

109TH CONGRESS
1ST SESSION

H. R. 2830

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.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2005

Mr. BOEHNER (for himself, Mr. THOMAS, Mr. SAM JOHNSON of Texas, Mr. KLINE, Mr. McKEON, Mr. TIBERI, and Mr. BOUSTANY) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pension Protection Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

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. Limitations on distributions and benefit accruals under single-employer plans.
- Sec. 104. Technical and conforming amendments.

Subtitle B—Amendments to Internal Revenue Code of 1986

- Sec. 111. Minimum funding standards.
- Sec. 112. Funding rules for single-employer defined benefit pension plans.
- Sec. 113. Limitations on distributions and benefit accruals under single-employer plans.
- Sec. 114. Technical and conforming amendments.

Subtitle C—Other provisions

- Sec. 121. Modification of transition rule to pension funding requirements.
- Sec. 122. Treatment of nonqualified deferred compensation plans when employer defined benefit plan in at-risk status.

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

Subtitle A—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. Withdrawal liability reforms.
- Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Subtitle B—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.

TITLE III—OTHER INTEREST-RELATED FUNDING PROVISIONS

- Sec. 301. Interest rate assumption for determination of lump sum distributions.
- Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notices.

Sec. 502. Additional disclosure requirements.

Sec. 503. Notice to participants and beneficiaries of section 4010 filings with the PBGC.

TITLE VI—INVESTMENT ADVICE

Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.

Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice.

TITLE VII—DEDUCTION LIMITATIONS

Sec. 701. Increase in deduction limits.

Sec. 702. Updating deduction rules for combination of plans.

1 TITLE I—REFORM OF FUNDING 2 RULES FOR SINGLE-EM- 3 PLOYER DEFINED BENEFIT 4 PENSION PLANS

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

8 SEC. 101. MINIMUM FUNDING STANDARDS.

9 (a) REPEAL OF EXISTING FUNDING RULES.—Sec-
10 tions 302 through 306 of the Employee Retirement In-
11 come Security Act of 1974 (29 U.S.C. 1082 through
12 1085a) are repealed.

13 (b) NEW MINIMUM FUNDING STANDARDS.—Part 3
14 of subtitle B of title I of such Act (as amended by sub-
15 section (a)) is amended further by inserting after section
16 301 the following new section:

1 “MINIMUM FUNDING STANDARDS

2 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM
3 FUNDING STANDARD.—

4 “(1) IN GENERAL.—A plan to which this part
5 applies shall satisfy the minimum funding standard
6 applicable to the plan for any plan year.

7 “(2) MINIMUM FUNDING STANDARD.—For pur-
8 poses of paragraph (1), a plan shall be treated as
9 satisfying the minimum funding standard for a plan
10 year if—

11 “(A) in the case of a defined benefit plan
12 which is a single-employer plan, the employer
13 makes contributions to or under the plan for
14 the plan year which, in the aggregate, are not
15 less than the minimum required contribution
16 determined under section 303 for the plan for
17 the plan year,

18 “(B) in the case of a money purchase plan
19 which is a single-employer plan, the employer
20 makes contributions to or under the plan for
21 the plan year which are required under the
22 terms of the plan, and

23 “(C) in the case of a multiemployer plan,
24 the employers make contributions to or under
25 the plan for any plan year which, in the aggre-

1 gate, are sufficient to ensure that the plan does
2 not have an accumulated funding deficiency
3 under section 304 as of the end of the plan
4 year.

5 “(b) LIABILITY FOR CONTRIBUTIONS.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), the amount of any contribution required
8 by this section (including any required installments
9 under paragraphs (3) and (4) of section 303(i))
10 shall be paid by any employer responsible for mak-
11 ing contributions to or under the plan.

12 “(2) JOINT AND SEVERAL LIABILITY WHERE
13 EMPLOYER MEMBER OF CONTROLLED GROUP.—In
14 the case of a single-employer plan, if the employer
15 referred to in paragraph (1) is a member of a con-
16 trolled group, each member of such group shall be
17 jointly and severally liable for payment of such con-
18 tributions.

19 “(c) VARIANCE FROM MINIMUM FUNDING STAND-
20 ARDS.—

21 “(1) WAIVER IN CASE OF BUSINESS HARD-
22 SHIP.—

23 “(A) IN GENERAL.—If—

24 “(i) an employer is (or in the case of
25 a multiemployer plan, 10 percent or more

1 of the number of employers contributing to
2 or under the plan is) unable to satisfy the
3 minimum funding standard for a plan year
4 without temporary substantial business
5 hardship (substantial business hardship in
6 the case of a multiemployer), and

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

10 the Secretary of the Treasury may, subject to
11 subparagraphs (B) and (C), waive the require-
12 ments of subsection (a) for such year with re-
13 spect to all or any portion of the minimum
14 funding standard. The Secretary of the Treas-
15 ury shall not waive the minimum funding
16 standard with respect to a plan for more than
17 3 of any 15 (5 of any 15 in the case of a multi-
18 employer plan) consecutive plan years.

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

22 “(i) in the case of a single-employer
23 plan, the minimum required contribution
24 under section 303 for the plan year shall
25 be reduced by the amount of the waived

1 funding deficiency and such amount shall
2 be amortized as required under section
3 303(j), and

4 “(ii) in the case of a multiemployer
5 plan, the funding standard account shall
6 be credited under section 304(b)(3)(C)
7 with the amount of the waived funding de-
8 ficiency and such amount shall be amor-
9 tized as required under section
10 304(b)(2)(C).

11 “(C) WAIVER OF AMORTIZED PORTION
12 NOT ALLOWED.—The Secretary of the Treasury
13 may not waive under subparagraph (A) any
14 portion of the minimum funding standard
15 under subsection (a) for a plan year which is
16 attributable to any amortization payment re-
17 quired to be made for such plan year with re-
18 spect to any amortization described in subpara-
19 graph (B) of any waived portion of the min-
20 imum funding standard for any preceding plan
21 year.

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

1 hardship in the case of a multiemployer plan) shall
2 include (but shall not be limited to) whether or
3 not—

4 “(A) the employer is operating at an eco-
5 nomic loss,

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

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

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

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

21 “(4) SECURITY FOR WAIVERS FOR SINGLE-EM-
22 PLOYER PLANS, CONSULTATIONS.—

23 “(A) SECURITY MAY BE REQUIRED.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in subparagraph (C), the Secretary

1 of the Treasury may require an employer
2 maintaining a defined benefit plan which is
3 a single-employer plan (within the meaning
4 of section 4001(a)(15)) to provide security
5 to such plan as a condition for granting or
6 modifying a waiver under paragraph (1).

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

16 “(B) CONSULTATION WITH THE PENSION
17 BENEFIT GUARANTY CORPORATION.—Except as
18 provided in subparagraph (C), the Secretary of
19 the Treasury shall, before granting or modi-
20 fying a waiver under this subsection with re-
21 spect to a plan described in subparagraph
22 (A)(i)—

23 “(i) provide the Pension Benefit
24 Guaranty Corporation with—

1 “(I) notice of the completed ap-
2 plication for any waiver or modifica-
3 tion, and

4 “(II) an opportunity to comment
5 on such application within 30 days
6 after receipt of such notice, and

7 “(ii) consider—

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

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

17 Information provided to the Corporation
18 under this subparagraph shall be consid-
19 ered tax return information and subject to
20 the safeguarding and reporting require-
21 ments of section 6103(p) of the Internal
22 Revenue Code of 1986.

23 “(C) EXCEPTION FOR CERTAIN WAIV-
24 ERS.—

1 “(i) IN GENERAL.—The preceding
2 provisions of this paragraph shall not
3 apply to any plan with respect to which the
4 sum of—

5 “(I) the shortfall amortization
6 charge (within the meaning of section
7 303(c)(1)) for the plan year, and

8 “(II) the aggregate total of
9 shortfall amortization installments de-
10 termined for succeeding plan years
11 under section 303(c)(2),
12 is less than \$1,000,000.

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

21 “(5) SPECIAL RULES FOR SINGLE-EMPLOYER
22 PLANS.—

23 “(A) APPLICATION MUST BE SUBMITTED
24 BEFORE DATE 2½ MONTHS AFTER CLOSE OF
25 YEAR.—In the case of a single-employer plan,

1 no waiver may be granted under this subsection
2 with respect to any plan for any plan year un-
3 less an application therefor is submitted to the
4 Secretary of the Treasury not later than the
5 15th day of the 3rd month beginning after the
6 close of such plan year.

7 “(B) SPECIAL RULE IF EMPLOYER IS MEM-
8 BER OF CONTROLLED GROUP.—In the case of a
9 single-employer plan, if an employer is a mem-
10 ber of a controlled group, the temporary sub-
11 stantial business hardship requirements of
12 paragraph (1) shall be treated as met only if
13 such requirements are met—

14 “(i) with respect to such employer,
15 and

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

20 The Secretary of the Treasury may provide that
21 an analysis of a trade or business or industry
22 of a member need not be conducted if the Sec-
23 retary of the Treasury determines such analysis
24 is not necessary because the taking into account

1 of such member would not significantly affect
2 the determination under this paragraph.

3 “(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

4 “(A) IN GENERAL.—The Secretary of the
5 Treasury shall, before granting a waiver under
6 this subsection, require each applicant to pro-
7 vide evidence satisfactory to such Secretary that
8 the applicant has provided notice of the filing of
9 the application for such waiver to each em-
10 ployee organization representing employees cov-
11 ered by the affected plan, and each affected
12 party (as defined in section 4001(a)(21)). Such
13 notice shall include a description of the extent
14 to which the plan is funded for benefits which
15 are guaranteed under title IV and for benefit li-
16 abilities.

17 “(B) CONSIDERATION OF RELEVANT IN-
18 FORMATION.—The Secretary of the Treasury
19 shall consider any relevant information provided
20 by a person to whom notice was given under
21 subparagraph (A).

22 “(7) CROSS REFERENCE.—For corresponding
23 duties of the Secretary of the Treasury with regard
24 to implementation of the Internal Revenue Code of
25 1986, see section 412(c) of such Code.

1 “(d) MISCELLANEOUS RULES.—

2 “(1) CHANGE IN METHOD OR YEAR.—If the
3 funding method, the valuation date, or a plan year
4 for a plan is changed, the change shall take effect
5 only if approved by the Secretary of the Treasury.

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

9 “(A) is adopted after the close of such plan
10 year but no later than 2½ months after the
11 close of the plan year (or, in the case of a mul-
12 tiemployer plan, no later than 2 years after the
13 close of such plan year),

14 “(B) does not reduce the accrued benefit
15 of any participant determined as of the begin-
16 ning of the first plan year to which the amend-
17 ment applies, and

18 “(C) does not reduce the accrued benefit of
19 any participant determined as of the time of
20 adoption except to the extent required by the
21 circumstances,

22 shall, at the election of the plan administrator, be
23 deemed to have been made on the first day of such
24 plan year. No amendment described in this para-
25 graph which reduces the accrued benefits of any par-

1 ticipant shall take effect unless the plan adminis-
2 trator files a notice with the Secretary of the Treas-
3 ury notifying him of such amendment and such Sec-
4 retary has approved such amendment, or within 90
5 days after the date on which such notice was filed,
6 failed to disapprove such amendment. No amend-
7 ment described in this subsection shall be approved
8 by the Secretary of the Treasury unless such Sec-
9 retary determines that such amendment is necessary
10 because of a substantial business hardship (as deter-
11 mined under subsection (c)(2)) and that a waiver
12 under subsection (c) (or, in the case of a multiem-
13 ployer plan, any extension of the amortization period
14 under section 304(d)) is unavailable or inadequate.

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

20 (c) CLERICAL AMENDMENT.—The table of contents
21 in section 1 of such Act is amended by striking the items
22 relating to sections 302 through 306 and inserting the fol-
23 lowing new item:

 “Sec. 302. Minimum funding standards.”.

24 (d) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to plan years beginning after 2005.

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 further
6 by inserting 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 CONTRIBU-
10 TION.—

11 “(1) IN GENERAL.—For purposes of section
12 302(a)(2)(A), except as otherwise provided in this
13 subsection, the minimum required contribution with
14 respect to a plan for a plan year is the target nor-
15 mal cost of the plan for the plan year.

16 “(2) SHORTFALL AMORTIZATION CHARGE.—In
17 any case in which the value of plan assets (deter-
18 mined without regard to subsection (e)(1)) of the
19 plan for the plan year which are held by the plan
20 immediately before the valuation date is less than
21 the funding target of the plan for the plan year, the
22 minimum required contribution with respect to the
23 plan for the plan year is the sum of the amount de-
24 termined under paragraph (1) plus a shortfall amor-
25 tization charge for such plan year determined under
26 subsection (c).

1 “(3) CREDIT FOR EXCESS ASSETS.—In any
2 case in which the value of plan assets of the plan for
3 the plan year which are held by the plan imme-
4 diately before the valuation date exceed the funding
5 target of the plan for the plan year, the minimum
6 required contribution with respect to the plan for the
7 plan year is the amount determined under para-
8 graph (1), reduced by such excess.

9 “(4) PRE-FUNDING BALANCE.—In the case of
10 any plan year in which—

11 “(A) the ratio (expressed as a percentage)
12 which—

13 “(i) the value of plan assets (deter-
14 mined without regard to subsection
15 (e)(1)(B)) for the preceding plan year,
16 bears to

17 “(ii) the funding target of the plan for
18 the preceding plan year (determined with-
19 out regard to subsection (g)(1)),
20 is at least 80 percent, and

21 “(B) the plan sponsor elects (in such form
22 and manner as shall be prescribed in regula-
23 tions of the Secretary of the Treasury) to credit
24 against the minimum required contribution for
25 the current plan year all or a portion of the

1 funding standard carryover balance and the
2 pre-funding balance (to the extent provided in
3 subsection (h)) for the preceding plan year (not
4 in excess of such minimum required contribu-
5 tion),

6 the minimum required contribution for the plan year
7 shall be reduced by the amount so credited by the
8 plan sponsor.

9 “(b) TARGET NORMAL COST.—For purposes of this
10 section, subject to subsection (g)(2), the term ‘target nor-
11 mal cost’ means, for any plan year, the present value of
12 all benefits which are expected to accrue or to be earned
13 under the plan during the plan year. If any benefit attrib-
14 utable to services performed in a preceding plan year is
15 increased by reason of any increase in compensation dur-
16 ing the current plan year, the increase shall be treated
17 as having accrued during the current plan year.

18 “(c) SHORTFALL AMORTIZATION CHARGE.—

19 “(1) IN GENERAL.—The shortfall amortization
20 charge for a plan for any plan year is the aggregate
21 total of the shortfall amortization installments for
22 such plan year with respect to the shortfall amorti-
23 zation bases for such plan year and each of the 6
24 preceding plan years.

1 “(2) SHORTFALL AMORTIZATION INSTALL-
2 MENT.—

3 “(A) IN GENERAL.—For purposes of para-
4 graph (1), the plan sponsor shall determine,
5 with respect to the shortfall amortization base
6 of the plan for any plan year, the amounts nec-
7 essary to amortize such shortfall amortization
8 base, in level annual installments over a period
9 of 7 plan years beginning with such plan year.
10 The annual installment of such amortization for
11 each plan year in such 7-plan-year period is the
12 shortfall amortization installment for such plan
13 year with respect to such shortfall amortization
14 base.

15 “(B) COMPUTATION ASSUMPTIONS.—The
16 determination of any annual installment under
17 subparagraph (A) for any plan year shall be
18 made as of the valuation date for such plan
19 year, using the effective rate of interest for the
20 plan for such plan year.

21 “(3) SHORTFALL AMORTIZATION BASE.—The
22 shortfall amortization base of a plan for a plan year
23 is the excess (if any) of—

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

1 “(B) the present value (determined using
2 the effective interest rate of the plan for the
3 plan year) of the aggregate total of the shortfall
4 amortization installments, for such plan year
5 and the 5 succeeding plan years, which have
6 been determined with respect to the shortfall
7 amortization bases of the plan for each of the
8 6 plan years preceding such plan year.

9 “(4) FUNDING SHORTFALL.—For purposes of
10 this section, the funding shortfall of a plan for any
11 plan year is the excess (if any) of—

12 “(A) the funding target of the plan for the
13 plan year, over

14 “(B) the value of plan assets of the plan
15 for the plan year which are held by the plan im-
16 mediately before the valuation date.

17 “(5) EARLY DEEMED AMORTIZATION UPON AT-
18 TAINMENT OF FUNDING TARGET.—In any case in
19 which the funding shortfall of a plan for a plan year
20 is zero, for purposes of determining the shortfall am-
21 ortization charge for such plan year and succeeding
22 plan years, the shortfall amortization base for all
23 preceding plan years shall be reduced to zero.

24 “(d) RULES RELATING TO FUNDING TARGET.—For
25 purposes of this section—

1 “(1) FUNDING TARGET.—Except as provided in
2 subsection (g)(1), the funding target of a plan for a
3 plan year is the present value of all liabilities to par-
4 ticipants and their beneficiaries under the plan for
5 the plan year.

6 “(2) FUNDING TARGET ATTAINMENT PERCENT-
7 AGE.—The ‘funding target attainment percentage’ of
8 a plan for a plan year is the ratio (expressed as a
9 percentage) which—

10 “(A) the value of plan assets for the plan
11 year, bears to

12 “(B) the funding target of the plan for the
13 plan year (determined without regard to sub-
14 section (g)(1)).

15 “(e) VALUATION OF PLAN ASSETS AND LIABIL-
16 ITIES.—

17 “(1) VALUE OF PLAN ASSETS.—For purposes
18 of this section (other than paragraph (4) and sub-
19 sections (a)(2) and (h)(3)), the term ‘value of plan
20 assets’ means the excess of the value of plan assets
21 (determined without regard to this paragraph) over
22 the sum of—

23 “(A) the pre-funding balance of the plan
24 maintained under subsection (h)(1), and

1 “(B) the funding standard carryover bal-
2 ance of the plan maintained under subsection
3 (h)(2).

4 “(2) TIMING OF DETERMINATIONS.—Except as
5 otherwise provided under this subsection, all deter-
6 minations under this section for a plan year shall be
7 made as of the valuation date of the plan for such
8 plan year.

9 “(3) VALUATION DATE.—For purposes of this
10 section—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the valuation date of a plan
13 for any plan year shall be the first day of the
14 plan year.

15 “(B) EXCEPTION FOR SMALL PLANS.—If,
16 on each day during the preceding plan year, a
17 plan had 500 or fewer participants, the plan
18 may designate any day during the plan year as
19 its valuation date for such plan year. For pur-
20 poses of this subparagraph, all defined benefit
21 plans (other than multiemployer plans) main-
22 tained by the same employer (or any member of
23 such employer’s controlled group) shall be treat-
24 ed as 1 plan, but only employees of such em-
25 ployer or member shall be taken into account.

1 “(C) APPLICATION OF CERTAIN RULES IN
2 DETERMINATION OF PLAN SIZE.—For purposes
3 of this paragraph—

4 “(i) PLANS NOT IN EXISTENCE IN
5 PRECEDING YEAR.—In the case of the first
6 plan year of any plan, subparagraph (B)
7 shall apply to such plan by taking into ac-
8 count the number of participants that the
9 plan is reasonably expected to have on
10 days during such first plan year.

11 “(ii) PREDECESSORS.—Any reference
12 in subparagraph (B) to an employer shall
13 include a reference to any predecessor of
14 such employer.

15 “(4) AUTHORIZATION OF USE OF ACTUARIAL
16 VALUE.—For purposes of this section, the value of
17 plan assets (determined without regard to paragraph
18 (1)) shall be determined on the basis of any reason-
19 able actuarial method of valuation which takes into
20 account fair market value and which is permitted
21 under regulations prescribed by the Secretary of the
22 Treasury, except that—

23 “(A) any such method providing for aver-
24 aging of fair market values may not provide for
25 averaging of such values over more than the

1 current plan year and the 2 preceding plan
2 years, and

3 “(B) any such method may not result in a
4 determination of the value of plan assets which,
5 at any time, is lower than 90 percent or greater
6 than 110 percent of the fair market value of
7 such assets at such time.

8 “(5) ACCOUNTING FOR CONTRIBUTION RE-
9 CEIPTS.—For purposes of this section—

10 “(A) CONTRIBUTIONS FOR PRIOR PLAN
11 YEARS TAKEN INTO ACCOUNT.—For purposes
12 of determining the value of plan assets for any
13 current plan year, in any case in which a con-
14 tribution properly allocable to amounts owed for
15 a preceding plan year is made on or after the
16 valuation date of the plan for such current plan
17 year, such contribution shall be taken into ac-
18 count, except that any such contribution made
19 during any such current plan year beginning
20 after 2006 shall be taken into account only in
21 an amount equal to its present value (deter-
22 mined using the effective rate of interest for the
23 plan for the preceding plan year) as of the valu-
24 ation date of the plan for such current plan
25 year.

1 “(B) CONTRIBUTIONS FOR CURRENT PLAN
2 YEAR DISREGARDED.—For purposes of deter-
3 mining the value of plan assets for any current
4 plan year, contributions which are properly allo-
5 cable to amounts owed for such plan year shall
6 not be taken into account, and, in the case of
7 any such contribution made before the valuation
8 date of the plan for such plan year, such value
9 of plan assets shall be reduced for interest on
10 such amount determined using the effective rate
11 of interest of the plan for the preceding plan
12 year for the period beginning when such pay-
13 ment was made and ending on the valuation
14 date of the plan.

15 “(6) ACCOUNTING FOR PLAN LIABILITIES.—
16 For purposes of this section—

17 “(A) LIABILITIES TAKEN INTO ACCOUNT
18 FOR CURRENT PLAN YEAR.—In determining the
19 value of liabilities under a plan for a plan year,
20 liabilities shall be taken into account to the ex-
21 tent attributable to benefits (including any early
22 retirement or similar benefit) accrued as of the
23 beginning of the plan year.

24 “(B) ACCRUALS DURING CURRENT PLAN
25 YEAR DISREGARDED.—For purposes of sub-

paragraph (A), benefits accrued during such plan year (after those taken into account under subparagraph (A)) shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

“(f) 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 liabilities referred to in subsection (d)(1)

1 would result in an amount equal to the funding
2 target of the plan for such plan year.

3 “(B) APPLICATION TO FUNDING TAR-
4 GET.—For purposes of determining the funding
5 target of a plan for any plan year, the interest
6 rate used in determining the present value of
7 the liabilities of the plan shall be—

8 “(i) in the case of liabilities reason-
9 ably determined to be payable during the
10 5-year period beginning on the first day of
11 the plan year, the first segment rate with
12 respect to the applicable month,

13 “(ii) in the case of liabilities reason-
14 ably determined to be payable during the
15 15-year period beginning at the end of the
16 period described in clause (i), the second
17 segment rate with respect to the applicable
18 month, and

19 “(iii) in the case of liabilities reason-
20 ably determined to be payable after the pe-
21 riod described in clause (ii), the third seg-
22 ment rate with respect to the applicable
23 month.

24 “(C) SEGMENT RATES.—For purposes of
25 this paragraph—

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

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

22 “(iii) THIRD SEGMENT RATE.—The
23 term ‘third segment rate’ means, with re-
24 spect to any month, the single rate of in-
25 terest which shall be determined by the

1 Secretary of the Treasury for such month
2 on the basis of the corporate bond yield
3 curve for such month, taking into account
4 only that portion of such yield curve which
5 is based on bonds maturing during periods
6 beginning after the period described in
7 clause (ii).

8 “(D) CORPORATE BOND YIELD CURVE.—

9 For purposes of this paragraph—

10 “(i) IN GENERAL.—The term ‘cor-
11 porate bond yield curve’ means, with re-
12 spect to any month, a yield curve which is
13 prescribed by the Secretary of the Treas-
14 ury for such month and which reflects a 3-
15 year weighted average of yields on invest-
16 ment grade corporate bonds with varying
17 maturities.

18 “(ii) 3-YEAR WEIGHTED AVERAGE.—
19 The term ‘3-year weighted average’ means
20 an averaging methodology under which the
21 most recent year is weighted 50 percent,
22 the year preceding such year is weighted
23 35 percent, and the second year preceding
24 such year is weighted 15 percent.

1 “(E) APPLICABLE MONTH.—For purposes
2 of this paragraph, the term ‘applicable month’
3 means, with respect to any plan for any plan
4 year, the month which includes the valuation
5 date of such plan for such plan year or, at the
6 election of the plan administrator, any of the 4
7 months which precede such month. Any election
8 made under this subparagraph shall apply to
9 the plan year for which made and all succeeding
10 plan years unless revoked with the consent of
11 the Secretary of the Treasury.

12 “(F) PUBLICATION REQUIREMENTS.—The
13 Secretary of the Treasury shall publish for each
14 month the corporate bond yield curve (and the
15 corporate bond yield curve reflecting the modi-
16 fication described in section
17 205(g)(3)(B)(iii)(I)) for such month and each
18 of the rates determined under subparagraph
19 (B) for such month. The Secretary of the
20 Treasury shall also publish a description of the
21 methodology used to determine such yield curve
22 and such rates which is sufficiently detailed to
23 enable plans to make reasonable projections re-
24 garding the yield curve and such rates for fu-

ture months based on the plan's projection of future interest rates.

“(G) TRANSITION RULE.—

“(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2006 or 2007, the first, second, and third segment rates for a plan with respect to any month shall be equal to the sum of—

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

“(II) the product of the rate determined under the rules of section 302(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2005), multiplied by a percentage equal to 100 percent minus the applicable percentage.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is $33\frac{1}{3}$ percent for plan years beginning in 2006 and $66\frac{2}{3}$ percent for plan years beginning in 2007.

1 “(3) MORTALITY TABLE.—

2 “(A) IN GENERAL.—The mortality tables
3 used in determining any present value or mak-
4 ing any computation under this section shall be
5 the RP-2000 Combined Mortality Table, as
6 published by the Society of American Actuaries,
7 as in effect on the date of the enactment of the
8 Pension Protection Act of 2005 and as revised
9 from time to time under subparagraph (B).

10 “(B) PERIODIC REVISION.—The Secretary
11 of the Treasury shall (at least every 10 years)
12 make revisions in any tables in effect under this
13 paragraph to reflect the actual experience of
14 pension plans and projected trends in such ex-
15 perience.

16 “(C) TRANSITION RULE.—Under regula-
17 tions of the Secretary of the Treasury, any dif-
18 ference in assumptions as set forth in the mor-
19 tality table specified in subparagraph (A) and
20 assumptions as set forth in the mortality table
21 described in section 302(d)(7)(C)(ii) (as in ef-
22 fect for plan years beginning in 2005) shall be
23 phased in ratably over the first period of 5 plan
24 years beginning in or after 2006 so as to be
25 fully effective for the fifth plan year.

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

6 “(A) the probability that future benefit
7 payments under the plan will be made in the
8 form of optional forms of benefits provided
9 under the plan (including lump sum distribu-
10 tions, determined on the basis of the plan’s ex-
11 perience and other related assumptions), and

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

18 “(5) APPROVAL OF LARGE CHANGES IN ACTU-
19 ARIAL ASSUMPTIONS.—

20 “(A) IN GENERAL.—No actuarial assump-
21 tion used to determine the funding target for a
22 single-employer plan to which this paragraph
23 applies may be changed without the approval of
24 the Secretary of the Treasury.

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

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

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

25 “(g) SPECIAL RULES FOR AT-RISK PLANS.—

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

3 “(A) IN GENERAL.—In any case in which
4 a plan is in at-risk status for a plan year, the
5 funding target of the plan for the plan year is
6 the sum of—

7 “(i) the present value of all liabilities
8 to participants and their beneficiaries
9 under the plan for the plan year, as deter-
10 mined by using, in addition to the actu-
11 arial assumptions described in subsection
12 (f), the supplemental actuarial assumptions
13 described in subparagraph (B), plus

14 “(ii) a loading factor determined
15 under subparagraph (C).

16 “(B) SUPPLEMENTAL ACTUARIAL ASSUMP-
17 TIONS.—The actuarial assumptions used in de-
18 termining the valuation of the funding target
19 shall include, in addition to the actuarial as-
20 sumptions described in subsection (f), an as-
21 sumption that all participants will elect benefits
22 at such times and in such forms as will result
23 in the highest present value of liabilities under
24 subparagraph (A)(i).

1 “(C) LOADING FACTOR.—The loading fac-
 2 tor applied with respect to a plan under this
 3 paragraph for any plan year is the sum of—

4 “(i) \$700, times the number of par-
 5 ticipants in the plan, plus

6 “(ii) 4 percent of the funding target
 7 (determined without regard to this para-
 8 graph) of the plan for the plan year.

9 “(2) TARGET NORMAL COST OF AT-RISK
 10 PLANS.—

11 “(A) IN GENERAL.—In any case in which
 12 a plan is in at-risk status for a plan year, the
 13 target normal cost of the plan for such plan
 14 year shall be the sum of—

15 “(i) the present value of all benefits
 16 which are expected to accrue under the
 17 plan during the plan year, determined
 18 under the actuarial assumptions used
 19 under paragraph (1), plus

20 “(ii) the loading factor under para-
 21 graph (1)(C), excluding the portion of the
 22 loading factor described in paragraph
 23 (1)(C)(i).

24 “(B) MINIMUM AMOUNT.—In no event
 25 shall the target normal cost of a plan deter-

1 mined under this paragraph be less than the
2 target normal cost of such plan as determined
3 without regard to this paragraph.

4 “(3) DETERMINATION OF AT-RISK STATUS.—
5 For purposes of this subsection, a plan is in ‘at-risk
6 status’ for a plan year if the funding target attain-
7 ment percentage of the plan for the preceding plan
8 year was less than 60 percent.

9 “(4) TRANSITION BETWEEN APPLICABLE FUND-
10 ING TARGETS AND BETWEEN APPLICABLE TARGET
11 NORMAL COST.—

12 “(A) IN GENERAL.—In any case in which
13 a plan which is in at-risk status for a plan year
14 has been in such status for a consecutive period
15 of fewer than 5 plan years, the applicable
16 amount of the funding target and of the target
17 normal cost shall be, in lieu of the amount de-
18 termined without regard to this paragraph, the
19 sum of—

20 “(i) the amount determined under this
21 section without regard to this subsection,
22 plus

23 “(ii) the transition percentage for
24 such plan year of the excess of the amount
25 determined under this subsection (without

1 regard to this paragraph) over the amount
 2 determined under this section without re-
 3 gard to this subsection.

4 “(B) TRANSITION PERCENTAGE.—For
 5 purposes of this paragraph, the ‘transition per-
 6 centage’ for a plan year is the product derived
 7 by multiplying—

8 “(i) 20 percent, by

9 “(ii) the number of plan years during
 10 the period described in subparagraph (A).

11 “(h) PRE-FUNDING AND FUNDING STANDARD CAR-
 12 RYOVER BALANCES.—

13 “(1) PRE-FUNDING BALANCE.—

14 “(A) IN GENERAL.—The plan sponsor of a
 15 pension plan which is a single-employer plan
 16 shall maintain a pre-funding balance for pur-
 17 poses of this subsection. Such balance shall con-
 18 sist of a beginning balance of zero, increased
 19 and decreased to the extent provided in sub-
 20 paragraphs (B) and (C), and adjusted further
 21 as provided in paragraph (3).

22 “(B) INCREASES.—As of the valuation
 23 date for each plan year beginning after 2006,
 24 the pre-funding balance of a plan shall be in-
 25 creased by the amount elected by the plan spon-

1 sor for the plan year. Such amount shall not ex-
2 ceed the excess (if any) of—

3 “(i) the aggregate total of employer
4 contributions to the plan for the preceding
5 plan year, over

6 “(ii) the minimum required contribu-
7 tion for such preceding plan year (in-
8 creased by interest on any portion of such
9 minimum required contribution remaining
10 unpaid, at the effective interest rate for
11 the plan for the preceding plan year, for
12 the period beginning with the first day of
13 such preceding plan year and ending on
14 the date that payment of such portion is
15 made).

16 “(C) DECREASES.—As of the valuation
17 date for each plan year after 2006, the pre-
18 funding balance of a plan shall be decreased
19 (but not below zero) by the sum of—

20 “(i) the amount credited under sub-
21 section (a)(4) (if any) in reducing the min-
22 imum required contribution of the plan for
23 the preceding plan year, and

24 “(ii) the amount elected by the plan
25 sponsor as a reduction in the pre-funding

1 balance (for purposes of the determination
 2 under subsection (e)(1) and any other pur-
 3 pose under this section).

4 “(D) COORDINATION WITH FUNDING
 5 STANDARD CARRYOVER BALANCE.—To the ex-
 6 tent that any plan has a funding standard car-
 7 ryover balance greater than zero—

8 “(i) no amount of the pre-funding bal-
 9 ance of such plan may be credited under
 10 subsection (a)(4) in reducing the minimum
 11 required contribution, and

12 “(ii) no election may be made under
 13 subparagraph (C)(ii).

14 “(E) NO USE OF BALANCE TO REDUCE
 15 MINIMUM REQUIRED CONTRIBUTION IF USED
 16 TO AVOID SHORTFALL AMORTIZATION.—The
 17 amount of the pre-funding balance of such plan
 18 may be credited under subsection (a)(4) in re-
 19 ducing the minimum required contribution only
 20 if the plan sponsor has elected to apply sub-
 21 section (a)(2) to the plan for such plan year by
 22 substituting ‘subsection (e)(1)(B)’ for ‘sub-
 23 section (e)(1)’.

24 “(2) FUNDING STANDARD CARRYOVER BAL-
 25 ANCE.—

1 “(A) IN GENERAL.—The plan sponsor of a
2 pension plan to which this paragraph applies
3 shall maintain a funding standard carryover
4 balance for purposes of this subsection. Such
5 balance shall consist of a beginning balance de-
6 termined under subparagraph (C), decreased to
7 the extent provided in subparagraph (D), and
8 adjusted further as provided in paragraph (3).

9 “(B) PLANS TO WHICH THIS PARAGRAPH
10 APPLIES.—This paragraph applies to any plan
11 which—

12 “(i) is a single-employer plan subject
13 to this part,

14 “(ii) was in effect for a plan year be-
15 ginning in 2005, and

16 “(iii) had a positive balance in the
17 funding standard account under section
18 302(b) as in effect for such plan year and
19 determined as of the end of such plan year.

20 “(C) BEGINNING BALANCE.—The begin-
21 ning balance of the funding standard carryover
22 balance shall be the positive balance described
23 in subparagraph (B)(iii).

24 “(D) DECREASES.—As of the valuation
25 date for each plan year after 2006, the funding

1 standard carryover balance of a plan shall be
2 decreased (but not below zero) by the sum of—

3 “(i) the amount credited under sub-
4 section (a)(4) (if any) in reducing the min-
5 imum required contribution of the plan for
6 the preceding plan year, and

7 “(ii) the amount elected by the plan
8 sponsor as a reduction in the funding
9 standard carryover balance (for purposes
10 of the determination under subsection
11 (e)(1) and any other purpose under this
12 section).

13 “(3) ADJUSTMENTS.—In determining the pre-
14 funding balance or the funding standard carryover
15 balance of a plan as of the valuation date of the plan
16 (before applying any increase or decrease under
17 paragraph (1) or (2)), the plan sponsor shall, in ac-
18 cordance with regulations which shall be prescribed
19 by the Secretary of the Treasury, adjust such bal-
20 ance of the plan so as to reflect the rate of net gain
21 or loss (determined, notwithstanding subsection
22 (e)(4), on the basis of fair market value) experienced
23 by all plan assets for the period beginning with the
24 valuation date for the preceding plan year and end-
25 ing with the date preceding the valuation date for

1 the current plan year, properly taking into account,
2 in accordance with such regulations, all contribu-
3 tions, distributions, and other plan payments made
4 during such period.

5 “(4) ELECTIONS.—Except as otherwise pro-
6 vided in this subsection, any election made under
7 this subsection shall be made at such time and in
8 such form and manner as the Secretary of the
9 Treasury may provide.

10 “(5) COORDINATION WITH WAIVERS.—For pur-
11 poses of this subsection, the term ‘minimum re-
12 quired contribution’ means for any plan year the
13 minimum required contribution for such plan year
14 determined without regard to this subsection and by
15 taking into account any waiver under section 302(c)
16 and any waiver amortization charge under sub-
17 section (j) for such plan year.

18 “(i) PAYMENT OF MINIMUM REQUIRED CONTRIBU-
19 TIONS.—

20 “(1) IN GENERAL.—For purposes of this sec-
21 tion, the due date for any payment of any minimum
22 required contribution for any plan year shall be 8½
23 months after the close of the plan year.

24 “(2) INTEREST.—Any payment required under
25 paragraph (1) for a plan year made after the valu-

1 ation date for such plan year shall be increased by
2 interest, for the period from the valuation date to
3 the payment date, at the effective rate of interest for
4 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.—In any case in which the plan has
10 a funding shortfall for the preceding plan year,
11 if the required installment is not paid in full,
12 then the minimum required contribution for the
13 plan year (as increased under paragraph (2))
14 shall be further increased by an amount equal
15 to the interest on the amount of the under-
16 payment for the period of the underpayment,
17 using an interest rate equal to the excess of—

18 “(i) 175 percent of the Federal mid-
19 term rate (as in effect under section 1274
20 of the Internal Revenue Code of 1986 for
21 the 1st month of such plan year), over

22 “(ii) the effective rate of interest for
23 the plan for the plan year.

1 “(B) AMOUNT OF UNDERPAYMENT, PE-
2 RIOD OF UNDERPAYMENT.—For purposes of
3 subparagraph (A)—

4 “(i) AMOUNT.—The amount of the
5 underpayment shall be the excess of—

6 “(I) the required installment,
7 over

8 “(II) the amount (if any) of the
9 installment contributed to or under
10 the plan on or before the due date for
11 the installment.

12 “(ii) PERIOD OF UNDERPAYMENT.—
13 The period for which any interest is
14 charged under this paragraph with respect
15 to any portion of the underpayment shall
16 run from the due date for the installment
17 to the date on which such portion is con-
18 tributed to or under the plan.

19 “(iii) ORDER OF CREDITING CON-
20 TRIBUTIONS.—For purposes of clause
21 (i)(II), contributions shall be credited
22 against unpaid required installments in the
23 order in which such installments are re-
24 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 IN-
8 STALLMENTS.—The due dates for required
9 installments are set forth in the following
10 table:

“In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the fol- lowing year

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

13 “(i) IN GENERAL.—The amount of
14 any required installment shall be 25 per-
15 cent of the required annual payment.

16 “(ii) REQUIRED ANNUAL PAYMENT.—
17 For purposes of clause (i), the term ‘re-
18 quired annual payment’ means the lesser
19 of—

20 “(I) 90 percent of the minimum
21 required contribution (without regard

1 to any waiver under section 302(c)) to
2 the plan for the plan year under this
3 section, or

4 “(II) in the case of a plan year
5 beginning after 2006, 100 percent of
6 the minimum required contribution
7 (without regard to any waiver under
8 section 302(c)) to the plan for the
9 preceding plan year.

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

13 “(E) FISCAL YEARS AND SHORT YEARS.—

14 “(i) FISCAL YEARS.—In applying this
15 paragraph to a plan year beginning on any
16 date other than January 1, there shall be
17 substituted for the months specified in this
18 paragraph, the months which correspond
19 thereto.

20 “(ii) SHORT PLAN YEAR.—This sub-
21 paragraph shall be applied to plan years of
22 less than 12 months in accordance with
23 regulations prescribed by the Secretary of
24 the Treasury.

1 “(4) LIQUIDITY REQUIREMENT IN CONNECTION
2 WITH QUARTERLY CONTRIBUTIONS.—

3 “(A) IN GENERAL.—A plan to which this
4 paragraph applies shall be treated as failing to
5 pay the full amount of any required installment
6 under paragraph (3) to the extent that the
7 value of the liquid assets paid in such install-
8 ment is less than the liquidity shortfall (wheth-
9 er or not such liquidity shortfall exceeds the
10 amount of such installment required to be paid
11 but for this paragraph).

12 “(B) PLANS TO WHICH PARAGRAPH AP-
13 PLIES.—This paragraph shall apply to a plan
14 (other than a plan that would be described in
15 subsection (e)(3)(B) if ‘100’ were substituted
16 for ‘500’ therein) which—

17 “(i) is required to pay installments
18 under paragraph (3) for a plan year, and

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

21 “(C) PERIOD OF UNDERPAYMENT.—For
22 purposes of paragraph (3)(A), any portion of an
23 installment that is treated as not paid under
24 subparagraph (A) shall continue to be treated

1 as unpaid until the close of the quarter in
2 which the due date for such installment occurs.

3 “(D) LIMITATION ON INCREASE.—If the
4 amount of any required installment is increased
5 by reason of subparagraph (A), in no event
6 shall such increase exceed the amount which,
7 when added to prior installments for the plan
8 year, is necessary to increase the funding target
9 attainment percentage of the plan for the plan
10 year (taking into account the expected increase
11 in funding target due to benefits accruing or
12 earned during the plan year) to 100 percent.

13 “(E) DEFINITIONS.—For purposes of this
14 subparagraph:

15 “(i) LIQUIDITY SHORTFALL.—The
16 term ‘liquidity shortfall’ means, with re-
17 spect to any required installment, an
18 amount equal to the excess (as of the last
19 day of the quarter for which such install-
20 ment is made) of—

21 “(I) the base amount with re-
22 spect to such quarter, over

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

25 “(ii) BASE AMOUNT.—

1 “(I) IN GENERAL.—The term
2 ‘base amount’ means, with respect to
3 any quarter, an amount equal to 3
4 times the sum of the adjusted dis-
5 bursements from the plan for the 12
6 months ending on the last day of such
7 quarter.

8 “(II) SPECIAL RULE.—If the
9 amount determined under subclause
10 (I) exceeds an amount equal to 2
11 times the sum of the adjusted dis-
12 bursements from the plan for the 36
13 months ending on the last day of the
14 quarter and an enrolled actuary cer-
15 tifies to the satisfaction of the Sec-
16 retary of the Treasury that such ex-
17 cess is the result of nonrecurring cir-
18 cumstances, the base amount with re-
19 spect to such quarter shall be deter-
20 mined without regard to amounts re-
21 lated to those nonrecurring cir-
22 cumstances.

23 “(iii) DISBURSEMENTS FROM THE
24 PLAN.—The term ‘disbursements from the
25 plan’ means all disbursements from the

1 trust, including purchases of annuities,
2 payments of single sums and other bene-
3 fits, and administrative expenses.

4 “(iv) ADJUSTED DISBURSEMENTS.—
5 The term ‘adjusted disbursements’ means
6 disbursements from the plan reduced by
7 the product of—

8 “(I) the plan’s funding target at-
9 tainment percentage for the plan year,
10 and

11 “(II) the sum of the purchases of
12 annuities, payments of single sums,
13 and such other disbursements as the
14 Secretary of the Treasury shall pro-
15 vide in regulations.

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

21 “(vi) QUARTER.—The term ‘quarter’
22 means, with respect to any required install-
23 ment, the 3-month period preceding the
24 month in which the due date for such in-
25 stallment occurs.

1 “(F) REGULATIONS.—The Secretary of the
2 Treasury may prescribe such regulations as are
3 necessary to carry out this paragraph.

4 “(j) WAIVER AMORTIZATION CHARGE.—

5 “(1) IN GENERAL.—The minimum required
6 contribution for any plan year under subsection (a)
7 shall be increased by the amount of the waiver am-
8 ortization charge (if any) for such plan year.

9 “(2) DETERMINATION OF WAIVER AMORTIZA-
10 TION CHARGE.—The waiver amortization charge for
11 a plan for any plan year is the aggregate total of the
12 waiver amortization installments for such plan year
13 with respect to the waiver amortization bases for
14 such plan year and each of the 4 preceding plan
15 years.

16 “(3) WAIVER AMORTIZATION INSTALLMENT.—
17 For purposes of paragraph (2), the plan sponsor
18 shall determine, with respect to the waiver amortiza-
19 tion base of the plan for any plan year, the amounts
20 necessary to amortize such waiver amortization base,
21 in level annual installments over a period of 5 plan
22 years beginning with such plan year. The annual in-
23 stallment of such amortization for each plan year in
24 such 5-plan year period is the waiver amortization

1 installment for such plan year with respect to such
2 waiver amortization base.

3 “(4) COMPUTATION ASSUMPTIONS.—The deter-
4 mination of any annual installment under paragraph
5 (2) for any plan year shall be made as of the valu-
6 ation date for such plan year, using the effective
7 rate of interest for the plan for the preceding plan
8 year.

9 “(5) WAIVER AMORTIZATION BASE.—The waiv-
10 er amortization base of a plan for a plan year is the
11 excess (if any) of—

12 “(A) the portion of the minimum required
13 contribution of such plan waived under section
14 302(c) for such plan year, over

15 “(B) the aggregate total of the waiver am-
16 ortization installments, for such plan year and
17 the 3 succeeding plan years, which have been
18 determined with respect to the waiver amortiza-
19 tion bases of the plan for each of the 4 plan
20 years preceding such plan year.

21 “(k) IMPOSITION OF LIEN WHERE FAILURE TO
22 MAKE REQUIRED CONTRIBUTIONS.—

23 “(1) IN GENERAL.—In the case of a plan cov-
24 ered under section 4021 of this Act and to which

1 this subsection applies (as provided under paragraph
2 (2)), if—

3 “(A) any person fails to make a contribu-
4 tion payment required by section 302 and this
5 section before the due date for such payment,
6 and

7 “(B) the unpaid balance of such payment
8 (including interest), when added to the aggre-
9 gate unpaid balance of all preceding such pay-
10 ments for which payment was not made before
11 the due date (including interest), exceeds
12 \$1,000,000,

13 then there shall be a lien in favor of the plan in the
14 amount determined under paragraph (3) upon all
15 property and rights to property, whether real or per-
16 sonal, belonging to such person and any other per-
17 son who is a member of the same controlled group
18 of which such person is a member.

19 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
20 This subsection shall apply to a defined benefit plan
21 which is a single-employer plan for any plan year for
22 which the funding target attainment percentage (as
23 defined in subsection (d)(2)) of such plan is less
24 than 100 percent.

1 “(3) AMOUNT OF LIEN.—For purposes of para-
2 graph (1), the amount of the lien shall be equal to
3 the aggregate unpaid balance of contribution pay-
4 ments required under this section and section 302
5 for which payment has not been made before the due
6 date.

7 “(4) NOTICE OF FAILURE; LIEN.—

8 “(A) NOTICE OF FAILURE.—A person
9 committing a failure described in paragraph (1)
10 shall notify the Pension Benefit Guaranty Cor-
11 poration of such failure within 10 days of the
12 due date for the required contribution payment.

13 “(B) PERIOD OF LIEN.—The lien imposed
14 by paragraph (1) shall arise on the due date for
15 the required contribution payment and shall
16 continue until the last day of the first plan year
17 in which the plan ceases to be described in
18 paragraph (1)(B). Such lien shall continue to
19 run without regard to whether such plan con-
20 tinues to be described in paragraph (2) during
21 the period referred to in the preceding sentence.

22 “(C) CERTAIN RULES TO APPLY.—Any
23 amount with respect to which a lien is imposed
24 under paragraph (1) shall be treated as taxes
25 due and owing the United States and rules

1 similar to the rules of subsections (c), (d), and
2 (e) of section 4068 shall apply with respect to
3 a lien imposed by subsection (a) and the
4 amount with respect to such lien.

5 “(5) ENFORCEMENT.—Any lien created under
6 paragraph (1) may be perfected and enforced only
7 by the Pension Benefit Guaranty Corporation, or at
8 the direction of the Pension Benefit Guaranty Cor-
9 poration, by the contributing sponsor (or any mem-
10 ber of the controlled group of the contributing spon-
11 sor).

12 “(6) DEFINITIONS.—For purposes of this sub-
13 section—

14 “(A) CONTRIBUTION PAYMENT.—The term
15 ‘contribution payment’ means, in connection
16 with a plan, a contribution payment required to
17 be made to the plan, including any required in-
18 stallment under paragraphs (3) and (4) of sub-
19 section (i).

20 “(B) DUE DATE; REQUIRED INSTALL-
21 MENT.—The terms ‘due date’ and ‘required in-
22 stallment’ have the meanings given such terms
23 by subsection (i), except that in the case of a
24 payment other than a required installment, the

1 due date shall be the date such payment is re-
 2 quired to be made under section 303.

3 “(C) CONTROLLED GROUP.—The term
 4 ‘controlled group’ means any group treated as
 5 a single employer under subsections (b), (c),
 6 (m), and (o) of section 414 of the Internal Rev-
 7 enue Code of 1986.

8 “(I) QUALIFIED TRANSFERS TO HEALTH BENEFIT
 9 ACCOUNTS.—In the case of a qualified transfer (as de-
 10 fined in section 420 of the Internal Revenue Code of
 11 1986), any assets so transferred shall not, for purposes
 12 of this section, be treated as assets in the plan.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 in section 1 of such Act (as amended by section 101) is
 15 amended by inserting after the item relating to section
 16 302 the following new item:

“Sec. 303. Minimum funding standards for single-employer defined benefit pen-
 sion plans.”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply with respect to plan years begin-
 19 ning after 2005.

20 **SEC. 103. LIMITATIONS ON DISTRIBUTIONS AND BENEFIT**
 21 **ACCRUALS UNDER SINGLE-EMPLOYER**
 22 **PLANS.**

23 (a) PROHIBITION OF SHUTDOWN BENEFITS AND
 24 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS

1 UNDER SINGLE-EMPLOYER PLANS.—Section 206 of the
 2 Employee Retirement Income Security Act of 1974 (29
 3 U.S.C. 1056) is amended by adding at the end the fol-
 4 lowing new subsection:

5 “(g) PROHIBITION OF SHUTDOWN BENEFITS AND
 6 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS
 7 UNDER SINGLE-EMPLOYER PLANS.—

8 “(1) IN GENERAL.—No pension plan which is a
 9 single-employer plan may provide benefits which are
 10 payable upon the occurrence of—

11 “(A) a plant shutdown, or

12 “(B) any other unpredictable contingent
 13 event.

14 “(2) UNPREDICTABLE CONTINGENT EVENT.—

15 For purposes of this subsection, the term ‘unpredict-
 16 able contingent event’ means an event other than—

17 “(A) attainment of any age, performance
 18 of any service, receipt or derivation of any com-
 19 pensation, or the occurrence of death or dis-
 20 ability, or

21 “(B) an event which is reasonably and reli-
 22 ably predictable (as determined by the Sec-
 23 retary of the Treasury).”.

24 (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-
 25 CRUALS.—

1 (1) IN GENERAL.—Section 206 of such Act (as
2 amended by subsection (a)) is amended further by
3 adding at the end the following new subsection:

4 “(h) FUNDING-BASED LIMITS ON BENEFITS AND
5 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER
6 PLANS.—

7 “(1) LIMITATIONS ON PLAN AMENDMENTS IN-
8 CREASING LIABILITY FOR BENEFITS.—

9 “(A) IN GENERAL.—No amendment to a
10 single-employer plan which has the effect of in-
11 creasing liabilities of the plan by reason of in-
12 creases in benefits, establishment of new bene-
13 fits, changing the rate of benefit accrual, or
14 changing the rate at which benefits become
15 nonforfeitable to the plan may take effect dur-
16 ing any plan year if the funding target attain-
17 ment percentage as of the valuation date of the
18 plan for such plan year is—

19 “(i) less than 80 percent, or

20 “(ii) would be less than 80 percent
21 taking into account such amendment.

22 “(B) EXEMPTION.—Subparagraph (A)
23 shall cease to apply with respect to any plan
24 year, effective as of the first date of the plan
25 year (or if later, the effective date of the

1 amendment), upon payment by the plan sponsor
2 of a contribution equal to—

3 “(i) in the case of subparagraph
4 (A)(i), the amount of the increase in the
5 funding target of the plan (under section
6 303) for the plan year attributable to the
7 amendment, and

8 “(ii) in the case of subparagraph
9 (A)(ii), the amount sufficient to result in a
10 funding target attainment percentage of 80
11 percent.

12 “(2) FUNDING-BASED LIMITATION ON CERTAIN
13 FORMS OF DISTRIBUTION.—A single-employer plan
14 shall provide that, in any case in which the plan’s
15 funding target attainment percentage as of the valu-
16 ation date of the plan for a plan year is less than
17 80 percent, the plan may not after such date pay
18 any prohibited payment (as defined in section
19 206(e)).

20 “(3) LIMITATIONS ON BENEFIT ACCRUALS FOR
21 PLANS WITH SEVERE FUNDING SHORTFALLS.—A
22 single-employer plan shall provide that, in any case
23 in which the plan’s funding target attainment per-
24 centage as of the valuation date of the plan for a

1 plan year is less than 60 percent, all future benefit
2 accruals under the plan shall cease as of such date.

3 “(4) NEW PLANS.—Paragraphs (1) and (3)
4 shall not apply to a plan for the first 5 plan years
5 of the plan. For purposes of this paragraph, the ref-
6 erence in this paragraph to a plan shall include a
7 reference to any predecessor plan.

8 “(5) PRESUMED UNDERFUNDING FOR PUR-
9 POSES OF BENEFIT LIMITATIONS BASED ON PRIOR
10 YEAR’S FUNDING STATUS.—

11 “(A) PRESUMPTION OF CONTINUED
12 UNDERFUNDING.—In any case in which a ben-
13 efit limitation under paragraph (1), (2), or (3)
14 has been applied to a plan with respect to the
15 plan year preceding the current plan year, the
16 funding target attainment percentage of the
17 plan as of the valuation date of the plan for the
18 current plan year shall be presumed to be equal
19 to the funding target attainment percentage of
20 the plan as of the valuation date of the plan for
21 the preceding plan year until the enrolled actu-
22 ary of the plan certifies the actual funding tar-
23 get attainment percentage of the plan as of the
24 valuation date of the plan for the current plan
25 year.

1 “(B) PRESUMPTION OF UNDERFUNDING
2 AFTER 10TH MONTH.—In any case in which no
3 such certification is made with respect to the
4 plan before the first day of the 10th month of
5 the current plan year, for purposes of para-
6 graphs (1), (2), and (3), the plan’s funding tar-
7 get attainment percentage shall be conclusively
8 presumed to be less than 60 percent as of the
9 first day of such 10th month, and such day
10 shall be deemed, for purposes of such para-
11 graphs, to be the valuation date of the plan for
12 the current plan year.

13 “(C) PRESUMPTION OF UNDERFUNDING
14 AFTER 4TH MONTH FOR NEARLY UNDER-
15 FUNDED PLANS.—In any case in which—

16 “(i) a benefit limitation under para-
17 graph (1), (2), or (3) did not apply to a
18 plan with respect to the plan year pre-
19 ceding the current plan year, but the fund-
20 ing target attainment percentage of the
21 plan for such preceding plan year was not
22 more than 10 percentage points greater
23 than the percentage which would have
24 caused such paragraph to apply to the plan

1 with respect to such preceding plan year,
2 and

3 “(ii) as of the first day of the 4th
4 month of the current plan year, the en-
5 rolled actuary of the plan has not certified
6 the actual funding target attainment per-
7 centage of the plan as of the valuation date
8 of the plan for the current plan year,
9 until the enrolled actuary so certifies, such first
10 day shall be deemed, for purposes of such para-
11 graph, to be the valuation date of the plan for
12 the current plan year and the funding target at-
13 tainment percentage of the plan as of such first
14 day shall, for purposes of such paragraph, be
15 presumed to be equal to 10 percentage points
16 less than the funding target attainment per-
17 centage of the plan as of the valuation date of
18 the plan for such preceding plan year.

19 “(6) RESTORATION BY PLAN AMENDMENT OF
20 BENEFITS OR BENEFIT ACCRUAL.—In any case in
21 which a prohibition under paragraph (2) of the pay-
22 ment of lump sum distributions or benefits in any
23 other accelerated form or a cessation of benefit ac-
24 cruals under paragraph (3) is applied to a plan with
25 respect to any plan year and such prohibition or ces-

sation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of paragraph (5).

“(7) FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of this subsection, the term ‘funding target attainment percentage’ has the meaning provided such term under section 303(d)(2).”.

(2) NOTICE REQUIREMENT.—

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

(i) by redesignating subsection (j) as subsection (k); and

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

“(j) NOTICE OF FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—The plan administrator of a single-employer plan shall provide a written notice to plan participants and beneficiaries within 30 days after the plan has become subject to the restriction de-

1 scribed in section 206(h)(2) or at such other time as may
2 be determined by the Secretary.”.

3 (B) PENALTY.—Section 502(c)(1)(A) of
4 such Act (29 U.S.C. 1132(c)(1)(A)) is amended
5 by striking “section 606” and all that follows
6 through “101(f)” and inserting “section 606,
7 101(e)(1), 101(f), or 101(j)”.

8 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
9 plan shall not fail to meet the requirements of section
10 204(g) of the Employee Retirement Income Security Act
11 of 1974 or section 411(d)(6) of the Internal Revenue Code
12 of 1986 solely by reason of the adoption by the plan of
13 an amendment necessary to meet the requirements of the
14 amendments made by this section.

15 (d) EFFECTIVE DATE.—

16 (1) SHUTDOWN BENEFITS.—Except as provided
17 in paragraph (3), the amendments made by sub-
18 section (a) shall apply with respect to plant shut-
19 downs, or other unpredictable contingent events, oc-
20 ccurring after 2006.

21 (2) OTHER BENEFITS.—Except as provided in
22 paragraph (3), the amendments made by subsection
23 (b) shall apply with respect to plan years beginning
24 after 2006.

1 (3) COLLECTIVE BARGAINING EXCEPTION.—In
2 the case of a plan maintained pursuant to 1 or more
3 collective bargaining agreements between employee
4 representatives and 1 or more employers ratified be-
5 fore the date of the enactment of this Act, the
6 amendments made by this subsection shall not apply
7 to plan years beginning before the earlier of—

8 (A) the later of—

9 (i) the date on which the last collec-
10 tive bargaining agreement relating to the
11 plan terminates (determined without re-
12 gard to any extension thereof agreed to
13 after the date of the enactment of this
14 Act), or

15 (ii) the first day of the first plan year
16 to which the amendments made by this
17 subsection would (but for this subpara-
18 graph) apply, or

19 (B) January 1, 2009.

20 For purposes of clause (i), any plan amendment
21 made pursuant to a collective bargaining agreement
22 relating to the plan which amends the plan solely to
23 conform to any requirement added by this subsection
24 shall not be treated as a termination of such collec-
25 tive bargaining agreement.

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

2 (a) SECURITY REQUIRED FOR PLAN AMENDMENT
3 RESULTING IN SIGNIFICANT UNDERFUNDING.—Section
4 307 of the Employee Retirement Income Security Act of
5 1974 (29 U.S.C. 1085b) is amended—

6 (1) in subsection (a)(1), by striking “current li-
7 ability under the plan” and inserting “the funding
8 target of the plan”;

9 (2) in subsection (a)(2), by striking “funded
10 current liability percentage” and inserting “funding
11 target attainment percentage”, and by striking “un-
12 funded current liability” and inserting “unfunded li-
13 abilities”;

14 (3) in subsection (c)(1)(A), by striking “funded
15 current liability percentage” and inserting “funding
16 target attainment percentage”, and by “unfunded
17 current liability” and inserting “unfunded liabil-
18 ities”;

19 (4) in subsection (c)(1)(B), by striking “current
20 liability” and inserting “funding target”;

21 (5) in subsection (d), by striking “funded cur-
22 rent liability percentage” each place it appears and
23 inserting “funding target attainment percentage”;
24 and

25 (6) in subsection (f), by striking “the terms”
26 and all that follows and inserting the following: “the

1 terms ‘funding target’ and ‘funding target attain-
 2 ment percentage’ shall have the meanings given such
 3 terms by sections 303(d) and 303(g)(4), respectively,
 4 and the term ‘unfunded liabilities’ means, with re-
 5 spect to any plan year, the excess (if any) of the
 6 funding target of the plan over the value of the
 7 plan’s assets determined under section 303(e)(4).”

8 (b) MISCELLANEOUS AMENDMENTS.—Subtitle B of
 9 title I of such Act (29 U.S.C. 1021 et seq.) is amended—

10 (1) in section 101(d)(3), by striking “section
 11 302(e)” and inserting “section 303(i)”;

12 (2) in section 101(f)(2)(B), by striking clause
 13 (i) and inserting the following:

14 “(i) a statement as to whether—

15 “(I) in the case of a single-em-
 16 ployer plan, the plan’s funding target
 17 attainment percentage (as defined in
 18 section 303(g)(4)), or

19 “(II) in the case of a multiem-
 20 ployer plan, the plan’s funded current
 21 liability percentage (as defined in sec-
 22 tion 305(e)(4)),

23 is at least 100 percent (and, if note, the
 24 actual percentage);”;

1 (3) in section 103(d)(8)(B), by striking “the re-
2 quirements of section 302(c)(3)” and inserting “the
3 applicable requirements of sections 303(f) and
4 304(c)(3)”;

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

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

9 “(A) in the case of a single-employer plan,
10 the funding target (as defined in section
11 303(d)) of the plan, or

12 “(B) in the case of a multiemployer plan,
13 the current liability (as defined in section
14 304(c)(6)(C)) under the plan,
15 the percentage which such value is of the amount
16 described in subparagraph (A) or (B).”;

17 (5) in section 203(a)(3)(C), by striking “section
18 302(c)(8)” and inserting “section 302(d)(2)”;

19 (6) in section 204(g)(1), by striking “section
20 302(c)(8)” and inserting “section 302(d)(2)”;

21 (7) in section 204(i)(2)(B), by striking “section
22 302(c)(8)” and inserting “section 302(d)(2)”;

23 (8) in section 204(i)(3), by striking “funded
24 current liability percentage (within the meaning of
25 section 302(d)(8) of this Act)” and inserting “fund-

1 ing target attainment percentage (as defined in sec-
2 tion 303(g)(4))”;

3 (9) in section 204(i)(4), by striking “section
4 302(c)(11)(A), without regard to section
5 302(c)(11)(B)” and inserting “section 302(b)(1),
6 without regard to section 302(b)(2)”;

7 (10) in section 206(e)(1), by striking “subject
8 to the additional funding requirements of section
9 302(d)” and inserting “in at-risk status under sec-
10 tion 303(g)”, and by striking “section 302(e)(5)”
11 and inserting “section 303(i)(4)(E)(i)”;

12 (11) in section 206(e)(3), by striking “section
13 302(e) by reason of paragraph (5)(A) thereof” and
14 inserting “section 303(i)(3) by reason of section
15 303(i)(4)(A)”;

16 (12) in sections 101(e)(3), 403(c)(1), and
17 408(b)(13), by striking “American Jobs Creation
18 Act of 2004” and inserting “Pension Protection Act
19 of 2005”.

20 (c) REPEAL OF EXPIRED AUTHORITY FOR TEM-
21 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.
22 1057) is repealed.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to plan years beginning after 2005.

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

SEC. 111. MINIMUM FUNDING STANDARDS.

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

“SEC. 412. MINIMUM FUNDING STANDARDS.

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

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

“(2) MINIMUM FUNDING STANDARD.—For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

“(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 430 for the plan for the plan year,

“(B) in the case of a money purchase plan which is a single-employer plan, the employer

1 makes contributions to or under the plan for
2 the plan year which are required under the
3 terms of the plan, and

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

11 “(b) LIABILITY FOR CONTRIBUTIONS.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), the amount of any contribution required
14 by this section (including any required installments
15 under paragraphs (3) and (4) of section 430(i))
16 shall be paid by any employer responsible for mak-
17 ing contributions to or under the plan.

18 “(2) JOINT AND SEVERAL LIABILITY WHERE
19 EMPLOYER MEMBER OF CONTROLLED GROUP.—In
20 the case of a single-employer plan, if the employer
21 referred to in paragraph (1) is a member of a con-
22 trolled group, each member of such group shall be
23 jointly and severally liable for payment of such con-
24 tributions.

1 “(c) VARIANCE FROM MINIMUM FUNDING STAND-
2 ARDS.—

3 “(1) WAIVER IN CASE OF BUSINESS HARD-
4 SHIP.—

5 “(A) IN GENERAL.—If—

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

14 “(ii) application of the standard would
15 be adverse to the interests of plan partici-
16 pants in the aggregate,

17 the Secretary may, subject to subparagraphs
18 (B) and (C), waive the requirements of sub-
19 section (a) for such year with respect to all or
20 any portion of the minimum funding standard.
21 The Secretary shall not waive the minimum
22 funding standard with respect to a plan for
23 more than 3 of any 15 (5 of any 15 in the case
24 of a multiemployer plan) consecutive plan years.

1 “(B) EFFECTS OF WAIVER.—If a waiver is
2 granted under subparagraph (A) for any plan
3 year—

4 “(i) in the case of a single-employer
5 plan, the minimum required contribution
6 under section 430 for the plan year shall
7 be reduced by the amount of the waived
8 funding deficiency and such amount shall
9 be amortized as required under section
10 430(j), and

11 “(ii) in the case of a multiemployer
12 plan, the funding standard account shall
13 be credited under section 431(b)(3)(C)
14 with the amount of the waived funding de-
15 ficiency and such amount shall be amor-
16 tized as required under section
17 431(b)(2)(C).

18 “(C) WAIVER OF AMORTIZED PORTION
19 NOT ALLOWED.—The Secretary may not waive
20 under subparagraph (A) any portion of the
21 minimum funding standard under subsection
22 (a) for a plan year which is attributable to any
23 amortization payment required to be made for
24 such plan year with respect to any amortization
25 described in subparagraph (B) of any waived

1 portion of the minimum funding standard for
2 any preceding plan year.

3 “(2) DETERMINATION OF BUSINESS HARD-
4 SHIP.—For purposes of this subsection, the factors
5 taken into account in determining temporary sub-
6 stantial business hardship (substantial business
7 hardship in the case of a multiemployer plan) shall
8 include (but shall not be limited to) whether or
9 not—

10 “(A) the employer is operating at an eco-
11 nomic loss,

12 “(B) there is substantial unemployment or
13 underemployment in the trade or business and
14 in the industry concerned,

15 “(C) the sales and profits of the industry
16 concerned are depressed or declining, and

17 “(D) it is reasonable to expect that the
18 plan will be continued only if the waiver is
19 granted.

20 “(3) WAIVED FUNDING DEFICIENCY.—For pur-
21 poses of this part, the term ‘waived funding defi-
22 ciency’ means the portion of the minimum funding
23 standard under subsection (a) (determined without
24 regard to the waiver) for a plan year waived by the

1 Secretary and not satisfied by employer contribu-
2 tions.

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

5 “(A) SECURITY MAY BE REQUIRED.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in subparagraph (C), the Secretary
8 may require an employer maintaining a de-
9 fined benefit plan which is a single-em-
10 ployer plan (within the meaning of section
11 4001(a)(15) of the Employee Retirement
12 and Income Security Act of 1974) to pro-
13 vide security to such plan as a condition
14 for granting or modifying a waiver under
15 paragraph (1).

16 “(ii) SPECIAL RULES.—Any security
17 provided under clause (i) may be perfected
18 and enforced only by the Pension Benefit
19 Guaranty Corporation, or at the direction
20 of the Corporation, by a contributing spon-
21 sor (within the meaning of section
22 4001(a)(13) of such Act), or a member of
23 such sponsor’s controlled group (within the
24 meaning of section 4001(a)(14) of such
25 Act).

1 “(B) CONSULTATION WITH THE PENSION
2 BENEFIT GUARANTY CORPORATION.—Except as
3 provided in subparagraph (C), the Secretary
4 shall, before granting or modifying a waiver
5 under this subsection with respect to a plan de-
6 scribed in subparagraph (A)(i)—

7 “(i) provide the Pension Benefit
8 Guaranty Corporation with—

9 “(I) notice of the completed ap-
10 plication for any waiver or modifica-
11 tion, and

12 “(II) an opportunity to comment
13 on such application within 30 days
14 after receipt of such notice, and

15 “(ii) consider—

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

18 “(II) any views of any employee
19 organization (within the meaning of
20 section 3(4) of the Employee Retirement
21 and Income Security Act of
22 1974) representing participants in the
23 plan which are submitted in writing to
24 the Secretary in connection with such
25 application.

1 Information provided to the Corporation
2 under this subparagraph shall be consid-
3 ered tax return information and subject to
4 the safeguarding and reporting require-
5 ments of section 6103(p).

6 “(C) EXCEPTION FOR CERTAIN WAIV-
7 ERS.—

8 “(i) IN GENERAL.—The preceding
9 provisions of this paragraph shall not
10 apply to any plan with respect to which the
11 sum of—

12 “(I) the shortfall amortization
13 charge (within the meaning of section
14 303(c)(1)) for the plan year, and

15 “(II) the aggregate total of
16 shortfall amortization installments de-
17 termined for succeeding plan years
18 under section 303(c)(2),
19 is less than \$1,000,000.

20 “(ii) TREATMENT OF WAIVERS FOR
21 WHICH APPLICATIONS ARE PENDING.—The
22 amount described in clause (i)(I) shall in-
23 clude any increase in such amount which
24 would result if all applications for waivers
25 of the minimum funding standard under

1 this subsection which are pending with re-
2 spect to such plan were denied.

3 “(5) SPECIAL RULES FOR SINGLE-EMPLOYER
4 PLANS.—

5 “(A) APPLICATION MUST BE SUBMITTED
6 BEFORE DATE 2½ MONTHS AFTER CLOSE OF
7 YEAR.—In the case of a single-employer plan,
8 no waiver may be granted under this subsection
9 with respect to any plan for any plan year un-
10 less an application therefor is submitted to the
11 Secretary not later than the 15th day of the
12 3rd month beginning after the close of such
13 plan year.

14 “(B) SPECIAL RULE IF EMPLOYER IS MEM-
15 BER OF CONTROLLED GROUP.—In the case of a
16 single-employer plan, if an employer is a mem-
17 ber of a controlled group, the temporary sub-
18 stantial business hardship requirements of
19 paragraph (1) shall be treated as met only if
20 such requirements are met—

21 “(i) with respect to such employer,
22 and

23 “(ii) with respect to the controlled
24 group of which such employer is a member

1 (determined by treating all members of
2 such group as a single employer).

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

10 “(6) NOTICE TO EMPLOYEE ORGANIZATIONS.—

11 “(A) IN GENERAL.—The Secretary shall,
12 before granting a waiver under this subsection,
13 require each applicant to provide evidence satis-
14 factory to the Secretary that the applicant has
15 provided notice of the filing of the application
16 for such waiver to each employee organization
17 representing employees covered by the affected
18 plan, and participant, beneficiary, and alternate
19 payee (within the meaning of section
20 414(p)(8)). Such notice shall include a descrip-
21 tion of the extent to which the plan is funded
22 for benefits which are guaranteed under title IV
23 and for benefit liabilities.

24 “(B) CONSIDERATION OF RELEVANT IN-
25 FORMATION.—The Secretary shall consider any

1 relevant information provided by a person to
2 whom notice was given under subparagraph
3 (A).

4 “(d) MISCELLANEOUS RULES.—

5 “(1) CHANGE IN METHOD OR YEAR.—If the
6 funding method, the valuation date, or a plan year
7 for a plan is changed, the change shall take effect
8 only if approved by the Secretary.

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

12 “(A) is adopted after the close of such plan
13 year but no later than 2½ months after the
14 close of the plan year (or, in the case of a mul-
15 tiemployer plan, no later than 2 years after the
16 close of such plan year),

17 “(B) does not reduce the accrued benefit
18 of any participant determined as of the begin-
19 ning of the first plan year to which the amend-
20 ment applies, and

21 “(C) does not reduce the accrued benefit of
22 any participant determined as of the time of
23 adoption except to the extent required by the
24 circumstances,

1 shall, at the election of the plan administrator, be
2 deemed to have been made on the first day of such
3 plan year. No amendment described in this para-
4 graph which reduces the accrued benefits of any par-
5 ticipant shall take effect unless the plan adminis-
6 trator files a notice with the Secretary notifying him
7 of such amendment and the Secretary has approved
8 such amendment, or within 90 days after the date
9 on which such notice was filed, failed to disapprove
10 such amendment. No amendment described in this
11 subsection shall be approved by the Secretary unless
12 the Secretary determines that such amendment is
13 necessary because of a substantial business hardship
14 (as determined under subsection (c)(2)) and that a
15 waiver under subsection (c) (or, in the case of a
16 multiemployer plan, any extension of the amortiza-
17 tion period under section 431(d)) is unavailable or
18 inadequate.

19 “(3) CONTROLLED GROUP.—For purposes of
20 this section, the term ‘controlled group’ means any
21 group treated as a single employer under subsection
22 (b), (c), (m), or (o) of section 414.

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

1 “(A) the plan is funded exclusively by the
2 purchase of individual insurance contracts,

3 “(B) such contracts provide for level an-
4 nual premium payments to be paid extending
5 not later than the retirement age for each indi-
6 vidual participating in the plan, and com-
7 mencing with the date the individual became a
8 participant in the plan (or, in the case of an in-
9 crease in benefits, commencing at the time such
10 increase becomes effective),

11 “(C) benefits provided by the plan are
12 equal to the benefits provided under each con-
13 tract at normal retirement age under the plan
14 and are guaranteed by an insurance carrier (li-
15 censed under the laws of a State to do business
16 with the plan) to the extent premiums have
17 been paid,

18 “(D) premiums payable for the plan year,
19 and all prior plan years, under such contracts
20 have been paid before lapse or there is rein-
21 statement of the policy,

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

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

3 A plan funded exclusively by the purchase of group
4 insurance contracts which is determined under regu-
5 lations prescribed by the Secretary to have the same
6 characteristics as contracts described in the pre-
7 ceding sentence shall be treated as a plan described
8 in this paragraph.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to plan years beginning after 2005.

11 **SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DE-**
12 **FINED BENEFIT PENSION PLANS.**

13 (a) IN GENERAL.—Subchapter D of chapter 1 of the
14 Internal Revenue Code of 1986 (relating to deferred com-
15 pensation, etc.) is amended by adding at the end the fol-
16 lowing new part:

17 **“PART III—MINIMUM FUNDING STANDARDS FOR**
18 **SINGLE-EMPLOYER DEFINED BENEFIT PEN-**
19 **SION PLANS**

20 **“SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-**
21 **EMPLOYER DEFINED BENEFIT PENSION**
22 **PLANS.**

23 “(a) MINIMUM REQUIRED CONTRIBUTION.—

24 “(1) IN GENERAL.—For purposes of section
25 412(a)(2)(A), except as otherwise provided in this

1 subsection, the minimum required contribution with
2 respect to a plan for a plan year is the target nor-
3 mal cost of the plan for the plan year.

4 “(2) SHORTFALL AMORTIZATION CHARGE.—In
5 any case in which the value of plan assets (deter-
6 mined without regard to subsection (e)(1)) of the
7 plan for the plan year which are held by the plan
8 immediately before the valuation date is less than
9 the funding target of the plan for the plan year, the
10 minimum required contribution with respect to the
11 plan for the plan year is the sum of the amount de-
12 termined under paragraph (1) plus a shortfall amor-
13 tization charge for such plan year determined under
14 subsection (c).

15 “(3) CREDIT FOR EXCESS ASSETS.—In any
16 case in which the value of plan assets of the plan for
17 the plan year which are held by the plan imme-
18 diately before the valuation date exceed the funding
19 target of the plan for the plan year, the minimum
20 required contribution with respect to the plan for the
21 plan year is the amount determined under para-
22 graph (1), reduced by such excess.

23 “(4) PRE-FUNDING BALANCE.—In the case of
24 any plan year in which—

1 “(A) the ratio (expressed as a percentage)
2 which—

3 “(i) the value of plan assets (deter-
4 mined without regard to subsection
5 (e)(1)(B)) for the preceding plan year,
6 bears to

7 “(ii) the funding target of the plan for
8 the preceding plan year (determined with-
9 out regard to subsection (g)(1)),
10 is at least 80 percent, and

11 “(B) the plan sponsor elects (in such form
12 and manner as shall be prescribed in regula-
13 tions of the Secretary) to credit against the
14 minimum required contribution for the current
15 plan year all or a portion of the funding stand-
16 ard carryover balance and the pre-funding bal-
17 ance (to the extent provided in subsection (h))
18 for the preceding plan year (not in excess of
19 such minimum required contribution),

20 the minimum required contribution for the plan year
21 shall be reduced by the amount so credited by the
22 plan sponsor.

23 “(b) TARGET NORMAL COST.—For purposes of this
24 section, subject to subsection (g)(2), the term ‘target nor-
25 mal cost’ means, for any plan year, the present value of

1 all benefits which are expected to accrue or to be earned
2 under the plan during the plan year. If any benefit attrib-
3 utable to services performed in a preceding plan year is
4 increased by reason of any increase in compensation dur-
5 ing the current plan year, the increase shall be treated
6 as having accrued during the current plan year.

7 “(c) SHORTFALL AMORTIZATION CHARGE.—

8 “(1) IN GENERAL.—The shortfall amortization
9 charge for a plan for any plan year is the aggregate
10 total of the shortfall amortization installments for
11 such plan year with respect to the shortfall amorti-
12 zation bases for such plan year and each of the 6
13 preceding plan years.

14 “(2) SHORTFALL AMORTIZATION INSTALL-
15 MENT.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), the plan sponsor shall determine,
18 with respect to the shortfall amortization base
19 of the plan for any plan year, the amounts nec-
20 essary to amortize such shortfall amortization
21 base, in level annual installments over a period
22 of 7 plan years beginning with such plan year.
23 The annual installment of such amortization for
24 each plan year in such 7-plan-year period is the
25 shortfall amortization installment for such plan

1 year with respect to such shortfall amortization
2 base.

3 “(B) COMPUTATION ASSUMPTIONS.—The
4 determination of any annual installment under
5 subparagraph (A) for any plan year shall be
6 made as of the valuation date for such plan
7 year, using the effective rate of interest for the
8 plan for such plan year.

9 “(3) SHORTFALL AMORTIZATION BASE.—The
10 shortfall amortization base of a plan for a plan year
11 is the excess (if any) of—

12 “(A) the funding shortfall of such plan for
13 such plan year, over

14 “(B) the present value (determined using
15 the effective interest rate of the plan for the
16 plan year) of the aggregate total of the shortfall
17 amortization installments, for such plan year
18 and the 5 succeeding plan years, which have
19 been determined with respect to the shortfall
20 amortization bases of the plan for each of the
21 6 plan years preceding such plan year.

22 “(4) FUNDING SHORTFALL.—For purposes of
23 this section, the funding shortfall of a plan for any
24 plan year is the excess (if any) of—

1 “(A) the funding target of the plan for the
2 plan year, over

3 “(B) the value of plan assets of the plan
4 for the plan year which are held by the plan im-
5 mediately before the valuation date.

6 “(5) EARLY DEEMED AMORTIZATION UPON AT-
7 TAINMENT OF FUNDING TARGET.—In any case in
8 which the funding shortfall of a plan for a plan year
9 is zero, for purposes of determining the shortfall am-
10 ortization charge for such plan year and succeeding
11 plan years, the shortfall amortization base for all
12 preceding plan years shall be reduced to zero.

13 “(d) RULES RELATING TO FUNDING TARGET.—For
14 purposes of this section—

15 “(1) FUNDING TARGET.—Except as provided in
16 subsection (g)(1), the funding target of a plan for a
17 plan year is the present value of all liabilities to par-
18 ticipants and their beneficiaries under the plan for
19 the plan year.

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

24 “(A) the value of plan assets for the plan
25 year, bears to

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

4 “(e) VALUATION OF PLAN ASSETS AND LIABIL-
5 ITIES.—

6 “(1) VALUE OF PLAN ASSETS.—For purposes
7 of this section (other than paragraph (4) and sub-
8 sections (a)(2) and (h)(3)), the term ‘value of plan
9 assets’ means the excess of the value of plan assets
10 (determined without regard to this paragraph) over
11 the sum of—

12 “(A) the pre-funding balance of the plan
13 maintained under subsection (h)(1), and

14 “(B) the funding standard carryover bal-
15 ance of the plan maintained under subsection
16 (h)(2).

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

22 “(3) VALUATION DATE.—For purposes of this
23 section—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), the valuation date of a plan

1 for any plan year shall be the first day of the
2 plan year.

3 “(B) EXCEPTION FOR SMALL PLANS.—If,
4 on each day during the preceding plan year, a
5 plan had 500 or fewer participants, the plan
6 may designate any day during the plan year as
7 its valuation date for such plan year. For pur-
8 poses of this subparagraph, all defined benefit
9 plans (other than multiemployer plans) main-
10 tained by the same employer (or any member of
11 such employer’s controlled group) shall be treat-
12 ed as 1 plan, but only employees of such em-
13 ployer or member shall be taken into account.

14 “(C) APPLICATION OF CERTAIN RULES IN
15 DETERMINATION OF PLAN SIZE.—For purposes
16 of this paragraph—

17 “(i) PLANS NOT IN EXISTENCE IN
18 PRECEDING YEAR.—In the case of the first
19 plan year of any plan, subparagraph (B)
20 shall apply to such plan by taking into ac-
21 count the number of participants that the
22 plan is reasonably expected to have on
23 days during such first plan year.

24 “(ii) PREDECESSORS.—Any reference
25 in subparagraph (B) to an employer shall

1 include a reference to any predecessor of
2 such employer.

3 “(4) AUTHORIZATION OF USE OF ACTUARIAL
4 VALUE.—For purposes of this section, the value of
5 plan assets (determined without regard to paragraph
6 (1)) shall be determined on the basis of any reason-
7 able actuarial method of valuation which takes into
8 account fair market value and which is permitted
9 under regulations prescribed by the Secretary, ex-
10 cept that—

11 “(A) any such method providing for aver-
12 aging of fair market values may not provide for
13 averaging of such values over more than the
14 current plan year and the 2 preceding plan
15 years, and

16 “(B) any such method may not result in a
17 determination of the value of plan assets which,
18 at any time, is lower than 90 percent or greater
19 than 110 percent of the fair market value of
20 such assets at such time.

21 “(5) ACCOUNTING FOR CONTRIBUTION RE-
22 CEIPTS.—For purposes of this section—

23 “(A) CONTRIBUTIONS FOR PRIOR PLAN
24 YEARS TAKEN INTO ACCOUNT.—For purposes
25 of determining the value of plan assets for any

1 current plan year, in any case in which a con-
2 tribution properly allocable to amounts owed for
3 a preceding plan year is made on or after the
4 valuation date of the plan for such current plan
5 year, such contribution shall be taken into ac-
6 count, except that any such contribution made
7 during any such current plan year beginning
8 after 2006 shall be taken into account only in
9 an amount equal to its present value (deter-
10 mined using the effective rate of interest for the
11 plan for the preceding plan year) as of the valu-
12 ation date of the plan for such current plan
13 year.

14 “(B) CONTRIBUTIONS FOR CURRENT PLAN
15 YEAR DISREGARDED.—For purposes of deter-
16 mining the value of plan assets for any current
17 plan year, contributions which are properly allo-
18 cable to amounts owed for such plan year shall
19 not be taken into account, and, in the case of
20 any such contribution made before the valuation
21 date of the plan for such plan year, such value
22 of plan assets shall be reduced for interest on
23 such amount determined using the effective rate
24 of interest of the plan for the preceding plan
25 year for the period beginning when such pay-

1 ment was made and ending on the valuation
2 date of the plan.

3 “(6) ACCOUNTING FOR PLAN LIABILITIES.—

4 For purposes of this section—

5 “(A) LIABILITIES TAKEN INTO ACCOUNT
6 FOR CURRENT PLAN YEAR.—In determining the
7 value of liabilities under a plan for a plan year,
8 liabilities shall be taken into account to the ex-
9 tent attributable to benefits (including any early
10 retirement or similar benefit) accrued as of the
11 beginning of the plan year.

12 “(B) ACCRUALS DURING CURRENT PLAN
13 YEAR DISREGARDED.—For purposes of sub-
14 paragraph (A), benefits accrued during such
15 plan year (after those taken into account under
16 subparagraph (A)) shall not be taken into ac-
17 count, irrespective of whether the valuation date
18 of the plan for such plan year is later than the
19 first day of such plan year.

20 “(f) ACTUARIAL ASSUMPTIONS AND METHODS.—

21 “(1) IN GENERAL.—Subject to this subsection,
22 the determination of any present value or other com-
23 putation under this section shall be made on the
24 basis of actuarial assumptions and methods—

1 “(A) each of which is reasonable (taking
2 into account the experience of the plan and rea-
3 sonable expectations), and

4 “(B) which, in combination, offer the actu-
5 ary’s best estimate of anticipated experience
6 under the plan.

7 “(2) INTEREST RATES.—

8 “(A) EFFECTIVE INTEREST RATE.—For
9 purposes of this section, the term ‘effective in-
10 terest rate’ means, with respect to any plan for
11 any plan year, the single rate of interest which,
12 if used to determine the present value of the
13 plan’s liabilities referred to in subsection (d)(1)
14 would result in an amount equal to the funding
15 target of the plan for such plan year.

16 “(B) APPLICATION TO FUNDING TAR-
17 GET.—For purposes of determining the funding
18 target of a plan for any plan year, the interest
19 rate used in determining the present value of
20 the liabilities of the plan shall be—

21 “(i) in the case of liabilities reason-
22 ably determined to be payable during the
23 5-year period beginning on the first day of
24 the plan year, the first segment rate with
25 respect to the applicable month,

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

“(iii) in the case of liabilities reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

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

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

“(ii) SECOND SEGMENT RATE.—The term ‘second segment rate’ means, with re-

1 spect to any month, the single rate of in-
 2 terest which shall be determined by the
 3 Secretary for such month on the basis of
 4 the corporate bond yield curve for such
 5 month, taking into account only that por-
 6 tion of such yield curve which is based on
 7 bonds maturing during the 15-year period
 8 beginning at the end of the period de-
 9 scribed in clause (i).

10 “(iii) THIRD SEGMENT RATE.—The
 11 term ‘third segment rate’ means, with re-
 12 spect to any month, the single rate of in-
 13 terest which shall be determined by the
 14 Secretary for such month on the basis of
 15 the corporate bond yield curve for such
 16 month, taking into account only that por-
 17 tion of such yield curve which is based on
 18 bonds maturing during periods beginning
 19 after the period described in clause (ii).

20 “(D) CORPORATE BOND YIELD CURVE.—

21 For purposes of this paragraph—

22 “(i) IN GENERAL.—The term ‘cor-
 23 porate bond yield curve’ means, with re-
 24 spect to any month, a yield curve which is
 25 prescribed by the Secretary for such month

1 and which reflects a 3-year weighted aver-
2 age of yields on investment grade cor-
3 porate bonds with varying maturities.

4 “(ii) 3-YEAR WEIGHTED AVERAGE.—

5 The term ‘3-year weighted average’ means
6 an averaging methodology under which the
7 most recent year is weighted 50 percent,
8 the year preceding such year is weighted
9 35 percent, and the second year preceding
10 such year is weighted 15 percent.

11 “(E) APPLICABLE MONTH.—For purposes

12 of this paragraph, the term ‘applicable month’
13 means, with respect to any plan for any plan
14 year, the month which includes the valuation
15 date of such plan for such plan year or, at the
16 election of the plan administrator, any of the 4
17 months which precede such month. Any election
18 made under this subparagraph shall apply to
19 the plan year for which made and all succeeding
20 plan years unless revoked with the consent of
21 the Secretary.

22 “(F) PUBLICATION REQUIREMENTS.—The

23 Secretary shall publish for each month the cor-
24 porate bond yield curve (and the corporate bond
25 yield curve reflecting the modification described

1 in section 417(e)(3)(A)(iii)(I) for such month
 2 and each of the rates determined under sub-
 3 paragraph (B) for such month. The Secretary
 4 shall also publish a description of the method-
 5 ology used to determine such yield curve and
 6 such rates which is sufficiently detailed to en-
 7 able plans to make reasonable projections re-
 8 garding the yield curve and such rates for fu-
 9 ture months based on the plan's projection of
 10 future interest rates.

11 “(G) TRANSITION RULE.—

12 “(i) IN GENERAL.—Notwithstanding
 13 the preceding provisions of this paragraph,
 14 for plan years beginning in 2006 or 2007,
 15 the first, second, and third segment rates
 16 for a plan with respect to any month shall
 17 be equal to the sum of—

18 “(I) the product of such rate for
 19 such month determined without re-
 20 gard to this subparagraph, multiplied
 21 by the applicable percentage, and

22 “(II) the product of the rate de-
 23 termined under the rules of section
 24 412(b)(5)(B)(ii)(II) (as in effect for
 25 plan years beginning in 2005), multi-

1 plied by a percentage equal to 100
2 percent minus the applicable percent-
3 age.

4 “(ii) APPLICABLE PERCENTAGE.—For
5 purposes of clause (i), the applicable per-
6 centage is $33\frac{1}{3}$ percent for plan years be-
7 ginning in 2006 and $66\frac{2}{3}$ percent for plan
8 years beginning in 2007.

9 “(3) MORTALITY TABLE.—

10 “(A) IN GENERAL.—The mortality tables
11 used in determining any present value or mak-
12 ing any computation under this section shall be
13 the RP-2000 Combined Mortality Table, as
14 published by the Society of American Actuaries,
15 as in effect on the date of the enactment of the
16 Pension Protection Act of 2005 and as revised
17 from time to time under subparagraph (B).

18 “(B) PERIODIC REVISION.—The Secretary
19 shall (at least every 10 years) make revisions in
20 any tables in effect under this paragraph to re-
21 flect the actual experience of pension plans and
22 projected trends in such experience.

23 “(C) TRANSITION RULE.—Under regula-
24 tions of the Secretary, any difference in as-
25 sumptions as set forth in the mortality table

1 specified in subparagraph (A) and assumptions
2 as set forth in the mortality table described in
3 section 412(d)(7)(C)(ii) (as in effect for plan
4 years beginning in 2005) shall be phased in rat-
5 ably over the first period of 5 plan years begin-
6 ning in or after 2006 so as to be fully effective
7 for the fifth plan year.

8 “(4) PROBABILITY OF BENEFIT PAYMENTS IN
9 THE FORM OF LUMP SUMS OR OTHER OPTIONAL
10 FORMS.—For purposes of determining any present
11 value or making any computation under this section,
12 there shall be taken into account—

13 “(A) the probability that future benefit
14 payments under the plan will be made in the
15 form of optional forms of benefits provided
16 under the plan (including lump sum distribu-
17 tions, determined on the basis of the plan’s ex-
18 perience and other related assumptions), and

19 “(B) any difference in the present value of
20 such future benefit payments resulting from the
21 use of actuarial assumptions, in determining
22 benefit payments in any such optional form of
23 benefits, which are different from those speci-
24 fied in this subsection.

1 “(5) APPROVAL OF LARGE CHANGES IN ACTU-
2 ARIAL ASSUMPTIONS.—

3 “(A) IN GENERAL.—No actuarial assump-
4 tion used to determine the funding target for a
5 single-employer plan to which this paragraph
6 applies may be changed without the approval of
7 the Secretary.

8 “(B) PLANS TO WHICH PARAGRAPH AP-
9 PLIES.—This paragraph shall apply to a plan
10 only if—

11 “(i) the aggregate unfunded vested
12 benefits as of the close of the preceding
13 plan year (as determined under section
14 4006(a)(3)(E)(iii) of the Employee Retire-
15 ment and Income Security Act of 1974) of
16 such plan and all other plans maintained
17 by the contributing sponsors (as defined in
18 section 4001(a)(13) of such Act) and
19 members of such sponsors’ controlled
20 groups (as defined in section 4001(a)(14)
21 of such Act) which are covered by title IV
22 (disregarding plans with no unfunded vest-
23 ed benefits) exceed \$50,000,000; and

24 “(ii) the change in assumptions (de-
25 termined after taking into account any

changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

“(g) SPECIAL RULES FOR AT-RISK PLANS.—

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

“(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the funding target of the plan for the plan year is the sum of—

“(i) the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using, in addition to the actuarial assumptions described in subsection (f), the supplemental actuarial assumptions described in subparagraph (B), plus

“(ii) a loading factor determined under subparagraph (C).

“(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in de-

termining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (f), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

“(C) LOADING FACTOR.—The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

“(i) \$700, times the number of participants in the plan, plus

“(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

“(2) TARGET NORMAL COST OF AT-RISK PLANS.—

“(A) IN GENERAL.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

“(i) the present value of all benefits which are expected to accrue under the plan during the plan year, determined

1 under the actuarial assumptions used
2 under paragraph (1), plus

3 “(ii) the loading factor under para-
4 graph (1)(C), excluding the portion of the
5 loading factor described in paragraph
6 (1)(C)(i).

7 “(B) MINIMUM AMOUNT.—In no event
8 shall the target normal cost of a plan deter-
9 mined under this paragraph be less than the
10 target normal cost of such plan as determined
11 without regard to this paragraph.

12 “(3) DETERMINATION OF AT-RISK STATUS.—
13 For purposes of this subsection, a plan is in ‘at-risk
14 status’ for a plan year if the funding target attain-
15 ment percentage of the plan for the preceding plan
16 year was less than 60 percent.

17 “(4) TRANSITION BETWEEN APPLICABLE FUND-
18 ING TARGETS AND BETWEEN APPLICABLE TARGET
19 NORMAL COST.—

20 “(A) IN GENERAL.—In any case in which
21 a plan which is in at-risk status for a plan year
22 has been in such status for a consecutive period
23 of fewer than 5 plan years, the applicable
24 amount of the funding target and of the target
25 normal cost shall be, in lieu of the amount de-

1 terminated without regard to this paragraph, the
2 sum of—

3 “(i) the amount determined under this
4 section without regard to this subsection,
5 plus

6 “(ii) the transition percentage for
7 such plan year of the excess of the amount
8 determined under this subsection (without
9 regard to this paragraph) over the amount
10 determined under this section without re-
11 gard to this subsection.

12 “(B) TRANSITION PERCENTAGE.—For
13 purposes of this paragraph, the ‘transition per-
14 centage’ for a plan year is the product derived
15 by multiplying—

16 “(i) 20 percent, by

17 “(ii) the number of plan years during
18 the period described in subparagraph (A).

19 “(h) PRE-FUNDING AND FUNDING STANDARD CAR-
20 RYOVER BALANCES.—

21 “(1) PRE-FUNDING BALANCE.—

22 “(A) IN GENERAL.—The plan sponsor of a
23 pension plan which is a single-employer plan
24 shall maintain a pre-funding balance for pur-
25 poses of this subsection. Such balance shall con-

1 sist of a beginning balance of zero, increased
2 and decreased to the extent provided in sub-
3 paragraphs (B) and (C), and adjusted further
4 as provided in paragraph (3).

5 “(B) INCREASES.—As of the valuation
6 date for each plan year beginning after 2006,
7 the pre-funding balance of a plan shall be in-
8 creased by the amount elected by the plan spon-
9 sor for the plan year. Such amount shall not ex-
10 ceed the excess (if any) of—

11 “(i) the aggregate total of employer
12 contributions to the plan for the preceding
13 plan year, over

14 “(ii) the minimum required contribu-
15 tion for such preceding plan year (in-
16 creased by interest on any portion of such
17 minimum required contribution remaining
18 unpaid, at the effective interest rate for
19 the plan for the preceding plan year, for
20 the period beginning with the first day of
21 such preceding plan year and ending on
22 the date that payment of such portion is
23 made).

24 “(C) DECREASES.—As of the valuation
25 date for each plan year after 2006, the pre-

1 funding balance of a plan shall be decreased
2 (but not below zero) by the sum of—

3 “(i) the amount credited under sub-
4 section (a)(4) (if any) in reducing the min-
5 imum required contribution of the plan for
6 the preceding plan year, and

7 “(ii) the amount elected by the plan
8 sponsor as a reduction in the pre-funding
9 balance (for purposes of the determination
10 under subsection (e)(1) and any other pur-
11 pose under this section).

12 “(D) COORDINATION WITH FUNDING
13 STANDARD CARRYOVER BALANCE.—To the ex-
14 tent that any plan has a funding standard car-
15 ryover balance greater than zero—

16 “(i) no amount of the pre-funding bal-
17 ance of such plan may be credited under
18 subsection (a)(4) in reducing the minimum
19 required contribution, and

20 “(ii) no election may be made under
21 subparagraph (C)(ii).

22 “(E) NO USE OF BALANCE TO REDUCE
23 MINIMUM REQUIRED CONTRIBUTION IF USED
24 TO AVOID SHORTFALL AMORTIZATION.—The
25 amount of the pre-funding balance of such plan

1 may be credited under subsection (a)(4) in re-
 2 ducing the minimum required contribution only
 3 if the plan sponsor has elected to apply sub-
 4 section (a)(2) to the plan for such plan year by
 5 substituting ‘subsection (e)(1)(B)’ for ‘sub-
 6 section (e)(1)’.

7 “(2) FUNDING STANDARD CARRYOVER BAL-
 8 ANCE.—

9 “(A) IN GENERAL.—The plan sponsor of a
 10 pension plan to which this paragraph applies
 11 shall maintain a funding standard carryover
 12 balance for purposes of this subsection. Such
 13 balance shall consist of a beginning balance de-
 14 termined under subparagraph (C), decreased to
 15 the extent provided in subparagraph (D), and
 16 adjusted further as provided in paragraph (3).

17 “(B) PLANS TO WHICH THIS PARAGRAPH
 18 APPLIES.—This paragraph applies to any plan
 19 which—

20 “(i) is a single-employer plan subject
 21 to this part,

22 “(ii) was in effect for a plan year be-
 23 ginning in 2005, and

24 “(iii) had a positive balance in the
 25 funding standard account under section

1 412(b) as in effect for such plan year and
2 determined as of the end of such plan year.

3 “(C) BEGINNING BALANCE.—The begin-
4 ning balance of the funding standard carryover
5 balance shall be the positive balance described
6 in subparagraph (B)(iii).

7 “(D) DECREASES.—As of the valuation
8 date for each plan year after 2006, the funding
9 standard carryover balance of a plan shall be
10 decreased (but not below zero) by the sum of—

11 “(i) the amount credited under sub-
12 section (a)(4) (if any) in reducing the min-
13 imum required contribution of the plan for
14 the preceding plan year, and

15 “(ii) the amount elected by the plan
16 sponsor as a reduction in the funding
17 standard carryover balance (for purposes
18 of the determination under subsection
19 (e)(1) and any other purpose under this
20 section).

21 “(3) ADJUSTMENTS.—In determining the pre-
22 funding balance or the funding standard carryover
23 balance of a plan as of the valuation date of the plan
24 (before applying any increase or decrease under
25 paragraph (1) or (2)), the plan sponsor shall, in ac-

1 cordance with regulations which shall be prescribed
2 by the Secretary, adjust such balance of the plan so
3 as to reflect the rate of net gain or loss (determined,
4 notwithstanding subsection (e)(4), on the basis of
5 fair market value) experienced by all plan assets for
6 the period beginning with the valuation date for the
7 preceding plan year and ending with the date pre-
8 ceding the valuation date for the current plan year,
9 properly taking into account, in accordance with
10 such regulations, all contributions, distributions, and
11 other plan payments made during such period.

12 “(4) ELECTIONS.—Except as otherwise pro-
13 vided in this subsection, any election made under
14 this subsection shall be made at such time and in
15 such form and manner as the Secretary may pro-
16 vide.

17 “(5) COORDINATION WITH WAIVERS.—For pur-
18 poses of this subsection, the term ‘minimum re-
19 quired contribution’ means for any plan year the
20 minimum required contribution for such plan year
21 determined without regard to this subsection and by
22 taking into account any waiver under section 412(c)
23 and any waiver amortization charge under sub-
24 section (j) for such plan year.

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

3 “(1) IN GENERAL.—For purposes of this sec-
4 tion, the due date for any payment of any minimum
5 required 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
10 interest, for the period from the valuation date to
11 the payment date, at the effective rate of interest for
12 the plan for such plan year.

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

15 “(A) INTEREST PENALTY FOR FAILURE TO
16 MEET ACCELERATED QUARTERLY PAYMENT
17 SCHEDULE.—In any case in which the plan has
18 a funding shortfall for the preceding plan year,
19 if the required installment is not paid in full,
20 then the minimum required contribution for the
21 plan year (as increased under paragraph (2))
22 shall be further increased by an amount equal
23 to the interest on the amount of the under-
24 payment for the period of the underpayment,
25 using an interest rate equal to the excess of—

1 “(i) 175 percent of the Federal mid-
 2 term rate (as in effect under section 1274
 3 for the 1st month of such plan year), over

4 “(ii) the effective rate of interest for
 5 the plan for the plan year.

6 “(B) AMOUNT OF UNDERPAYMENT, PE-
 7 RIOD OF UNDERPAYMENT.—For purposes of
 8 subparagraph (A)—

9 “(i) AMOUNT.—The amount of the
 10 underpayment shall be the excess of—

11 “(I) the required installment,
 12 over

13 “(II) the amount (if any) of the
 14 installment contributed to or under
 15 the plan on or before the due date for
 16 the installment.

17 “(ii) PERIOD OF UNDERPAYMENT.—
 18 The period for which any interest is
 19 charged under this paragraph with respect
 20 to any portion of the underpayment shall
 21 run from the due date for the installment
 22 to the date on which such portion is con-
 23 tributed to or under the plan.

24 “(iii) ORDER OF CREDITING CON-
 25 TRIBUTIONS.—For purposes of clause

1 (i)(II), contributions shall be credited
 2 against unpaid required installments in the
 3 order in which such installments are re-
 4 quired to be paid.

5 “(C) NUMBER OF REQUIRED INSTALL-
 6 MENTS; DUE DATES.—For purposes of this
 7 paragraph—

8 “(i) PAYABLE IN 4 INSTALLMENTS.—
 9 There shall be 4 required installments for
 10 each plan year.

11 “(ii) TIME FOR PAYMENT OF IN-
 12 STALLMENTS.—The due dates for required
 13 installments are set forth in the following
 14 table:

“In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the fol- lowing year

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

17 “(i) IN GENERAL.—The amount of
 18 any required installment shall be 25 per-
 19 cent of the required annual payment.

20 “(ii) REQUIRED ANNUAL PAYMENT.—
 21 For purposes of clause (i), the term ‘re-

quired annual payment’ means the lesser
of—

“(I) 90 percent of the minimum
required contribution (without regard
to any waiver under section 412(c)) to
the plan for the plan year under this
section, or

“(II) in the case of a plan year
beginning after 2006, 100 percent of
the minimum required contribution
(without regard to any waiver under
section 412(c)) to the plan for the
preceding plan year.

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

“(E) FISCAL YEARS AND SHORT YEARS.—

“(i) FISCAL YEARS.—In applying this
paragraph to a plan year beginning on any
date other than January 1, there shall be
substituted for the months specified in this
paragraph, the months which correspond
thereto.

“(ii) SHORT PLAN YEAR.—This sub-
paragraph shall be applied to plan years of

1 less than 12 months in accordance with
2 regulations prescribed by the Secretary.

3 “(4) LIQUIDITY REQUIREMENT IN CONNECTION
4 WITH QUARTERLY CONTRIBUTIONS.—

5 “(A) IN GENERAL.—A plan to which this
6 paragraph applies shall be treated as failing to
7 pay the full amount of any required installment
8 under paragraph (3) to the extent that the
9 value of the liquid assets paid in such install-
10 ment is less than the liquidity shortfall (wheth-
11 er or not such liquidity shortfall exceeds the
12 amount of such installment required to be paid
13 but for this paragraph).

14 “(B) PLANS TO WHICH PARAGRAPH AP-
15 PLIES.—This paragraph shall apply to a plan
16 (other than a plan that would be described in
17 subsection (e)(3)(B) if ‘100’ were substituted
18 for ‘500’ therein) which—

19 “(i) is required to pay installments
20 under paragraph (3) for a plan year, and

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

23 “(C) PERIOD OF UNDERPAYMENT.—For
24 purposes of paragraph (3)(A), any portion of an
25 installment that is treated as not paid under

1 subparagraph (A) shall continue to be treated
2 as unpaid until the close of the quarter in
3 which the due date for such installment occurs.

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

14 “(E) DEFINITIONS.—For purposes of this
15 subparagraph:

16 “(i) LIQUIDITY SHORTFALL.—The
17 term ‘liquidity shortfall’ means, with re-
18 spect to any required installment, an
19 amount equal to the excess (as of the last
20 day of the quarter for which such install-
21 ment is made) of—

22 “(I) the base amount with re-
23 spect to such quarter, over

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

1 “(ii) BASE AMOUNT.—

2 “(I) IN GENERAL.—The term
3 ‘base amount’ means, with respect to
4 any quarter, an amount equal to 3
5 times the sum of the adjusted dis-
6 bursements from the plan for the 12
7 months ending on the last day of such
8 quarter.

9 “(II) SPECIAL RULE.—If the
10 amount determined under subclause
11 (I) exceeds an amount equal to 2
12 times the sum of the adjusted dis-
13 bursements from the plan for the 36
14 months ending on the last day of the
15 quarter and an enrolled actuary cer-
16 tifies to the satisfaction of the Sec-
17 retary that such excess is the result of
18 nonrecurring circumstances, the base
19 amount with respect to such quarter
20 shall be determined without regard to
21 amounts related to those nonrecurring
22 circumstances.

23 “(iii) DISBURSEMENTS FROM THE
24 PLAN.—The term ‘disbursements from the
25 plan’ means all disbursements from the

1 trust, including purchases of annuities,
2 payments of single sums and other bene-
3 fits, and administrative expenses.

4 “(iv) ADJUSTED DISBURSEMENTS.—
5 The term ‘adjusted disbursements’ means
6 disbursements from the plan reduced by
7 the product of—

8 “(I) the plan’s funding target at-
9 tainment percentage for the plan year,
10 and

11 “(II) the sum of the purchases of
12 annuities, payments of single sums,
13 and such other disbursements as the
14 Secretary shall provide in regulations.

15 “(v) LIQUID ASSETS.—The term ‘liq-
16 uid assets’ means cash, marketable securi-
17 ties, and such other assets as specified by
18 the Secretary in regulations.

19 “(vi) QUARTER.—The term ‘quarter’
20 means, with respect to any required install-
21 ment, the 3-month period preceding the
22 month in which the due date for such in-
23 stallment occurs.

1 “(F) REGULATIONS.—The Secretary may
2 prescribe such regulations as are necessary to
3 carry out this paragraph.

4 “(j) WAIVER AMORTIZATION CHARGE.—

5 “(1) IN GENERAL.—The minimum required
6 contribution for any plan year under subsection (a)
7 shall be increased by the amount of the waiver am-
8 ortization charge (if any) for such plan year.

9 “(2) DETERMINATION OF WAIVER AMORTIZA-
10 TION CHARGE.—The waiver amortization charge for
11 a plan for any plan year is the aggregate total of the
12 waiver amortization installments for such plan year
13 with respect to the waiver amortization bases for
14 such plan year and each of the 4 preceding plan
15 years.

16 “(3) WAIVER AMORTIZATION INSTALLMENT.—
17 For purposes of paragraph (2), the plan sponsor
18 shall determine, with respect to the waiver amortiza-
19 tion base of the plan for any plan year, the amounts
20 necessary to amortize such waiver amortization base,
21 in level annual installments over a period of 5 plan
22 years beginning with such plan year. The annual in-
23 stallment of such amortization for each plan year in
24 such 5-plan year period is the waiver amortization

1 installment for such plan year with respect to such
2 waiver amortization base.

3 “(4) COMPUTATION ASSUMPTIONS.—The deter-
4 mination of any annual installment under paragraph
5 (2) for any plan year shall be made as of the valu-
6 ation date for such plan year, using the effective
7 rate of interest for the plan for the preceding plan
8 year.

9 “(5) WAIVER AMORTIZATION BASE.—The waiv-
10 er amortization base of a plan for a plan year is the
11 excess (if any) of—

12 “(A) the portion of the minimum required
13 contribution of such plan waived under section
14 412(c) for such plan year, over

15 “(B) the aggregate total of the waiver am-
16 ortization installments, for such plan year and
17 the 3 succeeding plan years, which have been
18 determined with respect to the waiver amortiza-
19 tion bases of the plan for each of the 4 plan
20 years preceding such plan year.

21 “(k) IMPOSITION OF LIEN WHERE FAILURE TO
22 MAKE REQUIRED CONTRIBUTIONS.—

23 “(1) IN GENERAL.—In the case of a plan cov-
24 ered under section 4021 of the Employee Retirement
25 and Income Security Act of 1974 and to which this

1 subsection applies (as provided under paragraph
2 (2)), if—

3 “(A) any person fails to make a contribu-
4 tion payment required by section 412 and this
5 section before the due date for such payment,
6 and

7 “(B) the unpaid balance of such payment
8 (including interest), when added to the aggre-
9 gate unpaid balance of all preceding such pay-
10 ments for which payment was not made before
11 the due date (including interest), exceeds
12 \$1,000,000,

13 then there shall be a lien in favor of the plan in the
14 amount determined under paragraph (3) upon all
15 property and rights to property, whether real or per-
16 sonal, belonging to such person and any other per-
17 son who is a member of the same controlled group
18 of which such person is a member.

19 “(2) PLANS TO WHICH SUBSECTION APPLIES.—
20 This subsection shall apply to a defined benefit plan
21 which is a single-employer plan for any plan year for
22 which the funding target attainment percentage (as
23 defined in subsection (d)(2)) of such plan is less
24 than 100 percent.

1 “(3) AMOUNT OF LIEN.—For purposes of para-
2 graph (1), the amount of the lien shall be equal to
3 the aggregate unpaid balance of contribution pay-
4 ments required under this section and section 412
5 for which payment has not been made before the due
6 date.

7 “(4) NOTICE OF FAILURE; LIEN.—

8 “(A) NOTICE OF FAILURE.—A person
9 committing a failure described in paragraph (1)
10 shall notify the Pension Benefit Guaranty Cor-
11 poration of such failure within 10 days of the
12 due date for the required contribution payment.

13 “(B) PERIOD OF LIEN.—The lien imposed
14 by paragraph (1) shall arise on the due date for
15 the required contribution payment and shall
16 continue until the last day of the first plan year
17 in which the plan ceases to be described in
18 paragraph (1)(B). Such lien shall continue to
19 run without regard to whether such plan con-
20 tinues to be described in paragraph (2) during
21 the period referred to in the preceding sentence.

22 “(C) CERTAIN RULES TO APPLY.—Any
23 amount with respect to which a lien is imposed
24 under paragraph (1) shall be treated as taxes
25 due and owing the United States and rules

1 similar to the rules of subsections (c), (d), and
2 (e) of section 4068 of the Employee Retirement
3 and Income Security Act of 1974 shall apply
4 with respect to a lien imposed by subsection (a)
5 and the amount with respect to such lien.

6 “(5) ENFORCEMENT.—Any lien created under
7 paragraph (1) may be perfected and enforced only
8 by the Pension Benefit Guaranty Corporation, or at
9 the direction of the Pension Benefit Guaranty Cor-
10 poration, by the contributing sponsor (or any mem-
11 ber of the controlled group of the contributing spon-
12 sor).

13 “(6) DEFINITIONS.—For purposes of this sub-
14 section—

15 “(A) CONTRIBUTION PAYMENT.—The term
16 ‘contribution payment’ means, in connection
17 with a plan, a contribution payment required to
18 be made to the plan, including any required in-
19 stallment under paragraphs (3) and (4) of sub-
20 section (i).

21 “(B) DUE DATE; REQUIRED INSTALL-
22 MENT.—The terms ‘due date’ and ‘required in-
23 stallment’ have the meanings given such terms
24 by subsection (i), except that in the case of a
25 payment other than a required installment, the

1 due date shall be the date such payment is re-
2 quired to be made under section 430.

3 “(C) CONTROLLED GROUP.—The term
4 ‘controlled group’ means any group treated as
5 a single employer under subsections (b), (c),
6 (m), and (o) of section 414.

7 “(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT
8 ACCOUNTS.—In the case of a qualified transfer (as de-
9 fined in section 420), any assets so transferred shall not,
10 for purposes of this section, be treated as assets in the
11 plan. ”.

12 (b) EFFECTIVE DATE.—The amendments made by
13 this section shall apply with respect to plan years begin-
14 ning after 2005.

15 **SEC. 113. LIMITATIONS ON DISTRIBUTIONS AND BENEFIT**
16 **ACCRUALS UNDER SINGLE-EMPLOYER**
17 **PLANS.**

18 (a) PROHIBITION OF SHUTDOWN BENEFITS AND
19 OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS
20 UNDER SINGLE-EMPLOYER PLANS.—Part III of sub-
21 chapter D of chapter 1 of the Internal Revenue Code of
22 1986 (relating to deferred compensation, etc.) is amend-
23 ed—

24 (1) by striking the heading and inserting the
25 following:

1 **“PART III—RULES RELATING TO MINIMUM FUND-**
 2 **ING STANDARDS AND BENEFIT LIMITATIONS**

“Subpart A. Minimum funding standards for pension plans.

“Subpart B. Benefit limitations under single-employer plans.

3 **“Subpart A—Minimum Funding Standards for**
 4 **Pension Plans**

“Sec. 430. Minimum funding standards for single-employer defined benefit pension plans.”, and

5 (2) by adding at the end the following new sub-
 6 part:

7 **“Subpart B—Benefit Limitations Under Single-**
 8 **employer Plans**

“Sec. 436. Prohibition of shutdown benefits and other unpredictable contingent event benefits.

9 **“SEC. 436. PROHIBITION OF SHUTDOWN BENEFITS AND**
 10 **OTHER UNPREDICTABLE CONTINGENT**
 11 **EVENT BENEFITS.**

12 “(a) IN GENERAL.—No pension plan which is a sin-
 13 gle-employer plan may provide benefits which are payable
 14 upon the occurrence of—

15 “(1) a plant shutdown, or

16 “(2) any other unpredictable contingent event.

17 “(b) UNPREDICTABLE CONTINGENT EVENT.—For
 18 purposes of this subsection, the term ‘unpredictable con-
 19 tingent event’ means an event other than—

1 “(1) attainment of any age, performance of any
2 service, receipt or derivation of any compensation, or
3 the occurrence of death or disability, or

4 “(2) an event which is reasonably and reliably
5 predictable (as determined by the Secretary).”.

6 (b) OTHER LIMITS ON BENEFITS AND BENEFIT AC-
7 CRUALS.—

8 (1) IN GENERAL.—Subpart B of part III of
9 subchapter D of chapter 1 of such Code is amended
10 by adding at the end the following:

11 **“SEC. 437. BENEFIT LIMITATIONS ON UNDERFUNDED PLANS.**

12 “(a) LIMITATIONS ON PLAN AMENDMENTS INCREAS-
13 ING LIABILITY FOR BENEFITS.—

14 “(1) IN GENERAL.—No amendment to a de-
15 fined benefit plan (other than a multiemployer plan)
16 which has the effect of increasing liabilities of the
17 plan by reason of increases in benefits, establish-
18 ment of new benefits, changing the rate of benefit
19 accrual, or changing the rate at which benefits be-
20 come nonforfeitable to the plan may take effect dur-
21 ing any plan year if the funding target attainment
22 percentage as of the valuation date of the plan for
23 such plan year is—

24 “(A) less than 80 percent, or

1 “(B) would be less than 80 percent taking
2 into account such amendment.

3 “(2) EXEMPTION.—Paragraph (1) shall cease
4 to apply with respect to any plan year, effective as
5 of the first date of the plan year (or if later, the ef-
6 fective date of the amendment), upon payment by
7 the plan sponsor of a contribution equal to—

8 “(A) in the case of paragraph (1)(A), the
9 amount of the increase in the funding target of
10 the plan (under section 430) for the plan year
11 attributable to the amendment, and

12 “(B) in the case of subparagraph (1)(B),
13 the amount sufficient to result in a funding tar-
14 get attainment percentage of 80 percent.

15 “(b) FUNDING-BASED LIMITATION ON CERTAIN
16 FORMS OF DISTRIBUTION.—A defined benefit plan (other
17 than a multiemployer plan) shall provide that, in any case
18 in which the plan’s funding target attainment percentage
19 as of the valuation date of the plan for a plan year is
20 less than 80 percent, the plan may not after such date
21 pay any prohibited payment (as defined in section 206(e)
22 of the Employee Retirement and Income Security Act of
23 1974).

24 “(c) LIMITATIONS ON BENEFIT ACCRUALS FOR
25 PLANS WITH SEVERE FUNDING SHORTFALLS.—A de-

1 fined benefit plan (other than a multiemployer plan) shall
2 provide that, in any case in which the plan’s funding tar-
3 get attainment percentage as of the valuation date of the
4 plan for a plan year is less than 60 percent, all future
5 benefit accruals under the plan shall cease as of such date.

6 “(d) NEW PLANS.—Subsections (a) and (c) shall not
7 apply to a plan for the first 5 plan years of the plan. For
8 purposes of this subsection, the reference in this sub-
9 section to a plan shall include a reference to any prede-
10 cessor plan.

11 “(e) PRESUMED UNDERFUNDING FOR PURPOSES OF
12 BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUND-
13 ING STATUS.—

14 “(1) PRESUMPTION OF CONTINUED UNDER-
15 FUNDING.—In any case in which a benefit limitation
16 under subsections (a), (b), or (c) has been applied
17 to a plan with respect to the plan year preceding the
18 current plan year, the funding target attainment
19 percentage of the plan as of the valuation date of
20 the plan for the current plan year shall be presumed
21 to be equal to the funding target attainment per-
22 centage of the plan as of the valuation date of the
23 plan for the preceding plan year until the enrolled
24 actuary of the plan certifies the actual funding tar-

1 get attainment percentage of the plan as of the valu-
2 ation date of the plan for the current plan year.

3 “(2) PRESUMPTION OF UNDERFUNDING AFTER
4 10TH MONTH.—In any case in which no such certifi-
5 cation is made with respect to the plan before the
6 first day of the 10th month of the current plan year,
7 for purposes of subsections (a), (b), and (c), the
8 plan’s funding target attainment percentage shall be
9 conclusively presumed to be less than 60 percent as
10 of the first day of such 10th month, and such day
11 shall be deemed, for purposes of such paragraphs, to
12 be the valuation date of the plan for the current
13 plan year.

14 “(3) PRESUMPTION OF UNDERFUNDING AFTER
15 4TH MONTH FOR NEARLY UNDERFUNDED PLANS.—
16 In any case in which—

17 “(A) a benefit limitation under subsections
18 (a), (b), or (c) did not apply to a plan with re-
19 spect to the plan year preceding the current
20 plan year, but the funding target attainment
21 percentage of the plan for such preceding plan
22 year was not more than 10 percentage points
23 greater than the percentage which would have
24 caused such paragraph to apply to the plan
25 with respect to such preceding plan year, and

1 “(B) as of the first day of the 4th month
2 of the current plan year, the enrolled actuary of
3 the plan has not certified the actual funding
4 target attainment percentage of the plan as of
5 the valuation date of the plan for the current
6 plan year,

7 until the enrolled actuary so certifies, such first day
8 shall be deemed, for purposes of such subsection, to
9 be the valuation date of the plan for the current
10 plan year and the funding target attainment per-
11 centage of the plan as of such first day shall, for
12 purposes of such subsection, be presumed to be
13 equal to 10 percentage points less than the funding
14 target attainment percentage of the plan as of the
15 valuation date of the plan for such preceding plan
16 year.

17 “(f) RESTORATION BY PLAN AMENDMENT OF BENE-
18 FITS OR BENEFIT ACCRUAL.—In any case in which a pro-
19 hibition under subsection (b) of the payment of lump sum
20 distributions or benefits in any other accelerated form or
21 a cessation of benefit accruals under subsection (c) is ap-
22 plied to a plan with respect to any plan year and such
23 prohibition or cessation, as the case may be, ceases to
24 apply to any subsequent plan year, the plan may provide
25 for the resumption of such benefit payment or such benefit

1 accrual only by means of the adoption of a plan amend-
 2 ment after the valuation date of the plan for such subse-
 3 quent plan year. The preceding sentence shall not apply
 4 to a prohibition or cessation required by reason of sub-
 5 section (e).

6 “(g) FUNDING TARGET ATTAINMENT PERCENT-
 7 AGE.—For purposes of this section, the term ‘funding tar-
 8 get attainment percentage’ has the meaning provided such
 9 term under section 430(d)(2).”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
 11 tions for such subpart is amended by adding at the
 12 end the following new item:

“Sec. 437. Benefit limitations on underfunded plans.”.

13 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A
 14 plan shall not fail to meet the requirements of section
 15 204(g) of the Employee Retirement Income Security Act
 16 of 1974 or section 411(d)(6) of the Internal Revenue Code
 17 of 1986 solely by reason of the adoption by the plan of
 18 an amendment necessary to meet the requirements of the
 19 amendments made by this section.

20 (d) EFFECTIVE DATE.—

21 (1) SHUTDOWN BENEFITS.—Except as provided
 22 in paragraph (3), the amendments made by sub-
 23 section (a) shall apply with respect to plant shut-
 24 downs, or other unpredictable contingent events, oc-
 25 ccurring after 2006.

1 (2) OTHER BENEFITS.—Except as provided in
2 paragraph (3), the amendments made by subsection
3 (b) shall apply with respect to plan years beginning
4 after 2006.

5 (3) COLLECTIVE BARGAINING EXCEPTION.—In
6 the case of a plan maintained pursuant to 1 or more
7 collective bargaining agreements between employee
8 representatives and 1 or more employers ratified be-
9 fore the date of the enactment of this Act, the
10 amendments made by this subsection shall not apply
11 to plan years beginning before the earlier of—

12 (A) the later of—

13 (i) the date on which the last collec-
14 tive bargaining agreement relating to the
15 plan terminates (determined without re-
16 gard to any extension thereof agreed to
17 after the date of the enactment of this
18 Act), or

19 (ii) the first day of the first plan year
20 to which the amendments made by this
21 subsection would (but for this subpara-
22 graph) apply, or

23 (B) January 1, 2009.

24 For purposes of clause (i), any plan amendment
25 made pursuant to a collective bargaining agreement

1 relating to the plan which amends the plan solely to
 2 conform to any requirement added by this subsection
 3 shall not be treated as a termination of such collec-
 4 tive bargaining agreement.

5 **SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.**

6 (a) AMENDMENTS RELATED TO QUALIFICATION RE-
 7 QUIREMENTS.—

8 (1) Section 401(a)(29) of the Internal Revenue
 9 Code of 1986 is amended to read as follows:

10 “(29) BENEFIT LIMITATIONS ON PLANS IN AT-
 11 RISK STATUS.—In the case of a defined benefit plan
 12 (other than a multiemployer plan) to which the re-
 13 quirements of section 412 apply, the trust of which
 14 the plan is a part shall not constitute a qualified
 15 trust under this subsection unless the plan meets the
 16 requirements of sections 436 and 437.”.

17 (2) Section 401(a)(32) of such Code is amend-
 18 ed—

19 (A) in subparagraph (A), by striking
 20 “412(m)(5)” each place it appears and insert-
 21 ing “section 430(i)(4)”, and

22 (B) in subparagraph (C), by striking “sec-
 23 tion 412(m)” and inserting “section 430(i)”.

1 (3) Section 401(a) is amended by striking para-
 2 graph (33) and by redesignating paragraph (34) as
 3 paragraph (33).

4 (b) VESTING RULES.—Section 411 of such Code is
 5 amended—

6 (1) by striking “section 412(c)(8)” in sub-
 7 section (a)(3)(C) and inserting “section 412(d)(2)”,
 8 (2) in subsection (b)(1)(F)—

9 (A) by striking “paragraphs (2) and (3) of
 10 section 412(i)” in clause (ii) and inserting
 11 “subparagraphs (B) and (C) of section
 12 412(d)(4)”, and

13 (B) by striking “paragraphs (4), (5), and
 14 (6) of section 412(i)” and inserting “subpara-
 15 graphs (D), (E), and (F) of section 412(d)(4)”,
 16 and

17 (3) by striking “section 412(c)(8)” in sub-
 18 section (d)(6)(A) and inserting “section 412(e)(3)”.

19 (c) MERGERS AND CONSOLIDATIONS OF PLANS.—
 20 Subclause (I) of section 414(l)(2)(B)(i) of such Code is
 21 amended to read as follows:

22 “(I) the amount determined
 23 under section 431(c)(6)(A)(i) in the
 24 case of a multiemployer plan (and the
 25 sum of the target liability amount and

1 target normal cost determined under
 2 section 430 in the case of any other
 3 plan), over”.

4 (d) TRANSFER OF EXCESS PENSION ASSETS TO RE-
 5 TIREE HEALTH ACCOUNTS.—

6 (1) Section 420(e)(2) of such Code is amended
 7 to read as follows:

8 “(2) EXCESS PENSION ASSETS.—The term ‘ex-
 9 cess pension assets’ means the excess (if any) of—

10 “(A) the lesser of—

11 “(i) the fair market value of the
 12 plan’s assets (reduced by the pre-funding
 13 balance and the funding standard carry-
 14 over balance, as determined under section
 15 430(e)(1)), or

16 “(ii) the value of plan assets as deter-
 17 mined under section 430(e)(4) after reduc-
 18 tion under section 430(e)(1), over

19 “(B) 125 percent of the sum of the target
 20 liability amount and the target normal cost de-
 21 termined under section 430 for such plan
 22 year.”.

23 (2) Section 420(e)(4) of such Code is amended
 24 to read as follows:

1 “(4) COORDINATION WITH SECTION 430.—In
 2 the case of a qualified transfer, any assets so trans-
 3 ferred shall not, for purposes of this section, be
 4 treated as assets in the plan.”.

5 (e) EXCISE TAXES.—

6 (1) IN GENERAL.—Subsections (a) and (b) of
 7 section 4971 of such Code are amended to read as
 8 follows:

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
 17 the 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)
 24 on any unpaid required minimum contribution and

1 such amount remains unpaid as of the close of the
2 taxable period, or

3 “(2) a tax is imposed under subsection (a)(2)
4 on any accumulated funding deficiency and the accu-
5 mulated funding deficiency is not corrected within
6 the 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
10 not 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
20 minimum required contribution’ means, with re-
21 spect to any plan year, any minimum required
22 contribution under section 430 for the plan
23 year which is not paid on or before the due date
24 (as determined under section 430(i)(1)) for the
25 plan year.

1 “(B) ORDERING RULE.—Any payment to
 2 or 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
 5 first-in, first-out basis and then to the min-
 6 imum required contribution under section 430
 7 for the plan year.”.

8 (3) Section 4971(e)(1) of such Code is amended
 9 by striking “section 412(b)(3)(A)” and inserting
 10 “section 412(a)(1)(A)”.

11 (4) Section 4971(f)(1) of such Code is amend-
 12 ed—

13 (A) by striking “section 412(m)(5)” and
 14 inserting “section 430(i)(4)”, and

15 (B) by striking “section 412(m)” and in-
 16 serting “section 430(i)”.

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
 23 that such contributions exceed the full-funding limi-
 24 tation (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(f)(1) or
 12 431(c)(3), whichever are applicable, have been
 13 complied with.”.

14 **Subtitle C—Other Provisions**

15 **SEC. 121. MODIFICATION OF TRANSITION RULE TO PEN-** 16 **SION FUNDING REQUIREMENTS.**

17 (a) IN GENERAL.—In the case of a plan that—

18 (1) was not required to pay a variable rate pre-
 19 mium for the plan year beginning in 1996,

20 (2) has not, in any plan year beginning after
 21 1995, merged with another plan (other than a plan
 22 sponsored by an employer that was in 1996 within
 23 the controlled group of the plan sponsor); and

1 (3) is sponsored by a company that is engaged
2 primarily in the interurban or interstate passenger
3 bus service,
4 the rules described in subsection (b) shall apply for any
5 plan year beginning after 2005.

6 (b) MODIFIED RULES.—The rules described in this
7 subsection are as follows:

8 (1) For purposes of section 430(i)(3) of the In-
9 ternal Revenue Code of 1986 and section 303(i)(3)
10 of the Employee Retirement Income Security Act of
11 1974, the plan shall be treated as not having a fund-
12 ing shortfall for any plan year.

13 (2) For purposes of—

14 (A) determining unfunded vested benefits
15 under section 4006(a)(3)(E)(iii) of such Act,
16 and

17 (B) determining any present value or mak-
18 ing any computation under section 412 of such
19 Code or section 302 of such Act,
20 the mortality table shall be the mortality table used
21 by the plan.

22 (c) CONFORMING AMENDMENT.—

23 (1) Section 769 of the Retirement Protection
24 Act of 1994 is amended by striking subsection (c).

1 (2) The amendment made this subsection shall
2 apply to plan years beginning after 2005.

3 **SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COM-**
4 **PENSATION PLANS WHEN EMPLOYER DE-**
5 **FINED BENEFIT PLAN IN AT-RISK STATUS.**

6 (a) IN GENERAL.—Subsection (b) of section 409A of
7 the Internal Revenue Code of 1986 (providing rules relat-
8 ing to funding) is amended by redesignating paragraphs
9 (3) and (4) as paragraphs (4) and (5), respectively, and
10 by inserting after paragraph (2) the following new para-
11 graph:

12 “(3) EMPLOYER’S DEFINED BENEFIT PLAN IN
13 AT-RISK STATUS.—In the case of a plan to which
14 section 412 applies, if—

15 “(A) during any period in which any de-
16 fined benefit plan of an employer is in an at-
17 risk status (as defined in section 412(g)(3)), as-
18 sets are set aside (directly or indirectly) in a
19 trust (or other arrangement determined by the
20 Secretary), or transferred to such a trust or
21 other arrangement, for purposes of paying de-
22 ferred compensation under a nonqualified de-
23 ferred compensation plan of the employer, or

24 “(B) a nonqualified deferred compensation
25 plan of the employer provides that assets will

1 become restricted to the provision of benefits
2 under the plan in connection with such at-risk
3 status (or other similar financial measure deter-
4 mined by the Secretary) of the defined benefit
5 plan, or assets are so restricted,

6 such assets shall for purposes of section 83 be treat-
7 ed as property transferred in connection with the
8 performance of services whether or not such assets
9 are available to satisfy claims of general creditors.”.

10 (b) CONFORMING AMENDMENTS.—Paragraphs (4)
11 and (5) of section 409A(b) of such Code, as redesignated
12 by subsection (a) of this subsection, are each amended by
13 striking “paragraph (1) or (2)” each place it appears and
14 inserting “paragraph (1), (2), or (3)”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on January 1, 2006.

1 **TITLE II—FUNDING RULES FOR**
2 **MULTIEMPLOYER DEFINED**
3 **BENEFIT PLANS**

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

7 **SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED**
8 **BENEFIT PLANS.**

9 (a) IN GENERAL.—Part 3 of subtitle B of title I of
10 the Employee Retirement Income Security Act of 1974 (as
11 amended by section 102) is amended further by inserting
12 after section 303 the following new section:

13 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER
14 PLANS

15 “SEC. 304. (a) IN GENERAL.—For purposes of sec-
16 tion 302, the accumulated funding deficiency of a multi-
17 employer plan for any plan year is—

18 “(1) except as provided in paragraph (2), the
19 amount, determined as of the end of the plan year,
20 equal to the excess (if any) of the total charges to
21 the funding standard account of the plan for all plan
22 years (beginning with the first plan year for which
23 this part applies to the plan) over the total credits
24 to such account for such years, and

1 “(2) if the multiemployer plan is in reorganiza-
 2 tion for any plan year, the accumulated funding de-
 3 ficiency of the plan determined under section 4243.

4 “(b) FUNDING STANDARD ACCOUNT.—

5 “(1) ACCOUNT REQUIRED.—Each multiem-
 6 ployer plan to which this part applies shall establish
 7 and maintain a funding standard account. Such ac-
 8 count shall be credited and charged solely as pro-
 9 vided in this section.

10 “(2) CHARGES TO ACCOUNT.—For a plan year,
 11 the funding standard account shall be charged with
 12 the sum of—

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

15 “(B) the amounts necessary to amortize in
 16 equal annual installments (until fully amor-
 17 tized)—

18 “(i) in the case of a plan in existence
 19 on January 1, 1974, the unfunded past
 20 service liability under the plan on the first
 21 day of the first plan year to which this sec-
 22 tion applies, over a period of 40 plan
 23 years,

24 “(ii) in the case of a plan which comes
 25 into existence after January 1, 1974, the

1 unfunded past service liability under the
2 plan on the first day of the first plan year
3 to which this section applies, over a period
4 of 15 plan years,

5 “(iii) separately, with respect to each
6 plan year, the net increase (if any) in un-
7 funded past service liability under the plan
8 arising from plan amendments adopted in
9 such year, over a period of 15 plan years,

10 “(iv) separately, with respect to each
11 plan year, the net experience loss (if any)
12 under the plan, over a period of 15 plan
13 years, and

14 “(v) separately, with respect to each
15 plan year, the net loss (if any) resulting
16 from changes in actuarial assumptions
17 used under the plan, over a period of 15
18 plan years,

19 “(C) the amount necessary to amortize
20 each waived funding deficiency (within the
21 meaning of section 302(c)(3)) for each prior
22 plan year in equal annual installments (until
23 fully amortized) over a period of 15 plan years,

24 “(D) the amount necessary to amortize in
25 equal annual installments (until fully amor-

tized) over a period of 5 plan years any amount credited to the funding standard account under section 302(b)(3)(D) (as in effect on the day before the date of the enactment of this section), and

“(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 302(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of this section).

“(3) CREDITS TO ACCOUNT.—For a plan year, the funding standard account shall be credited with the sum of—

“(A) the amount considered contributed by the employer to or under the plan for the plan year,

“(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

“(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan

1 arising from plan amendments adopted in
2 such year, over a period of 15 plan years,
3 “(ii) separately, with respect to each
4 plan year, the net experience gain (if any)
5 under the plan, over a period of 15 plan
6 years, and

7 “(iii) separately, with respect to each
8 plan year, the net gain (if any) resulting
9 from changes in actuarial assumptions
10 used under the plan, over a period of 15
11 plan years,

12 “(C) the amount of the waived funding de-
13 ficiency (within the meaning of section
14 302(c)(3)) for the plan year, and

15 “(D) in the case of a plan year for which
16 the accumulated funding deficiency is deter-
17 mined under the funding standard account if
18 such plan year follows a plan year for which
19 such deficiency was determined under the alter-
20 native minimum funding standard under section
21 305 (as in effect on the day before the date of
22 the enactment of this section), the excess (if
23 any) of any debit balance in the funding stand-
24 ard account (determined without regard to this

1 subparagraph) over any debit balance in the al-
2 ternative minimum funding standard account.

3 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
4 ORTIZED TO PLAN YEARS BEFORE 2006.—In the case
5 of any amount amortized under section 302(b) (as
6 in effect before the date of the enactment of Pension
7 Protection Act of 2005) over any period beginning
8 with a plan year beginning before 2006, in lieu of
9 the amortization described in paragraphs (2)(B) and
10 (3)(B), such amount shall continue to be amortized
11 under such section as so in effect.

12 “(5) COMBINING AND OFFSETTING AMOUNTS
13 TO BE AMORTIZED.—Under regulations prescribed
14 by the Secretary of the Treasury, amounts required
15 to be amortized under paragraph (2) or paragraph
16 (3), as the case may be—

17 “(A) may be combined into one amount
18 under such paragraph to be amortized over a
19 period determined on the basis of the remaining
20 amortization period for all items entering into
21 such combined amount, and

22 “(B) may be offset against amounts re-
23 quired to be amortized under the other such
24 paragraph, with the resulting amount to be am-
25 ortized over a period determined on the basis of

1 the remaining amortization periods for all items
2 entering into whichever of the two amounts
3 being offset is the greater.

4 “(6) INTEREST.—The funding standard ac-
5 count (and items therein) shall be charged or cred-
6 ited (as determined under regulations prescribed by
7 the Secretary of the Treasury) with interest at the
8 appropriate rate consistent with the rate or rates of
9 interest used under the plan to determine costs.

10 “(7) CERTAIN AMORTIZATION CHARGES AND
11 CREDITS.—In the case of a plan which, immediately
12 before the date of the enactment of the Multiem-
13 ployer Pension Plan Amendments Act of 1980, was
14 a multiemployer plan (within the meaning of section
15 3(37) as in effect immediately before such date)—

16 “(A) any amount described in paragraph
17 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-
18 section which arose in a plan year beginning be-
19 fore such date shall be amortized in equal an-
20 nual installments (until fully amortized) over 40
21 plan years, beginning with the plan year in
22 which the amount arose;

23 “(B) any amount described in paragraph
24 (2)(B)(iv) or (3)(B)(ii) of this subsection which
25 arose in a plan year beginning before such date

1 shall be amortized in equal annual installments
2 (until fully amortized) over 20 plan years, be-
3 ginning with the plan year in which the amount
4 arose;

5 “(C) any change in past service liability
6 which arises during the period of 3 plan years
7 beginning on or after such date, and results
8 from a plan amendment adopted before such
9 date, shall be amortized in equal annual install-
10 ments (until fully amortized) over 40 plan
11 years, beginning with the plan year in which the
12 change arises; and

13 “(D) any change in past service liability
14 which arises during the period of 2 plan years
15 beginning on or after such date, and results
16 from the changing of a group of participants
17 from one benefit level to another benefit level
18 under a schedule of plan benefits which—

19 “(i) was adopted before such date,
20 and

21 “(ii) was effective for any plan partici-
22 pant before the beginning of the first plan
23 year beginning on or after such date,
24 shall be amortized in equal annual installments
25 (until fully amortized) over 40 plan years, be-

1 ginning with the plan year in which the change
2 arises.

3 “(8) SPECIAL RULES RELATING TO CHARGES
4 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
5 For 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 reg-
13 ulation additional charges and credits to a mul-
14 tiemployer plan’s funding standard account to
15 the extent necessary to prevent withdrawal li-
16 ability payments from being unduly reflected as
17 advance 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 in
23 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
9 extent 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
18 the Internal Revenue Code of 1986 pursuant to
19 section 4223 of this Act shall reduce the
20 amount of contributions considered received by
21 the plan for the plan year.

22 “(D) INTERIM WITHDRAWAL LIABILITY
23 PAYMENTS.—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
2 employer by the plan shall be charged to the
3 funding standard account in accordance with
4 regulations prescribed by the Secretary of the
5 Treasury.

6 “(E) ELECTION FOR DEFERRAL OF
7 CHARGE FOR PORTION OF NET EXPERIENCE
8 LOSS.—If an election is in effect under section
9 302(b)(7)(F) (as in effect on the day before the
10 date of the enactment of this section) for any
11 plan year, the funding standard account shall
12 be charged in the plan year to which the por-
13 tion of the net experience loss deferred by such
14 election was deferred with the amount so de-
15 ferred (and paragraph (2)(B)(iv) shall not
16 apply to the amount so charged).

17 “(F) FINANCIAL ASSISTANCE.—Any
18 amount of any financial assistance from the
19 Pension Benefit Guaranty Corporation to any
20 plan, and any repayment of such amount, shall
21 be taken into account under this section and
22 section 412 in such manner as is determined by
23 the Secretary of the Treasury.

24 “(G) SHORT-TERM BENEFITS.—To the ex-
25 tent that any plan amendment increases the un-

1 funded past service liability under the plan by
2 reason of an increase in benefits which are pay-
3 able under the plan during a period that does
4 not exceed 14 years, paragraph (2)(B)(iii) shall
5 be applied separately with respect to such in-
6 crease in unfunded past service liability by sub-
7 stituting the number of years of the period dur-
8 ing which such benefits are payable for ‘15’.

9 “(c) ADDITIONAL RULES.—

10 “(1) DETERMINATIONS TO BE MADE UNDER
11 FUNDING METHOD.—For purposes of this part, nor-
12 mal costs, accrued liability, past service liabilities,
13 and experience gains and losses shall be determined
14 under the funding method used to determine costs
15 under the plan.

16 “(2) VALUATION OF ASSETS.—

17 “(A) IN GENERAL.—For purposes of this
18 part, the value of the plan’s assets shall be de-
19 termined on the basis of any reasonable actu-
20 arial method of valuation which takes into ac-
21 count fair market value and which is permitted
22 under regulations prescribed by the Secretary of
23 the Treasury.

24 “(B) ELECTION WITH RESPECT TO
25 BONDS.—The value of a bond or other evidence

1 of indebtedness which is not in default as to
2 principal or interest may, at the election of the
3 plan administrator, be determined on an amor-
4 tized basis running from initial cost at purchase
5 to par value at maturity or earliest call date.
6 Any election under this subparagraph shall be
7 made at such time and in such manner as the
8 Secretary of the Treasury shall by regulations
9 provide, shall apply to all such evidences of in-
10 debtedness, and may be revoked only with the
11 consent of such Secretary.

12 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
13 SONABLE.—For purposes of this section, all costs, li-
14 abilities, rates of interest, and other factors under
15 the plan shall be determined on the basis of actu-
16 arial assumptions and methods—

17 “(A) which, in the aggregate, are reason-
18 able (taking into account the experience of the
19 plan and reasonable expectations), and

20 “(B) which, in combination, offer the actu-
21 ary’s best estimate of anticipated experience
22 under the plan.

23 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
24 PERIENCE GAIN OR LOSS.—For purposes of this sec-
25 tion, if—

1 “(A) a change in benefits under the Social
2 Security Act or in other retirement benefits cre-
3 ated under Federal or State law, or

4 “(B) a change in the definition of the term
5 ‘wages’ under section 3121 of the Internal Rev-
6 enue Code of 1986, or a change in the amount
7 of such wages taken into account under regula-
8 tions prescribed for purposes of section
9 401(a)(5) of such Code,
10 results in an increase or decrease in accrued liability
11 under a plan, such increase or decrease shall be
12 treated as an experience loss or gain.

13 “(5) FULL FUNDING.—If, as of the close of a
14 plan year, a plan would (without regard to this para-
15 graph) have an accumulated funding deficiency in
16 excess of the full funding limitation—

17 “(A) the funding standard account shall be
18 credited with the amount of such excess, and

19 “(B) all amounts described in subpara-
20 graphs (B), (C), and (D) of paragraph (2) and
21 subparagraph (B) of subsection (b)(3) which
22 are required to be amortized shall be considered
23 fully amortized for purposes of such subpara-
24 graphs.

25 “(6) FULL-FUNDING LIMITATION.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (5), the term ‘full-funding limitation’
3 means the excess (if any) of—

4 “(i) the accrued liability (including
5 normal cost) under the plan (determined
6 under the entry age normal funding meth-
7 od if such accrued liability cannot be di-
8 rectly calculated under the funding method
9 used for the plan), over

10 “(ii) the lesser of—

11 “(I) the fair market value of the
12 plan’s assets, or

13 “(II) the value of such assets de-
14 termined under paragraph (2).

15 “(B) MINIMUM AMOUNT.—

16 “(i) IN GENERAL.—In no event shall
17 the full-funding limitation determined
18 under subparagraph (A) be less than the
19 excess (if any) of—

20 “(I) 90 percent of the current li-
21 ability of the plan (including the ex-
22 pected increase in current liability due
23 to benefits accruing during the plan
24 year), over

1 “(II) the value of the plan’s as-
2 sets determined under paragraph (2).

3 “(ii) ASSETS.—For purposes of clause
4 (i), assets shall not be reduced by any
5 credit balance in the funding standard ac-
6 count.

7 “(C) CURRENT LIABILITY.—For purposes
8 of this paragraph—

9 “(i) IN GENERAL.—The term ‘current
10 liability’ means all liabilities to employees
11 and their beneficiaries under the plan.

12 “(ii) TREATMENT OF UNPREDICTABLE
13 CONTINGENT EVENT BENEFITS.—For pur-
14 poses of clause (i), any benefit contingent
15 on an event other than—

16 “(I) age, service, compensation,
17 death, or disability, or

18 “(II) an event which is reason-
19 ably and reliably predictable (as deter-
20 mined by the Secretary of the Treas-
21 ury),

22 shall not be taken into account until the
23 event on which the benefit is contingent oc-
24 curs.

1 “(iii) INTEREST RATE USED.—The
2 rate of interest used to determine current
3 liability under this paragraph shall be the
4 rate of interest determined under subpara-
5 graph (D).

6 “(iv) MORTALITY TABLES.—

7 “(I) COMMISSIONERS’ STANDARD
8 TABLE.—In the case of plan years be-
9 ginning before the first plan year to
10 which the first tables prescribed under
11 subclause (II) apply, the mortality
12 table used in determining current li-
13 ability under this paragraph shall be
14 the table prescribed by the Secretary
15 of the Treasury which is based on the
16 prevailing commissioners’ standard
17 table (described in section
18 807(d)(5)(A) of the Internal Revenue
19 Code of 1986) used to determine re-
20 serves for group annuity contracts
21 issued on January 1, 1993.

22 “(II) SECRETARIAL AUTHOR-
23 ITY.—The Secretary of the Treasury
24 may by regulation prescribe for plan
25 years beginning after December 31,

1 1999, mortality tables to be used in
2 determining current liability under
3 this subsection. Such tables shall be
4 based upon the actual experience of
5 pension plans and projected trends in
6 such experience. In prescribing such
7 tables, such Secretary shall take into
8 account results of available inde-
9 pendent studies of mortality of indi-
10 viduals covered by pension plans.

11 “(v) SEPARATE MORTALITY TABLES
12 FOR THE DISABLED.—Notwithstanding
13 clause (iv)—

14 “(I) IN GENERAL.—In the case
15 of plan years beginning after Decem-
16 ber 31, 1995, the Secretary of the
17 Treasury shall establish mortality ta-
18 bles which may be used (in lieu of the
19 tables under clause (ii)) to determine
20 current liability under this subsection
21 for individuals who are entitled to
22 benefits under the plan on account of
23 disability. Such Secretary shall estab-
24 lish separate tables for individuals
25 whose disabilities occur in plan years

beginning before January 1, 1995,
and for individuals whose disabilities
occur in plan years beginning on or
after such date.

“(II) SPECIAL RULE FOR DIS-
ABILITIES OCCURRING AFTER 1994.—

In the case of disabilities occurring in
plan years beginning after December
31, 1994, the tables under subclause
(I) shall apply only with respect to in-
dividuals described in such subclause
who are disabled within the meaning
of title II of the Social Security Act
and the regulations thereunder.

“(vi) PERIODIC REVIEW.—The Sec-
retary of the Treasury shall periodically (at
least every 5 years) review any tables in ef-
fect under this subparagraph and shall, to
the extent such Secretary determines nec-
essary, by regulation update the tables to
reflect the actual experience of pension
plans and projected trends in such experi-
ence.

“(D) REQUIRED CHANGE OF INTEREST
RATE.—For purposes of determining a plan’s

1 current liability for purposes of this para-
2 graph—

3 “(i) IN GENERAL.—If any rate of in-
4 terest used under the plan under sub-
5 section (b)(5) to determine cost is not
6 within the permissible range, the plan shall
7 establish a new rate of interest within the
8 permissible range.

9 “(ii) PERMISSIBLE RANGE.—For pur-
10 poses of this subparagraph—

11 “(I) IN GENERAL.—Except as
12 provided in subclause (II), the term
13 ‘permissible range’ means a rate of in-
14 terest which is not more than 5 per-
15 cent above, and not more than 10 per-
16 cent below, the weighted average of
17 the rates of interest on 30-year Treas-
18 ury securities during the 4-year period
19 ending on the last day before the be-
20 ginning of the plan year.

21 “(II) SECRETARIAL AUTHOR-
22 ITY.—If the Secretary of the Treasury
23 finds that the lowest rate of interest
24 permissible under subclause (I) is un-
25 reasonably high, such Secretary may

1 prescribe a lower rate of interest, ex-
2 cept that such rate may not be less
3 than 80 percent of the average rate
4 determined under such subclause.

5 “(iii) ASSUMPTIONS.—Notwith-
6 standing paragraph (3)(A), the interest
7 rate used under the plan shall be—

8 “(I) determined without taking
9 into account the experience of the
10 plan and reasonable expectations, but

11 “(II) consistent with the assump-
12 tions which reflect the purchase rates
13 which would be used by insurance
14 companies to satisfy the liabilities
15 under the plan.

16 “(E) FULL FUNDING LIMITATION.—For
17 purposes of this paragraph, unless otherwise
18 provided by the plan, the accrued liability under
19 a multiemployer plan shall not include benefits
20 which are not nonforfeitable under the plan
21 after the termination of the plan (taking into
22 consideration section 411(d)(3) of the Internal
23 Revenue Code of 1986).

24 “(7) ANNUAL VALUATION.—

1 “(A) IN GENERAL.—For purposes of this
2 section, a determination of experience gains and
3 losses and a valuation of the plan’s liability
4 shall be made not less frequently than once
5 every year, except that such determination shall
6 be made more frequently to the extent required
7 in particular cases under regulations prescribed
8 by the Secretary of the Treasury.

9 “(B) VALUATION DATE.—

10 “(i) CURRENT YEAR.—Except as pro-
11 vided in clause (ii), the valuation referred
12 to in subparagraph (A) shall be made as of
13 a date within the plan year to which the
14 valuation refers or within one month prior
15 to the beginning of such year.

16 “(ii) USE OF PRIOR YEAR VALU-
17 ATION.—The valuation referred to in sub-
18 paragraph (A) may be made as of a date
19 within the plan year prior to the year to
20 which the valuation refers if, as of such
21 date, the value of the assets of the plan are
22 not less than 100 percent of the plan’s cur-
23 rent liability (as defined in paragraph
24 (6)(C) without regard to clause (iv) there-
25 of).

1 “(iii) ADJUSTMENTS.—Information
2 under clause (ii) shall, in accordance with
3 regulations, be actuarially adjusted to re-
4 flect significant differences in participants.

5 “(iv) LIMITATION.—A change in fund-
6 ing method to use a prior year valuation,
7 as provided in clause (ii), may not be made
8 unless as of the valuation date within the
9 prior plan year, the value of the assets of
10 the plan are not less than 125 percent of
11 the plan’s current liability (as defined in
12 paragraph (6)(C) without regard to clause
13 (iv) thereof).

14 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
15 DEEMED MADE.—For purposes of this section, any
16 contributions for a plan year made by an employer
17 after the last day of such plan year, but not later
18 than two and one-half months after such day, shall
19 be deemed to have been made on such last day. For
20 purposes of this subparagraph, such two and one-
21 half month period may be extended for not more
22 than six months under regulations prescribed by the
23 Secretary of the Treasury.

1 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
2 MULTIEMPLOYER PLANS.—In the case of a multiemployer
3 plan—

4 “(1) AUTOMATIC EXTENSION.—The Secretary
5 of the Treasury shall, upon application and subject
6 to the requirements of paragraph (4), extend the pe-
7 riod of years required to amortize any unfunded li-
8 ability (described in any clause of subsection
9 (b)(2)(B)) of the plan for a period of time not in ex-
10 cess of 5 years.

11 “(2) EXTENSION FOR CAUSE.—The period of
12 years required to amortize any unfunded liability
13 (described in any clause of subsection (b)(2)(B)) of
14 any multiemployer plan may be extended (in addi-
15 tion to any extension under paragraph (1)) by the
16 Secretary of the Treasury for a period of time (not
17 in excess of 5 years) if he determines that such ex-
18 tension would carry out the purposes of this Act and
19 would provide adequate protection for participants
20 under the plan and their beneficiaries and if he de-
21 termines that the failure to permit such extension
22 would—

23 “(A) result in—

24 “(i) a substantial risk to the voluntary
25 continuation of the plan, or

1 “(ii) a substantial curtailment of pen-
2 sion benefit levels or employee compensa-
3 tion, and

4 “(B) be adverse to the interests of plan
5 participants in the aggregate.

6 “(3) INTEREST RATE.—The interest rate appli-
7 cable for any plan year under any arrangement en-
8 tered into by the Secretary of the Treasury in con-
9 nection with an extension granted under this sub-
10 section shall be the greater of—

11 “(A) 150 percent of the Federal mid-term
12 rate (as in effect under section 1274 of the In-
13 ternal Revenue Code of 1986 for the 1st month
14 of such plan year), or

15 “(B) the rate of interest used under the
16 plan for determining costs.

17 “(4) REQUIRED NOTICE.—

18 “(A) IN GENERAL.—The Secretary of the
19 Treasury shall, before granting an extension
20 under this section, require each applicant to
21 provide evidence satisfactory to such Secretary
22 that the applicant has provided notice of the fil-
23 ing of the application for such extension to each
24 employee organization representing employees

1 covered by the affected plan and to the Pension
2 Benefit Guaranty Corporation.

3 “(B) CONSIDERATION OF RELEVANT IN-
4 FORMATION.—The Secretary of the Treasury
5 shall consider any relevant information provided
6 by a person to whom notice was given under
7 paragraph (1).

8 “(e) RESTRICTION ON PLAN AMENDMENTS.—

9 “(1) IN GENERAL.—No amendment of a multi-
10 employer plan which increases the liabilities of the
11 plan by reason of any increase in benefits, any
12 change in the accrual of benefits, or any change in
13 the rate at which benefits become nonforfeitable
14 under the plan shall be adopted if a waiver under
15 section 302(c) or an extension of time under sub-
16 section (d) is in effect with respect to the plan, or
17 if a plan amendment described in section 302(d)(2)
18 has been made at any time in the preceding 24
19 months. If a plan is amended in violation of the pre-
20 ceding sentence, any such waiver, or extension of
21 time, shall not apply to any plan year ending on or
22 after the date on which such amendment is adopted.

23 “(2) EXCEPTION.—Paragraph (1) shall not
24 apply to any plan amendment which—

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

4 “(B) only repeals an amendment described
 5 in section 302(d)(2), or

6 “(C) is required as a condition of qualifica-
 7 tion under part I of subchapter D, of chapter
 8 1, of the Internal Revenue Code of 1986.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Section 301 of the Employee Retirement In-
 11 come Security Act of 1974 (29 U.S.C. 1081) is
 12 amended by striking subsection (d).

13 (2) The table of contents in section 1 of such
 14 Act (as amended by section 102 of this Act) is
 15 amended further by inserting after the item relating
 16 to section 303 the following new item:

“Sec. 304. Minimum funding standards for multiemployer plans.”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to plan years beginning after 2005.

19 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**
 20 **PLOYER PLANS IN ENDANGERED OR CRIT-**
 21 **ICAL STATUS.**

22 (a) IN GENERAL.—Part 3 of subtitle B of title I of
 23 the Employee Retirement Income Security Act of 1974 (as
 24 amended by the preceding provisions of this Act) is

1 amended further by inserting after section 304 the fol-
2 lowing new section:

3 “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER
4 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS
5 “SEC. 305. (a) ANNUAL CERTIFICATION BY PLAN
6 ACTUARY.—

7 “(1) IN GENERAL.—During the 90-day period
8 beginning on first day of each plan year of a multi-
9 employer plan, the plan actuary of shall certify to
10 the Secretary of the Treasury whether or not the
11 plan is in endangered status for such plan year and
12 whether or not the plan is in critical status for such
13 plan year.

14 “(2) ACTUARIAL PROJECTIONS OF ASSETS AND
15 LIABILITIES.—

16 “(A) IN GENERAL.—In making the deter-
17 minations under paragraph (1), the plan actu-
18 ary shall make projections under subsections
19 (b)(2) and (c)(2) for the current and succeeding
20 plan years, using reasonable actuarial assump-
21 tions and methods, of the current value of the
22 assets of the plan and the present value of all
23 liabilities to participants and beneficiaries under
24 the plan for the current plan year as of the be-
25 ginning of such year, as set forth in the actu-

1 arial statement prepared for the preceding plan
2 year under section 103(d).

3 “(B) DETERMINATIONS OF FUTURE CON-
4 TRIBUTIONS.—Any such actuarial projection of
5 plan assets shall assume—

6 “(i) reasonably anticipated employer
7 and employee contributions for the current
8 and succeeding plan years, assuming that
9 the terms of the one or more collective bar-
10 gaining agreements pursuant to which the
11 plan is maintained for the current plan
12 year continue in effect for succeeding plan
13 years, or

14 “(ii) employer and employee contribu-
15 tions projected for the current and suc-
16 ceeding plan years under the terms of such
17 collective bargaining agreements (assuming
18 the continued application of such terms in-
19 definitely to such plan years), but only if
20 the plan actuary determines there have
21 been no significant demographic changes
22 that would make continued application of
23 such terms unreasonable.

24 “(3) PRESUMED STATUS IN ABSENCE OF TIME-
25 LY ACTUARIAL CERTIFICATION.—If certification

1 under this subsection is not made before the end of
2 the 90-day period specified in paragraph (1), the
3 plan shall be presumed to be in critical status for
4 such plan year until such time as the actuary makes
5 a contrary certification.

6 “(4) NOTICE.—In any case in which a multiem-
7 ployer plan is certified to be in endangered or crit-
8 ical status for a plan year under paragraph (1), is
9 presumed to be in critical status under paragraph
10 (3), or is deemed to be in critical status under sub-
11 section (b)(7), the plan sponsor shall, not later than
12 30 days after the date of the certification, presump-
13 tion, or deeming, provide notification of the endan-
14 gered or critical status to the participants and bene-
15 ficiaries, the bargaining parties, the Pension Benefit
16 Guaranty Corporation, the Secretary of the Treas-
17 ury, and the Secretary of Labor.

18 “(b) FUNDING RULES FOR MULTIEMPLOYER PLANS
19 IN ENDANGERED STATUS.—

20 “(1) IN GENERAL.—In any case in which a
21 multiemployer plan is in endangered status for a
22 plan year, the plan sponsor shall, in accordance with
23 this subsection, amend the plan to include a funding
24 improvement plan upon approval thereof by the bar-
25 gaining parties under this subsection. The amend-

1 ment shall be adopted not later than 240 days after
2 the date on which the plan is certified to be in en-
3 dangered status under subsection (a)(1).

4 “(2) ENDANGERED STATUS.—A multiemployer
5 plan is in endangered status for a plan year if, as
6 determined by the plan actuary under subsection
7 (c)—

8 “(A) the plan’s funded percentage for such
9 plan year is less than 80 percent, or

10 “(B) the plan has an accumulated funding
11 deficiency for such plan year under section 304
12 or is projected to have such an accumulated
13 funding deficiency for any of the 6 succeeding
14 plan years, taking into account any extension of
15 amortization periods under section 304(d).

16 “(3) FUNDING IMPROVEMENT PLAN.—

17 “(A) BENCHMARKS.—A funding improve-
18 ment plan shall consist of amendments to the
19 plan formulated to provide, under reasonable
20 actuarial assumptions, for the attainment, dur-
21 ing the funding improvement period under the
22 funding improvement plan, of the following
23 benchmarks:

24 “(i) REDUCTION IN UNFUNDED CUR-
25 RENT LIABILITY.—A percentage decrease

1 in the plan's unfunded current liability
2 from the amount for the first plan year of
3 the funding improvement period to the
4 amount for the last plan year of the fund-
5 ing improvement period, of at least 33 $\frac{1}{3}$
6 percent.

7 “(ii) AVOIDANCE OF ACCUMULATED
8 FUNDING DEFICIENCIES.—No accumulated
9 funding deficiency for any plan year during
10 the funding improvement period (taking
11 into account any extension of amortization
12 periods under section 304(d)).

13 “(B) FUNDING IMPROVEMENT PERIOD.—
14 The funding improvement period for any fund-
15 ing improvement plan adopted pursuant to this
16 subsection is the 10-year period beginning on
17 the earlier of—

18 “(i) the second anniversary of the
19 date of the adoption of the funding im-
20 provement plan, or

21 “(ii) the first day of the first plan
22 year of the multiemployer plan following
23 the plan year in which occurs the first date
24 after the day of the certification as of
25 which collective bargaining agreements cov-

1 ering on the day of such certification at
2 least 75 percent of active participants in
3 such multiemployer plan have expired.

4 “(C) REPORTING.—A summary of any
5 funding improvement plan or modification
6 thereto adopted during any plan year shall be
7 included in the annual report for such plan year
8 under section 104(a) and in the summary an-
9 nual report described in section 104(b)(3).

10 “(4) DEVELOPMENT OF FUNDING IMPROVE-
11 MENT PLAN.—

12 “(A) ACTIONS BY PLAN SPONSOR PENDING
13 APPROVAL.—Pending the approval of a funding
14 improvement plan under this paragraph, the
15 plan sponsor shall take all reasonable actions,
16 consistent with the terms of the plan and appli-
17 cable law, necessary to ensure—

18 “(i) an increase in the plan’s funded
19 percentage, and

20 “(ii) postponement of an accumulated
21 funding deficiency for at least 1 additional
22 plan year.

23 Such actions include applications for extensions
24 of amortization periods under section 304(d),
25 use of the shortfall funding method in making

1 funding standard account computations,
2 amendments to the plan's benefit structure, re-
3 ductions in future benefit accruals, and other
4 reasonable actions consistent with the terms of
5 the plan and applicable law.

6 “(B) RECOMMENDATIONS BY PLAN SPON-
7 SOR.—

8 “(i) IN GENERAL.—During the period
9 of 90 days following the date on which a
10 multiemployer plan is certified to be in en-
11 dangered status, the plan sponsor shall de-
12 velop and provide to the bargaining parties
13 alternative proposals for revised benefit
14 structures, contribution structures, or
15 both, which, if adopted as amendments to
16 the plan, may be reasonably expected to
17 meet the benchmarks described in para-
18 graph (3)(A). Such proposals shall in-
19 clude—

20 “(I) at least one proposal for re-
21 ductions in the amount of future ben-
22 efit accruals necessary to achieve the
23 benchmarks, assuming no amend-
24 ments increasing contributions under
25 the plan (other than amendments in-

1 creasing contributions necessary to
2 achieve the benchmarks after amend-
3 ments have reduced future benefit ac-
4 cruals to the maximum extent per-
5 mitted by law), and

6 “(II) at least one proposal for in-
7 creases in contributions under the
8 plan necessary to achieve the bench-
9 marks, assuming no amendments re-
10 ducing future benefit accruals under
11 the plan.

12 “(ii) REQUESTS BY BARGAINING PAR-
13 TIES.—Upon the request of any bargaining
14 party who—

15 “(I) employs at least 5 percent of
16 the active participants, or

17 “(II) represents as an employee
18 organization, for purposes of collective
19 bargaining, at least 5 percent of the
20 active participants,

21 the plan sponsor shall provide all such par-
22 ties information as to other combinations
23 of increases in contributions and reduc-
24 tions in future benefit accruals which
25 would result in achieving the benchmarks.

1 “(iii) OTHER INFORMATION.—The
2 plan sponsor may, as it deems appropriate,
3 prepare and provide the bargaining parties
4 with additional information relating to con-
5 tribution structures or benefit structures
6 or other information relevant to the fund-
7 ing improvement plan.

8 “(5) MAINTENANCE OF CONTRIBUTIONS PEND-
9 ING APPROVAL OF FUNDING IMPROVEMENT PLAN.—
10 Pending approval of a funding improvement plan by
11 the bargaining parties with respect to a multiem-
12 ployer plan, the multiemployer plan may not be
13 amended so as to provide—

14 “(A) a reduction in the level of contribu-
15 tions for participants who are not in pay status,

16 “(B) a suspension of contributions with re-
17 spect to any period of service, or

18 “(C) any new direct or indirect exclusion
19 of younger or newly hired employees from plan
20 participation.

21 “(6) BENEFIT RESTRICTIONS PENDING AP-
22 PROVAL OF FUNDING IMPROVEMENT PLAN.—Pend-
23 ing approval of a funding improvement plan by the
24 bargaining parties with respect to a multiemployer
25 plan—

1 “(A) RESTRICTIONS ON LUMP SUM DIS-
2 TRIBUTIONS AND SIMILAR DISTRIBUTIONS.—
3 The multiemployer plan may not be amended so
4 as to provide additional forms of benefits.

5 “(B) PROHIBITION ON BENEFIT IN-
6 CREASES.—

7 “(i) IN GENERAL.—No amendment of
8 the plan which increases the liabilities of
9 the plan by reason of any increase in bene-
10 fits, any change in the accrual of benefits,
11 or any change in the rate at which benefits
12 become nonforfeitable under the plan may
13 be adopted.

14 “(ii) EXCEPTION.—Clause (i) shall
15 not apply to any plan amendment which—

16 “(I) the Secretary of the Treas-
17 ury determines to be reasonable and
18 which provides for only de minimis in-
19 creases in the liabilities of the plan,

20 “(II) only repeals an amendment
21 described in section 302(d)(2), or

22 “(III) is required as a condition
23 of qualification under part I of sub-
24 chapter D of chapter 1 of subtitle A
25 of the Internal Revenue Code of 1986.

1 “(7) DEFAULT CRITICAL STATUS IF NO FUND-
2 ING IMPROVEMENT PLAN ADOPTED.—If no plan
3 amendment adopting a funding improvement plan
4 has been adopted by the end of the 240-day period
5 referred to in subsection (a)(1), the plan shall be in
6 critical status as of the first day of the succeeding
7 plan year.

8 “(8) RESTRICTIONS UPON APPROVAL OF FUND-
9 ING IMPROVEMENT PLAN.—Upon adoption of a
10 funding improvement plan with respect to a multi-
11 employer plan, the plan may not be amended—

12 “(A) so as to be inconsistent with the
13 funding improvement plan, or

14 “(B) so as to increase future benefit accru-
15 als, unless the plan actuary certifies in advance
16 that, after taking into account the proposed in-
17 crease, the plan is reasonably expected to meet
18 the the benchmarks described in paragraph
19 (3)(A).

20 “(c) FUNDING RULES FOR MULTIEMPLOYER PLANS
21 IN CRITICAL STATUS.—

22 “(1) IN GENERAL.—In any case in which a
23 multiemployer plan is in critical status for a plan
24 year, the plan sponsor shall, in accordance with this
25 subsection, amend the plan to include a rehabilita-

tion plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in critical status under subsection (a)(1) or is presumed to be in critical status under subsection (a)(3), or the first day of the plan year in the case of a plan that is deemed to be in critical status under subsection (b)(7).

“(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

“(A) the plan is in endangered status for the plan year and the requirements of subsection (b)(1) are not met with respect to the plan for such plan year, or

“(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

Any multiemployer plan which is in critical status under subparagraph (A) or (B) for a plan year shall be treated as in critical status also for the succeeding plan year.

“(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

1 “(A) A plan is described in this subpara-
2 graph if, as of the beginning of the current plan
3 year—

4 “(i) the funded percentage of the plan
5 is less than 65 percent, and

6 “(ii) the sum of—

7 “(I) the market value of plan as-
8 sets, plus

9 “(II) the present value of the
10 reasonably anticipated employer and
11 employee contributions for the current
12 plan year and each of the 6 suc-
13 ceeding plan years, assuming that the
14 terms of the one or more collective
15 bargaining agreements pursuant to
16 which the plan is maintained for the
17 current plan year continue in effect
18 for succeeding plan years,

19 is less than the present value of all non-
20 forfeitable benefits for all participants and
21 beneficiaries projected to be payable under
22 the plan during the current plan year and
23 each of the 6 succeeding plan years (plus
24 administrative expenses for such plan
25 years).

1 “(B) A plan is described in this subpara-
2 graph if, as of the beginning of the current plan
3 year, the sum of—

4 “(i) the market value of plan assets,
5 plus

6 “(ii) the present value of the reason-
7 ably anticipated employer and employee
8 contributions for the current plan year and
9 each of the 4 succeeding plan years, as-
10 suming that the terms of the one or more
11 collective bargaining agreements pursuant
12 to which the plan is maintained for the
13 current plan year remain in effect for suc-
14 ceeding plan years,

15 is less than the present value of all nonforfeit-
16 able benefits for all participants and bene-
17 ficiaries projected to be payable under the plan
18 during the current plan year and each of the 4
19 succeeding plan years (plus administrative ex-
20 penses for such plan years).

21 “(C) A plan is described in this subpara-
22 graph if—

23 “(i) as of the beginning of the current
24 plan year, the funded percentage of the
25 plan is less than 65 percent, and

1 “(ii) the plan has an accumulated
2 funding deficiency for the current plan
3 year or is projected to have an accumu-
4 lated funding deficiency for any of the 4
5 succeeding plan years, taking into account
6 any extension of amortization periods
7 under section 304(e).

8 “(D) A plan is described in this subpara-
9 graph if—

10 “(i)(I) the plan’s normal cost for the
11 current plan year, plus interest (deter-
12 mined at the rate used for determining
13 cost under the plan) for the current plan
14 year on the amount of unfunded benefit li-
15 abilities under the plan as of the last date
16 of the preceding plan year, exceeds

17 “(II) the present value, as of the be-
18 ginning of the current plan year, of the
19 reasonably anticipated employer and em-
20 ployee contributions for the current plan
21 year,

22 “(ii) the present value, as of the be-
23 ginning of the current plan year, of non-
24 forfeitable benefits of inactive participants
25 is greater than the present value, as of the

1 beginning of the current plan year, of non-
2 forfeitable benefits of active participants,
3 and

4 “(iii) the plan is projected to have an
5 accumulated funding deficiency for the
6 current plan year or any of the 4 suc-
7 ceeding plan years.

8 “(E) A plan is described in this subpara-
9 graph if—

10 “(i) the funded percentage of the plan
11 is greater than 65 percent for the current
12 plan year, and

13 “(ii) the plan is projected to have an
14 accumulated funding deficiency during ei-
15 ther of the following 3 plan years.

16 “(4) REHABILITATION PLAN.—

17 “(A) IN GENERAL.—A rehabilitation plan
18 shall consist of—

19 “(i) amendments to the plan providing
20 (under reasonable actuarial assumptions)
21 for measures, agreed to by the bargaining
22 parties, to increase contributions, reduce
23 plan expenditures (including plan mergers
24 and consolidations), or reduce future ben-
25 efit accruals, or to take any combination of

1 such actions, determined necessary to
2 cause the plan to cease, during the reha-
3 bilitation period, to be in critical status,

4 “(ii) measures, agreed to by the bar-
5 gaining parties, to provide funding relief,
6 or

7 “(iii) reasonable measures to forestall
8 possible insolvency (within the meaning of
9 section 4245) if the plan sponsor deter-
10 mines that, upon exhaustion of all reason-
11 able measures, the plan would not cease
12 during the rehabilitation period to be in
13 critical status.

14 “(B) REHABILITATION PERIOD.—The re-
15 habilitation period for any rehabilitation plan
16 adopted pursuant to this section is the 10-year
17 period beginning on the earlier of—

18 “(i) the second anniversary of the
19 date of the adoption of the rehabilitation
20 plan, or

21 “(ii) the first day of the first plan
22 year of the multiemployer plan following
23 the plan year in which occurs the first date
24 after the day of the certification as of
25 which collective bargaining agreements cov-

1 ering on the day of such certification at
2 least 75 percent of active participants in
3 such multiemployer plan have expired.

4 “(C) REPORTING.—A summary of any re-
5 habilitation plan or modification thereto adopt-
6 ed during any plan year, together with annual
7 updates regarding the funding ratio of the plan,
8 shall be included in the annual report for such
9 plan year under section 104(a) and in the sum-
10 mary annual report described in section
11 104(b)(3).

12 “(5) DEVELOPMENT OF REHABILITATION
13 PLAN.—

14 “(A) PROPOSALS BY PLAN SPONSOR.—

15 “(i) IN GENERAL.—Within 90 days
16 after the date of the certification under
17 subsection (a) that the plan is in critical
18 status (or the date as of which the require-
19 ments of subsection (b)(1) are not met
20 with respect to the plan), the plan sponsor
21 shall propose to all bargaining parties a
22 range of alternative schedules of increases
23 in contributions and reductions in future
24 benefit accruals that would serve to carry

1 out a rehabilitation plan under this sub-
2 section.

3 “(ii) PROPOSAL ASSUMING NO CON-
4 TRIBUTION INCREASES.—Such proposals
5 shall include, as one of the proposed sched-
6 ules, a schedule of those reductions in fu-
7 ture benefit accruals that would be nec-
8 essary to cause the plan to cease to be in
9 critical status if there were no further in-
10 creases in rates of contribution to the plan.

11 “(iii) PROPOSAL WHERE CONTRIBU-
12 TIONS ARE NECESSARY.—If the plan spon-
13 sor determines that the plan will not cease
14 to be in critical status during the rehabili-
15 tation period unless the plan is amended to
16 provide for an increase in contributions,
17 the plan sponsor’s proposals shall include a
18 schedule of those increases in contribution
19 rates that would be necessary to cause the
20 plan to cease to be in critical status if fu-
21 ture benefit accruals were reduced to the
22 maximum extent permitted by law and the
23 rate of future benefit accruals did not ex-
24 ceed 1 percent per plan year.

1 “(B) REQUESTS FOR ADDITIONAL SCHED-
2 ULES.—Upon the joint request of all bargaining
3 parties, each of whom—

4 “(i) employs at least 5 percent of the
5 active participants, or

6 “(ii) represents as an employee orga-
7 nization, for purposes of collective bar-
8 gaining, at least 5 percent of the active
9 participants,

10 the plan sponsor shall include among the pro-
11 posed schedules such schedules of increases in
12 contributions and reductions in future benefit
13 accruals as may be specified by the bargaining
14 parties.

15 “(C) DEFAULT SCHEDULE.—In any case
16 in which the bargaining parties, as of 240 days
17 after the later of the date of the certification
18 under subsection (a) or the first day the plan
19 is in critical status under subsection (a)(3) or
20 (b)(7), have not agreed to at least one of the
21 proposed schedules, the plan sponsor shall
22 amend the plan to implement the schedule re-
23 quired by subparagraph (A)(ii).

24 “(D) SUBSEQUENT AMENDMENTS.—Upon
25 the adoption of a schedule of increases in con-

1 tributions or reductions in future benefit accru-
2 als as part of the rehabilitation plan, the plan
3 sponsor may amend the plan thereafter to up-
4 date the schedule to adjust for any experience
5 of the plan contrary to past actuarial assump-
6 tions, except that such an amendment may be
7 made not more than once in any 3-year period.

8 “(E) ALLOCATION OF REDUCTIONS IN FU-
9 TURE BENEFIT ACCRUALS.—Any schedule con-
10 taining reductions in future benefit accruals
11 forming a part of a rehabilitation plan shall be
12 applicable with respect to any group of active
13 participants who are employed by any bar-
14 gaining party (as an employer obligated to con-
15 tribute under the plan) in proportion to the ex-
16 tent to which increases in contributions under
17 such schedule apply to such bargaining party.

18 “(6) MAINTENANCE OF CONTRIBUTIONS AND
19 RESTRICTIONS ON BENEFITS PENDING ADOPTION OF
20 REHABILITATION PLAN.—The rules of paragraphs
21 (5) and (6) of subsection (b) shall apply for pur-
22 poses of this subsection by substituting the term ‘re-
23 habilitation plan’ for ‘funding improvement plan’.

24 “(7) DEEMED WITHDRAWAL.—Upon the failure
25 of any employer who has an obligation to contribute

1 under the plan to make contributions in compliance
2 with the schedule adopted under paragraph (6) as
3 part of the rehabilitation plan, the failure of the em-
4 ployer may, at the discretion of the plan sponsor, be
5 treated as a withdrawal by the employer from the
6 plan under section 4203 or a partial withdrawal by
7 the employer under section 4205.

8 “(d) DEFINITIONS.—For purposes of this section—

9 “(1) BARGAINING PARTY.—The term ‘bar-
10 gaining party’ means, in connection with a multiem-
11 ployer plan—

12 “(A) an employer who has an obligation to
13 contribute under the plan, and

14 “(B) an employee organization which, for
15 purposes of collective bargaining, represents
16 plan participants employed by such an em-
17 ployer.

18 “(2) CURRENT LIABILITY.—The term ‘current
19 liability’ has the meaning provided such term in sec-
20 tion 304(c)(6)(C).

21 “(3) UNFUNDED CURRENT LIABILITY.—The
22 term ‘unfunded current liability’ means the excess
23 (if any) of—

24 “(A) the current liability of the plan, over

1 “(B) the value of the plan’s assets deter-
2 mined under section 304(c)(2).

3 “(4) FUNDED PERCENTAGE.—The term ‘fund-
4 ed percentage’ means the percentage expressed as a
5 ratio of which—

6 “(A) the numerator of which is the value
7 of the plan’s assets, as determined under sec-
8 tion 304(c)(2), and

9 “(B) the denominator of which is the ac-
10 crued liability of the plan.

11 “(5) UNFUNDED VESTED BENEFITS.—The
12 term ‘unfunded vested benefits’ has the meaning
13 provided in section 4241(b)(9).

14 “(6) ACCUMULATED FUNDING DEFICIENCY.—
15 The term ‘accumulated funding deficiency’ has the
16 meaning provided such term in section 304(a).

17 “(7) ACTIVE PARTICIPANT.—The term ‘active
18 participant’ means, in connection with a multiem-
19 ployer plan, a participant who is in covered service
20 under the plan.

21 “(8) INACTIVE PARTICIPANT.—The term ‘inac-
22 tive participant’ means, in connection with a multi-
23 employer plan, 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
 3 plan.

4 “(9) PAY STATUS.—A person is in ‘pay status’
 5 under a multiemployer plan if—

6 “(A) at any time during the current plan
 7 year, such person is a participant or beneficiary
 8 under the plan and is paid an early, late, nor-
 9 mal, or disability retirement benefit under the
 10 plan (or a death benefit under the plan related
 11 to a retirement benefit), or

12 “(B) to the extent provided in regulations
 13 of the Secretary of the Treasury, such person
 14 is entitled to such a benefit under the plan.

15 “(10) OBLIGATION TO CONTRIBUTE.—The term
 16 ‘obligation to contribute’ has the meaning provided
 17 such term under section 4212(a).”.

18 (b) CONFORMING AMENDMENT.—The table of con-
 19 tents in section 1 of such Act (as amended by the pre-
 20 ceding provisions of this Act) is amended further by in-
 21 serting after the item relating to section 304 the following
 22 new item:

 “Sec. 305. Additional funding rules for multiemployer plans in endangered sta-
 tus or critical status.”.

1 (c) EFFECTIVE DATE.—The amendment made by
2 this section shall apply with respect to plan years begin-
3 ning after 2005.

4 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**
5 **TIEMPLOYER PLANS.**

6 (a) ADVANCE DETERMINATION OF IMPENDING IN-
7 SOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the
8 Employee Retirement Income Security Act of 1974 (29
9 U.S.C. 1426(d)(1)) is amended—

10 (1) by striking “3 plan years” the second place
11 it appears and inserting “5 plan years”; and

12 (2) by adding at the end the following new sen-
13 tence: “If the plan sponsor makes such a determina-
14 tion that the plan will be insolvent in any of the next
15 5 plan years, the plan sponsor shall make the com-
16 parison under this paragraph at least annually until
17 the plan sponsor makes a determination that the
18 plan will not be insolvent in any of the next 5 plan
19 years.”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to determinations
22 made in plan years beginning after 2005.

1 **SEC. 204. WITHDRAWAL LIABILITY REFORMS.**

2 (a) REPEAL OF LIMITATION ON WITHDRAWAL LI-
3 ABILITY IN THE EVENT OF CERTAIN SALES OF EM-
4 PLOYER ASSETS TO UNRELATED PARTIES.—

5 (1) IN GENERAL.—Section 4225 of the Em-
6 ployee Retirement Income Security Act of 1974 (29
7 U.S.C. 1405) is repealed.

8 (2) CONFORMING AMENDMENT.—The table of
9 contents in section 1 of such Act is amended by
10 striking the item relating to section 4225.

11 (3) EFFECTIVE DATE.—The amendments made
12 by this section shall apply with respect to sales oc-
13 ccurring on or after January 1, 2006.

14 (b) REPEAL OF LIMITATION TO 20 ANNUAL PAY-
15 MENTS.—

16 (1) IN GENERAL.—Section 4219(c)(1) of such
17 Act (29 U.S.C. 1399(c)(1)) is amended by striking
18 subparagraph (B).

19 (2) EFFECTIVE DATE.—The amendment made
20 by this section shall apply with respect to with-
21 drawals occurring on or after January 1, 2006.

22 (c) PARTIAL WITHDRAWALS BY MEANS OF
23 OUTSOURCING.—

24 (1) IN GENERAL.—Section 4205(b)(2)(A) of
25 such Act (29 U.S.C. 1385(b)(2)(A)) is amended—

1 (A) by striking “or” at the end of clause
2 (i);

3 (B) by striking “ceased.” at the end of
4 clause (ii) and inserting “ceased, or”; and

5 (C) by adding at the end the following new
6 clause:

7 “(iii) an employer continues to per-
8 form work of the type for which contribu-
9 tions are made under the plan by means of
10 services of individuals who are not employ-
11 ees of such employer covered by such
12 plan.”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by this subsection shall apply with respect to work
15 performed on or after January 1, 2006.

16 (d) REPEAL OF SPECIAL RULE FOR LONG AND
17 SHORT HAUL TRUCKING INDUSTRY.—

18 (1) IN GENERAL.—Subsection (d) of section
19 4203 of such Act (29 U.S.C. 1383(d)) is repealed.

20 (2) EFFECTIVE DATE.—The repeal under this
21 subsection shall apply with respect to cessations to
22 have obligations to contribute to multiemployer
23 plans and cessations of covered operations under
24 such plans occurring on or after January 1, 2006.

1 (e) APPLICATION OF FORGIVENESS RULE TO PLANS
 2 PRIMARILY COVERING EMPLOYEES IN THE BUILDING
 3 AND CONSTRUCTION.—

4 (1) IN GENERAL.—Section 4210(b) of such Act
 5 (29 U.S.C. 1390(b)) is amended—

6 (A) by striking paragraph (1); and

7 (B) by redesignating paragraphs (2)
 8 through (4) as paragraphs (1) through (3), re-
 9 spectively.

10 (2) EFFECTIVE DATE.—The amendments made
 11 by this subsection shall apply with respect to plan
 12 withdrawals occurring on or after January 1, 2006.

13 **SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO**
 14 **PROCEDURES APPLICABLE TO DISPUTES IN-**
 15 **VOLVING WITHDRAWAL LIABILITY.**

16 (a) IN GENERAL.—Section 4221(f)(1) of the Em-
 17 ployee Retirement Income Security Act of 1974 (29
 18 U.S.C. 1401(f)(1)) is amended—

19 (1) in subparagraph (A) by inserting “and”
 20 after “plan,” and

21 (2) by striking subparagraphs (B) and (C) and
 22 inserting the following new subparagraph:

23 “(B) such determination is based in whole
 24 or in part on a finding by the plan sponsor
 25 under section 4212(c) that a principal purpose

1 of any transaction which occurred at least 5
2 years (2 years in the case of a small employer)
3 before the date of the complete or partial with-
4 drawal was to evade or avoid withdrawal liabil-
5 ity under this subtitle.”.

6 (b) SMALL EMPLOYER.—Paragraph (2) of section
7 4221(f) of such Act is amended by adding at the end the
8 following new subparagraph:

9 “(C) SMALL EMPLOYER.—For purposes of
10 paragraph (1)(B)—

11 “(i) IN GENERAL.—The term ‘small
12 employer’ means any employer who (as of
13 immediately before the transaction referred
14 to in paragraph (1)(B)) employs not more
15 than 250 employees.

16 “(ii) CONTROLLED GROUP.—Any
17 group treated as a single employer under
18 subsection (b), (c), (m), or (o) of section
19 414 of the Internal Revenue Code of 1986
20 shall be treated as a single employer for
21 purposes of this subparagraph.”.

22 (c) CONFORMING AMENDMENT.—Subparagraph (A)
23 of section 4221(f)(2) of such Act is amended by striking
24 “Notwithstanding” and inserting “In the case of a trans-
25 action occurring before January 1, 1999, and at least 5

1 years before the date of the complete or partial with-
 2 drawal, notwithstanding”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to any employer that receives a
 5 notification under section 4219(b)(1) of the Employee Re-
 6 tirement Income Security Act of 1974 on or after the date
 7 of the enactment of this Act.

8 **Subtitle B—Amendments to** 9 **Internal Revenue Code of 1986**

10 **SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED** 11 **BENEFIT PLANS.**

12 (a) **IN GENERAL.**—Subpart A of part III of sub-
 13 chapter D of chapter 1 of the Internal Revenue Code of
 14 1986 (added by section 112 of this Act) is amended by
 15 adding at the end the following new section:

16 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-** 17 **PLOYER PLANS.**

18 “(a) **IN GENERAL.**—For purposes of section 412, the
 19 accumulated funding deficiency of a multiemployer plan
 20 for any plan year is—

21 “(1) except as provided in paragraph (2), the
 22 amount, determined as of the end of the plan year,
 23 equal to the excess (if any) of the total charges to
 24 the funding standard account of the plan for all plan
 25 years (beginning with the first plan year for which

1 this part applies to the plan) over the total credits
2 to such account for such years, and

3 “(2) if the multiemployer plan is in reorganiza-
4 tion for any plan year, the accumulated funding de-
5 ficiency of the plan determined under section 418B.

6 “(b) FUNDING STANDARD ACCOUNT.—

7 “(1) ACCOUNT REQUIRED.—Each multiem-
8 ployer plan to which this part applies shall establish
9 and maintain a funding standard account. Such ac-
10 count shall be credited and charged solely as pro-
11 vided in this section.

12 “(2) CHARGES TO ACCOUNT.—For a plan year,
13 the funding standard account shall be charged with
14 the sum of—

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

17 “(B) the amounts necessary to amortize in
18 equal annual installments (until fully amor-
19 tized)—

20 “(i) in the case of a plan in existence
21 on January 1, 1974, the unfunded past
22 service liability under the plan on the first
23 day of the first plan year to which this sec-
24 tion applies, over a period of 40 plan
25 years,

1 “(ii) in the case of a plan which comes
2 into existence after January 1, 1974, the
3 unfunded past service liability under the
4 plan on the first day of the first plan year
5 to which this section applies, over a period
6 of 15 plan years,

7 “(iii) separately, with respect to each
8 plan year, the net increase (if any) in un-
9 funded past service liability under the plan
10 arising from plan amendments adopted in
11 such year, over a period of 15 plan years,

12 “(iv) separately, with respect to each
13 plan year, the net experience loss (if any)
14 under the plan, over a period of 15 plan
15 years, and

16 “(v) separately, with respect to each
17 plan year, the net loss (if any) resulting
18 from changes in actuarial assumptions
19 used under the plan, over a period of 15
20 plan years,

21 “(C) the amount necessary to amortize
22 each waived funding deficiency (within the
23 meaning of section 412(c)(3)) for each prior
24 plan year in equal annual installments (until
25 fully amortized) 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
6 before the date of the enactment of this sec-
7 tion), 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 contribu-
11 tions which would be required to be made under
12 the plan but for the provisions of section
13 412(c)(7)(A)(i)(I) (as in effect on the day be-
14 fore the date of the enactment of this section).

15 “(3) CREDITS TO ACCOUNT.—For a plan year,
16 the funding standard account shall be credited with
17 the sum of—

18 “(A) the amount considered contributed by
19 the employer to or under the plan for the plan
20 year,

21 “(B) the amount necessary to amortize in
22 equal annual installments (until fully amor-
23 tized)—

24 “(i) separately, with respect to each
25 plan year, the net decrease (if any) in un-

1 funded past service liability under the plan
2 arising from plan amendments adopted in
3 such year, over a period of 15 plan years,

4 “(ii) separately, with respect to each
5 plan year, the net experience gain (if any)
6 under the plan, over a period of 15 plan
7 years, and

8 “(iii) separately, with respect to each
9 plan year, the net gain (if any) resulting
10 from changes in actuarial assumptions
11 used under the plan, over a period of 15
12 plan years,

13 “(C) the amount of the waived funding de-
14 ficiency (within the meaning of section
15 412(c)(3)) for the plan year, and

16 “(D) in the case of a plan year for which
17 the accumulated funding deficiency is deter-
18 mined under the funding standard account if
19 such plan year follows a plan year for which
20 such deficiency was determined under the alter-
21 native minimum funding standard under section
22 412(g) (as in effect on the day before the date
23 of the enactment of this section), the excess (if
24 any) of any debit balance in the funding stand-
25 ard account (determined without regard to this

1 subparagraph) over any debit balance in the al-
2 ternative minimum funding standard account.

3 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-
4 ORTIZED TO PLAN YEARS BEFORE 2006.—In the case
5 of any amount amortized under section 412(b) (as
6 in effect before the date of the enactment of Pension
7 Protection Act of 2005) over any period beginning
8 with a plan year beginning before 2006, in lieu of
9 the amortization described in paragraphs (2)(B) and
10 (3)(B), such amount shall continue to be amortized
11 under such section as so in effect.

12 “(5) COMBINING AND OFFSETTING AMOUNTS
13 TO BE AMORTIZED.—Under regulations prescribed
14 by the Secretary, amounts required to be amortized
15 under paragraph (2) or paragraph (3), as the case
16 may be—

17 “(A) may be combined into one amount
18 under such paragraph to be amortized over a
19 period determined on the basis of the remaining
20 amortization period for all items entering into
21 such combined amount, and

22 “(B) may be offset against amounts re-
23 quired to be amortized under the other such
24 paragraph, with the resulting amount to be am-
25 ortized over a period determined on the basis of

1 the remaining amortization periods for all items
2 entering into whichever of the two amounts
3 being offset is the greater.

4 “(6) INTEREST.—The funding standard ac-
5 count (and items therein) shall be charged or cred-
6 ited (as determined under regulations prescribed by
7 the Secretary) with interest at the appropriate rate
8 consistent with the rate or rates of interest used
9 under the plan to determine costs.

10 “(7) CERTAIN AMORTIZATION CHARGES AND
11 CREDITS.—In the case of a plan which, immediately
12 before the date of the enactment of the Multiem-
13 ployer Pension Plan Amendments Act of 1980, was
14 a multiemployer plan (within the meaning of section
15 414(f) as in effect immediately before such date)—

16 “(A) any amount described in paragraph
17 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this sub-
18 section which arose in a plan year beginning be-
19 fore such date shall be amortized in equal an-
20 nual installments (until fully amortized) over 40
21 plan years, beginning with the plan year in
22 which the amount arose;

23 “(B) any amount described in paragraph
24 (2)(B)(iv) or (3)(B)(ii) of this subsection which
25 arose in a plan year beginning before such date

1 shall be amortized in equal annual installments
2 (until fully amortized) over 20 plan years, be-
3 ginning with the plan year in which the amount
4 arose;

5 “(C) any change in past service liability
6 which arises during the period of 3 plan years
7 beginning on or after such date, and results
8 from a plan amendment adopted before such
9 date, shall be amortized in equal annual install-
10 ments (until fully amortized) over 40 plan
11 years, beginning with the plan year in which the
12 change arises; and

13 “(D) any change in past service liability
14 which arises during the period of 2 plan years
15 beginning on or after such date, and results
16 from the changing of a group of participants
17 from one benefit level to another benefit level
18 under a schedule of plan benefits which—

19 “(i) was adopted before such date,
20 and

21 “(ii) was effective for any plan partici-
22 pant before the beginning of the first plan
23 year beginning on or after such date,
24 shall be amortized in equal annual installments
25 (until fully amortized) over 40 plan years, be-

1 ginning with the plan year in which the change
2 arises.

3 “(8) SPECIAL RULES RELATING TO CHARGES
4 AND CREDITS TO FUNDING STANDARD ACCOUNT.—
5 For 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 may prescribe by regulation addi-
13 tional charges and credits to a multiemployer
14 plan’s funding standard account to the extent
15 necessary to prevent withdrawal liability pay-
16 ments 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 in
23 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
9 extent of any accumulated funding deficiency
10 under section 418B(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 the Em-
17 ployee Retirement Income Security Act of 1974
18 or to a fund exempt under section 501(c)(22)
19 pursuant to section 4223 of such Act shall re-
20 duce the amount of contributions considered re-
21 ceived by the plan for the plan year.

22 “(D) INTERIM WITHDRAWAL LIABILITY
23 PAYMENTS.—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
2 employer by the plan shall be charged to the
3 funding standard account in accordance with
4 regulations prescribed by the Secretary.

5 “(E) ELECTION FOR DEFERRAL OF
6 CHARGE FOR PORTION OF NET EXPERIENCE
7 LOSS.—If an election is in effect under section
8 412(b)(7)(F) (as in effect on the day before the
9 date of the enactment of this section) for any
10 plan year, the funding standard account shall
11 be charged in the plan year to which the por-
12 tion of the net experience loss deferred by such
13 election was deferred with the amount so de-
14 ferred (and paragraph (2)(B)(iv) shall not
15 apply to the amount so charged).

16 “(F) FINANCIAL ASSISTANCE.—Any
17 amount of any financial assistance from the
18 Pension Benefit Guaranty Corporation to any
19 plan, and any repayment of such amount, shall
20 be taken into account under this section and
21 section 412 in such manner as is determined by
22 the Secretary.

23 “(G) SHORT-TERM BENEFITS.—To the ex-
24 tent that any plan amendment increases the un-
25 funded past service liability under the plan by

1 reason of an increase in benefits which are pay-
2 able under the plan during a period that does
3 not exceed 14 years, paragraph (2)(B)(iii) shall
4 be applied separately with respect to such in-
5 crease in unfunded past service liability by sub-
6 stituting the number of years of the period dur-
7 ing which such benefits are payable for ‘15’.

8 “(c) ADDITIONAL RULES.—

9 “(1) DETERMINATIONS TO BE MADE UNDER
10 FUNDING METHOD.—For purposes of this part, nor-
11 mal costs, accrued liability, past service liabilities,
12 and experience gains and losses shall be determined
13 under the funding method used to determine costs
14 under the plan.

15 “(2) VALUATION OF ASSETS.—

16 “(A) IN GENERAL.—For purposes of this
17 part, the value of the plan’s assets shall be de-
18 termined on the basis of any reasonable actu-
19 arial method of valuation which takes into ac-
20 count fair market value and which is permitted
21 under regulations prescribed by the Secretary.

22 “(B) ELECTION WITH RESPECT TO
23 BONDS.—The value of a bond or other evidence
24 of indebtedness which is not in default as to
25 principal or interest may, at the election of the

1 plan administrator, be determined on an amor-
2 tized basis running from initial cost at purchase
3 to par value at maturity or earliest call date.
4 Any election under this subparagraph shall be
5 made at such time and in such manner as the
6 Secretary shall by regulations provide, shall
7 apply to all such evidences of indebtedness, and
8 may be revoked only with the consent of the
9 Secretary.

10 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-
11 SONABLE.—For purposes of this section, all costs, li-
12 abilities, rates of interest, and other factors under
13 the plan shall be determined on the basis of actu-
14 arial assumptions and methods—

15 “(A) which, in the aggregate, are reason-
16 able (taking into account the experience of the
17 plan and reasonable expectations), and

18 “(B) which, in combination, offer the actu-
19 ary’s best estimate of anticipated experience
20 under the plan.

21 “(4) TREATMENT OF CERTAIN CHANGES AS EX-
22 PERIENCE GAIN OR LOSS.—For purposes of this sec-
23 tion, if—

1 “(A) a change in benefits under the Social
2 Security Act or in other retirement benefits cre-
3 ated under Federal or State law, or

4 “(B) a change in the definition of the term
5 ‘wages’ under section 3121, or a change in the
6 amount of such wages taken into account under
7 regulations prescribed for purposes of section
8 401(a)(5),

9 results in an increase or decrease in accrued liability
10 under a plan, such increase or decrease shall be
11 treated as an experience loss or gain.

12 “(5) FULL FUNDING.—If, as of the close of a
13 plan year, a plan would (without regard to this para-
14 graph) have an accumulated funding deficiency in
15 excess of the full funding limitation—

16 “(A) the funding standard account shall be
17 credited with the amount of such excess, and

18 “(B) all amounts described in subpara-
19 graphs (B), (C), and (D) of paragraph (2) and
20 subparagraph (B) of subsection (b)(3) which
21 are required to be amortized shall be considered
22 fully amortized for purposes of such subpara-
23 graphs.

24 “(6) FULL-FUNDING LIMITATION.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (5), the term ‘full-funding limitation’
3 means the excess (if any) of—

4 “(i) the accrued liability (including
5 normal cost) under the plan (determined
6 under the entry age normal funding meth-
7 od if such accrued liability cannot be di-
8 rectly calculated under the funding method
9 used for the plan), over

10 “(ii) the lesser of—

11 “(I) the fair market value of the
12 plan’s assets, or

13 “(II) the value of such assets de-
14 termined under paragraph (2).

15 “(B) MINIMUM AMOUNT.—

16 “(i) IN GENERAL.—In no event shall
17 the full-funding limitation determined
18 under subparagraph (A) be less than the
19 excess (if any) of—

20 “(I) 90 percent of the current li-
21 ability of the plan (including the ex-
22 pected increase in current liability due
23 to benefits accruing during the plan
24 year), over

1 “(II) the value of the plan’s as-
2 sets determined under paragraph (2).

3 “(ii) ASSETS.—For purposes of clause
4 (i), assets shall not be reduced by any
5 credit balance in the funding standard ac-
6 count.

7 “(C) CURRENT LIABILITY.—For purposes
8 of this paragraph—

9 “(i) IN GENERAL.—The term ‘current
10 liability’ means all liabilities to employees
11 and their beneficiaries under the plan.

12 “(ii) TREATMENT OF UNPREDICTABLE
13 CONTINGENT EVENT BENEFITS.—For pur-
14 poses of clause (i), any benefit contingent
15 on an event other than—

16 “(I) age, service, compensation,
17 death, or disability, or

18 “(II) an event which is reason-
19 ably and reliably predictable (as deter-
20 mined by the Secretary),
21 shall not be taken into account until the
22 event on which the benefit is contingent oc-
23 curs.

24 “(iii) INTEREST RATE USED.—The
25 rate of interest used to determine current

1 liability under this paragraph shall be the
2 rate of interest determined under subpara-
3 graph (D).

4 “(iv) MORTALITY TABLES.—

5 “(I) COMMISSIONERS’ STANDARD
6 TABLE.—In the case of plan years be-
7 ginning before the first plan year to
8 which the first tables prescribed under
9 subclause (II) apply, the mortality
10 table used in determining current li-
11 ability under this paragraph shall be
12 the table prescribed by the Secretary
13 which is based on the prevailing com-
14 missioners’ standard table (described
15 in section 807(d)(5)(A)) used to de-
16 termine reserves for group annuity
17 contracts issued on January 1, 1993.

18 “(II) SECRETARIAL AUTHOR-
19 ITY.—The Secretary may by regula-
20 tion prescribe for plan years beginning
21 after December 31, 1999, mortality
22 tables to be used in determining cur-
23 rent liability under this subsection.
24 Such tables shall be based upon the
25 actual experience of pension plans and

1 projected trends in such experience.

2 In prescribing such tables, the Sec-
3 retary shall take into account results
4 of available independent studies of
5 mortality of individuals covered by
6 pension plans.

7 “(v) SEPARATE MORTALITY TABLES
8 FOR THE DISABLED.—Notwithstanding
9 clause (iv)—

10 “(I) IN GENERAL.—In the case
11 of plan years beginning after Decem-
12 ber 31, 1995, the Secretary shall es-
13 tablish mortality tables which may be
14 used (in lieu of the tables under
15 clause (ii)) to determine current liabil-
16 ity under this subsection for individ-
17 uals who are entitled to benefits under
18 the plan on account of disability. The
19 Secretary shall establish separate ta-
20 bles for individuals whose disabilities
21 occur in plan years beginning before
22 January 1, 1995, and for individuals
23 whose disabilities occur in plan years
24 beginning on or after such date.

1 “(II) SPECIAL RULE FOR DIS-
2 ABILITIES OCCURRING AFTER 1994.—

3 In the case of disabilities occurring in
4 plan years beginning after December
5 31, 1994, the tables under subclause
6 (I) shall apply only with respect to in-
7 dividuals described in such subclause
8 who are disabled within the meaning
9 of title II of the Social Security Act
10 and the regulations thereunder.

11 “(vi) PERIODIC REVIEW.—The Sec-
12 retary shall periodically (at least every 5
13 years) review any tables in effect under
14 this subparagraph and shall, to the extent
15 the Secretary determines necessary, by
16 regulation update the tables to reflect the
17 actual experience of pension plans and pro-
18 jected trends in such experience.

19 “(D) REQUIRED CHANGE OF INTEREST
20 RATE.—For purposes of determining a plan’s
21 current liability for purposes of this para-
22 graph—

23 “(i) IN GENERAL.—If any rate of in-
24 terest used under the plan under sub-
25 section (b)(5) to determine cost is not

1 within the permissible range, the plan shall
2 establish a new rate of interest within the
3 permissible range.

4 “(ii) PERMISSIBLE RANGE.—For pur-
5 poses of this subparagraph—

6 “(I) IN GENERAL.—Except as
7 provided in subclause (II), the term
8 ‘permissible range’ means a rate of in-
9 terest which is not more than 5 per-
10 cent above, and not more than 10 per-
11 cent below, the weighted average of
12 the rates of interest on 30-year Treas-
13 ury securities during the 4-year period
14 ending on the last day before the be-
15 ginning of the plan year.

16 “(II) SECRETARIAL AUTHOR-
17 ITY.—If the Secretary finds that the
18 lowest rate of interest permissible
19 under subclause (I) is unreasonably
20 high, the Secretary may prescribe a
21 lower rate of interest, except that
22 such rate may not be less than 80
23 percent of the average rate deter-
24 mined under such subclause.

1 “(iii) ASSUMPTIONS.—Notwith-
2 standing paragraph (3)(A), the interest
3 rate used under the plan shall be—

4 “(I) determined without taking
5 into account the experience of the
6 plan and reasonable expectations, but

7 “(II) consistent with the assump-
8 tions which reflect the purchase rates
9 which would be used by insurance
10 companies to satisfy the liabilities
11 under the plan.

12 “(E) FULL FUNDING LIMITATION.—For
13 purposes of this paragraph, unless otherwise
14 provided by the plan, the accrued liability under
15 a multiemployer plan shall not include benefits
16 which are not nonforfeitable under the plan
17 after the termination of the plan (taking into
18 consideration section 411(d)(3)).

19 “(7) ANNUAL VALUATION.—

20 “(A) IN GENERAL.—For purposes of this
21 section, a determination of experience gains and
22 losses and a valuation of the plan’s liability
23 shall be made not less frequently than once
24 every year, except that such determination shall
25 be made more frequently to the extent required

1 in particular cases under regulations prescribed
2 by the Secretary.

3 “(B) VALUATION DATE.—

4 “(i) CURRENT YEAR.—Except as pro-
5 vided in clause (ii), the valuation referred
6 to in subparagraph (A) shall be made as of
7 a date within the plan year to which the
8 valuation refers or within one month prior
9 to the beginning of such year.

10 “(ii) USE OF PRIOR YEAR VALU-
11 ATION.—The valuation referred to in sub-
12 paragraph (A) may be made as of a date
13 within the plan year prior to the year to
14 which the valuation refers if, as of such
15 date, the value of the assets of the plan are
16 not less than 100 percent of the plan’s cur-
17 rent liability (as defined in paragraph
18 (6)(C) without regard to clause (iv) there-
19 of).

20 “(iii) ADJUSTMENTS.—Information
21 under clause (ii) shall, in accordance with
22 regulations, be actuarially adjusted to re-
23 flect significant differences in participants.

24 “(iv) LIMITATION.—A change in fund-
25 ing method to use a prior year valuation,

1 as provided in clause (ii), may not be made
2 unless as of the valuation date within the
3 prior plan year, the value of the assets of
4 the plan are not less than 125 percent of
5 the plan's current liability (as defined in
6 paragraph (6)(C) without regard to clause
7 (iv) thereof).

8 “(8) TIME WHEN CERTAIN CONTRIBUTIONS
9 DEEMED MADE.—For purposes of this section, any
10 contributions for a plan year made by an employer
11 after the last day of such plan year, but not later
12 than two and one-half months after such day, shall
13 be deemed to have been made on such last day. For
14 purposes of this subparagraph, such two and one-
15 half month period may be extended for not more
16 than six months under regulations prescribed by the
17 Secretary.

18 “(d) EXTENSION OF AMORTIZATION PERIODS FOR
19 MULTIEMPLOYER PLANS.—In the case of a multiemployer
20 plan—

21 “(1) AUTOMATIC EXTENSION.—The Secretary
22 shall, upon application and subject to the require-
23 ments of paragraph (4), extend the period of years
24 required to amortize any unfunded liability (de-

scribed in any clause of subsection (b)(2)(B)) of the plan for a period of time not in excess of 5 years.

“(2) EXTENSION FOR CAUSE.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary for a period of time (not in excess of 5 years) if he determines that such extension would carry out the purposes of this Act and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

“(A) result in—

“(i) a substantial risk to the voluntary continuation of the plan, or

“(ii) a substantial curtailment of pension benefit levels or employee compensation, and

“(B) be adverse to the interests of plan participants in the aggregate.

“(3) INTEREST RATE.—The interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an ex-

1 tension granted under this subsection shall be the
2 greater of—

3 “(A) 150 percent of the Federal mid-term
4 rate (as in effect under section 1274 for the 1st
5 month of such plan year), or

6 “(B) the rate of interest used under the
7 plan for determining costs.

8 “(4) REQUIRED NOTICE.—

9 “(A) IN GENERAL.—The Secretary shall,
10 before granting an extension under this section,
11 require each applicant to provide evidence satis-
12 factory to the Secretary that the applicant has
13 provided notice of the filing of the application
14 for such extension to each employee organiza-
15 tion representing employees covered by the af-
16 fected plan and to the Pension Benefit Guar-
17 anty Corporation.

18 “(B) CONSIDERATION OF RELEVANT IN-
19 FORMATION.—The Secretary shall consider any
20 relevant information provided by a person to
21 whom notice was given under paragraph (1).

22 “(e) RESTRICTION ON PLAN AMENDMENTS.—

23 “(1) IN GENERAL.—No amendment of a multi-
24 employer plan which increases the liabilities of the
25 plan by reason of any increase in benefits, any

1 change in the accrual of benefits, or any change in
2 the rate at which benefits become nonforfeitable
3 under the plan shall be adopted if a waiver under
4 section 412(c) or an extension of time under sub-
5 section (d) is in effect with respect to the plan, or
6 if a plan amendment described in section 412(d)(2)
7 has been made at any time in the preceding 24
8 months. If a plan is amended in violation of the pre-
9 ceding sentence, any such waiver, or extension of
10 time, shall not apply to any plan year ending on or
11 after the date on which such amendment is adopted.

12 “(2) EXCEPTION.—Paragraph (1) shall not
13 apply to any plan amendment which—

14 “(A) the Secretary determines to be rea-
15 sonable and which provides for only de minimis
16 increases in the liabilities of the plan,

17 “(B) only repeals an amendment described
18 in section 412(d)(2), or

19 “(C) is required as a condition of qualifica-
20 tion under part I of subchapter D, of chapter
21 1.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 418(b)(2) of such Code is amend-
24 ed—

1 (A) by striking “section 412(b)(2)” in sub-
 2 paragraph (A) and inserting “section
 3 431(b)(2)”, and

4 (B) by striking “section 412(b)(3)(B)” in
 5 subparagraph (B) and inserting “section
 6 431(b)(3)(B)”.

7 (2) Section 418B of such Code is amended—

8 (A) by striking “section 412(b)(2)(A) or
 9 (B)” in subsection (d)(1)(B) and inserting
 10 “section 431(b)(2)(A) or (B)”,

11 (B) by striking “section 412(c)(8)” in sub-
 12 section (e) and inserting “section 412(g)(2)”,
 13 and

14 (C) by striking “section 412(c)(3)” in sub-
 15 section (g) and inserting “section 431(c)(3)”.

16 (3) Section 418D(a)(2) of such Code is amend-
 17 ed—

18 (A) by striking “section 412(c)(8)” and in-
 19 serting “section 412(g)(2)”, and

20 (B) by striking “section 412(c)(10)” and
 21 inserting “section 431(c)(8)”.

22 (c) CLERICAL AMENDMENT.—The table of sections
 23 for subpart A of part III of subchapter D of chapter 1
 24 of such Code is amended by adding after the item relating
 25 to section 430 the following new item:

“Sec. 431. Minimum funding standards for multiemployer plans.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan years beginning after 2005.

3 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**
4 **PLOYER PLANS IN ENDANGERED OR CRIT-**
5 **ICAL STATUS.**

6 (a) IN GENERAL.—Subpart A of part III of sub-
7 chapter D of chapter 1 of the Internal Revenue Code of
8 1986 is amended by inserting after section 431 the fol-
9 lowing new section:

10 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**
11 **PLOYER PLANS IN ENDANGERED STATUS OR**
12 **CRITICAL STATUS.**

13 “(a) ANNUAL CERTIFICATION BY PLAN ACTUARY.—

14 “(1) IN GENERAL.—During the 90-day period
15 beginning on first day of each plan year of a multi-
16 employer plan, the plan actuary of shall certify to
17 the Secretary whether or not the plan is in endan-
18 gered status for such plan year and whether or not
19 the plan is in critical status for such plan year.

20 “(2) ACTUARIAL PROJECTIONS OF ASSETS AND
21 LIABILITIES.—

22 “(A) IN GENERAL.—In making the deter-
23 minations under paragraph (1), the plan actu-
24 ary shall make projections under subsections
25 (b)(2) and (c)(2) for the current and succeeding

1 plan years, using reasonable actuarial assump-
2 tions and methods, of the current value of the
3 assets of the plan and the present value of all
4 liabilities to participants and beneficiaries under
5 the plan for the current plan year as of the be-
6 ginning of such year, as set forth in the actu-
7 arial statement prepared for the preceding plan
8 year under section 6058.

9 “(B) DETERMINATIONS OF FUTURE CON-
10 TRIBUTIONS.—Any such actuarial projection of
11 plan assets shall assume—

12 “(i) reasonably anticipated employer
13 and employee contributions for the current
14 and succeeding plan years, assuming that
15 the terms of the one or more collective bar-
16 gaining agreements pursuant to which the
17 plan is maintained for the current plan
18 year continue in effect for succeeding plan
19 years, or

20 “(ii) employer and employee contribu-
21 tions projected for the current and suc-
22 ceeding plan years under the terms of such
23 collective bargaining agreements (assuming
24 the continued application of such terms in-
25 definitely to such plan years), but only if

1 the plan actuary determines there have
2 been no significant demographic changes
3 that would make continued application of
4 such terms unreasonable.

5 “(3) PRESUMED STATUS IN ABSENCE OF TIME-
6 LY ACTUARIAL CERTIFICATION.—If certification
7 under this subsection is not made before the end of
8 the 90-day period specified in paragraph (1), the
9 plan shall be presumed to be in critical status for
10 such plan year until such time as the actuary makes
11 a contrary certification.

12 “(4) NOTICE.—In any case in which a multiem-
13 ployer plan is certified to be in endangered or crit-
14 ical status for a plan year under paragraph (1), is
15 presumed to be in critical status under paragraph
16 (3), or is deemed to be in critical status under sub-
17 section (b)(7), the plan sponsor shall, not later than
18 30 days after the date of the certification, presump-
19 tion, or deeming, provide notification of the endan-
20 gered or critical status to the participants and bene-
21 ficiaries, the bargaining parties, the Pension Benefit
22 Guaranty Corporation, the Secretary of the Treas-
23 ury, and the Secretary of Labor.

24 “(b) FUNDING RULES FOR MULTIEMPLOYER PLANS
25 IN ENDANGERED STATUS.—

1 “(1) IN GENERAL.—In any case in which a
2 multiemployer plan is in endangered status for a
3 plan year, the plan sponsor shall, in accordance with
4 this subsection, amend the plan to include a funding
5 improvement plan upon approval thereof by the bar-
6 gaining parties under this subsection. The amend-
7 ment shall be adopted not later than 240 days after
8 the date on which the plan is certified to be in en-
9 dangered status under subsection (a)(1).

10 “(2) ENDANGERED STATUS.—A multiemployer
11 plan is in endangered status for a plan year if, as
12 determined by the plan actuary under subsection
13 (c)—

14 “(A) the plan’s funded percentage for such
15 plan year is less than 80 percent, or

16 “(B) the plan has an accumulated funding
17 deficiency for such plan year under section 431
18 or is projected to have such an accumulated
19 funding deficiency for any of the 6 succeeding
20 plan years, taking into account any extension of
21 amortization periods under section 431(d).

22 “(3) FUNDING IMPROVEMENT PLAN.—

23 “(A) BENCHMARKS.—A funding improve-
24 ment plan shall consist of amendments to the
25 plan formulated to provide, under reasonable

1 actuarial assumptions, for the attainment, dur-
2 ing the funding improvement period under the
3 funding improvement plan, of the following
4 benchmarks:

5 “(i) REDUCTION IN UNFUNDED CUR-
6 RENT LIABILITY.—A percentage decrease
7 in the plan’s unfunded current liability
8 from the amount for the first plan year of
9 the funding improvement period to the
10 amount for the last plan year of the fund-
11 ing improvement period, of at least $33\frac{1}{3}$
12 percent.

13 “(ii) AVOIDANCE OF ACCUMULATED
14 FUNDING DEFICIENCIES.—No accumulated
15 funding deficiency for any plan year during
16 the funding improvement period (taking
17 into account any extension of amortization
18 periods under section 431(d)).

19 “(B) FUNDING IMPROVEMENT PERIOD.—
20 The funding improvement period for any fund-
21 ing improvement plan adopted pursuant to this
22 subsection is the 10-year period beginning on
23 the earlier of—

1 “(i) the second anniversary of the
2 date of the adoption of the funding im-
3 provement plan, or

4 “(ii) the first day of the first plan
5 year of the multiemployer plan following
6 the plan year in which occurs the first date
7 after the day of the certification as of
8 which collective bargaining agreements cov-
9 ering on the day of such certification at
10 least 75 percent of active participants in
11 such multiemployer plan have expired.

12 “(C) REPORTING.—A summary of any
13 funding improvement plan or modification
14 thereto adopted during any plan year shall be
15 included in the annual report for such plan year
16 under section 104(a) of the Employee Retire-
17 ment and Income Security Act of 1974 and in
18 the summary annual report described in section
19 104(b)(3) of such Act.

20 “(4) DEVELOPMENT OF FUNDING IMPROVE-
21 MENT PLAN.—

22 “(A) ACTIONS BY PLAN SPONSOR PENDING
23 APPROVAL.—Pending the approval of a funding
24 improvement plan under this paragraph, the
25 plan sponsor shall take all reasonable actions,

1 consistent with the terms of the plan and appli-
2 cable law, necessary to ensure—

3 “(i) an increase in the plan’s funded
4 percentage, and

5 “(ii) postponement of an accumulated
6 funding deficiency for at least 1 additional
7 plan year.

8 Such actions include applications for extensions
9 of amortization periods under section 431(d),
10 use of the shortfall funding method in making
11 funding standard account computations,
12 amendments to the plan’s benefit structure, re-
13 ductions in future benefit accruals, and other
14 reasonable actions consistent with the terms of
15 the plan and applicable law.

16 “(B) RECOMMENDATIONS BY PLAN SPON-
17 SOR.—

18 “(i) IN GENERAL.—During the period
19 of 90 days following the date on which a
20 multiemployer plan is certified to be in en-
21 dangered status, the plan sponsor shall de-
22 velop and provide to the bargaining parties
23 alternative proposals for revised benefit
24 structures, contribution structures, or
25 both, which, if adopted as amendments to

1 the plan, may be reasonably expected to
2 meet the benchmarks described in para-
3 graph (3)(A). Such proposals shall in-
4 clude—

5 “(I) at least one proposal for re-
6 ductions in the amount of future ben-
7 efit accruals necessary to achieve the
8 benchmarks, assuming no amend-
9 ments increasing contributions under
10 the plan (other than amendments in-
11 creasing contributions necessary to
12 achieve the benchmarks after amend-
13 ments have reduced future benefit ac-
14 cruals to the maximum extent per-
15 mitted by law), and

16 “(II) at least one proposal for in-
17 creases in contributions under the
18 plan necessary to achieve the bench-
19 marks, assuming no amendments re-
20 ducing future benefit accruals under
21 the plan.

22 “(ii) REQUESTS BY BARGAINING PAR-
23 TIES.—Upon the request of any bargaining
24 party who—

1 “(I) employs at least 5 percent of
2 the active participants, or

3 “(II) represents as an employee
4 organization, for purposes of collective
5 bargaining, at least 5 percent of the
6 active participants,

7 the plan sponsor shall provide all such par-
8 ties information as to other combinations
9 of increases in contributions and reduc-
10 tions in future benefit accruals which
11 would result in achieving the benchmarks.

12 “(iii) OTHER INFORMATION.—The
13 plan sponsor may, as it deems appropriate,
14 prepare and provide the bargaining parties
15 with additional information relating to con-
16 tribution structures or benefit structures
17 or other information relevant to the fund-
18 ing improvement plan.

19 “(5) MAINTENANCE OF CONTRIBUTIONS PEND-
20 ING APPROVAL OF FUNDING IMPROVEMENT PLAN.—
21 Pending approval of a funding improvement plan by
22 the bargaining parties with respect to a multiem-
23 ployer plan, the multiemployer plan may not be
24 amended so as to provide—

1 “(A) a reduction in the level of contribu-
2 tions for participants who are not in pay status,

3 “(B) a suspension of contributions with re-
4 spect to any period of service, or

5 “(C) any new direct or indirect exclusion
6 of younger or newly hired employees from plan
7 participation.

8 “(6) BENEFIT RESTRICTIONS PENDING AP-
9 PROVAL OF FUNDING IMPROVEMENT PLAN.—Pend-
10 ing approval of a funding improvement plan by the
11 bargaining parties with respect to a multiemployer
12 plan—

13 “(A) RESTRICTIONS ON LUMP SUM DIS-
14 TRIBUTIONS AND SIMILAR DISTRIBUTIONS.—
15 The multiemployer plan may not be amended so
16 as to provide additional forms of benefits.

17 “(B) PROHIBITION ON BENEFIT IN-
18 CREASES.—

19 “(i) IN GENERAL.—No amendment of
20 the plan which increases the liabilities of
21 the plan by reason of any increase in bene-
22 fits, any change in the accrual of benefits,
23 or any change in the rate at which benefits
24 become nonforfeitable under the plan may
25 be adopted.

1 “(ii) EXCEPTION.—Clause (i) shall
2 not apply to any plan amendment which—

3 “(I) the Secretary determines to
4 be reasonable and which provides for
5 only de minimis increases in the liabil-
6 ities of the plan,

7 “(II) only repeals an amendment
8 described in section 430(d)(2), or

9 “(III) is required as a condition
10 of qualification under part I of sub-
11 chapter D of chapter 1 of subtitle A.

12 “(7) DEFAULT CRITICAL STATUS IF NO FUND-
13 ING IMPROVEMENT PLAN ADOPTED.—If no plan
14 amendment adopting a funding improvement plan
15 has been adopted by the end of the 240-day period
16 referred to in subsection (a)(1), the plan shall be in
17 critical status as of the first day of the succeeding
18 plan year.

19 “(8) RESTRICTIONS UPON APPROVAL OF FUND-
20 ING IMPROVEMENT PLAN.—Upon adoption of a
21 funding improvement plan with respect to a multi-
22 employer plan, the plan may not be amended—

23 “(A) so as to be inconsistent with the
24 funding improvement plan, or

1 “(B) so as to increase future benefit accru-
2 als, unless the plan actuary certifies in advance
3 that, after taking into account the proposed in-
4 crease, the plan is reasonably expected to meet
5 the the benchmarks described in paragraph
6 (3)(A).

7 “(c) FUNDING RULES FOR MULTIEMPLOYER PLANS
8 IN CRITICAL STATUS.—

9 “(1) IN GENERAL.—In any case in which a
10 multiemployer plan is in critical status for a plan
11 year, the plan sponsor shall, in accordance with this
12 subsection, amend the plan to include a rehabilita-
13 tion plan under this subsection. The amendment
14 shall be adopted not later than 240 days after the
15 date on which the plan is certified to be in critical
16 status under subsection (a)(1) or is presumed to be
17 in critical status under subsection (a)(3), or the first
18 day of the plan year in the case of a plan that is
19 deemed to be in critical status under subsection
20 (b)(7).

21 “(2) CRITICAL STATUS.—A multiemployer plan
22 is in critical status for a plan year if—

23 “(A) the plan is in endangered status for
24 the plan year and the requirements of sub-

1 section (b)(1) are not met with respect to the
2 plan for such plan year, or

3 “(B) as determined by the plan actuary
4 under subsection (a), the plan is described in
5 paragraph (3).

6 Any multiemployer plan which is in critical status
7 under subparagraph (A) or (B) for a plan year shall
8 be treated as in critical status also for the suc-
9 ceeding plan year.

10 “(3) CRITICALITY DESCRIPTION.—For purposes
11 of paragraph (2)(B), a plan is described in this
12 paragraph if the plan is described in at least one of
13 the following subparagraphs:

14 “(A) A plan is described in this subpara-
15 graph if, as of the beginning of the current plan
16 year—

17 “(i) the funded percentage of the plan
18 is less than 65 percent, and

19 “(ii) the sum of—

20 “(I) the market value of plan as-
21 sets, plus

22 “(II) the present value of the
23 reasonably anticipated employer and
24 employee contributions for the current
25 plan year and each of the 6 suc-

1 ceeding plan years, assuming that the
2 terms of the one or more collective
3 bargaining agreements pursuant to
4 which the plan is maintained for the
5 current plan year continue in effect
6 for succeeding plan years,

7 is less than the present value of all non-
8 forfeitable benefits for all participants and
9 beneficiaries projected to be payable under
10 the plan during the current plan year and
11 each of the 6 succeeding plan years (plus
12 administrative expenses for such plan
13 years).

14 “(B) A plan is described in this subpara-
15 graph if, as of the beginning of the current plan
16 year, 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 and employee
21 contributions for the current plan year and
22 each of the 4 succeeding plan years, as-
23 suming that the terms of the one or more
24 collective bargaining agreements pursuant
25 to which the plan is maintained for the

1 current plan year remain in effect for suc-
2 ceeding plan years,
3 is less than the present value of all nonforfeit-
4 able benefits for all participants and bene-
5 ficiaries projected to be payable under the plan
6 during the current plan year and each of the 4
7 succeeding plan years (plus administrative ex-
8 penses for such plan years).

9 “(C) A plan is described in this subpara-
10 graph if—

11 “(i) as of the beginning of the current
12 plan year, the funded percentage of the
13 plan is less than 65 percent, and

14 “(ii) the plan has an accumulated
15 funding deficiency for the current plan
16 year or is projected to have an accumu-
17 lated funding deficiency for any of the 4
18 succeeding plan years, taking into account
19 any extension of amortization periods
20 under section 431(d).

21 “(D) A plan is described in this subpara-
22 graph if—

23 “(i)(I) the plan’s normal cost for the
24 current plan year, plus interest (deter-
25 mined at the rate used for determining

1 cost under the plan) for the current plan
2 year on the amount of unfunded benefit li-
3 abilities under the plan as of the last date
4 of the preceding plan year, exceeds

5 “(II) the present value, as of the be-
6 ginning of the current plan year, of the
7 reasonably anticipated employer and em-
8 ployee contributions for the current plan
9 year,

10 “(ii) the present value, as of the be-
11 ginning of the current plan year, of non-
12 forfeitable benefits of inactive participants
13 is greater than the present value, as of the
14 beginning of the current plan year, of non-
15 forfeitable benefits of active participants,
16 and

17 “(iii) the plan is projected to have an
18 accumulated funding deficiency for the
19 current plan year or any of the 4 suc-
20 ceeding plan years.

21 “(E) A plan is described in this subpara-
22 graph if—

23 “(i) the funded percentage of the plan
24 is greater than 65 percent for the current
25 plan year, and

1 “(ii) the plan is projected to have an
2 accumulated funding deficiency during ei-
3 ther of the following 3 plan years.

4 “(4) REHABILITATION PLAN.—

5 “(A) IN GENERAL.—A rehabilitation plan
6 shall consist of—

7 “(i) amendments to the plan providing
8 (under reasonable actuarial assumptions)
9 for measures, agreed to by the bargaining
10 parties, to increase contributions, reduce
11 plan expenditures (including plan mergers
12 and consolidations), or reduce future ben-
13 efit accruals, or to take any combination of
14 such actions, determined necessary to
15 cause the plan to cease, during the reha-
16 bilitation period, to be in critical status,

17 “(ii) measures, agreed to by the bar-
18 gaining parties, to provide funding relief,
19 or

20 “(iii) reasonable measures to forestall
21 possible insolvency (within the meaning of
22 section 418E) if the plan sponsor deter-
23 mines that, upon exhaustion of all reason-
24 able measures, the plan would not cease

1 during the rehabilitation period to be in
2 critical status.

3 “(B) REHABILITATION PERIOD.—The re-
4 habilitation period for any rehabilitation plan
5 adopted pursuant to this section is the 10-year
6 period beginning on the earlier of—

7 “(i) the second anniversary of the
8 date of the adoption of the rehabilitation
9 plan, or

10 “(ii) the first day of the first plan
11 year of the multiemployer plan following
12 the plan year in which occurs the first date
13 after the day of the certification as of
14 which collective bargaining agreements cov-
15 ering on the day of such certification at
16 least 75 percent of active participants in
17 such multiemployer plan have expired.

18 “(C) REPORTING.—A summary of any re-
19 habilitation plan or modification thereto adopt-
20 ed during any plan year, together with annual
21 updates regarding the funding ratio of the plan,
22 shall be included in the annual report for such
23 plan year under section 104(a) and in the sum-
24 mary annual report described in section

1 104(b)(3) of the Employee Retirement and In-
2 come Security Act of 1974.

3 “(5) DEVELOPMENT OF REHABILITATION
4 PLAN.—

5 “(A) PROPOSALS BY PLAN SPONSOR.—

6 “(i) IN GENERAL.—Within 90 days
7 after the date of the certification under
8 subsection (a) that the plan is in critical
9 status (or the date as of which the require-
10 ments of subsection (b)(1) are not met
11 with respect to the plan), the plan sponsor
12 shall propose to all bargaining parties a
13 range of alternative schedules of increases
14 in contributions and reductions in future
15 benefit accruals that would serve to carry
16 out a rehabilitation plan under this sub-
17 section.

18 “(ii) PROPOSAL ASSUMING NO CON-
19 TRIBUTION INCREASES.—Such proposals
20 shall include, as one of the proposed sched-
21 ules, a schedule of those reductions in fu-
22 ture benefit accruals that would be nec-
23 essary to cause the plan to cease to be in
24 critical status if there were no further in-
25 creases in rates of contribution to the plan.

1 “(iii) PROPOSAL WHERE CONTRIBU-
2 TIONS ARE NECESSARY.—If the plan spon-
3 sor determines that the plan will not cease
4 to be in critical status during the rehabili-
5 tation period unless the plan is amended to
6 provide for an increase in contributions,
7 the plan sponsor’s proposals shall include a
8 schedule of those increases in contribution
9 rates that would be necessary to cause the
10 plan to cease to be in critical status if fu-
11 ture benefit accruals were reduced to the
12 maximum extent permitted by law and the
13 rate of future benefit accruals did not ex-
14 ceed 1 percent per plan year.

15 “(B) REQUESTS FOR ADDITIONAL SCHED-
16 ULES.—Upon the joint request of all bargaining
17 parties, each of whom—

18 “(i) employs at least 5 percent of the
19 active participants, or

20 “(ii) represents as an employee orga-
21 nization, for purposes of collective bar-
22 gaining, at least 5 percent of the active
23 participants,

24 the plan sponsor shall include among the pro-
25 posed schedules such schedules of increases in

1 contributions and reductions in future benefit
2 accruals as may be specified by the bargaining
3 parties.

4 “(C) DEFAULT SCHEDULE.—In any case
5 in which the bargaining parties, as of 240 days
6 after the later of the date of the certification
7 under subsection (a) or the first day the plan
8 is in critical status under subsection (a)(3) or
9 (b)(7), have not agreed to at least one of the
10 proposed schedules, the plan sponsor shall
11 amend the plan to implement the schedule re-
12 quired by subparagraph (A)(ii).

13 “(D) SUBSEQUENT AMENDMENTS.—Upon
14 the adoption of a schedule of increases in con-
15 tributions or reductions in future benefit accru-
16 als as part of the rehabilitation plan, the plan
17 sponsor may amend the plan thereafter to up-
18 date the schedule to adjust for any experience
19 of the plan contrary to past actuarial assump-
20 tions, except that such an amendment may be
21 made not more than once in any 3-year period.

22 “(E) ALLOCATION OF REDUCTIONS IN FU-
23 TURE BENEFIT ACCRUALS.—Any schedule con-
24 taining reductions in future benefit accruals
25 forming a part of a rehabilitation plan shall be

1 applicable with respect to any group of active
2 participants who are employed by any bar-
3 gaining party (as an employer obligated to con-
4 tribute under the plan) in proportion to the ex-
5 tent to which increases in contributions under
6 such schedule apply to such bargaining party.

7 “(6) MAINTENANCE OF CONTRIBUTIONS AND
8 RESTRICTIONS ON BENEFITS PENDING ADOPTION OF
9 REHABILITATION PLAN.—The rules of paragraphs
10 (5) and (6) of subsection (b) shall apply for pur-
11 poses of this subsection by substituting the term ‘re-
12 habilitation plan’ for ‘funding improvement plan’.

13 “(7) DEEMED WITHDRAWAL.—Upon the failure
14 of any employer who has an obligation to contribute
15 under the plan to make contributions in compliance
16 with the schedule adopted under paragraph (6) as
17 part of the rehabilitation plan, the failure of the em-
18 ployer may, at the discretion of the plan sponsor, be
19 treated as a withdrawal by the employer from the
20 plan under section 4203 of the Employee Retirement
21 and Income Security Act of 1974 or a partial with-
22 drawal by the employer under section 4205 of such
23 Act.

24 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) BARGAINING PARTY.—The term ‘bar-
2 gaining party’ means, in connection with a multiem-
3 ployer plan—

4 “(A) an employer who has an obligation to
5 contribute under the plan, and

6 “(B) an employee organization which, for
7 purposes of collective bargaining, represents
8 plan participants employed by such an em-
9 ployer.

10 “(2) CURRENT LIABILITY.—The term ‘current
11 liability’ has the meaning provided such term in sec-
12 tion 431(c)(6)(C).

13 “(3) UNFUNDED CURRENT LIABILITY.—The
14 term ‘unfunded current liability’ means the excess
15 (if any) of—

16 “(A) the current liability of the plan, over

17 “(B) the value of the plan’s assets deter-
18 mined under section 431(c)(2).

19 “(4) FUNDED PERCENTAGE.—The term ‘fund-
20 ed percentage’ means the percentage expressed as a
21 ratio of which—

22 “(A) the numerator of which is the value
23 of the plan’s assets, as determined under sec-
24 tion 431(c)(2), and

1 “(B) the denominator of which is the ac-
2 crued liability of the plan.

3 “(5) UNFUNDED VESTED BENEFITS.—The
4 term ‘unfunded vested benefits’ has the meaning
5 provided in section 418(b)(7).

6 “(6) ACCUMULATED FUNDING DEFICIENCY.—
7 The term ‘accumulated funding deficiency’ has the
8 meaning provided such term in section 431(a).

9 “(7) ACTIVE PARTICIPANT.—The term ‘active
10 participant’ means, in connection with a multiem-
11 ployer plan, a participant who is in covered service
12 under the plan.

13 “(8) INACTIVE PARTICIPANT.—The term ‘inac-
14 tive participant’ means, in connection with a multi-
15 employer plan, a participant who—

16 “(A) is not in covered service under the
17 plan, and

18 “(B) is in pay status under the plan or has
19 a nonforfeitable right to benefits under the
20 plan.

21 “(9) PAY STATUS.—A person is in ‘pay status’
22 under a multiemployer plan if—

23 “(A) at any time during the current plan
24 year, such person is a participant or beneficiary
25 under the plan and is paid an early, late, nor-

1 mal, or disability retirement benefit under the
 2 plan (or a death benefit under the plan related
 3 to a retirement benefit), or

4 “(B) to the extent provided in regulations
 5 of the Secretary, such person is entitled to such
 6 a benefit under the plan.

7 “(10) OBLIGATION TO CONTRIBUTE.—The term
 8 ‘obligation to contribute’ has the meaning provided
 9 such term under section 4212(a).”.

10 (b) CLERICAL AMENDMENT.—The table of sections
 11 for subpart A of part III of subchapter D of chapter 1
 12 of such Code is amended by adding at the end the fol-
 13 lowing new item:

“Sec. 432. Additional funding rules for multiemployer plans in endangered sta-
 tus or critical status.”.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to plan years beginning after 2005.

16 **TITLE III—OTHER INTEREST-** 17 **RELATED FUNDING PROVISIONS**

18 **SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINA-** 19 **TION OF LUMP SUM DISTRIBUTIONS.**

20 (a) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
 21 COME SECURITY ACT OF 1974.—Subparagraph (B) of
 22 section 205(g)(3) of the Employee Retirement Income Se-
 23 curity Act of 1974 (29 U.S.C. 1055(g)(3)) is amended to
 24 read as follows:

1 “(B) For purposes of subparagraph (A)—

2 “(i) The term ‘applicable mortality table’ means
3 the mortality table specified for the plan year under
4 section 303(f)(3).

5 “(ii) The term ‘applicable interest rate’ means
6 the adjusted first, second, and third segment rates
7 applied under rules similar to the rules of section
8 303(f)(2)(B).

9 “(iii) For purposes of clause (ii), the adjusted
10 first, second, and third segment rates are the first,
11 second, and third segment rates which would be de-
12 termined under section 303(f)(2)(C) if—

13 “(I) section 303(f)(2)(D)(i) were applied
14 by substituting ‘the yields’ for ‘a 3-year weight-
15 ed average of yields’, and

16 “(II) the applicable percentage under sec-
17 tion 303(f)(2)(G) were determined in accord-
18 ance with the following table:

“In the case of plan years beginning in:	The applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.”.

19 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
20 1986.—Section 417(e)(3)(A) of the Internal Revenue

1 Code of 1986 is amended by striking clause (ii) and insert-
 2 ing the following:

3 “(ii) APPLICABLE MORTALITY
 4 TABLE.—For purposes of clause (i), the
 5 term ‘applicable mortality table’ means the
 6 mortality table specified for the plan under
 7 section 430(f)(3).

8 “(iii) APPLICABLE INTEREST RATE.—
 9 For purposes of clause (i), the term ‘appli-
 10 cable interest rate’ means the adjusted
 11 first, second, and third segment rates ap-
 12 plied under rules similar to the rules of
 13 section 430(f)(2)(B).

14 “(iv) ADJUSTED FIRST, SECOND, AND
 15 THIRD SEGMENT RATES.—For purposes of
 16 clause (iii), the adjusted first, second, and
 17 third segment rates are the first, second,
 18 and third segment rates which would be
 19 determined under section 430(f)(2)(C) if—

20 “(I) section 430(f)(2)(D)(i) were
 21 applied by substituting ‘the yields’ for
 22 ‘a 3-year weighted average of yields’,
 23 and

24 “(II) the applicable percentage
 25 under section 430(f)(2)(G) were de-

1 terminated in accordance with the fol-
 2 lowing table:

“In the case of plan years beginning in:	The applicable percentage is:
2006	20 percent
2007	40 percent
2008	60 percent
2009	80 percent.”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply with respect to plan years begin-
 5 ning after 2005.

6 **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**
 7 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**
 8 **TRIBUTIONS.**

9 (a) IN GENERAL.—Clause (ii) of section
 10 415(b)(2)(E) of the Internal Revenue Code of 1986 is
 11 amended to read as follows:

12 “(ii) For purposes of adjusting any
 13 benefit under subparagraph (B) for any
 14 form of benefit subject to section
 15 417(e)(3), the interest rate assumption
 16 shall not be less than the greater of—

17 “(I) 5.5 percent,

18 “(II) the rate that provides a
 19 benefit of not more than 105 percent
 20 of the benefit that would be provided
 21 if the applicable interest rate (as de-

1 fined in section 417(e)(3)) were the
 2 interest rate assumption, or
 3 “(III) the rate specified under
 4 the plan.”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 subsection (a) shall apply to distributions made in years
 7 beginning after 2005.

8 **TITLE IV—IMPROVEMENTS IN** 9 **PBGC GUARANTEE PROVISIONS**

10 **SEC. 401. INCREASES IN PBGC PREMIUMS.**

11 (a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of
 12 the Employee Retirement Income Security Act of 1974
 13 (29 U.S.C. 1306(a)(3)) is amended—

14 (1) by striking clause (i) of subparagraph (A)
 15 and inserting the following:

16 “(i) in the case of a single-employer plan—

17 “(I) for plan years beginning after Decem-
 18 ber 31, 1990, and before January 1, 2008, an
 19 amount equal to the sum of \$19, and

20 “(II) for plan years beginning after De-
 21 cember 31, 2007, an amount determined under
 22 subparagraph (F),

23 plus the additional premium (if any) determined
 24 under subparagraph (E) for each individual who is

1 a participant in such plan during the plan year;”;
2 and

3 (2) by adding at the end the following new sub-
4 paragraph:

5 “(F)(i) Except as otherwise provided in this subpara-
6 graph, for purposes of determining the annual premium
7 rate payable to the corporation by a single-employer plan
8 for basic benefits guaranteed under this title, the amount
9 determined under this subparagraph is the greater of \$30
10 or the adjusted amount determined under clause (ii).

11 “(ii) The adjusted amount determined under this
12 clause is the product derived by multiplying \$30 by the
13 ratio of—

14 “(I) the national average wage index (as de-
15 fined in section 209(k)(1) of the Social Security Act)
16 for the first of the 2 calendar years preceding the
17 calendar year before the calendar year in which the
18 plan year begins, to

19 “(II) the national average wage index (as so de-
20 fined) for 2006,

21 with such product, if not a multiple of \$1, being rounded
22 to the next higher multiple of \$1 where such product is
23 a multiple of \$0.50 but not of \$1, and to the nearest mul-
24 tiple of \$1 in any other case.

1 “(iii) For purposes of determining the annual pre-
 2 mium rate payable to the corporation by a single-employer
 3 plan for basic benefits guaranteed under this title for any
 4 plan year beginning after 2007 and before 2012—

5 “(I) except as provided in subclause (II), the
 6 premium amount referred to in subparagraph
 7 (A)(i)(II) for any such plan year is the amount set
 8 forth in connection with such plan year in the fol-
 9 lowing table:

“If the plan year begins in:	The amount is:
2008	\$21.20
2009	\$23.40
2010	\$25.60
2011	\$27.80; or

10 “(II) if the plan’s funding target attainment
 11 percentage for the plan year preceding the current
 12 plan year was less than 80 percent, the premium
 13 amount referred to in subparagraph (A)(i)(II) for
 14 such current plan year is the amount set forth in
 15 connection with such current plan year in the fol-
 16 lowing table:

“If the plan year begins in:	The amount is:
2008	\$22.67
2009	\$26.33
2010 or 2011	the amount provided under clause (i)

1 “(iv) For purposes of this subparagraph, the term
 2 ‘funding target attainment percentage’ has the meaning
 3 provided such term in section 303(d)(2).”.

4 (b) RISK-BASED PREMIUMS.—

5 (1) IN GENERAL.—Section 4006(a)(3)(E) of
 6 such Act (29 U.S.C. 1306(a)(3)(E)) is amended—

7 (A) in clause (ii), by striking “\$9.00” and
 8 inserting “the greater of \$9.00 or the adjusted
 9 amount determined under clause (iii)”;

10 (B) by redesignating clauses (iii) and (iv)
 11 as clauses (iv) and (v), respectively; and

12 (C) by inserting after clause (ii) the fol-
 13 lowing new clause:

14 “(iii) The adjusted amount determined under this
 15 clause is the product derived by multiplying \$9.00 by the
 16 ratio of—

17 “(I) the national average wage index (as de-
 18 fined in section 209(k)(1) of the Social Security Act)
 19 for the first of the 2 calendar years preceding the
 20 calendar year before the calendar year in which the
 21 plan year begins, to

22 “(II) the national average wage index (as so de-
 23 fined) for 2006,

24 with such product, if not a multiple of \$1.00, being round-
 25 ed to the next higher multiple of \$1.00 where such product

1 is a multiple of \$0.50 but not of \$1.00, and to the nearest
2 multiple of \$1.00 in any other case.”.

3 (2) CONFORMING AMENDMENTS RELATED TO
4 FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—
5 Section 4006(a)(3)(E) of such Act (as amended by
6 paragraph (1)) is amended further—

7 (A) by striking clause (iv) and inserting
8 the following:

9 “(iv)(I) For purposes of clause (ii), except as pro-
10 vided in subclause (II) or (III), the term ‘unfunded bene-
11 fits’ means, for a plan year, the amount which would be
12 the plan’s funding shortfall (as defined in section
13 303(c)(4)), if the value of plan assets of the plan were
14 equal to the fair market value of such assets and deter-
15 mined without regard to section 303(e)(1), and only vested
16 benefits were taken into account.

17 “(II) The interest rate used in valuing vested benefits
18 for purposes of subclause (I) shall be equal to the first,
19 second, or third segment rate which would be determined
20 under section 303(f)(2)(C) if section 303(f)(2)(D)(i) were
21 applied by substituting ‘the yields’ for ‘the 3-year weighted
22 average of yields’, as applicable under rules similar to the
23 rules under section 303(f)(2)(B).”; and

24 (B) by striking clause (iv).

25 (3) EFFECTIVE DATES.—

1 (A) The amendments made by paragraph
 2 (1) shall apply with respect to premiums for
 3 plan years after 2007.

4 (B) The amendments made by paragraph
 5 (2) shall apply with respect to plan years begin-
 6 ning after 2005.

7 **TITLE V—DISCLOSURE**

8 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.**

9 (a) APPLICATION OF PLAN FUNDING NOTICE RE-
 10 QUIREMENTS TO ALL DEFINED BENEFIT PLANS.—Sec-
 11 tion 101(f) of the Employee Retirement Income Security
 12 Act of 1974 (29 U.S.C. 1021(f)) is amended—

13 (1) in the heading, by striking “MULTIEM-
 14 PLOYER”;

15 (2) in paragraph (1), by striking “which is a
 16 multiemployer plan”; and

17 (3) in paragraph (2)(B)(iii), by inserting after
 18 “plan” the following: “, and a summary of the rules
 19 governing termination of single-employer plans
 20 under subtitle C of title IV”.

21 (b) INCLUSION OF STATEMENT OF THE RATIO OF IN-
 22 ACTIVE PARTICIPANTS TO ACTIVE PARTICIPANTS.—Sec-
 23 tion 101(f)(2)(B) of such Act (29 U.S.C. 1021(f)(2)(B))
 24 is amended—

1 (1) in clause (iii)(II) (added by subsection
2 (a)(3) of this section), by striking “and” at the end;

3 (2) in clause (iv), by striking “apply.” and in-
4 serting “apply; and”; and

5 (3) by adding at the end the following new
6 clause:

7 “(v) a statement of the ratio, as of
8 the end of the plan year to which the no-
9 tice relates, of—

10 “(I) the number of participants
11 who are not in covered service under
12 the plan and are in pay status under
13 the plan or have a nonforfeitable right
14 to benefits under the plan, to

15 “(II) the number of participants
16 who are in covered service under the
17 plan.”.

18 (c) COMPARISON OF MONTHLY AVERAGE OF VALUE
19 OF PLAN ASSETS TO PROJECTED CURRENT LIABIL-
20 ITIES.—Section 101(f)(2)(B) of such Act (29 U.S.C.
21 1021(f)(2)(B)) (as amended by the preceding provisions
22 of this section) is amended further—

23 (1) by striking clause (ii) and inserting the fol-
24 lowing:

1 “(ii) a statement of a reasonable esti-
2 mate of—

3 “(I) the value of the plan’s assets
4 for the plan year to which the notice
5 relates,

6 “(II) projected liabilities of the
7 plan for the plan year to which the
8 notice relates, and

9 “(III) the ratio of the estimated
10 amount determined under subclause
11 (I) to the estimated amount deter-
12 mined under subclause (II);” and

13 (2) by adding at the end (after and below
14 clause (v)) the following:

15 “For purposes of determining a plan’s projected
16 liabilities for a plan year under clause (ii)(II),
17 such projected liabilities shall be determined by
18 projecting forward in a reasonable manner to
19 the end of the plan year the liabilities of the
20 plan to participants and beneficiaries as of the
21 first day of the plan year, taking into account
22 any significant events that occur during the
23 plan year and that have a material effect on
24 such liabilities, including any plan amendments
25 in effect for the plan year.”.

1 (d) STATEMENT OF PLAN'S FUNDING POLICY AND
2 METHOD OF ASSET ALLOCATION.—Section 101(f)(2)(B)
3 of such Act (as amended by the preceding provisions of
4 this section) is amended further—

5 (1) in clause (iv), by striking “and” at the end;

6 (2) in clause (v), by striking the period and in-
7 serting “; and”; and

8 (3) by inserting after clause (v) the following
9 new clause:

10 “(vi) a statement setting forth the
11 funding policy of the plan and the asset al-
12 location of investments under the plan (ex-
13 pressed as percentages of total assets) as
14 of the end of the plan year to which the
15 notice relates.”.

16 (e) NOTICE OF FUNDING IMPROVEMENT PLAN OR
17 REHABILITATION PLAN ADOPTED BY MULTIEMPLOYER
18 PLAN.—Section 101(f)(2)(B) of such Act (as amended by
19 the preceding provisions of this section) is amended fur-
20 ther—

21 (1) in clause (v), by striking “and” at the end;

22 (2) in clause (vi), by striking the period and in-
23 serting “; and”; and

24 (3) by inserting after clause (vi) the following
25 new clause:

1 “(vii) a summary of any funding im-
2 provement plan, rehabilitation plan, or
3 modification thereof adopted under section
4 305 during the plan year to which the no-
5 tice relates.”.

6 (f) NOTICE PROVIDED TO ALTERNATE PAYEES.—
7 Section 101(f)(1) of such Act (29 U.S.C. 1021(f)(1)) is
8 amended by adding at the end the following new sentence:
9 “For purposes of this paragraph, the term ‘beneficiary’
10 includes an alternate payee (within the meaning of section
11 206(d)(3)(K)) under an applicable qualified domestic rela-
12 tions order (within the meaning of section
13 206(d)(3)(B)(i)) receiving benefits under the plan.”.

14 (g) NOTICE DUE 90 DAYS AFTER PLAN’S VALU-
15 ATION DATE.—Section 101(f)(3) of such Act (29 U.S.C.
16 1021(f)(3)) is amended by striking “two months after the
17 deadline (including extensions) for filing the annual report
18 for the plan year” and inserting “90 days after the end
19 of the plan year”.

20 (h) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to plan years beginning after De-
22 cember 31, 2005.

1 **SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.**

2 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-
3 MENTS.—Section 103 of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1023) is amended—

5 (1) in subsection (a)(1)(B), by striking “sub-
6 sections (d) and (e)” and inserting “subsections (d),
7 (e), and (f)”; and

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

10 “(f)(1) With respect to any defined benefit plan, an
11 annual report under this section for a plan year shall in-
12 clude the following:

13 “(A)(i) The ratio of the number of inactive par-
14 ticipants under the plan as of the end of such plan
15 year to the number of active participants as of the
16 end of such plan year.

17 “(ii) For purposes of clause (i)—

18 “(I) the term ‘active participant’ means an
19 individual who is in covered service under the
20 plan, and

21 “(II) the term ‘inactive participant’ means
22 an individual who is not in covered service
23 under the plan who is in pay status under the
24 plan or has a nonforfeitable right to benefits
25 under the plan.

1 “(B) In any case in which any liabilities to par-
2 ticipants or their beneficiaries under such plan as of
3 the end of such plan year consist (in whole or in
4 part) of liabilities to such participants and bene-
5 ficiaries borne by 2 or more pension plans as of im-
6 mediately before such plan year, the funded ratio of
7 each of such 2 or more pension plans as of imme-
8 diately before such plan year and the funded ratio
9 of the plan with respect to which the annual report
10 is filed as of the end of such plan year.

11 “(C) For purposes of this paragraph, the term
12 ‘funded ratio’ means, in connection with a plan, the
13 percentage which—

14 “(i) the value of the plan’s assets is of

15 “(ii) the liabilities to participants and
16 beneficiaries under the plan.

17 “(2) With respect to any defined benefit plan which
18 is a multiemployer plan, an annual report under this sec-
19 tion for a plan year shall include the following:

20 “(A) The number of employers obligated to con-
21 tribute to the plan as of the end of such plan year.

22 “(B) The number of participants under the
23 plan on whose behalf no employer contributions have
24 been made to the plan for such plan year. For pur-
25 poses of this subparagraph, the term ‘employer con-

1 tribution’ means, in connection with a participant, a
2 contribution made by an employer as an employer of
3 such participant.”.

4 (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-
5 ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-
6 JECTIONS.—Section 103(d) of such Act (29 U.S.C.
7 1023(d)) is amended—

8 (1) by redesignating paragraphs (12) and (13)
9 as paragraphs (13) and (14), respectively; and

10 (2) by inserting after paragraph (11) the fol-
11 lowing new paragraph:

12 “(12) A statement explaining the actuarial as-
13 sumptions and methods used in projecting future re-
14 tirements and asset distributions under the plan.”.

15 (c) SUMMARY ANNUAL REPORT FILED WITHIN 15
16 DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-
17 PORT.—Section 104(b)(3) of such Act (29 U.S.C.
18 1024(b)(3)) is amended—

19 (1) by striking “Within 210 days after the close
20 of the fiscal year,” and inserting “Within 15 busi-
21 ness days after the due date under subsection (a)(1)
22 for the filing of the annual report for the fiscal year
23 of the plan”; and

24 (2) by striking “the latest” and inserting
25 “such”.

1 (d) INFORMATION MADE AVAILABLE TO PARTICI-
2 PANTS, BENEFICIARIES, AND EMPLOYERS WITH RESPECT
3 TO MULTIEMPLOYER PLANS.—

4 (1) IN GENERAL.—Section 101 of the Employee
5 Retirement Income Security Act of 1974 (29 U.S.C.
6 1021) is amended—

7 (A) by redesignating subsection (j) as sub-
8 section (k); and

9 (B) by inserting after subsection (i) the
10 following new subsection:

11 “(j) MULTIEMPLOYER PLAN INFORMATION MADE
12 AVAILABLE ON REQUEST.—

13 “(1) IN GENERAL.—Each administrator of a
14 multiemployer plan shall furnish to any plan partici-
15 pant or beneficiary or any employer having an obli-
16 gation to contribute to the plan, who so requests in
17 writing—

18 “(A) a copy of any actuarial report received
19 by the plan for any plan year which has been
20 in receipt by the plan for at least 30 days, and

21 “(B) a copy of any financial report pre-
22 pared for the plan by any plan investment man-
23 ager or advisor or other person who is a plan
24 fiduciary which has been in receipt by the plan
25 for at least 30 days.

1 “(2) COMPLIANCE.—Information required to be
2 provided under paragraph (1) —

3 “(A) shall be provided to the requesting
4 participant, beneficiary, or employer within 30
5 days after the request in a form and manner
6 prescribed in regulations of the Secretary, and

7 “(B) may be provided in written, elec-
8 tronic, or other appropriate form to the extent
9 such form is reasonably accessible to persons to
10 whom the information is required to be pro-
11 vided.

12 “(3) LIMITATIONS.—In no case shall a partici-
13 pant, beneficiary, or employer be entitled under this
14 subsection to receive more than one copy of any re-
15 port described in paragraph (1) during any one 12-
16 month period. The administrator may make a rea-
17 sonable charge to cover copying, mailing, and other
18 costs of furnishing copies of information pursuant to
19 paragraph (1). The Secretary may by regulations
20 prescribe the maximum amount which will constitute
21 a reasonable charge under the preceding sentence.”.

22 “(2) ENFORCEMENT.—Section 502(c)(4) of such
23 Act (29 U.S.C. 1132(c)(4)) is amended by inserting
24 “or 101(j)” after “101(f)(1)”.

1 (3) REGULATIONS.—The Secretary shall pre-
2 scribe regulations under section 101(j)(2) of the
3 Employee Retirement Income Security Act of 1974
4 (added by paragraph (1) of this subsection) not later
5 than 90 days after the date of the enactment of this
6 Act.

7 (e) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY
8 TO MULTIEMPLOYER PLANS.—

9 (1) IN GENERAL.—Section 101 of such Act (as
10 amended by subsection (e) of this section) is amend-
11 ed further—

12 (A) by redesignating subsection (k) as sub-
13 section (l); and

14 (B) by inserting after subsection (j) the
15 following new subsection:

16 “(k) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-
17 ITY.—

18 “(1) IN GENERAL.—The plan sponsor or ad-
19 ministrators shall furnish to any employer who has
20 an obligation to contribute under the plan and who
21 so requests in writing notice of—

22 “(A) the amount which would be the
23 amount of such employer’s withdrawal liability
24 under part 1 of subtitle E of title IV if such

1 employer withdrew on the last day of the plan
2 year preceding the date of the request, and

3 “(B) the average increase, per participant
4 under the plan, in accrued liabilities under the
5 plan as of the end of such plan year to partici-
6 pants under such plan on whose behalf no em-
7 ployer contributions are payable (or their bene-
8 ficiaries), which would be attributable to such a
9 withdrawal by such employer.

10 For purposes of subparagraph (B), the term ‘em-
11 ployer contribution’ means, in connection with a par-
12 ticipant, a contribution made by an employer as an
13 employer of such participant.

14 “(2) COMPLIANCE.—Any notice required to be
15 provided under paragraph (1)—

16 “(A) shall be provided to the requesting
17 employer within 180 days after the request in
18 a form and manner prescribed in regulations of
19 the Secretary, and

20 “(B) may be provided in written, elec-
21 tronic, or other appropriate form to the extent
22 such form is reasonably accessible to employers
23 to whom the information is required to be pro-
24 vided.

1 “(3) LIMITATIONS.—In no case shall an em-
 2 ployer be entitled under this subsection to receive
 3 more than one notice described in paragraph (1)
 4 during any one 12-month period. The person re-
 5 quired to provide such notice may make a reasonable
 6 charge to cover copying, mailing, and other costs of
 7 furnishing such notice pursuant to paragraph (1).
 8 The Secretary may by regulations prescribe the max-
 9 imum amount which will constitute a reasonable
 10 charge under the preceding sentence.”.

11 (f) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to plan years beginning after De-
 13 cember 31, 2005.

14 **SEC. 503. NOTICE TO PARTICIPANTS AND BENEFICIARIES**
 15 **OF SECTION 4010 FILINGS WITH THE PBGC.**

16 (a) IN GENERAL.—Section 4010 of the Employee Re-
 17 tirement Income Security Act of 1974 (29 U.S.C. 1310)
 18 is amended by adding at the end the following new sub-
 19 section:

20 “(d) NOTICE TO PARTICIPANTS AND BENE-
 21 FICIARIES.—

22 “(1) IN GENERAL.—Not later than 90 days
 23 after the submission by any person to the corpora-
 24 tion of information or documentary material with re-
 25 spect to any plan pursuant to subsection (a), such

1 person shall provide notice of such submission to
2 each participant and beneficiary under the plan (and
3 under all plans maintained by members of the con-
4 trolled group of each contributing sponsor of the
5 plan). Such notice shall also set forth—

6 “(A) the number of single-employer plans
7 covered by this title which are in at-risk status
8 and are maintained by contributing sponsors of
9 such plan (and by members of their controlled
10 groups) with respect to which the funding tar-
11 get attainment percentage for the preceding
12 plan year of each plan is less than 60 percent;

13 “(B) the value of the assets of each of the
14 plans described in subparagraph (A) for the
15 plan year, the funding target for each of such
16 plans for the plan year, and the funding target
17 attainment percentage of each of such plans for
18 the plan year; and

19 “(C) taking into account all single-em-
20 ployer plans maintained by the contributing
21 sponsor and the members of its controlled
22 group as of the end of such plan year—

23 “(i) the aggregate total of the values
24 of plan assets of such plans as of the end
25 of such plan year,

1 “(ii) the aggregate total of the fund-
2 ing targets of such plans, as of the end of
3 such plan year, taking into account only
4 benefits to which participants and bene-
5 ficiaries have a nonforfeitable right, and

6 “(iii) the aggregate funding targets
7 attainment percentage with respect to the
8 contributing sponsor for the preceding plan
9 year.

10 “(2) DEFINITIONS.—For purposes of this sub-
11 section—

12 “(A) VALUE OF PLAN ASSETS.—The term
13 ‘value of plan assets’ means the value of plan
14 assets, as determined under section 303(a)(2).

15 “(B) FUNDING TARGET.—The term ‘fund-
16 ing target’ has the meaning provided under sec-
17 tion 303(d)(1).

18 “(C) FUNDING TARGET ATTAINMENT PER-
19 CENTAGE.—The term ‘funding target attain-
20 ment percentage’ has the meaning provided in
21 section 303(d)(2).

22 “(D) AGGREGATE FUNDING TARGET AT-
23 TAINMENT PERCENTAGE.—The term ‘aggregate
24 funding targets attainment percentage’ with re-
25 spect to a contributing sponsor for a plan year

1 is the percentage, taking into account all plans
2 maintained by the contributing sponsor and the
3 members of its controlled group as of the end
4 of such plan year, which

5 “(i) the aggregate total of the values
6 of plan assets, as of the end of such plan
7 year, of such plans, is of

8 “(ii) the aggregate total of the fund-
9 ing targets of such plans, as of the end of
10 such plan year, taking into account only
11 benefits to which participants and bene-
12 ficiaries have a nonforfeitable right.

13 “(E) AT-RISK STATUS.—The term ‘at-risk
14 status’ has the meaning provided in section
15 303(h)(3).

16 “(3) COMPLIANCE.—

17 “(A) IN GENERAL.—Any notice required to
18 be provided under paragraph (1) may be pro-
19 vided in written, electronic, or other appropriate
20 form to the extent such form is reasonably ac-
21 cessible to individuals to whom the information
22 is required to be provided.

23 “(B) LIMITATIONS.—In no case shall a
24 participant or beneficiary be entitled under this
25 subsection to receive more than one notice de-

1 scribed in paragraph (1) during any one 12-
 2 month period. The person required to provide
 3 such notice may make a reasonable charge to
 4 cover copying, mailing, and other costs of fur-
 5 nishing such notice pursuant to paragraph (1).
 6 The corporation may by regulations prescribe
 7 the maximum amount which will constitute a
 8 reasonable charge under the preceding sen-
 9 tence.”.

10 (b) EFFECTIVE DATE.—The amendment made by
 11 this section shall apply with respect to plan years begin-
 12 ning after 2006.

13 **TITLE VI—INVESTMENT ADVICE**

14 **SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT IN-** 15 **COME SECURITY ACT OF 1974 PROVIDING** 16 **PROHIBITED TRANSACTION EXEMPTION FOR** 17 **PROVISION OF INVESTMENT ADVICE.**

18 (a) EXEMPTION FROM PROHIBITED TRANS-
 19 ACTIONS.—Section 408(b) of the Employee Retirement
 20 Income Security Act of 1974 (29 U.S.C. 1108(b)) is
 21 amended by adding at the end the following new para-
 22 graph:

23 “(14)(A) Any transaction described in subpara-
 24 graph (B) in connection with the provision of invest-

1 ment advice described in section 3(21)(A)(ii), in any
2 case in which—

3 “(i) the investment of assets of the plan is
4 subject to the direction of plan participants or
5 beneficiaries,

6 “(ii) the advice is provided to the plan or
7 a participant or beneficiary of the plan by a fi-
8 duciary adviser in connection with any sale, ac-
9 quisition, or holding of a security or other prop-
10 erty for purposes of investment of plan assets,
11 and

12 “(iii) the requirements of subsection (g)
13 are met in connection with the provision of the
14 advice.

15 “(B) The transactions described in this sub-
16 paragraph are the following:

17 “(i) the provision of the advice to the plan,
18 participant, or beneficiary;

19 “(ii) the sale, acquisition, or holding of a
20 security or other property (including any lend-
21 ing of money or other extension of credit associ-
22 ated with the sale, acquisition, or holding of a
23 security or other property) pursuant to the ad-
24 vice; and

1 “(iii) the direct or indirect receipt of fees
2 or other compensation by the fiduciary adviser
3 or an affiliate thereof (or any employee, agent,
4 or registered representative of the fiduciary ad-
5 viser or affiliate) in connection with the provi-
6 sion of the advice or in connection with a sale,
7 acquisition, or holding of a security or other
8 property pursuant to the advice.”.

9 (b) REQUIREMENTS.—Section 408 of such Act is
10 amended further by adding at the end the following new
11 subsection:

12 “(g) REQUIREMENTS RELATING TO PROVISION OF
13 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

14 “(1) IN GENERAL.—The requirements of this
15 subsection are met in connection with the provision
16 of investment advice referred to in section
17 3(21)(A)(ii), provided to an employee benefit plan or
18 a participant or beneficiary of an employee benefit
19 plan by a fiduciary adviser with respect to the plan
20 in connection with any sale, acquisition, or holding
21 of a security or other property for purposes of in-
22 vestment of amounts held by the plan, if—

23 “(A) in the case of the initial provision of
24 the advice with regard to the security or other
25 property by the fiduciary adviser to the plan,

1 participant, or beneficiary, the fiduciary adviser
2 provides to the recipient of the advice, at a time
3 reasonably contemporaneous with the initial
4 provision of the advice, a written notification
5 (which may consist of notification by means of
6 electronic communication)—

7 “(i) of all fees or other compensation
8 relating to the advice that the fiduciary ad-
9 viser or any affiliate thereof is to receive
10 (including compensation provided by any
11 third party) in connection with the provi-
12 sion of the advice or in connection with the
13 sale, acquisition, or holding of the security
14 or other property,

15 “(ii) of any material affiliation or con-
16 tractual relationship of the fiduciary ad-
17 viser or affiliates thereof in the security or
18 other property,

19 “(iii) of any limitation placed on the
20 scope of the investment advice to be pro-
21 vided by the fiduciary adviser with respect
22 to any such sale, acquisition, or holding of
23 a security or other property,

24 “(iv) of the types of services provided
25 by the fiduciary adviser in connection with

1 the provision of investment advice by the
2 fiduciary adviser,

3 “(v) that the adviser is acting as a fi-
4 duciary of the plan in connection with the
5 provision of the advice, and

6 “(vi) that a recipient of the advice
7 may separately arrange for the provision of
8 advice by another adviser, that could have
9 no material affiliation with and receive no
10 fees or other compensation in connection
11 with the security or other property,

12 “(B) the fiduciary adviser provides appro-
13 priate disclosure, in connection with the sale,
14 acquisition, or holding of the security or other
15 property, in accordance with all applicable secu-
16 rities laws,

17 “(C) the sale, acquisition, or holding oc-
18 curs solely at the direction of the recipient of
19 the advice,

20 “(D) the compensation received by the fi-
21 duciary adviser and affiliates thereof in connec-
22 tion with the sale, acquisition, or holding of the
23 security or other property is reasonable, and

24 “(E) the terms of the sale, acquisition, or
25 holding of the security or other property are at

1 least as favorable to the plan as an arm's
2 length transaction would be.

3 “(2) STANDARDS FOR PRESENTATION OF IN-
4 FORMATION.—

5 “(A) IN GENERAL.—The notification re-
6 quired to be provided to participants and bene-
7 ficiaries under paragraph (1)(A) shall be writ-
8 ten in a clear and conspicuous manner and in
9 a manner calculated to be understood by the av-
10 erage plan participant and shall be sufficiently
11 accurate and comprehensive to reasonably ap-
12 prise such participants and beneficiaries of the
13 information required to be provided in the noti-
14 fication.

15 “(B) MODEL FORM FOR DISCLOSURE OF
16 FEES AND OTHER COMPENSATION.—The Sec-
17 retary shall issue a model form for the disclo-
18 sure of fees and other compensation required in
19 paragraph (1)(A)(i) which meets the require-
20 ments of subparagraph (A).

21 “(3) EXEMPTION CONDITIONED ON MAKING RE-
22 QUIRED INFORMATION AVAILABLE ANNUALLY, ON
23 REQUEST, AND IN THE EVENT OF MATERIAL
24 CHANGE.—The requirements of paragraph (1)(A)
25 shall be deemed not to have been met in connection

1 with the initial or any subsequent provision of advice
2 described in paragraph (1) to the plan, participant,
3 or beneficiary if, at any time during the provision of
4 advisory services to the plan, participant, or bene-
5 ficiary, the fiduciary adviser fails to maintain the in-
6 formation described in clauses (i) through (iv) of
7 subparagraph (A) in currently accurate form and in
8 the manner described in paragraph (2) or fails—

9 “(A) to provide, without charge, such cur-
10 rently accurate information to the recipient of
11 the advice no less than annually,

12 “(B) to make such currently accurate in-
13 formation available, upon request and without
14 charge, to the recipient of the advice, or

15 “(C) in the event of a material change to
16 the information described in clauses (i) through
17 (iv) of paragraph (1)(A), to provide, without
18 charge, such currently accurate information to
19 the recipient of the advice at a time reasonably
20 contemporaneous to the material change in in-
21 formation.

22 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
23 OF COMPLIANCE.—A fiduciary adviser referred to in
24 paragraph (1) who has provided advice referred to in
25 such paragraph shall, for a period of not less than

1 6 years after the provision of the advice, maintain
2 any records necessary for determining whether the
3 requirements of the preceding provisions of this sub-
4 section and of subsection (b)(14) have been met. A
5 transaction prohibited under section 406 shall not be
6 considered to have occurred solely because the
7 records are lost or destroyed prior to the end of the
8 6-year period due to circumstances beyond the con-
9 trol of the fiduciary adviser.

10 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
11 TAIN OTHER FIDUCIARIES.—

12 “(A) IN GENERAL.—Subject to subpara-
13 graph (B), a plan sponsor or other person who
14 is a fiduciary (other than a fiduciary adviser)
15 shall not be treated as failing to meet the re-
16 quirements of this part solely by reason of the
17 provision of investment advice referred to in
18 section 3(21)(A)(ii) (or solely by reason of con-
19 tracting for or otherwise arranging for the pro-
20 vision of the advice), if—

21 “(i) the advice is provided by a fidu-
22 ciary adviser pursuant to an arrangement
23 between the plan sponsor or other fidu-
24 ciary and the fiduciary adviser for the pro-

vision by the fiduciary adviser of investment advice referred to in such section,

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

“(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

“(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.— Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

1 “(C) AVAILABILITY OF PLAN ASSETS FOR
2 PAYMENT FOR ADVICE.—Nothing in this part
3 shall be construed to preclude the use of plan
4 assets to pay for reasonable expenses in pro-
5 viding investment advice referred to in section
6 3(21)(A)(ii).

7 “(6) DEFINITIONS.—For purposes of this sub-
8 section and subsection (b)(14)—

9 “(A) FIDUCIARY ADVISER.—The term ‘fi-
10 duciary adviser’ means, with respect to a plan,
11 a person who is a fiduciary of the plan by rea-
12 son of the provision of investment advice by the
13 person to the plan or to a participant or bene-
14 ficiary and who is—

15 “(i) registered as an investment ad-
16 viser under the Investment Advisers Act of
17 1940 (15 U.S.C. 80b–1 et seq.) or under
18 the laws of the State in which the fiduciary
19 maintains its principal office and place of
20 business,

21 “(ii) a bank or similar financial insti-
22 tution referred to in section 408(b)(4) or a
23 savings association (as defined in section
24 3(b)(1) of the Federal Deposit Insurance
25 Act (12 U.S.C. 1813(b)(1))), but only if

1 the advice is provided through a trust de-
2 partment of the bank or similar financial
3 institution or savings association which is
4 subject to periodic examination and review
5 by Federal or State banking authorities,

6 “(iii) an insurance company qualified
7 to do business under the laws of a State,

8 “(iv) a person registered as a broker
9 or dealer under the Securities Exchange
10 Act of 1934 (15 U.S.C. 78a et seq.),

11 “(v) an affiliate of a person described
12 in any of clauses (i) through (iv), or

13 “(vi) an employee, agent, or registered
14 representative of a person described in any
15 of clauses (i) through (v) who satisfies the
16 requirements of applicable insurance,
17 banking, and securities laws relating to the
18 provision of the advice.

19 “(B) AFFILIATE.—The term ‘affiliate’ of
20 another entity means an affiliated person of the
21 entity (as defined in section 2(a)(3) of the In-
22 vestment Company Act of 1940 (15 U.S.C.
23 80a–2(a)(3))).

24 “(C) REGISTERED REPRESENTATIVE.—
25 The term ‘registered representative’ of another

1 entity means a person described in section
2 3(a)(18) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78c(a)(18)) (substituting the
4 entity for the broker or dealer referred to in
5 such section) or a person described in section
6 202(a)(17) of the Investment Advisers Act of
7 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
8 the entity for the investment adviser referred to
9 in such section).”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to advice referred to
12 in section 3(21)(A)(ii) of the Employee Retirement In-
13 come Security Act of 1974 provided on or after January
14 1, 2006.

15 **SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF**
16 **1986 PROVIDING PROHIBITED TRANSACTION**
17 **EXEMPTION FOR PROVISION OF INVESTMENT**
18 **ADVICE.**

19 (a) EXEMPTION FROM PROHIBITED TRANS-
20 ACTIONS.—Subsection (d) of section 4975 of the Internal
21 Revenue Code of 1986 (relating to exemptions from tax
22 on prohibited transactions) is amended—

23 (1) in paragraph (14), by striking “or” at the
24 end;

1 (2) in paragraph (15), by striking the period at
2 the end and inserting “; or”; and

3 (3) by adding at the end the following new
4 paragraph:

5 “(16) any transaction described in subsection
6 (f)(7)(A) in connection with the provision of invest-
7 ment advice described in subsection (e)(3)(B)(i), in
8 any case in which—

9 “(A) the investment of assets of the plan
10 is subject to the direction of plan participants
11 or beneficiaries,

12 “(B) the advice is provided to the plan or
13 a participant or beneficiary of the plan by a fi-
14 ducary adviser in connection with any sale, ac-
15 quisition, or holding of a security or other prop-
16 erty for purposes of investment of plan assets,
17 and

18 “(C) the requirements of subsection
19 (f)(7)(B) are met in connection with the provi-
20 sion of the advice.”.

21 (b) ALLOWED TRANSACTIONS AND REQUIRE-
22 MENTS.—Subsection (f) of such section 4975 (relating to
23 other definitions and special rules) is amended by adding
24 at the end the following new paragraph:

1 “(7) PROVISIONS RELATING TO INVESTMENT
2 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

3 “(A) TRANSACTIONS ALLOWABLE IN CON-
4 NECTION WITH INVESTMENT ADVICE PROVIDED
5 BY FIDUCIARY ADVISERS.—The transactions re-
6 ferred to in subsection (d)(16), in connection
7 with the provision of investment advice by a fi-
8 duciary adviser, are the following:

9 “(i) the provision of the advice to the
10 plan, participant, or beneficiary;

11 “(ii) the sale, acquisition, or holding
12 of a security or other property (including
13 any lending of money or other extension of
14 credit associated with the sale, acquisition,
15 or holding of a security or other property)
16 pursuant to the advice; and

17 “(iii) the direct or indirect receipt of
18 fees or other compensation by the fiduciary
19 adviser or an affiliate thereof (or any em-
20 ployee, agent, or registered representative
21 of the fiduciary adviser or affiliate) in con-
22 nection with the provision of the advice or
23 in connection with a sale, acquisition, or
24 holding of a security or other property pur-
25 suant to the advice.

1 “(B) REQUIREMENTS RELATING TO PROVI-
2 SION OF INVESTMENT ADVICE BY FIDUCIARY
3 ADVISERS.—The requirements of this subpara-
4 graph (referred to in subsection (d)(16)(C)) are
5 met in connection with the provision of invest-
6 ment advice referred to in subsection (e)(3)(B),
7 provided to a plan or a participant or bene-
8 ficiary of a plan by a fiduciary adviser with re-
9 spect to the plan in connection with any sale,
10 acquisition, or holding of a security or other
11 property for purposes of investment of amounts
12 held by the plan, if—

13 “(i) in the case of the initial provision
14 of the advice with regard to the security or
15 other property by the fiduciary adviser to
16 the plan, participant, or beneficiary, the fi-
17 ducary adviser provides to the recipient of
18 the advice, at a time reasonably contem-
19 poraneous with the initial provision of the
20 advice, a written notification (which may
21 consist of notification by means of elec-
22 tronic communication)—

23 “(I) of all fees or other com-
24 pensation relating to the advice that
25 the fiduciary adviser or any affiliate

1 thereof is to receive (including com-
2 pensation provided by any third
3 party) in connection with the provi-
4 sion of the advice or in connection
5 with the sale, acquisition, or holding
6 of the security or other property,

7 “(II) of any material affiliation
8 or contractual relationship of the fidu-
9 ciary adviser or affiliates thereof in
10 the security or other property,

11 “(III) of any limitation placed on
12 the scope of the investment advice to
13 be provided by the fiduciary adviser
14 with respect to any such sale, acquisi-
15 tion, or holding of a security or other
16 property,

17 “(IV) of the types of services
18 provided by the fiduciary adviser in
19 connection with the provision of in-
20 vestment advice by the fiduciary ad-
21 viser,

22 “(V) that the adviser is acting as
23 a fiduciary of the plan in connection
24 with the provision of the advice, and

1 “(VI) that a recipient of the ad-
2 vice may separately arrange for the
3 provision of advice by another adviser,
4 that could have no material affiliation
5 with and receive no fees or other com-
6 pensation in connection with the secu-
7 rity or other property,

8 “(ii) the fiduciary adviser provides ap-
9 propriate disclosure, in connection with the
10 sale, acquisition, or holding of the security
11 or other property, in accordance with all
12 applicable securities laws,

13 “(iii) the sale, acquisition, or holding
14 occurs solely at the direction of the recipi-
15 ent of the advice,

16 “(iv) the compensation received by the
17 fiduciary adviser and affiliates thereof in
18 connection with the sale, acquisition, or
19 holding of the security or other property is
20 reasonable, and

21 “(v) the terms of the sale, acquisition,
22 or holding of the security or other property
23 are at least as favorable to the plan as an
24 arm’s length transaction would be.

1 “(C) STANDARDS FOR PRESENTATION OF
2 INFORMATION.—The notification required to be
3 provided to participants and beneficiaries under
4 subparagraph (B)(i) shall be written in a clear
5 and conspicuous manner and in a manner cal-
6 culated to be understood by the average plan
7 participant and shall be sufficiently accurate
8 and comprehensive to reasonably apprise such
9 participants and beneficiaries of the information
10 required to be provided in the notification.

11 “(D) EXEMPTION CONDITIONED ON MAK-
12 ING REQUIRED INFORMATION AVAILABLE ANNU-
13 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
14 TERIAL CHANGE.—The requirements of sub-
15 paragraph (B)(i) shall be deemed not to have
16 been met in connection with the initial or any
17 subsequent provision of advice described in sub-
18 paragraph (B) to the plan, participant, or bene-
19 ficiary if, at any time during the provision of
20 advisory services to the plan, participant, or
21 beneficiary, the fiduciary adviser fails to main-
22 tain the information described in subclauses (I)
23 through (IV) of subparagraph (B)(i) in cur-
24 rently accurate form and in the manner re-
25 quired by subparagraph (C), or fails—

1 “(i) to provide, without charge, such
2 currently accurate information to the re-
3 cipient of the advice no less than annually,

4 “(ii) to make such currently accurate
5 information available, upon request and
6 without charge, to the recipient of the ad-
7 vice, or

8 “(iii) in the event of a material
9 change to the information described in
10 subclauses (I) through (IV) of subpara-
11 graph (B)(i), to provide, without charge,
12 such currently accurate information to the
13 recipient of the advice at a time reasonably
14 contemporaneous to the material change in
15 information.

16 “(E) MAINTENANCE FOR 6 YEARS OF EVI-
17 DENCE OF COMPLIANCE.—A fiduciary adviser
18 referred to in subparagraph (B) who has pro-
19 vided advice referred to in such subparagraph
20 shall, for a period of not less than 6 years after
21 the provision of the advice, maintain any
22 records necessary for determining whether the
23 requirements of the preceding provisions of this
24 paragraph and of subsection (d)(16) have been
25 met. A transaction prohibited under subsection

1 (c)(1) shall not be considered to have occurred
2 solely because the records are lost or destroyed
3 prior to the end of the 6-year period due to cir-
4 cumstances beyond the control of the fiduciary
5 adviser.

6 “(F) EXEMPTION FOR PLAN SPONSOR AND
7 CERTAIN OTHER FIDUCIARIES.—A plan sponsor
8 or other person who is a fiduciary (other than
9 a fiduciary adviser) shall not be treated as fail-
10 ing to meet the requirements of this section
11 solely by reason of the provision of investment
12 advice referred to in subsection (e)(3)(B) (or
13 solely by reason of contracting for or otherwise
14 arranging for the provision of the advice), if—

15 “(i) the advice is provided by a fidu-
16 ciary adviser pursuant to an arrangement
17 between the plan sponsor or other fidu-
18 ciary and the fiduciary adviser for the pro-
19 vision by the fiduciary adviser of invest-
20 ment advice referred to in such section,

21 “(ii) the terms of the arrangement re-
22 quire compliance by the fiduciary adviser
23 with the requirements of this paragraph,

24 “(iii) the terms of the arrangement
25 include a written acknowledgment by the

1 fiduciary adviser that the fiduciary adviser
2 is a fiduciary of the plan with respect to
3 the provision of the advice, and

4 “(iv) the requirements of part 4 of
5 subtitle B of title I of the Employee Re-
6 tirement Income Security Act of 1974 are
7 met in connection with the provision of
8 such advice.

9 “(G) DEFINITIONS.—For purposes of this
10 paragraph and subsection (d)(16)—

11 “(i) FIDUCIARY ADVISER.—The term
12 ‘fiduciary adviser’ means, with respect to a
13 plan, a person who is a fiduciary of the
14 plan by reason of the provision of invest-
15 ment advice by the person to the plan or
16 to a participant or beneficiary and who
17 is—

18 “(I) registered as an investment
19 adviser under the Investment Advisers
20 Act of 1940 (15 U.S.C. 80b–1 et seq.)
21 or under the laws of the State in
22 which the fiduciary maintains its prin-
23 cipal office and place of business,

24 “(II) a bank or similar financial
25 institution referred to in subsection

1 (d)(4) or a savings association (as de-
2 fined in section 3(b)(1) of the Federal
3 Deposit Insurance Act (12 U.S.C.
4 1813(b)(1))), but only if the advice is
5 provided through a trust department
6 of the bank or similar financial insti-
7 tution or savings association which is
8 subject to periodic examination and
9 review by Federal or State banking
10 authorities,

11 “(III) an insurance company
12 qualified to do business under the
13 laws of a State,

14 “(IV) a person registered as a
15 broker or dealer under the Securities
16 Exchange Act of 1934 (15 U.S.C. 78a
17 et seq.),

18 “(V) an affiliate of a person de-
19 scribed in any of subclauses (I)
20 through (IV), or

21 “(VI) an employee, agent, or reg-
22 istered representative of a person de-
23 scribed in any of subclauses (I)
24 through (V) who satisfies the require-
25 ments of applicable insurance, bank-

1 ing, and securities laws relating to the
2 provision of the advice.

3 “(ii) AFFILIATE.—The term ‘affiliate’
4 of another entity means an affiliated per-
5 son of the entity (as defined in section
6 2(a)(3) of the Investment Company Act of
7 1940 (15 U.S.C. 80a–2(a)(3))).

8 “(iii) REGISTERED REPRESENTA-
9 TIVE.—The term ‘registered representa-
10 tive’ of another entity means a person de-
11 scribed in section 3(a)(18) of the Securi-
12 ties Exchange Act of 1934 (15 U.S.C.
13 78c(a)(18)) (substituting the entity for the
14 broker or dealer referred to in such sec-
15 tion) or a person described in section
16 202(a)(17) of the Investment Advisers Act
17 of 1940 (15 U.S.C. 80b–2(a)(17)) (sub-
18 stituting the entity for the investment ad-
19 viser referred to in such section).”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply with respect to advice referred to
22 in section 4975(c)(3)(B) of the Internal Revenue Code of
23 1986 provided on or after January 1, 2006.

TITLE VII—DEDUCTION LIMITATIONS

SEC. 701. INCREASE IN DEDUCTION LIMITS.

(a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees’ trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting “in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan” after “section 501(a),”, and

(2) by inserting at the end the following new subsection:

“(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—For purposes of subsection (a)(1)(A)—

“(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

1 “(2) DETERMINATION OF AMOUNT.—The
2 amount determined under this paragraph for any
3 plan year shall be equal to the excess (if any) of—

4 “(A) the greater of—

5 “(i) the sum of—

6 “(I) 150 percent of the funding
7 target applicable to the plan for such
8 plan year, determined under section
9 430(e), plus

10 “(II) the target normal cost ap-
11 plicable to the plan for such plan
12 year, determined under section
13 430(b), or

14 “(ii) in the case of a plan that is not
15 in an at-risk status (as determined under
16 430(g)), the sum of—

17 “(I) the funding target which
18 would be applicable to the plan for
19 such plan year if such plan were in an
20 at-risk status, determined under sec-
21 tion 430(e) (with regard to section
22 430(g)), plus

23 “(II) the target normal cost
24 which would be applicable to the plan
25 for such plan year if such plan were

1 in an at-risk status, determined under
 2 section 430(b) (with regard to section
 3 430(g)), over

4 “(B) the value of the plan assets (deter-
 5 mined under section 430(e) as of the valuation
 6 date of the plan).

7 “(3) SPECIAL RULE FOR TERMINATING
 8 PLANS.—In the case of a plan which, subject to sec-
 9 tion 4041 of the Employee Retirement Income Secu-
 10 rity Act of 1974, terminates during the plan year,
 11 the amount determined under paragraph (2) shall
 12 not be less than the amount required to make the
 13 plan sufficient for benefit liabilities (within the
 14 meaning of section 4041(d) of such Act).

15 “(4) DEFINITIONS.—Any term used in this sub-
 16 section which is also used in section 430 shall have
 17 the same meaning given such term by section 430.”.

18 (b) INCREASE IN DEDUCTION LIMIT FOR MULTIEM-
 19 PLOYER PLANS.—Section 404(a)(1)(D) of such Code is
 20 amended to read as follows:

21 “(D) AMOUNT DETERMINED ON BASIS OF
 22 UNFUNDED CURRENT LIABILITY.—

23 “(i) IN GENERAL.—In the case of a
 24 defined benefit plan which is a multiem-
 25 ployer plan, except as provided in regula-

tions, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability of the plan.

“(ii) UNFUNDED CURRENT LIABILITY.—For purposes of clause (i), the term ‘unfunded current liability’ means the excess (if any) of—

“(I) 140 percent of the current liability of the plan determined under section 431(c)(6)(C), over

“(II) the value of the plan’s assets determined under section 431(c)(2).”.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The last sentence of section 404(a)(1)(A) of such Code is amended by striking “section 412” each place it appears and inserting “section 431”.

(2) Section 404(a)(1)(B) of such Code is amended—

(A) by striking “In the case of a plan” and inserting “In the case of a multiemployer plan”,

(B) by striking “section 412(c)(7)” each place it appears and inserting “section 431(c)(6)”,

1 (C) by striking “section 412(c)(7)(B)” and
2 inserting “section 431(c)(6)(A)(ii)”,

3 (D) by striking “section 412(c)(7)(A)” and
4 inserting “section 431(c)(6)(A)(i)”, and

5 (E) by striking “section 412” and insert-
6 ing “section 431”.

7 (3) Section 404(a)(1) of such Code is amended
8 by striking subparagraph (F).

9 (4) Section 404(a)(7) of such Code is amend-
10 ed—

11 (A) in subparagraph (A)(ii), by striking
12 “for the plan year” and all that follows and in-
13 serting “which are multiemployer plans for the
14 plan year which ends with or within such tax-
15 able year (or for any prior plan year) and the
16 maximum amount of employer contributions al-
17 lowable under subsection (o) with respect to any
18 such defined benefit plans which are not multi-
19 employer plans for the plan year.”,

20 (B) by striking “section 412(l)” in the last
21 sentence of subparagraph (A) and inserting
22 “paragraph (1)(D)(ii)”, and

23 (C) by striking subparagraph (D) and in-
24 serting:

1 “(D) INSURANCE CONTRACT PLANS.—For
 2 purposes of this paragraph, a plan described in
 3 section 412(d)(3) shall be treated as a defined
 4 benefit plan.”.

5 (5) Section 404A(g)(3)(A) of such Code is
 6 amended by striking “paragraphs (3) and (7) of sec-
 7 tion 412(c)” and inserting “sections 430(d)(1) and
 8 431(c) (3) and (6)”.

9 (d) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to contributions for taxable years
 11 beginning after 2005.

12 **SEC. 702. UPDATING DEDUCTION RULES FOR COMBINA-**
 13 **TION OF PLANS.**

14 (a) IN GENERAL.—Subparagraph (C) of section
 15 404(a)(7) (relating to limitation on deductions where com-
 16 bination of defined contribution plan and defined benefit
 17 plan) is amended by adding after clause (ii) the following
 18 new clause:

19 “(iii) LIMITATION.—In the case of
 20 employer contributions to 1 or more de-
 21 fined contribution plans, this paragraph
 22 shall only apply to the extent that such
 23 contributions exceed 6 percent of the com-
 24 pensation otherwise paid or accrued during
 25 the taxable year to the beneficiaries under

1 such plans. For purposes of this clause,
2 amounts carried over from preceding tax-
3 able years under subparagraph (B) shall
4 be treated as employer contributions to 1
5 or more defined contributions to the extent
6 attributable to employer contributions to
7 such plans in such preceding taxable
8 years.”.

9 (b) CONFORMING AMENDMENTS.—Subparagraph (A)
10 of section 4972(c)(6) of such Code (relating to nondeduct-
11 ible contributions) is amended to read as follows:

12 “(A) so much of the contributions to 1 or
13 more defined contribution plans which are not
14 deductible when contributed solely because of
15 section 404(a)(7) as does not exceed the
16 amount of contributions described in section
17 401(m)(4)(A), or”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to contributions for taxable years
20 beginning after December 31, 2005.

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