE AND LOCAL GOVERNMENTAL PLANS.—*

22                   *“(A) IN GENERAL.—Except as provided in*  
 23                   *subparagraph (B), in the case of an individual*  
 24                   *who is a participant in 1 or more qualified cash*  
 25                   *or deferred arrangements maintained by a gov-*

ernmental entity described in section 401(k)(4)(B)(ii), the amount excludable from gross income under paragraph (1) with respect to the individual for any taxable year with respect to elective deferrals under such arrangements shall be reduced by the aggregate amounts deferred under section 457 with respect to the individual for the taxable year under 1 or more eligible deferred compensation plans (as defined in section 457(b)) maintained by an employer described in section 457(e)(1)(A).

“(B) SPECIAL RULE FOR PRE-1986 GRANDFATHERED PLANS.—Subparagraph (A) shall not apply to any qualified cash or deferred arrangement maintained by a governmental entity described in section 401(k)(4)(B)(ii) if the arrangement (or any predecessor) was adopted by the entity before May 6, 1986, or treated as so adopted under section 1116(f)(2)(B) of the Tax Reform Act of 1986.”

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

1 **PART III—EXCESS CONTRIBUTIONS**

2 **SEC. 1339. EXCESS CONTRIBUTIONS.**

3 (a) *EXPANSION OF CORRECTIVE DISTRIBUTION PE-*  
 4 *RIOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.*—  
 5 *Subsection (f) of section 4979 of the Internal Revenue Code*  
 6 *of 1986 is amended—*

7 (1) *by and inserting “(6 months in the case of*  
 8 *an excess contribution or excess aggregate contribu-*  
 9 *tion to an eligible automatic contribution arrange-*  
 10 *ment (as defined in section 414(w)(3)))” after “2½*  
 11 *months” in paragraph (1), and*

12 (2) *by striking “2½ MONTHS OF” in the heading*  
 13 *and inserting “SPECIFIED PERIOD AFTER”.*

14 (b) *YEAR OF INCLUSION.*—*Paragraph (2) of section*  
 15 *4979(f) of such Code is amended to read as follows:*

16 “(2) *YEAR OF INCLUSION.*—*Any amount distrib-*  
 17 *uted as provided in paragraph (1) shall be treated as*  
 18 *earned and received by the recipient in the recipient’s*  
 19 *taxable year in which such distributions were made.”.*

20 (c) *SIMPLIFICATION OF ALLOCABLE EARNINGS.*—

21 (1) *SECTION 4979.*—*Subsection (f) of section 4979*  
 22 *of such Code is amended—*

23 (A) *by adding “through the end of the plan*  
 24 *year for which the contribution was made” after*  
 25 *“thereto” in paragraph (1), and*

(B) by adding “through the end of the plan year for which the contributions were made” after “thereto” in paragraph (2)(B).

(2) *SECTION 401(k) AND 401(M).*—

(A) Clause (i) of section 401(k)(8)(A) is amended by adding “through the end of such year” after “such contributions”.

(B) Subparagraph (A) of section 401(m)(6) of such Code is amended by adding “through the end of such year” after “to such contributions”.

(d) *EFFECTIVE DATE.*—The amendments made by this section shall apply to years beginning after December 31, 2005.

#### **PART IV—OTHER PROVISIONS**

##### **SEC. 1341. AMENDMENTS RELATING TO PROHIBITED TRANSACTIONS.**

(a) *EXEMPTION FOR BLOCK TRADING.*—

(1) *IN GENERAL.*—Section 408(b) of the Employee Retirement Income Security Act (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

“(14) *BLOCK TRADING.*—

“(A) *IN GENERAL.*—Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fi-

1        *duciary who has investment discretion or control*  
2        *with respect to the assets involved in the trans-*  
3        *action or is providing investment advice as a fi-*  
4        *duciary for purposes of this title to enter into the*  
5        *transaction) with respect to a plan if—*

6                *“(i) the transaction involves a block*  
7                *trade,*

8                *“(ii) at the time of the transaction, the*  
9                *interest of the plan (together with the inter-*  
10               *ests of any other plans maintained by the*  
11               *same plan sponsor) does not exceed 10 per-*  
12               *cent of the aggregate size of the block trade,*

13               *“(iii) the terms of the transaction, in-*  
14               *cluding the price, are at least as favorable*  
15               *to the plan as an arm’s length transaction,*  
16               *and*

17               *“(iv) compensation associated with the*  
18               *purchase and sale is not greater than an*  
19               *arm’s length transaction with an unrelated*  
20               *party.*

21               *“(B) BLOCK TRADE.—For purposes of this*  
22               *paragraph, the term ‘block trade’ includes any*  
23               *trade of at least 10,000 shares or with a market*  
24               *value of at least \$200,000 which will be allocated*

1           *across two or more unrelated client accounts of*  
 2           *a fiduciary.”.*

3           (2) *CONFORMING AMENDMENTS.—*

4                 (A) *Section 4975(d) of such Code is*  
 5                 *amended—*

6                         (i) *by striking “or” at the end of para-*  
 7                         *graph (15),*

8                         (ii) *by striking the period at the end of*  
 9                         *paragraph (16)(F) and inserting “; or”,*  
 10                         *and*

11                         (iii) *by adding at the end the following*  
 12                         *new paragraph:*

13                         “(17) *any transaction involving the purchase or*  
 14                         *sale of securities between a plan and a disqualified*  
 15                         *person (other than a fiduciary who has investment*  
 16                         *discretion or control over the transaction or is pro-*  
 17                         *viding investment advice as a fiduciary for purposes*  
 18                         *of title I of the Employee Retirement Income Security*  
 19                         *Act to enter into the transaction) with respect to a*  
 20                         *plan if—*

21                                 “(A) *the transaction involves a block trade,*

22                                 “(B) *at the time of the transaction, the in-*  
 23                                 *terest of the plan (together with the interests of*  
 24                                 *any other plans maintained by the same plan*

1        *sponsor) does not exceed 10 percent of the aggre-*  
 2        *gate size of the block trade,*

3                *“(C) the terms of the transaction, including*  
 4        *the price, are at least as favorable to the plan as*  
 5        *an arm’s length transaction, and*

6                *“(D) compensation associated with the pur-*  
 7        *chase and sale is not greater than an arm’s*  
 8        *length transaction with an unrelated party.”.*

9                *(B) Section 4975(e) of such Code is amend-*  
 10       *ed by adding at the end the following new para-*  
 11       *graph:*

12                *“(11) BLOCK TRADE.—The term ‘block trade’ in-*  
 13       *cludes any trade of at least 10,000 shares or with a*  
 14       *market value of at least \$200,000 which will be allo-*  
 15       *cated across two or more unrelated client accounts of*  
 16       *a fiduciary.”.*

17        *(b) BONDING RELIEF.—Section 412(a) of such Act (29*  
 18       *U.S.C. 1112(a)) is amended—*

19                *(1) by redesignating paragraph (2) as para-*  
 20       *graph (3),*

21                *(2) by striking “and” at the end of paragraph*  
 22       *(1), and*

23                *(3) by inserting after paragraph (1) the fol-*  
 24       *lowing new paragraph:*

1           “(2) no bond shall be required of any entity  
 2           which is registered as a broker or a dealer under sec-  
 3           tion 15(b) of the Securities Exchange Act of 1934 (15  
 4           U.S.C. 78o(b)) if the broker or dealer is subject to the  
 5           fidelity bond requirements of a self-regulatory organi-  
 6           zation (within the meaning of section 3(a)(26) of such  
 7           Act (15 U.S.C. 78c(a)(26)).”.

8           (c) *EXEMPTION FOR FINANCIAL MARKETS TRADING*  
 9           *SYSTEMS.*—

10           (1) *IN GENERAL.*—Section 408(b) of such Act, as  
 11           amended by subsection (b)(1), is amended by adding  
 12           at the end the following new paragraph:

13           “(15) *FINANCIAL MARKETS TRADING SYSTEMS.*—  
 14           Any transaction involving the purchase and sale of  
 15           securities between a plan and a fiduciary or a party  
 16           in interest if—

17           “(A) the transaction is executed through—

18           “(i) a national securities exchange or a  
 19           trading system owned by a national securi-  
 20           ties association registered with the Securi-  
 21           ties and Exchange Commission, regardless  
 22           of whether such fiduciary or party in inter-  
 23           est (or any affiliate of either) has an inter-  
 24           est in such exchange or trading system,



1           “(ii) an alternative trading system or  
2           electronic communication network subject to  
3           regulation and oversight by the Securities  
4           and Exchange Commission, regardless of  
5           whether such fiduciary or party in interest  
6           (or any affiliate of either) has an interest in  
7           such alternative trading system or electronic  
8           communications network, or

9           “(iii) any other trading system for se-  
10          curities or other property approved by the  
11          Secretary through regulatory or exemptive  
12          relief,

13          “(B) the price associated with the purchase  
14          and sale is at least as favorable as an arm’s  
15          length transaction with an unrelated party,

16          “(C) the compensation associated with the  
17          purchase and sale is not greater than an arm’s  
18          length transaction with an unrelated party,

19          “(D) in the event the fiduciary or party in  
20          interest directing the transaction (or any affil-  
21          iate of either) has an ownership interest in the  
22          trading system (other than an exchange or trad-  
23          ing system described in subparagraph (A)(i)),  
24          the execution of transactions on such system is  
25          annually authorized by a plan fiduciary,

1           “(E) the transaction is executed in accord-  
 2           ance with the nondiscretionary rules and proce-  
 3           dures adopted by such trading system to match  
 4           offsetting orders, and

5           “(F) in the event the transaction is not exe-  
 6           cuted on an exchange or trading system de-  
 7           scribed in subparagraph (A)(i)—

8                   “(i) neither the trading system nor the  
 9                   parties to the transaction take into account  
 10                  the identity of the parties in the execution  
 11                  of trades, and the parties to the transaction  
 12                  do not actually know the identity of the  
 13                  other at the time that the terms and price  
 14                  of the transaction are agreed to, or

15                   “(ii) the transaction is effected pursu-  
 16                  ant to rules designed to match purchases  
 17                  and sales at the best price available through  
 18                  the trading system.”.

19           (2) CONFORMING AMENDMENT.—Section 4975(d)  
 20           of such Code (as amended by subsection (b)(2)) is  
 21           amended—

22                   (A) by striking “or” at the end of para-  
 23                  graph (16),

24                   (B) by striking the period at the end of  
 25                  paragraph (17)(E) and inserting “; or”, and

1           (C) by adding at the end the following new  
2           paragraph:

3           “(18) any transaction involving the purchase  
4           and sale of securities or other property between a  
5           plan and a fiduciary or a disqualified person if—

6           “(A) the transaction is executed through—

7                   “(i) a national securities exchange or a  
8                   trading system owned by a national securi-  
9                   ties association registered with the Securi-  
10                  ties and Exchange Commission, regardless  
11                  of whether such fiduciary or disqualified  
12                  person (or any affiliate of either) has an in-  
13                  terest in such exchange or trading system,

14                   “(ii) an alternative trading system or  
15                   electronic communication network subject to  
16                   regulation and oversight by the Securities  
17                   and Exchange Commission, regardless of  
18                   whether such fiduciary or disqualified per-  
19                   son (or any affiliate of either) has an inter-  
20                   est in such alternative trading system or  
21                   electronic communications network, or

22                   “(iii) any other trading system for se-  
23                   curities or other property approved by the  
24                   Secretary through regulatory or exemptive  
25                   relief,

1           “(B) the price associated with the purchase  
2           and sale is at least as favorable as an arm’s  
3           length transaction with an unrelated party,

4           “(C) the compensation associated with the  
5           purchase and sale is not greater than an arm’s  
6           length transaction with an unrelated party,

7           “(D) in the event the fiduciary or disquali-  
8           fied person directing the transaction (or any af-  
9           filiate of either) has an ownership interest in the  
10          trading system (other than an exchange or trad-  
11          ing system described in subparagraph (A)(i)),  
12          the execution of transactions on such system is  
13          annually authorized by a plan fiduciary,

14          “(E) the transaction is executed in accord-  
15          ance with the nondiscretionary rules and proce-  
16          dures adopted by such trading system to match  
17          offsetting orders, and

18          “(F) in the event the transaction is not exe-  
19          cuted on an exchange or trading system de-  
20          scribed in subparagraph (A)(i)—

21                 “(i) neither the trading system nor the  
22                 parties to the transaction take into account  
23                 the identity of the parties in the execution  
24                 of trades, and the parties to the transaction  
25                 do not actually know the identity of the

1                    *other at the time that the terms and price*  
 2                    *of the transaction are agreed to, or*  
 3                    *“(ii) the transaction is effected pursu-*  
 4                    *ant to rules designed to match purchases*  
 5                    *and sales at the best price available through*  
 6                    *the trading system.”.*

7            *(d) RELIEF FOR FOREIGN EXCHANGE TRANS-*  
 8 *ACTIONS.—*

9                    *(1) IN GENERAL.—Section 408(b) of such Act (29*  
 10                    *U.S.C. 1108(b)), as amended by subsection (c)(1), is*  
 11                    *amended by adding at the end the following new*  
 12                    *paragraph:*

13                    *“(16) Any foreign exchange transactions, between*  
 14                    *a bank or broker-dealer (or any affiliate of either),*  
 15                    *and a plan or an individual retirement account*  
 16                    *(within the meaning of section 408 of the Internal*  
 17                    *Revenue Code of 1986) with respect to which such*  
 18                    *bank or broker-dealer (or affiliate) is a trustee, custo-*  
 19                    *dian, fiduciary, or other party in interest, if—*

20                    *“(A) the transaction is in connection with*  
 21                    *the purchase, holding, or sale of securities,*

22                    *“(B) at the time the foreign exchange trans-*  
 23                    *action is entered into, the terms of the trans-*  
 24                    *action are not less favorable to the plan than the*  
 25                    *terms generally available in comparable arm’s*

length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

“(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more or less than 3 percent from the interbank bid and asked rates at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

“(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction.”.

(2) *CONFORMING AMENDMENT.*—Section 4975(d) of such Code, as amended by subsection (c)(2), is amended—

(A) by striking “or” at the end of paragraph (17)(E),

(B) by striking the period at the end of paragraph (18)(F)(ii) and inserting “; or”, and

1           (C) by adding at the end the following new  
2           paragraph:

3           “(19) any foreign exchange transactions, between  
4           a bank or broker-dealer (or any affiliate of either)  
5           and a plan or an individual retirement account  
6           (within the meaning of section 408) with respect to  
7           which such bank or broker-dealer (or affiliate) is a  
8           trustee, custodian, fiduciary, or disqualified person,  
9           if—

10           “(A) the transaction is in connection with  
11           the purchase, holding, or sale of securities,

12           “(B) at the time the foreign exchange trans-  
13           action is entered into, the terms of the trans-  
14           action are not less favorable to the plan than the  
15           terms generally available in comparable arm’s  
16           length foreign exchange transactions between un-  
17           related parties, or the terms afforded by the bank  
18           or broker-dealer (or any affiliate of either) in  
19           comparable arm’s-length foreign exchange trans-  
20           actions involving unrelated parties,

21           “(C) the exchange rate used by such bank or  
22           broker-dealer (or affiliate) for a particular for-  
23           eign exchange transaction does not deviate by  
24           more or less than 3 percent from the interbank  
25           bid and asked rates at the time of the trans-

1        *action as displayed on an independent service*  
 2        *that reports rates of exchange in the foreign cur-*  
 3        *rency market for such currency, and*

4                *“(D) the bank or broker-dealer (or any affil-*  
 5        *iate of either) does not have investment discre-*  
 6        *tion, or provide investment advice, with respect*  
 7        *to the transaction.”.*

8        *(e) CORRECTION PERIOD FOR CERTAIN TRANSACTIONS*  
 9        *INVOLVING SECURITIES AND COMMODITIES.—*

10                *(1) IN GENERAL.—Section 408(b) of such Act (29*  
 11        *U.S.C. 1108(b)), as amended by subsection (d)(1), is*  
 12        *amended by adding at the end the following new*  
 13        *paragraph:*

14                *“(17) CORRECTION PERIOD FOR CERTAIN TRANS-*  
 15        *ACTIONS INVOLVING SECURITIES AND COMMOD-*  
 16        *ITIES.—*

17                *“(A) IN GENERAL.—Except as provided in*  
 18        *subparagraphs (B) and (C), a transaction de-*  
 19        *scribed in section 406(a) in connection with the*  
 20        *acquisition, holding, or disposition of any secu-*  
 21        *rity or commodity, if the transaction is corrected*  
 22        *before the end of the correction period.*

23                *“(B) EXCEPTION FOR EMPLOYER SECURI-*  
 24        *TIES AND REAL PROPERTY.—Subparagraph (A)*  
 25        *does not apply to any transaction between a*



1        *plan and a plan sponsor or its affiliates that in-*  
 2        *volves the acquisition or sale of an employer se-*  
 3        *curity (as defined in section 407(d)(1)) or the*  
 4        *acquisition, sale, or lease of employer real prop-*  
 5        *erty (as defined in section 407(d)(2)).*

6            “(C) *EXCEPTION FOR KNOWING VIOLA-*  
 7        *TIONS.—In the case of any fiduciary or other*  
 8        *party in interest (or any other person knowingly*  
 9        *participating in such transaction), subpara-*  
 10       *graph (A) does not apply to any prohibited*  
 11       *transaction if, at the time such transaction oc-*  
 12       *curs, such fiduciary or party in interest (or*  
 13       *other person) knew that the transaction would*  
 14       *(without regard to this paragraph) constitute a*  
 15       *violation of section 406(a).*

16           “(D) *CORRECTION PERIOD.—For purposes*  
 17        *of this paragraph, the term ‘correction period’*  
 18        *means the 14-day period beginning on the date*  
 19        *on which such transaction occurs.*

20           “(E) *OTHER DEFINITIONS.—For purposes*  
 21        *of this paragraph—*

22           “(i) *the term ‘security’ has the mean-*  
 23        *ing given such term by section 475(c)(2) of*  
 24        *the Internal Revenue Code of 1986 (without*

1           regard to subparagraph (F)(iii) and the last  
2           sentence thereof),

3           “(ii) the term ‘commodity’ has the  
4           meaning given such term by section  
5           475(e)(2) of such Code (without regard to  
6           subparagraph (D)(iii) thereof), and

7           “(iii) the terms ‘correction’ and ‘cor-  
8           rect’ mean, with respect to a transaction,  
9           undoing the transaction to the extent pos-  
10          sible, but in any case, making good to the  
11          plan or affected account any losses resulting  
12          from the transaction and restoring to the  
13          plan or affected account any profits made  
14          through use of the plan.”.

15       (2) CONFORMING AMENDMENTS.—

16           (A) Section 4975(d) of such Code, as  
17          amended by subsection (d)(2), is amended—

18           (i) by striking “or” at the end of para-  
19          graph (18)(F)(2),

20           (ii) by striking the period at the end of  
21          paragraph (19)(D) and inserting “; or”,  
22          and

23           (iii) by adding at the end the following  
24          new paragraph:

1           “(20) *except as provided in subparagraph (B) or*  
 2           *(C) of subsection (f)(8), a transaction described in*  
 3           *subparagraph (A), (B), (C), or (D) of subsection*  
 4           *(c)(1) in connection with the acquisition, holding, or*  
 5           *disposition of any security or commodity, if the*  
 6           *transaction is corrected before the end of the correc-*  
 7           *tion period.*”.

8           *(B) Section 4975(f) of such Code is amend-*  
 9           *ed by adding at the end the following new para-*  
 10          *graph:*

11          “(8) *CORRECTION PERIOD.*—

12           “(A) *IN GENERAL.*—*For purposes of sub-*  
 13           *section (d)(20), the term ‘correction period’*  
 14           *means the 14-day period beginning on the date*  
 15           *on which such transaction occurs.*

16           “(B) *EXCEPTION FOR EMPLOYER SECURI-*  
 17           *TIES AND REAL PROPERTY.*—*Subsection (d)(20)*  
 18           *does not apply to any transaction between a*  
 19           *plan and a plan sponsor or its affiliates that in-*  
 20           *volves the acquisition or sale of an employer se-*  
 21           *curity (as defined in section 407(d)(1) of the*  
 22           *Employee Retirement Income Security Act) or*  
 23           *the acquisition, sale, or lease of employer real*  
 24           *property (as defined in section 407(d)(2) of such*  
 25           *Act).*

“(C) *EXCEPTION FOR KNOWING VIOLATIONS.*—*In the case of any fiduciary or other disqualified person (or any other person knowingly participating in such transaction), subsection (d)(20) does not apply to any prohibited transaction if, at the time such transaction occurs, such fiduciary or disqualified person (or other person) knew that the transaction would (without regard to subsection (d)(20) or this paragraph) constitute a violation of subparagraph (A), (B), (C), or (D) of subsection (c)(1).*

“(D) *ABATEMENT OF TAX WHERE THERE IS A CORRECTION.*—*If a transaction is not treated as a prohibited transaction by reason of subsection (d)(20), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and, if assessed, the assessment shall be abated, and, if collected, shall be credited or refunded as an overpayment.*

“(E) *OTHER DEFINITIONS.*—*For purposes of this paragraph and subsection (d)(20)—*

“(i) *the term ‘security’ has the meaning given such term by section 475(c)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof),*

1                   “(ii) the term ‘commodity’ has the  
 2                   meaning given such term by section  
 3                   475(e)(2) (without regard to subparagraph  
 4                   (D)(iii) thereof), and

5                   “(iii) the terms ‘correction’ and ‘cor-  
 6                   rect’ mean, with respect to a transaction,  
 7                   undoing the transaction to the extent pos-  
 8                   sible, but in any case, making good to the  
 9                   plan or affected account any losses resulting  
 10                  from the transaction and restoring to the  
 11                  plan or affected account any profits made  
 12                  through use of the plan.”.

13                  (C) Section 4975(f)(5) of such Code is  
 14                  amended by striking “The terms” and inserting  
 15                  “Except as provided in paragraph (8)(E)(iii),  
 16                  the terms”.

17                  (f) *CROSS TRADES STUDY*.—Not later than 2 years  
 18                  after the date of the enactment of this Act, the Secretary  
 19                  of Labor, in consultation with the President’s Working  
 20                  Group on Financial Markets, shall report to the President  
 21                  and Congress the results of a study on the implications for  
 22                  pension plans, plan sponsors, plan fiduciaries, and plan  
 23                  participants of a prohibited transaction exemption for ac-  
 24                  tive cross trades and the impact that such a prohibited  
 25                  transaction exemption could have on the safety and security

1 of pension plan assets. The study shall review and include  
2 recommendations regarding—

3 (1) the regulation and practice of passive and  
4 active cross trades in United States securities mar-  
5 kets,

6 (2) the potential benefits and drawbacks of per-  
7 mitting active cross trades for retirement funds, and

8 (3) the ease or difficulty in policing cross trad-  
9 ing activities for plan sponsors, plan fiduciaries, and  
10 any Federal agency charged with safeguarding the  
11 Nation's retirement funds.

12 (g) GAO STUDY.—The Comptroller General of the  
13 United States shall prepare a preliminary report not later  
14 than 2 years after the date of the enactment of this Act  
15 and a final report not later than 3 years after such date  
16 regarding the effects of the amendments made by this sec-  
17 tion, focusing on the effect of electronic communication net-  
18 works and block trading on plan investments and on the  
19 oversight and enforcement activities of the Department of  
20 Labor to protect the rights of plan participants and bene-  
21 ficiaries. The Comptroller General of the United States shall  
22 submit the reports required under the preceding sentence  
23 to the Committees on Finance and Health, Education,  
24 Labor, and Pensions of the Senate and the Committees on

1 *Ways and Means and Education and the Workforce of the*  
 2 *House of Representatives.*

3       (h) *EFFECTIVE DATE.*—*The amendments made by this*  
 4 *section shall apply to any transaction after the date of the*  
 5 *enactment of this Act.*

6 **SEC. 1342. FEDERAL TASK FORCE ON OLDER WORKERS.**

7       (a) *ESTABLISHMENT.*—*Not later than 90 days after*  
 8 *the date of enactment of this section, the Secretary of Labor*  
 9 *shall establish a Federal Task Force on Older Workers (re-*  
 10 *ferred to in this section as the “Task Force”).*

11       (b) *MEMBERSHIP.*—*The Task Force established pursu-*  
 12 *ant to subsection (a) shall be composed of representatives*  
 13 *from all relevant Federal agencies that have regulatory ju-*  
 14 *risdiction over, or a clear policy interest in, pension issues*  
 15 *relating to older workers, including the Internal Revenue*  
 16 *Service and the Equal Employment Opportunity Commis-*  
 17 *sion.*

18       (c) *ACTIVITIES.*—

19               (1) *IN GENERAL.*—*Not later than 1 year after*  
 20 *the date of establishment of the Task Force, the Task*  
 21 *Force shall—*

22                       (A) *identify statutory and regulatory provi-*  
 23 *sions in current pension law that are disincen-*  
 24 *tives to work and develop legislative and regu-*

1            *latory proposals to address such disincentives;*  
 2            *and*

3            *(B) identify best pension practices in the*  
 4            *private sector for hiring and retaining older*  
 5            *workers, and serve as a clearinghouse of such in-*  
 6            *formation.*

7            *(2) REPORT.—Not later than 1 year after the*  
 8            *date of establishment of the Task Force, the Task*  
 9            *Force shall submit a report to Congress on the activi-*  
 10           *ties of the Task Force pursuant to paragraph (1).*  
 11           *Such report shall be made available to the public.*

12           *(d) CONSULTATION.—In carrying out activities pursu-*  
 13           *ant to this section, the Task Force shall consult with senior,*  
 14           *business, labor, and other interested organizations.*

15           *(e) APPLICABILITY OF FACA; TERMINATION OF TASK*  
 16           *FORCE.—*

17           *(1) FACA.—The Federal Advisory Committee*  
 18           *Act (5 U.S.C. App.) shall not apply to the Task Force*  
 19           *established pursuant to this section.*

20           *(2) TERMINATION.—The Task Force shall termi-*  
 21           *nate 30 days after the date the Task Force completes*  
 22           *all of its duties under this section.*

23           **SEC. 1343. TECHNICAL CORRECTIONS TO SAVER ACT.**

24           *Section 517 of the Employee Retirement Income Secu-*  
 25           *rity Act of 1974 (29 U.S.C. 1147) is amended—*



1           (1) *in subsection (a), by striking “2001 and*  
 2           *2005 on or after September 1 of each year involved”*  
 3           *and inserting “2006 and 2010”;*

4           (2) *in subsection (b), by adding at the end the*  
 5           *following new sentence: “To effectuate the purposes of*  
 6           *this paragraph, the Secretary may enter into a coop-*  
 7           *erative agreement, pursuant to the Federal Grant and*  
 8           *Cooperative Agreement Act of 1977 (31 U.S.C. 6301*  
 9           *et seq.), with any appropriate, qualified entity.”;*

10          (3) *in subsection (e)(2)—*

11                (A) *by striking “Committee on Labor and*  
 12                *Human Resources” in subparagraph (D) and in-*  
 13                *serting “Committee on Health, Education,*  
 14                *Labor, and Pensions”;*

15                (B) *by striking subparagraph (F) and in-*  
 16                *serting the following:*

17                        “(F) *the Chairman and Ranking Member of*  
 18                        *the Subcommittee on Labor, Health and Human*  
 19                        *Services, and Education of the Committee on*  
 20                        *Appropriations of the House of Representatives*  
 21                        *and the Chairman and Ranking Member of the*  
 22                        *Subcommittee on Labor, Health and Human*  
 23                        *Services, and Education of the Committee on*  
 24                        *Appropriations of the Senate;”;*

1                   (C) by redesignating subparagraph (G) as  
2                   subparagraph (J); and

3                   (D) by inserting after subparagraph (F) the  
4                   following new subparagraphs:

5                   “(G) the Chairman and Ranking Member of  
6                   the Committee on Finance of the Senate;

7                   “(H) the Chairman and Ranking Member  
8                   of the Committee on Ways and Means of the  
9                   House of Representatives;

10                  “(I) the Chairman and Ranking Member of  
11                  the Subcommittee on Employer-Employee Rela-  
12                  tions of the Committee on Education and the  
13                  Workforce of the House of Representatives; and”;

14                  (4) in subsection (e)(3)(B), by striking “January  
15                  31, 1998” and inserting “3 months before the con-  
16                  vening of each summit;”;

17                  (5) in subsection (f)(1)(C), by inserting “, no  
18                  later than 90 days prior to the date of the commence-  
19                  ment of the National Summit,” after “comment”;

20                  (6) in subsection (g), by inserting “, in consulta-  
21                  tion with the congressional leaders specified in sub-  
22                  section (e)(2),” after “report” the first place it ap-  
23                  pears in the text;

24                  (7) in subsection (i)—

1                   (A) by striking “for fiscal years beginning  
2                   on or after October 1, 1997,”; and

3                   (B) by adding at the end the following new  
4                   paragraph:

5           “(3) *RECEPTION AND REPRESENTATION AUTHORITY.*—  
6   *The Secretary is hereby granted reception and representa-*  
7   *tion authority limited specifically to the events at the Na-*  
8   *tional Summit. The Secretary shall use any private con-*  
9   *tributions accepted in connection with the National Sum-*  
10   *mit prior to using funds appropriated for purposes of the*  
11   *National Summit pursuant to this paragraph.*”; and

12           (8) in subsection (k)—

13                   (A) by striking “shall enter into a contract  
14                   on a sole-source basis” and inserting “may enter  
15                   into a contract on a sole-source basis”; and

16                   (B) by striking “in fiscal year 1998”.

Attest:

Secretary.

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 2830**

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**AMENDMENT**