

## Calendar No. 231

109TH CONGRESS  
1ST SESSION**S. 1783**

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.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2005

Mr. GRASSLEY (for himself, Mr. ENZI, Mr. KENNEDY, and Mr. BAUCUS) introduced the following bill; which was read twice and ordered to be placed on the calendar

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**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 Security and Transparency 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—FUNDING AND DEDUCTION RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS**

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

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

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

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

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

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

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

**Subtitle A—Funding Rules**

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

- Sec. 201. Funding rules for multiemployer defined benefit plans.
- Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.
- Sec. 203. Measures to forestall insolvency of multiemployer plans.

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

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

**PART III—SUNSET OF FUNDING RULES**

- Sec. 216. Sunset of funding rules.

**Subtitle B—Deduction and Related Provisions**

- Sec. 221. Deduction limits for multiemployer plans.
- Sec. 222. Transfer of excess pension assets to multiemployer health plan.

**TITLE III—INTEREST RATE ASSUMPTIONS**

- Sec. 301. Interest rate assumption for determination of lump sum distributions.

- Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.
- Sec. 303. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.
- Sec. 304. Modification of pension funding requirements for plans subject to current transition rule.

#### TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.
- Sec. 402. Authority to enter alternative funding agreements to prevent plan terminations.
- Sec. 403. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
- Sec. 404. Limitation on PBGC guarantee of shutdown and other benefits.
- Sec. 405. Rules relating to bankruptcy of employer.
- Sec. 406. PBGC premiums for new plans of small employers.
- Sec. 407. PBGC premiums for small and new plans.
- Sec. 408. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 409. Rules for substantial owner benefits in terminated plans.
- Sec. 410. Acceleration of PBGC computation of benefits attributable to recoveries from employers.

#### TITLE V—DISCLOSURE

- Sec. 501. Defined benefit plan funding notice.
- Sec. 502. Access to multiemployer pension plan information.
- Sec. 503. Additional annual reporting requirements.
- Sec. 504. Timing of annual reporting requirements.
- Sec. 505. Section 4010 filings with the PBGC.
- Sec. 506. Disclosure of termination information to plan participants.
- Sec. 507. Study and report by Government Accountability Office.

#### TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PENSION PLANS

- Sec. 601. Prospective application of age discrimination, conversion, and present value assumption rules.
- Sec. 602. Regulations relating to mergers and acquisitions.

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

- Sec. 701. Defined contribution plans required to provide employees with freedom to invest their plan assets.
- Sec. 702. Notice of freedom to divest employer securities or real property.
- Sec. 703. Periodic pension benefit statements.
- Sec. 704. Notice to participants or beneficiaries of blackout periods.
- Sec. 705. Allowance of, and credit for, additional IRA payments in certain bankruptcy cases.

#### TITLE VIII—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

- Sec. 801. Defined contribution plans required to provide adequate investment education to participants.
- Sec. 802. Independent investment advice provided to plan participants.
- Sec. 803. Treatment of qualified retirement planning services.
- Sec. 804. Administrative provisions.

#### TITLE IX—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

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

#### TITLE X—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

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

#### TITLE XI—ADMINISTRATIVE PROVISIONS

- Sec. 1101. Employee plans compliance resolution system.
- Sec. 1102. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 1103. Notice and consent period regarding distributions.
- Sec. 1104. Reporting simplification.
- Sec. 1105. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 1106. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 1107. Withholding on distributions from governmental section 457 plans.
- Sec. 1108. Clarification of treatment of defined benefit plans of Indian Tribal governments.
- Sec. 1109. Treatment of defined benefit plan as governmental plan.

#### TITLE XII—UNITED STATES TAX COURT MODERNIZATION

- Sec. 1200. Amendment of 1986 Code.
- Sec. 1201. Annuities for survivors of Tax Court judges who are assassinated.

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

### TITLE XIII—OTHER PROVISIONS

#### Subtitle A—Administrative Provision

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

#### Subtitle B—Governmental Pension Plan Equalization

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

#### Subtitle C—Miscellaneous Provisions

- Sec. 1321. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.
- Sec. 1322. Treatment of death benefits from corporate-owned life insurance.

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

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

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

10 (a) REPEAL OF EXISTING FUNDING RULES.—Sec-  
 11 tions 302 through 308 of the Employee Retirement In-  
 12 come Security Act of 1974 (29 U.S.C. 1082 through  
 13 1086) are repealed.

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

18 “MINIMUM FUNDING STANDARDS

19 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM  
 20 FUNDING STANDARD.—

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

24 “(2) MINIMUM FUNDING STANDARD.—For pur-  
 25 poses of paragraph (1), a plan shall be treated as

1       satisfying the minimum funding standard for a plan  
 2       year if—

3               “(A) in the case of a defined benefit plan  
 4               which is a single-employer plan, the employer  
 5               makes contributions to or under the plan for  
 6               the plan year which, in the aggregate, are not  
 7               less than the minimum required contribution  
 8               determined under section 303 for the plan for  
 9               the plan year,

10              “(B) in the case of a money purchase plan  
 11              which is a single-employer plan, the employer  
 12              makes contributions to or under the plan for  
 13              the plan year which are required under the  
 14              terms of the plan, and

15              “(C) in the case of a multiemployer plan,  
 16              the employers make contributions to or under  
 17              the plan for any plan year which, in the aggregate,  
 18              are sufficient to ensure that the plan does  
 19              not have an accumulated funding deficiency  
 20              under section 304 as of the end of the plan  
 21              year.

22       “(b) LIABILITY FOR CONTRIBUTIONS.—

23              “(1) IN GENERAL.—Except as provided in para-  
 24              graph (2), the amount of any contribution required  
 25              by this section (including any required installments

1 under section 303(j)) shall be paid by the employer  
 2 responsible for making contributions to or under the  
 3 plan.

4 “(2) JOINT AND SEVERAL LIABILITY WHERE  
 5 EMPLOYER MEMBER OF CONTROLLED GROUP.—If  
 6 the employer referred to in paragraph (1) is a mem-  
 7 ber of a controlled group, each member of such  
 8 group shall be jointly and severally liable for pay-  
 9 ment of such contributions.

10 “(c) VARIANCE FROM MINIMUM FUNDING STAND-  
 11 ARDS.—

12 “(1) WAIVER IN CASE OF BUSINESS HARD-  
 13 SHIP.—

14 “(A) IN GENERAL.—If—

15 “(i) an employer is (or in the case of  
 16 a multiemployer plan, 10 percent or more  
 17 of the number of employers contributing to  
 18 or under the plan are) unable to satisfy the  
 19 minimum funding standard for a plan year  
 20 without temporary substantial business  
 21 hardship (substantial business hardship in  
 22 the case of a multiemployer plan), and

23 “(ii) application of the standard would  
 24 be adverse to the interests of plan partici-  
 25 pants in the aggregate,



1 the Secretary of the Treasury may, subject to  
2 subparagraph (C), waive the requirements of  
3 subsection (a) for such year with respect to all  
4 or any portion of the minimum funding stand-  
5 ard. The Secretary of the Treasury shall not  
6 waive the minimum funding standard with re-  
7 spect to a plan for more than 3 of any 15 (5  
8 of any 15 in the case of a multiemployer plan)  
9 consecutive plan years.

10 “(B) EFFECTS OF WAIVER.—If a waiver is  
11 granted under subparagraph (A) for any plan  
12 year—

13 “(i) in the case of a single-employer  
14 plan, the minimum required contribution  
15 under section 303 for the plan year shall  
16 be reduced by the amount of the waived  
17 funding deficiency and such amount shall  
18 be amortized as required under section  
19 303(e), and

20 “(ii) in the case of a multiemployer  
21 plan, the funding standard account shall  
22 be credited under section 304(b)(3)(C)  
23 with the amount of the waived funding de-  
24 ficiency and such amount shall be amor-

1           tized as required under section  
2           304(b)(2)(C).

3           “(C) WAIVER OF AMORTIZED PORTION  
4           NOT ALLOWED.—The Secretary of the Treasury  
5           may not waive under subparagraph (A) any  
6           portion of the minimum funding standard  
7           under subsection (a) for a plan year which is  
8           attributable to any waived funding deficiency  
9           for any preceding plan year.

10          “(2) DETERMINATION OF BUSINESS HARD-  
11          SHIP.—For purposes of this subsection, the factors  
12          taken into account in determining temporary sub-  
13          stantial business hardship (substantial business  
14          hardship in the case of a multiemployer plan) shall  
15          include (but shall not be limited to) whether or  
16          not—

17               “(A) the employer is operating at an eco-  
18               nomic loss,

19               “(B) there is substantial unemployment or  
20               underemployment in the trade or business and  
21               in the industry concerned,

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

1           “(D) it is reasonable to expect that the  
2           plan will be continued only if the waiver is  
3           granted.

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

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

13               “(A) SECURITY MAY BE REQUIRED.—

14               “(i) IN GENERAL.—Except as pro-  
15               vided in subparagraph (C), the Secretary  
16               of the Treasury may require an employer  
17               maintaining a defined benefit plan which is  
18               a single-employer plan (within the meaning  
19               of section 4001(a)(15)) to provide security  
20               to such plan as a condition for granting or  
21               modifying a waiver under paragraph (1).

22               “(ii) SPECIAL RULES.—Any security  
23               provided under clause (i) may be perfected  
24               and enforced only by the Pension Benefit  
25               Guaranty Corporation, or, at the direction

of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13)) or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14)).

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

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

“(I) notice of the completed application for any waiver or modification, and

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

“(ii) consider—

“(I) any comments of the Corporation under clause (i)(II), and

“(II) any views of any employee organization (within the meaning of

1 section 3(4)) representing participants  
2 in the plan which are submitted in  
3 writing to the Secretary of the Treas-  
4 ury in connection with such applica-  
5 tion.

6 Information provided to the Corporation under  
7 this subparagraph shall be considered tax re-  
8 turn information and subject to the safe-  
9 guarding and reporting requirements of section  
10 6103(p) of the Internal Revenue Code of 1986.

11 “(C) EXCEPTION FOR CERTAIN WAIV-  
12 ERS.—

13 “(i) IN GENERAL.—The preceding  
14 provisions of this paragraph shall not  
15 apply to any plan with respect to which the  
16 sum of—

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

21 “(II) the present value of all  
22 waiver amortization installments de-  
23 termined for the plan year and suc-  
24 ceeding plan years under section  
25 303(e)(2),

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

2 “(ii) TREATMENT OF WAIVERS FOR  
3 WHICH APPLICATIONS ARE PENDING.—The  
4 amount described in clause (i)(I) shall in-  
5 clude any increase in such amount which  
6 would result if all applications for waivers  
7 of the minimum funding standard under  
8 this subsection which are pending with re-  
9 spect to such plan were denied.

10 “(iii) UNPAID MINIMUM REQUIRED  
11 CONTRIBUTION.—For purposes of this sub-  
12 paragraph—

13 “(I) IN GENERAL.—The term  
14 ‘unpaid minimum required contribu-  
15 tion’ means, with respect to any plan  
16 year, any minimum required contribu-  
17 tion under section 303 for the plan  
18 year which is not paid on or before  
19 the due date (as determined under  
20 section 303(j)(1)) for the plan year.

21 “(II) ORDERING RULE.—For  
22 purposes of subclause (I), any pay-  
23 ment to or under a plan for any plan  
24 year shall be allocated first to unpaid  
25 minimum required contributions for

1 all preceding plan years on a first-in,  
2 first-out basis and then to the min-  
3 imum required contribution under sec-  
4 tion 303 for the plan year.

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

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

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

23 “(i) with respect to such employer,  
24 and

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

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

12                  “(6) ADVANCE NOTICE.—

13                  “(A) IN GENERAL.—The Secretary of the  
 14                  Treasury shall, before granting a waiver under  
 15                  this subsection, require each applicant to pro-  
 16                  vide evidence satisfactory to such Secretary that  
 17                  the applicant has provided notice of the filing of  
 18                  the application for such waiver to each affected  
 19                  party (as defined in section 4001(a)(21)) and in  
 20                  the case of a multiemployer plan, to each em-  
 21                  ployer required to contribute to the plan under  
 22                  subsection (b)(1). Such notice shall include a  
 23                  description of the extent to which the plan is  
 24                  funded for benefits which are guaranteed under  
 25                  title IV and for benefit liabilities.



1           “(B) CONSIDERATION OF RELEVANT IN-  
 2           FORMATION.—The Secretary of the Treasury  
 3           shall consider any relevant information provided  
 4           by a person to whom notice was given under  
 5           subparagraph (A).

6           “(7) RESTRICTION ON PLAN AMENDMENTS.—

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

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

24                 “(i) the Secretary of the Treasury de-  
 25                 termines to be reasonable and which pro-

1                   vides for only de minimis increases in the  
2                   liabilities of the plan,

3                   “(ii) only repeals an amendment de-  
4                   scribed in subsection (d)(2), or

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

9                   “(8) CROSS REFERENCE.—For corresponding  
10                  duties of the Secretary of the Treasury with regard  
11                  to implementation of the Internal Revenue Code of  
12                  1986, see section 412(c) of such Code.

13                  “(d) MISCELLANEOUS RULES.—

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

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

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

1           “(B) does not reduce the accrued benefit  
2           of any participant determined as of the begin-  
3           ning of the first plan year to which the amend-  
4           ment applies, and

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

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

1        ployer plan, any extension of the amortization period  
 2        under section 304(d)) is unavailable or inadequate.

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

8        (c) CLERICAL AMENDMENT.—The table of contents  
 9        in section 1 of such Act is amended by striking the items  
 10       relating to sections 302 through 308 and inserting the fol-  
 11       lowing new item:

          “Sec. 302. Minimum funding standards.”.

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

14       **SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DE-**  
 15       **FINED BENEFIT PENSION PLANS.**

16        (a) IN GENERAL.—Part 3 of subtitle B of title I of  
 17        the Employee Retirement Income Security Act of 1974 (as  
 18        amended by section 101 of this Act) is amended by insert-  
 19        ing after section 302 the following new section:

20        “MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER  
 21        DEFINED BENEFIT PENSION PLANS

22        “SEC. 303. (a) MINIMUM REQUIRED CONTRIBU-  
 23        TION.—For purposes of this section and section  
 24        302(a)(2)(A), except as provided in subsection (f), the  
 25        term ‘minimum required contribution’ means, with respect

1 to any plan year of a defined benefit plan which is a single  
 2 employer plan—

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

7 “(A) the target normal cost of the plan for  
 8 the plan year,

9 “(B) the shortfall amortization charge (if  
 10 any) for the plan for the plan year determined  
 11 under subsection (c), and

12 “(C) the waiver amortization charge (if  
 13 any) for the plan for the plan year as deter-  
 14 mined under subsection (e); or

15 “(2) in any case in which the value of plan as-  
 16 sets of the plan (as reduced under subsection (f)(4))  
 17 equals or exceeds the funding target of the plan for  
 18 the plan year, the target normal cost of the plan for  
 19 the plan year reduced (but not below zero) by any  
 20 such excess.

21 “(b) TARGET NORMAL COST.—For purposes of this  
 22 section, except as provided in subsection (i)(2) with re-  
 23 spect to plans in at-risk status, the term ‘target normal  
 24 cost’ means, for any plan year, the present value of all  
 25 benefits which are expected to accrue or to be earned

1 under the plan during the plan year. For purposes of this  
 2 subsection, if any benefit attributable to services per-  
 3 formed in a preceding plan year is increased by reason  
 4 of any increase in compensation during the current plan  
 5 year, the increase in such benefit shall be treated as hav-  
 6 ing accrued during the current plan year.

7 “(c) SHORTFALL AMORTIZATION CHARGE.—

8 “(1) IN GENERAL.—For purposes of this sec-  
 9 tion, the shortfall amortization charge for a plan for  
 10 any plan year is the aggregate total of the shortfall  
 11 amortization installments for such plan year with re-  
 12 spect to the shortfall amortization bases for such  
 13 plan year and each of the 6 preceding plan years.

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

16 “(A) DETERMINATION.—The plan sponsor  
 17 shall determine the amounts necessary to amor-  
 18 tize the shortfall amortization base of the plan  
 19 for any plan year in level annual installments  
 20 over the 7-plan-year period beginning with such  
 21 plan year.

22 “(B) SHORTFALL INSTALLMENT.—The  
 23 shortfall amortization installment for any plan  
 24 year in the 7-plan-year period under subpara-  
 25 graph (A) with respect to any shortfall amorti-

1            zation base is the annual installment deter-  
 2            mined under subparagraph (A) for that year for  
 3            that base.

4            “(C) SEGMENT RATES.—In determining  
 5            any shortfall amortization installment under  
 6            this paragraph, the plan sponsor shall use the  
 7            segment rates determined under subparagraph  
 8            (C) of subsection (h)(2), applied under rules  
 9            similar to the rules of subparagraph (B) of sub-  
 10          section (h)(2).

11          “(3) SHORTFALL AMORTIZATION BASE.—For  
 12          purposes of this section, the shortfall amortization  
 13          base of a plan for a plan year is the excess (if any)  
 14          of—

15                “(A) the funding shortfall of such plan for  
 16                such plan year, over

17                “(B) the present value (determined using  
 18                the segment rates determined under subpara-  
 19                graph (C) of subsection (h)(2), applied under  
 20                rules similar to the rules of subparagraph (B)  
 21                of subsection (h)(2)) of the aggregate total of  
 22                the shortfall amortization installments and  
 23                waiver amortization installments which have  
 24                been determined for such plan year and any  
 25                succeeding plan year with respect to the short-

1 fall amortization bases and waiver amortization  
2 bases of the plan for any plan year preceding  
3 such plan year.

4 “(4) FUNDING SHORTFALL.—

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

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

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

15 “(B) TRANSITION RULE FOR AMORTIZA-  
16 TION OF FUNDING SHORTFALL.—

17 “(i) IN GENERAL.—Solely for pur-  
18 poses of applying paragraph (3) in the case  
19 of plan years beginning after 2006 and be-  
20 fore 2011, only the applicable percentage  
21 of the funding target shall be taken into  
22 account under paragraph (3)(A) in deter-  
23 mining the funding shortfall for the plan  
24 year.



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

3 “(I) IN GENERAL.—Except as  
 4 provided in clause (ii), the applicable  
 5 percentage shall be 93 percent for  
 6 plan years beginning in 2007, 96 per-  
 7 cent for plan years beginning in 2008,  
 8 and 100 percent for any succeeding  
 9 plan year.

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

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

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

1        installments determined with respect to such bases)  
 2        shall be reduced to zero.

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

5            “(1) FUNDING TARGET.—Except as provided in  
 6 subsection (i)(1) with respect to plans in at-risk sta-  
 7 tus, the funding target of a plan for a plan year is  
 8 the present value of all benefits accrued or earned  
 9 under the plan as of the beginning of the plan year.

10           “(2) FUNDING TARGET ATTAINMENT PERCENT-  
 11 AGE.—The ‘funding target attainment percentage’ of  
 12 a plan for a plan year is the ratio (expressed as a  
 13 percentage) which—

14            “(A) the value of plan assets for the plan  
 15 year, bears to

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

19        “(e) WAIVER AMORTIZATION CHARGE.—

20           “(1) DETERMINATION OF WAIVER AMORTIZA-  
 21 TION CHARGE.—The waiver amortization charge (if  
 22 any) for a plan for any plan year is the aggregate  
 23 total of the waiver amortization installments for  
 24 such plan year with respect to the waiver amortiza-  
 25 tion bases for each of the 5 preceding plan years.

1           “(2) WAIVER AMORTIZATION INSTALLMENT.—

2           For purposes of paragraph (1)—

3                   “(A) DETERMINATION.—The plan sponsor  
4                   shall determine the amounts necessary to amor-  
5                   tize the waiver amortization base of the plan for  
6                   any plan year in level annual installments over  
7                   a period of 5 plan years beginning with the suc-  
8                   ceeding plan year.

9                   “(B) WAIVER INSTALLMENT.—The waiver  
10                  amortization installment for any plan year in  
11                  the 5-year period under subparagraph (A) with  
12                  respect to any waiver amortization base is the  
13                  annual installment determined under subpara-  
14                  graph (A) for that year for that base.

15                  “(3) INTEREST RATE.—In determining any  
16                  waiver amortization installment under this sub-  
17                  section, the plan sponsor shall use the segment rates  
18                  determined under subparagraph (C) of subsection  
19                  (h)(2), applied under rules similar to the rules of  
20                  subparagraph (B) of subsection (h)(2).

21                  “(4) WAIVER AMORTIZATION BASE.—The waiv-  
22                  er amortization base of a plan for a plan year is the  
23                  amount of the waived funding deficiency (if any) for  
24                  such plan year under section 302(c).

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

8           “(f) USE OF PREFUNDING BALANCES TO SATISFY  
 9           MINIMUM REQUIRED CONTRIBUTIONS.—

10           “(1) IN GENERAL.—A plan sponsor may credit  
 11           any amount of a plan’s prefunding balance for a  
 12           plan year against the minimum required contribu-  
 13           tion for the plan year and the amount of the con-  
 14           tributions an employer is required to make under  
 15           section 302(b) for the plan year shall be reduced by  
 16           the amount so credited. Any such amount shall be  
 17           credited on the first day of the plan year.

18           “(2) PREFUNDING BALANCE.—

19           “(A) BEGINNING BALANCE.—The begin-  
 20           ning balance of a prefunding balance main-  
 21           tained by a plan shall be zero, except that if a  
 22           plan was in effect for a plan year beginning in  
 23           2006 and had a positive balance in the funding  
 24           standard account under section 302(b) (as in  
 25           effect for such plan year) as of the end of such

1 plan year, the beginning balance for the plan  
 2 for its first plan year beginning after 2006 shall  
 3 be such positive balance.

4 “(B) INCREASES.—

5 “(i) IN GENERAL.—As of the first day  
 6 of each plan year beginning after 2007, the  
 7 prefunding balance of a plan shall be in-  
 8 creased by the excess (if any) of—

9 “(I) the aggregate amount of em-  
 10 ployer contributions to the plan for  
 11 the preceding plan year, over

12 “(II) the minimum required con-  
 13 tribution for the preceding plan year.

14 “(ii) ADJUSTMENTS FOR INTEREST.—  
 15 Any excess contributions under clause (i)  
 16 shall be properly adjusted for interest ac-  
 17 cruing for the periods between the first  
 18 day of the current plan year and the dates  
 19 on which the excess contributions were  
 20 made, determined by using the effective in-  
 21 terest rate for the preceding plan year and  
 22 by treating contributions as being first  
 23 used to satisfy the minimum required con-  
 24 tribution.

1                   “(iii) CERTAIN CONTRIBUTIONS DIS-  
2                   REGARDED.—Any contribution which is re-  
3                   quired to be made under section 206(g) in  
4                   addition to any contribution required  
5                   under this section shall not be taken into  
6                   account for purposes of clause (i).

7                   “(C) DECREASES.—As of the first day of  
8                   each plan year after 2007, the prefunding bal-  
9                   ance of a plan shall be decreased (but not below  
10                  zero) by the amount of the balance credited  
11                  under paragraph (1) against the minimum re-  
12                  quired contribution of the plan for the pre-  
13                  ceding plan year.

14                  “(D) ADJUSTMENTS FOR INVESTMENT EX-  
15                  PERIENCE.—In determining the prefunding bal-  
16                  ance of a plan as of the first day of the plan  
17                  year, the plan sponsor shall, in accordance with  
18                  regulations prescribed by the Secretary of the  
19                  Treasury, adjust such balance to reflect the  
20                  rate of net gain or loss with respect to plan as-  
21                  sets for the preceding plan year. Notwith-  
22                  standing subsection (g)(3), such rate of net  
23                  gain or loss shall be determined on the basis of  
24                  fair market value and shall properly take into  
25                  account, in accordance with such regulations,

all contributions, distributions, and other plan payments made during such period.

“(3) LIMITATION FOR UNDERFUNDED PLANS.—

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

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

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

is less than 80 percent, the preceding provisions of this subsection shall not apply unless employers liable for contributions to the plan under section 302(b) make contributions to the plan for the plan year in an aggregate amount not less than the amount determined under subparagraph (B). Any contribution required by this subparagraph may not be reduced by any credit otherwise allowable under paragraph (1).

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

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

1 “(ii) 25 percent of the minimum re-  
 2 quired contribution under subsection (a)  
 3 for the plan year without regard to this  
 4 subsection.

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

12 “(g) VALUATION OF PLAN ASSETS AND LIABIL-  
 13 ITIES.—

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

19 “(2) VALUATION DATE.—For purposes of this  
 20 section—

21 “(A) IN GENERAL.—Except as provided in  
 22 subparagraph (B), the valuation date of a plan  
 23 for any plan year shall be the first day of the  
 24 plan year.



1           “(B) EXCEPTION FOR SMALL PLANS.—If,  
2           on each day during the preceding plan year, a  
3           plan had 100 or fewer participants, the plan  
4           may designate any day during the plan year as  
5           its valuation date for such plan year and suc-  
6           ceeding plan years. For purposes of this sub-  
7           paragraph, all defined benefit plans (other than  
8           multiemployer plans) maintained by the same  
9           employer (or any member of such employer’s  
10          controlled group) shall be treated as 1 plan, but  
11          only employees of such employer or member  
12          shall be taken into account.

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

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

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

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

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

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), the value of plan assets shall  
7 be the fair market value of the assets.

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

13 “(i) is permitted under regulations  
14 prescribed by the Secretary of the Treas-  
15 ury, and

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

23 “(4) ACCOUNTING FOR CONTRIBUTION RE-  
24 CEIPTS.—For purposes of determining the value of  
25 assets under paragraph (3)—

1 “(A) PRIOR YEAR CONTRIBUTIONS.—If—

2 “(i) an employer makes any contribu-  
 3 tion to the plan after the valuation date for  
 4 the plan year in which the contribution is  
 5 made, and

6 “(ii) the contribution is for a pre-  
 7 ceding plan year,

8 the contribution shall be taken into account as  
 9 an asset of the plan as of the valuation date,  
 10 except that in the case of any plan year begin-  
 11 ning after 2007, only the present value (deter-  
 12 mined as of the valuation date) of such con-  
 13 tribution may be taken into account. For pur-  
 14 poses of the preceding sentence, present value  
 15 shall be determined using the effective interest  
 16 rate for the preceding plan year to which the  
 17 contribution is properly allocable.

18 “(B) SPECIAL RULE FOR CURRENT YEAR  
 19 CONTRIBUTIONS MADE BEFORE VALUATION  
 20 DATE.—If any contributions for any plan year  
 21 are made to or under the plan during the plan  
 22 year but before the valuation date for the plan  
 23 year, the assets of the plan as of the valuation  
 24 date shall not include—

25 “(i) such contributions, and

1                   “(ii) interest on such contributions for  
 2                   the period between the date of the con-  
 3                   tributions and the valuation date, deter-  
 4                   mined by using the effective interest rate  
 5                   for the plan year.

6           “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

11                   “(A) each of which is reasonable (taking  
 12                   into account the experience of the plan and rea-  
 13                   sonable expectations), and

14                   “(B) which, in combination, offer the actu-  
 15                   ary’s best estimate of anticipated experience  
 16                   under the plan.

17           “(2) INTEREST RATES.—

18                   “(A) EFFECTIVE INTEREST RATE.—For  
 19                   purposes of this section, the term ‘effective in-  
 20                   terest rate’ means, with respect to any plan for  
 21                   any plan year, the single rate of interest which,  
 22                   if used to determine the present value of the  
 23                   plan’s accrued or earned benefits referred to in  
 24                   subsection (d)(1), would result in an amount

1 equal to the funding target of the plan for such  
2 plan year.

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

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

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

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

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

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

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

1                   “(iii) THIRD SEGMENT RATE.—The  
 2                   term ‘third 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 periods  
 10                  beginning after the period described in  
 11                  clause (ii).

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

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

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

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

19 “(G) TRANSITION RULE.—

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



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

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

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

17 “(3) MORTALITY TABLES.—

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

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

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

9 “(C) SUBSTITUTE MORTALITY TABLE.—

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

23 “(ii) REQUIREMENTS.—A mortality  
24 table meets the requirements of this clause

1 if the Secretary of the Treasury determines  
2 that—

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

9 “(II) such table reflects the ac-  
10 tual experience of the pension plans  
11 maintained by the sponsor and pro-  
12 jected trends in general mortality ex-  
13 perience,

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

20 “(IV) such table is significantly  
21 different from the table described in  
22 subparagraph (A).

23 “(iii) DEADLINE FOR DISPOSITION OF  
24 APPLICATION.—Any mortality table sub-  
25 mitted to the Secretary of the Treasury for

1 approval under this subparagraph shall be  
 2 treated as in effect for the first plan year  
 3 in the 10-year period described in clause  
 4 (i) unless the Secretary of the Treasury,  
 5 during the 180-day period beginning on  
 6 the date of such submission, disapproves of  
 7 such table and provides the reasons that  
 8 such table fails to meet the requirements  
 9 of clause (ii). The 180-day period shall be  
 10 extended for any period during which the  
 11 Secretary of the Treasury has requested  
 12 information from the plan sponsor and  
 13 such information has not been provided.

14 “(D) SEPARATE MORTALITY TABLES FOR  
 15 THE DISABLED.—Notwithstanding subpara-  
 16 graph (A)—

17 “(i) IN GENERAL.—The Secretary of  
 18 the Treasury shall establish mortality ta-  
 19 bles which may be used (in lieu of the ta-  
 20 bles under subparagraph (A)) under this  
 21 subsection for individuals who are entitled  
 22 to benefits under the plan on account of  
 23 disability. The Secretary of the Treasury  
 24 shall establish separate tables for individ-  
 25 uals 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 DISABILITIES OCCURRING AFTER 1994.—In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

“(iii) PERIODIC REVISION.—The Secretary of the Treasury shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

“(E) TRANSITION RULE.—Under regulations of the Secretary of the Treasury, any difference in assumptions as set forth in the mortality table specified in subparagraph (A) and assumptions as set forth in the mortality table described in section 302(d)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be

1           phased in ratably over the first period of 5 plan  
 2           years beginning in or after 2007 so as to be  
 3           fully effective for the fifth plan year.

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

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

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

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

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

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

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

6 “(i) the aggregate unfunded vested  
7 benefits as of the close of the preceding  
8 plan year (as determined under section  
9 4006(a)(3)(E)(iii)) of such plan and all  
10 other plans maintained by the contributing  
11 sponsors (as defined in section  
12 4001(a)(13)) and members of such spon-  
13 sors’ controlled groups (as defined in sec-  
14 tion 4001(a)(14)) which are covered by  
15 title IV (disregarding plans with no un-  
16 funded vested benefits) exceed  
17 \$50,000,000; and

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

1                   more of the funding target of the plan be-  
2                   fore such change.

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

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

6                   “(A) IN GENERAL.—In the case of a plan  
7           to which this subsection applies for a plan year,  
8           the funding target of the plan for the plan year  
9           is equal to the present value of all liabilities to  
10          participants and their beneficiaries under the  
11          plan for the plan year, as determined by using  
12          the actuarial assumption described in subpara-  
13          graph (B).

14                  “(B) ADDITIONAL ACTUARIAL ASSUMP-  
15          TION.—The actuarial assumptions used in de-  
16          termining the valuation of the funding target  
17          shall include an assumption that all partici-  
18          pants who will be eligible to elect benefits dur-  
19          ing the plan year and the 7 succeeding plan  
20          years will elect benefits at such times and in  
21          such forms as will result in the highest present  
22          value of liabilities under subparagraph (A).

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



1 cost of the plan for such plan year shall be equal to  
 2 the present value of all benefits which are expected  
 3 to accrue or be earned under the plan during the  
 4 plan year, determined using the additional actuarial  
 5 assumption described in paragraph (1)(B).

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

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

10 “(B) the at-risk target normal cost be less  
 11 than the target normal cost, as determined  
 12 without regard to this subsection.

13 “(4) DETERMINATION OF AT-RISK STATUS.—

14 For purposes of this subsection, a plan is in at-risk  
 15 status for a plan year if—

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

18 “(B) the funding target attainment per-  
 19 centage for the plan year is less than 93 per-  
 20 cent.

21 “(5) FINANCIALLY-WEAK EMPLOYER.—

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

1 “(i) as of the valuation date for each  
2 of the years during a period of at least 3  
3 consecutive plan years ending with the  
4 plan year—

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

13 “(II) if no such debt instrument  
14 has been rated by such an organiza-  
15 tion but 1 or more of such organiza-  
16 tions has made an issuer credit rating  
17 for such employer, all such organiza-  
18 tions which have so rated the em-  
19 ployer have rated such employer lower  
20 than investment grade, and

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

23 “(B) CONTROLLED GROUP EXCEPTION.—

24 If an employer treated as a financially-weak  
25 employer under subparagraph (A) is a member

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

“(C) EMPLOYERS WITH NO RATINGS.—

If—

“(i) an employer has no debt instrument described in subparagraph (A)(i) which was rated by an organization described in such subparagraph, and

“(ii) no such organization has made an issuer credit rating for such employer, then such employer shall only be treated as a financially-weak employer to the extent provided in regulations prescribed by the Secretary of the Treasury.

“(6) DETERMINATION OF DETERIORATION YEAR.—For purposes of paragraph (5), the term ‘deterioration year’ means any year during the period described in paragraph (5)(A)(i) for which the

1 rating described in subclause (I) or (II) of para-  
 2 graph (5)(A)(i) by each organization is either—

3 “(A) lower than the lowest rating of the  
 4 employer by such organization for a preceding  
 5 year in such period, or

6 “(B) the lowest rating used by such orga-  
 7 nization.

8 “(7) YEARS BEFORE EFFECTIVE DATE.—For  
 9 purposes of paragraphs (5) and (6), plan years be-  
 10 ginning before 2007 shall not be taken into account.

11 “(8) TRANSITION BETWEEN APPLICABLE FUND-  
 12 ING TARGETS AND BETWEEN APPLICABLE TARGET  
 13 NORMAL COSTS.—

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

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

1                   “(ii) the transition percentage for  
 2                   such plan year of the excess of the amount  
 3                   determined under this subsection (without  
 4                   regard to this paragraph) over the amount  
 5                   determined under this section without re-  
 6                   gard to this subsection.

7                   “(B) TRANSITION PERCENTAGE.—For  
 8                   purposes of subparagraph (A), the transition  
 9                   percentage shall be determined in accordance  
 10                  with the following table:

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

11                  “(C) YEARS BEFORE EFFECTIVE DATE.—  
 12                  For purposes of this paragraph, plan years be-  
 13                  ginning before 2007 shall not be taken into ac-  
 14                  count.

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

16                  “(A) IN GENERAL.—Except as provided in  
 17                  this paragraph, this subsection shall apply to  
 18                  any plan to which this section applies and  
 19                  which is in at-risk status for the plan year.

20                  “(B) EXCEPTION FOR SMALL PLANS.—

21                  This subsection shall not apply to a plan for a  
 22                  plan year if the plan was described in sub-

1 section (g)(2)(B) for the preceding plan year,  
 2 determined by substituting ‘500’ for ‘100’.

3 “(C) EXCEPTION FOR PLANS MAINTAINED  
 4 BY CERTAIN COOPERATIVES.—This subsection  
 5 shall not apply to a plan for a plan year if the  
 6 plan is maintained by more than 1 employer  
 7 and at least 85 percent of the employers are—

8 “(i) rural cooperatives (as defined in  
 9 section 401(k)(7)(B) without regard to  
 10 clause (iv) thereof),

11 “(ii) rural telephone cooperative asso-  
 12 ciations described in section 3(40)(B)(v) of  
 13 the Employee Retirement Income Security  
 14 Act of 1974 which is not described in  
 15 clause (i), or

16 “(iii) organizations described in sec-  
 17 tion 1381(a) more than 50 percent of the  
 18 ownership or capital and profits interests  
 19 of which are held—

20 “(I) by producers of agricultural  
 21 products, or

22 “(II) organizations described in  
 23 section 1381(a) meeting the require-  
 24 ments of subclause (I).

1       “(j) 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) FAILURE TO TIMELY MAKE RE-  
16 QUIRED INSTALLMENT.—

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

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

5 “(ii) PLANS TO WHICH PARAGRAPH  
 6 APPLIES.—This paragraph applies to any  
 7 defined benefit plan to which this section  
 8 applies other than a plan which—

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

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

14 “(B) AMOUNT OF UNDERPAYMENT, PE-  
 15 RIOD OF UNDERPAYMENT.—For purposes of  
 16 subparagraph (A)—

17 “(i) AMOUNT.—The amount of the  
 18 underpayment shall be the excess of—

19 “(I) the required installment,  
 20 over

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



1 “(ii) PERIOD OF UNDERPAYMENT.—

2 The period for which any interest is  
3 charged under this paragraph with respect  
4 to any portion of the underpayment shall  
5 run from the due date for the installment  
6 to the date on which such portion is con-  
7 tributed to or under the plan.

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

14 “(C) NUMBER OF REQUIRED INSTALL-  
15 MENTS; DUE DATES.—For purposes of this  
16 paragraph—

17 “(i) PAYABLE IN 4 INSTALLMENTS.—  
18 There shall be 4 required installments for  
19 each plan year.

20 “(ii) TIME FOR PAYMENT OF IN-  
21 STALLMENTS.—The due dates for required  
22 installments are set forth in the following  
23 table:

**In the case of the following required in-  
stallment:**

1st .....

**The due date is:**

April 15

2nd .....	July 15
3rd .....	October 15
4th .....	January 15 of the following year.

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

3                   “(i) IN GENERAL.—The amount of  
4                   any required installment shall be 25 per-  
5                   cent of the required annual payment.

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

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

15                   “(II) in the case of a plan year  
16                   beginning after 2007, 100 percent of  
17                   the minimum required contribution  
18                   (without regard to any waiver under  
19                   section 302(c)) to the plan for the  
20                   preceding plan year.

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

4 “(E) FISCAL YEARS AND SHORT YEARS.—

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

11 “(ii) SHORT PLAN YEAR.—This sub-  
 12 paragraph shall be applied to plan years of  
 13 less than 12 months in accordance with  
 14 regulations prescribed by the Secretary of  
 15 the Treasury.

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

18 “(A) IN GENERAL.—A plan to which this  
 19 paragraph applies shall be treated as failing to  
 20 pay the full amount of any required installment  
 21 under paragraph (3) to the extent that the  
 22 value of the liquid assets paid in such install-  
 23 ment is less than the liquidity shortfall (wheth-  
 24 er or not such liquidity shortfall exceeds the

1 amount of such installment required to be paid  
2 but for this paragraph).

3 “(B) PLANS TO WHICH PARAGRAPH AP-  
4 PLIES.—This paragraph shall apply to a plan  
5 (other than a plan that would be described in  
6 subsection (g)(2)(B) if ‘100’ were substituted  
7 for ‘500’ therein) which—

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

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

12 “(C) PERIOD OF UNDERPAYMENT.—For  
13 purposes of paragraph (3)(A), any portion of an  
14 installment that is treated as not paid under  
15 subparagraph (A) shall continue to be treated  
16 as unpaid until the close of the quarter in  
17 which the due date for such installment occurs.

18 “(D) LIMITATION ON INCREASE.—If the  
19 amount of any required installment is increased  
20 by reason of subparagraph (A), in no event  
21 shall such increase exceed the amount which,  
22 when added to prior installments for the plan  
23 year, is necessary to increase the funding target  
24 attainment percentage of the plan for the plan  
25 year (taking into account the expected increase

1 in funding target due to benefits accruing or  
 2 earned during the plan year) to 100 percent.

3 “(E) DEFINITIONS.—For purposes of this  
 4 subparagraph:

5 “(i) LIQUIDITY SHORTFALL.—The  
 6 term ‘liquidity shortfall’ means, with re-  
 7 spect to any required installment, an  
 8 amount equal to the excess (as of the last  
 9 day of the quarter for which such install-  
 10 ment is made) of—

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

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

15 “(ii) BASE AMOUNT.—

16 “(I) IN GENERAL.—The term  
 17 ‘base amount’ means, with respect to  
 18 any quarter, an amount equal to 3  
 19 times the sum of the adjusted dis-  
 20 bursements from the plan for the 12  
 21 months ending on the last day of such  
 22 quarter.

23 “(II) SPECIAL RULE.—If the  
 24 amount determined under subclause  
 25 (I) exceeds an amount equal to 2

1 times the sum of the adjusted dis-  
 2 bursements from the plan for the 36  
 3 months ending on the last day of the  
 4 quarter and an enrolled actuary cer-  
 5 tifies to the satisfaction of the Sec-  
 6 retary of the Treasury that such ex-  
 7 cess is the result of nonrecurring cir-  
 8 cumstances, the base amount with re-  
 9 spect to such quarter shall be deter-  
 10 mined without regard to amounts re-  
 11 lated to those nonrecurring cir-  
 12 cumstances.

13 “(iii) DISBURSEMENTS FROM THE  
 14 PLAN.—The term ‘disbursements from the  
 15 plan’ means all disbursements from the  
 16 trust, including purchases of annuities,  
 17 payments of single sums and other bene-  
 18 fits, and administrative expenses.

19 “(iv) ADJUSTED DISBURSEMENTS.—  
 20 The term ‘adjusted disbursements’ means  
 21 disbursements from the plan reduced by  
 22 the product of—

23 “(I) the plan’s funding target at-  
 24 tainment percentage for the plan year,  
 25 and

1 “(II) the sum of the purchases of  
2 annuities, payments of single sums,  
3 and such other disbursements as the  
4 Secretary of the Treasury shall pro-  
5 vide in regulations.

6 “(v) LIQUID ASSETS.—The term ‘liq-  
7 uid assets’ means cash, marketable securi-  
8 ties, and such other assets as specified by  
9 the Secretary of the Treasury in regula-  
10 tions.

11 “(vi) QUARTER.—The term ‘quarter’  
12 means, with respect to any required install-  
13 ment, the 3-month period preceding the  
14 month in which the due date for such in-  
15 stallment occurs.

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

19 “(k) IMPOSITION OF LIEN WHERE FAILURE TO  
20 MAKE REQUIRED CONTRIBUTIONS.—

21 “(1) IN GENERAL.—In the case of a plan cov-  
22 ered under section 4021 of this Act and to which  
23 this subsection applies (as provided under paragraph  
24 (2)), if—

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

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

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

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

23          “(3) AMOUNT OF LIEN.—For purposes of para-  
 24          graph (1), the amount of the lien shall be equal to  
 25          the aggregate unpaid balance of contribution pay-



1       ments required under this section and section 302  
2       for which payment has not been made before the due  
3       date.

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

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

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

19           “(C) CERTAIN RULES TO APPLY.—Any  
20       amount with respect to which a lien is imposed  
21       under paragraph (1) shall be treated as taxes  
22       due and owing the United States and rules  
23       similar to the rules of subsections (c), (d), and  
24       (e) of section 4068 shall apply with respect to

1           a lien imposed by subsection (a) and the  
2           amount with respect to such lien.

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

10          “(6) DEFINITIONS.—For purposes of this sub-  
11          section—

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

18                 “(B) DUE DATE; REQUIRED INSTALL-  
19                 MENT.—The terms ‘due date’ and ‘required in-  
20                 stallment’ have the meanings given such terms  
21                 by subsection (j), except that in the case of a  
22                 payment other than a required installment, the  
23                 due date shall be the date such payment is re-  
24                 quired to be made under section 303.

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

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

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

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

15          (c) EFFECTIVE DATE.—The amendments made by  
 16 this section shall apply with respect to plan years begin-  
 17 ning after 2006.

18 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EM-**  
 19 **PLOYER PLANS.**

20          (a) LIMITS ON BENEFITS AND BENEFIT ACCRU-  
 21 ALS.—

22           (1) IN GENERAL.—Section 206 of such Act is  
 23 amended by adding at the end the following new  
 24 subsection:

1       “(g) FUNDING-BASED LIMITS ON BENEFITS AND  
 2 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER  
 3 PLANS.—

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

6           “(A) IN GENERAL.—Except as provided in  
 7 paragraph (4), no amendment to a single-em-  
 8 ployer plan which has the effect of increasing li-  
 9 abilities of the plan by reason of increases in  
 10 benefits, establishment of new benefits, chang-  
 11 ing the rate of benefit accrual, or changing the  
 12 rate at which benefits become nonforfeitable  
 13 may take effect during any plan year if the ad-  
 14 justed funding target attainment percentage as  
 15 of the valuation date of the plan for such plan  
 16 year is—

17           “(i) less than 80 percent, or

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

20           “(B) EXEMPTION.—Subparagraph (A)  
 21 shall cease to apply with respect to any plan  
 22 year, effective as of the first date of the plan  
 23 year (or if later, the effective date of the  
 24 amendment), upon payment by the plan sponsor  
 25 of a contribution (in addition to any minimum

1 required contribution under section 303) equal  
2 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  
10 an adjusted funding target attainment per-  
11 centage of 80 percent.

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

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

23 “(A) FAILURE TO TIMELY MAKE RE-  
24 QUIRED INSTALLMENT.—

“(i) IN GENERAL.—In the case of a plan to which this paragraph applies, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points.

“(ii) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any defined benefit plan to which this section applies other than a plan which—

“(I) is a plan described in subsection (g)(2)(B)), or

“(II) had a funded shortfall target liability of \$1,000,000 or less for the preceding plan year.

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

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

3 “(I) any payment, in excess of  
4 the monthly amount paid under a sin-  
5 gle life annuity (plus any social secu-  
6 rity supplements described in the last  
7 sentence of section 204(b)(1)(G)), to  
8 a participant or beneficiary whose an-  
9 nuity starting date (as defined in sec-  
10 tion 205(h)(2)) occurs during a pro-  
11 hibited period,

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

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

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

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

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



1            tions order (as defined in section  
2            206(d)(3)(B)(i)) provides otherwise.

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

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

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

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

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

1 as of the valuation date for the plan year, the  
2 plan's adjusted funded target liability percent-  
3 age is at least 100 percent.

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

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

10 “(ii) the plan's enrolled actuary cer-  
11 tifies that, as of the valuation date for the  
12 plan year, the adjusted funded target li-  
13 ability percentage of the plan is at least 60  
14 percent,

15 this paragraph shall be applied as if no prohib-  
16 ited period had begun as of the beginning of  
17 such year and the plan shall, under rules de-  
18 scribed by the Secretary of the Treasury, re-  
19 store any payments not made during the pro-  
20 hibited period in effect before the application of  
21 this paragraph.

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

24 “(A) IN GENERAL.—Except as provided in  
25 paragraph (4), a single-employer plan shall pro-

vide that all future benefit accruals under the plan shall cease during a severe funding shortfall period, but only to the extent the cessation of such accruals would have been permitted under section 204(g) if the cessation had been implemented by a plan amendment adopted immediately before the severe funding shortfall period.

“(B) SEVERE FUNDING SHORTFALL PERIOD.—For purposes of subparagraph (A), the term ‘severe funding shortfall period’ means in the case of a plan the adjusted funding target attainment percentage of which as of the valuation date of the plan for any plan year is less than 60 percent, the period—

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

“(ii) ending on the date the plan’s enrolled actuary certifies that the plan’s adjusted funding target attainment percentage is at least 60 percent, and

“(C) OPPORTUNITY FOR INCREASED FUNDING.—For purposes of subparagraph (B), a plan shall not be treated as described in such subparagraph for a plan year if the plan’s en-

1           rolled actuary certifies that the plan sponsor  
2           has before the end of the plan year contributed  
3           (in addition to any minimum required contribu-  
4           tion under section 303) the amount sufficient to  
5           result in an adjusted funding target attainment  
6           percentage as of the valuation date for the plan  
7           year of 60 percent.

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

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

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

1           “(5) RULES RELATING TO REQUIRED CON-  
2       TRIBUTIONS.—

3           “(A) SECURITY MAY BE PROVIDED.—

4           “(i) IN GENERAL.—For purposes of  
5       this subsection, the adjusted funding tar-  
6       get attainment percentage shall be deter-  
7       mined by treating as an asset of the plan  
8       any security provided by a plan sponsor in  
9       a form meeting the requirements of clause  
10      (ii) .

11          “(ii) FORM OF SECURITY.—The secu-  
12      rity required under clause (i) shall consist  
13      of—

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

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

22           “(III) such other form of security  
23      as is satisfactory to the Secretary of  
24      the Treasury and the parties involved.

1           “(iii) ENFORCEMENT.—Any security  
2           provided under clause (i) may be perfected  
3           and enforced at any time after the earlier  
4           of—

5                   “(I) the date on which the plan  
6                   terminates,

7                   “(II) if there is a failure to make  
8                   a payment of the minimum required  
9                   contribution for any plan year begin-  
10                  ning after the security is provided, the  
11                  due date for the payment under sec-  
12                  tion 303(j), or

13                  “(III) if the adjusted funding  
14                  target attainment percentage is less  
15                  than 60 percent for a consecutive pe-  
16                  riod of 7 years, the valuation date for  
17                  the last year in the period.

18           “(iv) RELEASE OF SECURITY.—The  
19           security shall be released (and any  
20           amounts thereunder shall be refunded to-  
21           gether with any interest accrued thereon)  
22           at such time as the Secretary of the Treas-  
23           ury may prescribe in regulations, including  
24           regulations for partial releases of the secu-

1                   rity by reason of increases in the funding  
2                   target attainment percentage.

3                   “(B) PREFUNDING BALANCE MAY NOT BE  
4                   USED.—No prefunding balance under section  
5                   303(f) may be used to satisfy any required con-  
6                   tribution under this subsection.

7                   “(C) TREATMENT AS UNPAID MINIMUM  
8                   REQUIRED CONTRIBUTION.—The amount of any  
9                   required contribution which a plan sponsor fails  
10                  to make under paragraph (2) or (4) for any  
11                  plan year shall be treated as an unpaid min-  
12                  imum required contribution for purposes of sub-  
13                  section (j) and (k) of section 303 and for pur-  
14                  poses of section 4971 of the Internal Revenue  
15                  Code of 1986.

16                  “(6) NEW PLANS.—Paragraphs (1) and (3)  
17                  shall not apply to a plan for the first 5 plan years  
18                  of the plan. For purposes of this paragraph, the ref-  
19                  erence in this paragraph to a plan shall include a  
20                  reference to any predecessor plan. Notwithstanding  
21                  the preceding sentence, paragraph (1) shall apply if  
22                  the plan is in bankruptcy during any of such years.

23                  “(7) PRESUMED UNDERFUNDING FOR PUR-  
24                  POSES OF BENEFIT LIMITATIONS BASED ON PRIOR  
25                  YEAR’S FUNDING STATUS.—

1           “(A)   PRESUMPTION   OF   CONTINUED  
2           UNDERFUNDING.—In any case in which a ben-  
3           efit limitation under paragraph (1), (2), or (3)  
4           has been applied to a plan with respect to the  
5           plan year preceding the current plan year, the  
6           funding target attainment percentage of the ad-  
7           justed plan as of the valuation date of the plan  
8           for the current plan year shall be presumed to  
9           be equal to the adjusted funding target attain-  
10          ment percentage of the plan as of the valuation  
11          date of the plan for the preceding plan year  
12          until the enrolled actuary of the plan certifies  
13          the actual adjusted funding target attainment  
14          percentage of the plan as of the valuation date  
15          of the plan for the current plan year.

16          “(B)   PRESUMPTION   OF   UNDERFUNDING  
17          AFTER 10TH MONTH.—In any case in which no  
18          such certification is made with respect to the  
19          plan before the first day of the 10th month of  
20          the current plan year, for purposes of para-  
21          graphs (1), (2), and (3), the plan’s adjusted  
22          funding target attainment percentage shall be  
23          conclusively presumed to be less than 60 per-  
24          cent as of the first day of such 10th month,  
25          and such day shall be deemed, for purposes of



1           such paragraphs, to be the valuation date of the  
2           plan for the current plan year.

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

6                   “(A) OPERATION OF PLAN AFTER PE-  
7                   RIOD.—Unless the plan provides otherwise, pay-  
8                   ments and accruals will resume effective as of  
9                   the day following the close of a period of limita-  
10                  tion of payment or accrual of benefits under  
11                  paragraph (2) or (3).

12                  “(B) TREATMENT OF AFFECTED BENE-  
13                  FITS.—Nothing in this paragraph shall be con-  
14                  strued as affecting the plan’s treatment of ben-  
15                  efits which would have been paid or accrued but  
16                  for this subsection.

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

19                   “(A) IN GENERAL.—The term ‘funding  
20                   target attainment percentage’ has the same  
21                   meaning given such term by section 303(d)(2).

22                   “(B) ADJUSTED FUNDED TARGET LIABIL-  
23                   ITY PERCENTAGE.—The term ‘adjusted funded  
24                   target liability percentage’ means the funded  
25                   target liability percentage which is determined

under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 303(d)(2) by the aggregate amount of purchases of annuities, payments of single sums, and such other disbursements as the Secretary of the Treasury shall prescribe in regulations, which were made by the plan during the preceding 2 plan years.”.

(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—

“(1) after the plan has become subject to the restriction described in section 206(g)(2),

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

1           “(A) the date in the plan year described in  
 2           section 206(g)(3)(B) on which the plan’s en-  
 3           rolled actuary certifies that the plan’s adjusted  
 4           funding target attainment percentage for the  
 5           plan year is less than 60 percent (or, if earlier,  
 6           the date such percentage is deemed to be less  
 7           than 60 percent under section 206(g)(7)), and

8           “(B) the first day of the severe funding  
 9           shortfall period, and

10          “(3) at such other time as may be determined  
 11         by the Secretary of the Treasury.”.

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

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

23         (c) EFFECTIVE DATES.—

24                 (1) BENEFIT RESTRICTIONS.—Except as pro-  
 25         vided in paragraph (2)—

1 (A) IN GENERAL.—Subject to subpara-  
 2 graph (B), the amendments made by subsection  
 3 (b) shall apply with respect to plan years begin-  
 4 ning after 2006.

5 (B) BENEFIT INCREASES.—Section  
 6 201(g)(1) of the Employee Retirement Income  
 7 Security Act of 1974 (as added by subsection  
 8 (a)) shall apply with respect to plan years be-  
 9 ginning after 2007.

10 (2) COLLECTIVE BARGAINING EXCEPTION.—In  
 11 the case of a plan maintained pursuant to 1 or more  
 12 collective bargaining agreements between employee  
 13 representatives and 1 or more employers ratified  
 14 January 1, 2007, the amendments made by this sec-  
 15 tion shall not apply to plan years beginning before  
 16 the earlier of—

17 (A) the later of—

18 (i) the date on which the last collec-  
 19 tive bargaining agreement relating to the  
 20 plan terminates (determined without re-  
 21 gard to any extension thereof agreed to  
 22 after the date of the enactment of this  
 23 Act), or

24 (ii) the first day of the first plan year  
 25 to which the amendments made by this

1 subsection would (but for this subpara-  
 2 graph) apply, or

3 (B) January 1, 2010.

4 For purposes of subparagraph (A)(i), any plan  
 5 amendment made pursuant to a collective bargaining  
 6 agreement relating to the plan which amends the  
 7 plan solely to conform to any requirement added by  
 8 this section shall not be treated as a termination of  
 9 such collective bargaining agreement.

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

11 (a) MISCELLANEOUS AMENDMENTS TO TITLE I.—  
 12 Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.)  
 13 is amended—

14 (1) in section 101(d)(3), by striking “section  
 15 302(e)” and inserting “section 303(j)”;

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

18 “(i) a statement as to whether—

19 “(I) in the case of a single-em-  
 20 ployer plan, the plan’s funding target  
 21 attainment percentage (as defined in  
 22 section 303(d)(2)), or

23 “(II) in the case of a multiem-  
 24 ployer plan, the plan’s funded percent-  
 25 age (as defined in section 305(d)(2)),

1 is at least 100 percent (and, if not, the ac-  
 2 tual percentage);”;

3 (3) in section 103(d)(8)(B), by striking “the re-  
 4 quirements of section 302(c)(3)” and inserting “the  
 5 applicable requirements of sections 303(h) and  
 6 304(c)(3)”;

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

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

11 “(A) in the case of a single-employer plan,  
 12 the funding target (as defined in section  
 13 303(d)(1)) of the plan, or

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

19 (5) in section 203(a)(3)(C), by striking “section  
 20 302(c)(8)” and inserting “section 302(d)(2)”;

21 (6) in section 204(g)(1), by striking “section  
 22 302(c)(8)” and inserting “section 302(d)(2)”;

23 (7) in section 204(i)(2)(B), by striking “section  
 24 302(c)(8)” and inserting “section 302(d)(2)”;

1           (8) in section 204(i)(3), by striking “funded  
2           current liability percentage (within the meaning of  
3           section 302(d)(8) of this Act)” and inserting “fund-  
4           ing target attainment percentage (as defined in sec-  
5           tion 303(d)(2))”;

6           (9) in section 204(i)(4), by striking “section  
7           302(c)(11)(A), without regard to section  
8           302(c)(11)(B)” and inserting “section 302(b)(1),  
9           without regard to section 302(b)(2)”;

10          (10) in section 206(e)(1), by striking “section  
11          302(d)” and inserting “section 303(j)(4)”, and by  
12          striking “section 302(e)(5)” and inserting “section  
13          303(j)(4)(E)(i)”;

14          (11) in section 206(e)(3), by striking “section  
15          302(e) by reason of paragraph (5)(A) thereof” and  
16          inserting “section 303(j)(3) by reason of section  
17          303(j)(4)(A)”;

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

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

24                 (1) in section 4001(a)(13) (29 U.S.C.  
25                 1301(a)(13)), by striking “302(c)(11)(A)” and in-

1       serting “302(b)(1)”, by striking “412(c)(11)(A)”  
 2       and inserting “412(b)(1)”, by striking  
 3       “302(c)(11)(B)” and inserting “302(b)(2)”, and by  
 4       striking “412(c)(11)(B)” and inserting “412(b)(2)”;  
 5       (2) in section 4003(e)(1) (29 U.S.C.  
 6       1303(e)(1)), by striking “302(f)(1)(A) and (B)” and  
 7       inserting “303(k)(1)(A) and (B)”, and by striking  
 8       “412(n)(1)(A) and (B)” and inserting  
 9       “430(k)(1)(A) and (B)”;

10       (3) in section 4010(b)(2) (29 U.S.C.  
 11       1310(b)(2)), by striking “302(f)(1)(A) and (B)” and  
 12       inserting “303(k)(1)(A) and (B)”, and by striking  
 13       “412(n)(1)(A) and (B)” and inserting  
 14       “430(k)(1)(A) and (B)”;

15       (4) in section 4011(b) (29 U.S.C. 1311(b)), by  
 16       striking “to which” and all that follows and insert-  
 17       ing “for any plan year for which the plan’s funding  
 18       target attainment percentage (as defined in section  
 19       303(d)(2)) is at least 90 percent.”;

20       (5) in section 4062(c)(1) (29 U.S.C.  
 21       1362(c)(1)), by striking paragraphs (1), (2), and (3)  
 22       and inserting the following:

23               “(1)(A) in the case of a single-employer plan,  
 24       the sum of the shortfall amortization charge (within  
 25       the meaning of section 303(c)(1) of this Act and



1       430(c)(1) of the Internal Revenue Code of 1986)  
2       with respect to the plan (if any) for the plan year  
3       in which the termination date occurs, plus the aggregate  
4       total of shortfall amortization installments (if  
5       any) determined for succeeding plan years under  
6       section 303(c)(2) of this Act and section 430(c)(2)  
7       of such Code (which, for purposes of this subparagraph,  
8       shall include any increase in such sum which  
9       would result if all applications for waivers of the  
10      minimum funding standard under section 302(c) of  
11      this Act and section 412(c) of such Code which are  
12      pending with respect to such plan were denied and  
13      if no additional contributions (other than those already  
14      made by the termination date) were made for  
15      the plan year in which the termination date occurs  
16      or for any previous plan year), or

17           “(B) in the case of a multiemployer plan, the  
18      outstanding balance of the accumulated funding deficiencies  
19      (within the meaning of section 304(a)(2)  
20      of this Act and section 431(a) of the Internal Revenue  
21      Code of 1986) of the plan (if any) (which, for  
22      purposes of this subparagraph, shall include the  
23      amount of any increase in such accumulated funding  
24      deficiencies of the plan which would result if all  
25      pending applications for waivers of the minimum

1 funding standard under section 302(c) of this Act or  
2 section 412(c) of such Code and for extensions of  
3 the amortization period under section 304(d) of this  
4 Act or section 431(d) of such Code with respect to  
5 such plan were denied and if no additional contribu-  
6 tions (other than those already made by the termi-  
7 nation date) were made for the plan year in which  
8 the termination date occurs or for any previous plan  
9 year),

10 “(2)(A) in the case of a single-employer plan,  
11 the sum of the waiver amortization charge (within  
12 the meaning of section 303(e)(1) of this Act and  
13 430(j)(2) of the Internal Revenue Code of 1986)  
14 with respect to the plan (if any) for the plan year  
15 in which the termination date occurs, plus the aggre-  
16 gate total of waiver amortization installments (if  
17 any) determined for succeeding plan years under  
18 section 303(e)(2) of this Act and section 430(j)(3)  
19 of such Code, or

20 “(B) in the case of a multiemployer plan, the  
21 outstanding balance of the amount of waived fund-  
22 ing deficiencies of the plan waived before such date  
23 under section 302(c) of this Act or section 412(c) of  
24 such Code (if any), and

1 “(3) in the case of a multiemployer plan, the  
 2 outstanding balance of the amount of decreases in  
 3 the minimum funding standard allowed before such  
 4 date under section 304(d) of this Act or section  
 5 431(d) of such Code (if any);”;

6 (6) in section 4071 (29 U.S.C. 1371), by strik-  
 7 ing “302(f)(4)” and inserting “303(k)(4)”;

8 (7) in section 4243(a)(1)(B) (29 U.S.C.  
 9 1423(a)(1)(B)), by striking “302(a)” and inserting  
 10 “304(a)”, and, in clause (i), by striking “302(a)”  
 11 and inserting “304(a)”;

12 (8) in section 4243(f)(1) (29 U.S.C.  
 13 1423(f)(1)), by striking “303(a)” and inserting  
 14 “302(c)”;

15 (9) in section 4243(f)(2) (29 U.S.C.  
 16 1423(f)(2)), by striking “303(c)” and inserting  
 17 “302(c)(3)”;

18 (10) in section 4243(g) (29 U.S.C. 1423(g)), by  
 19 striking “302(c)(3)” and inserting “304(c)(3)”.

20 (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4  
 21 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.  
 22 4 of 1978 (ratified and affirmed as law by Public Law  
 23 98–532 (98 Stat. 2705)) is amended by striking  
 24 “302(c)(8)” and inserting “302(d)(2)”, by striking  
 25 “304(a) and (b)(2)(A)” and inserting “304(d)(1), (d)(2),

1 and (e)(2)(A)”, and by striking “412(c)(8), (e), and  
 2 (f)(2)(A)” and inserting “412(d)(2) and 431(d)(1), (d)(2),  
 3 and (e)(2)(A)”.

4 (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-  
 5 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.  
 6 1057) is repealed.

7 (e) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to plan years beginning after 2005.

9 **SEC. 105. SPECIAL RULES FOR MULTIPLE EMPLOYER**  
 10 **PLANS OF CERTAIN COOPERATIVES.**

11 (a) GENERAL RULE.—Except as provided in this sec-  
 12 tion, if a plan in existence on July 26, 2005, was an eligi-  
 13 ble cooperative plan for its plan year which includes such  
 14 date, the amendments made by this subtitle and subtitle  
 15 B shall not apply to plan years beginning before the earlier  
 16 of—

17 (1) the first plan year for which the plan ceases  
 18 to be an eligible cooperative plan, or

19 (2) January 1, 2017.

20 (b) INTEREST RATE.—In applying section  
 21 302(b)(5)(B) of the Employee Retirement Income Secu-  
 22 rity Act of 1974 and section 412(b)(5)(B) of the Internal  
 23 Revenue Code of 1986 (as in effect before the amendments  
 24 made by this subtitle and subtitle B) to an eligible cooper-  
 25 ative plan for plan years beginning after December 31,

1 2006, and before the first plan year to which such amend-  
 2 ments apply, the third segment rate determined under sec-  
 3 tion 303(h)(2)(C)(iii) of such Act and section  
 4 430(h)(2)(C)(iii) of such Code (as added by such amend-  
 5 ments) shall be used in lieu of the 4-year weighted average  
 6 interest rate otherwise used.

7 (c) ELIGIBLE COOPERATIVE PLANS.—For purposes  
 8 of this section, the term “eligible cooperative plan” means  
 9 a plan which is maintained by more than 1 employer and  
 10 at least 85 percent of the employers are—

11 (1) rural cooperatives (as defined in section  
 12 401(k)(7)(B) of the Internal Revenue Code of 1986  
 13 without regard to clause (iv) thereof),

14 (2) rural telephone cooperative associations de-  
 15 scribed in section 3(40)(B)(v) of the Employee Re-  
 16 tirement Income Security Act of 1974 which is not  
 17 described in paragraph (1), or

18 (3) organizations described in section 1381(a)  
 19 of such Code more than 50 percent of the ownership  
 20 or capital and profits interests of which are held—

21 (A) by producers of agricultural products,  
 22 or

23 (B) organizations described in section  
 24 1381(a) of such Code meeting the requirements  
 25 of subparagraph (A).

## 1           **Subtitle B—Amendments to** 2           **Internal Revenue Code of 1986**

### 3   **SEC. 111. MODIFICATIONS OF THE MINIMUM FUNDING** 4                   **STANDARDS.**

5           (a) IN GENERAL.—Section 412 of the Internal Rev-  
 6   enue Code of 1986 (relating to minimum funding stand-  
 7   ards) is amended to read as follows:

#### 8   **“SEC. 412. MINIMUM FUNDING STANDARDS.**

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

11           “(1) IN GENERAL.—A plan to which this sec-  
 12   tion applies shall satisfy the minimum funding  
 13   standard applicable to the plan for any plan year.

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

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

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

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

13          “(b) PLANS TO WHICH SECTION APPLIES.—

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

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

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

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

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

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

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

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

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

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

21      No plan described in subparagraph (C), (D), or (F)  
22      shall be treated as a qualified plan for purposes of  
23      section 401(a) unless such plan meets the require-  
24      ments of section 401(a)(7) as in effect on September  
25      1, 1974.



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

8           “(c) LIABILITY FOR CONTRIBUTIONS.—

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

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

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

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

25                 “(A) IN GENERAL.—If—

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

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

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

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

24 “(i) in the case of a single-employer  
25 plan, the minimum required contribution

1 under section 430 for the plan year shall  
2 be reduced by the amount of the waived  
3 funding deficiency and such amount shall  
4 be amortized as required under section  
5 430(e), and

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

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

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

1 include (but shall not be limited to) whether or  
2 not—

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

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

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

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

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

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

22 “(A) SECURITY MAY BE REQUIRED.—

23 “(i) IN GENERAL.—Except as pro-  
24 vided in subparagraph (C), the Secretary  
25 may require an employer maintaining a de-

1            fined benefit plan which is a single-em-  
2            ployer plan (within the meaning of section  
3            4001(a)(15) of the Employee Retirement  
4            Income Security Act of 1974) to provide  
5            security to such plan as a condition for  
6            granting or modifying a waiver under  
7            paragraph (1).

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

18           “(B) CONSULTATION WITH THE PENSION  
19           BENEFIT GUARANTY CORPORATION.—Except as  
20           provided in subparagraph (C), the Secretary  
21           shall, before granting or modifying a waiver  
22           under this subsection with respect to a plan de-  
23           scribed in subparagraph (A)(i)—

24           “(i) provide the Pension Benefit  
25           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) of such Act) representing  
 13 participants in the plan which are  
 14 submitted in writing to the Secretary  
 15 of the Treasury in connection with  
 16 such application.

17 Information provided to the Corporation under  
 18 this subparagraph shall be considered tax re-  
 19 turn information and subject to the safe-  
 20 guarding and reporting requirements of section  
 21 6103(p).

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

24 “(i) IN GENERAL.—The preceding  
 25 provisions of this paragraph shall not

1 apply to any plan with respect to which the  
 2 sum of—

3 “(I) the aggregate unpaid min-  
 4 imum required contributions for the  
 5 plan year and all preceding plan  
 6 years, and

7 “(II) the present value of all  
 8 waiver amortization installments de-  
 9 termined for the plan year and suc-  
 10 ceeding plan years under section  
 11 430(e)(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 “(iii) UNPAID MINIMUM REQUIRED  
 22 CONTRIBUTION.—For purposes of this sub-  
 23 paragraph—

24 “(I) IN GENERAL.—The term  
 25 ‘unpaid minimum required contribu-

1           tion’ means, with respect to any plan  
 2           year, any minimum required contribu-  
 3           tion under section 430 for the plan  
 4           year which is not paid on or before  
 5           the due date (as determined under  
 6           section 430(j)(1)) for the plan year.

7                   “(II) ORDERING RULE.—For  
 8           purposes of subclause (I), any pay-  
 9           ment to or under a plan for any plan  
 10          year shall be allocated first to unpaid  
 11          minimum required contributions for  
 12          all preceding plan years on a first-in,  
 13          first-out basis and then to the min-  
 14          imum required contribution under sec-  
 15          tion 430 for the plan year.

16           “(5) SPECIAL RULES FOR SINGLE-EMPLOYER  
 17          PLANS.—

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



1 3rd month beginning after the close of such  
2 plan year.

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

10 “(i) with respect to such employer,  
11 and

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

16 The Secretary may provide that an analysis of  
17 a trade or business or industry of a member  
18 need not be conducted if the Secretary deter-  
19 mines such analysis is not necessary because  
20 the taking into account of such member would  
21 not significantly affect the determination under  
22 this paragraph.

23 “(6) ADVANCE NOTICE.—

24 “(A) IN GENERAL.—The Secretary shall,  
25 before granting a waiver under this subsection,

1       require each applicant to provide evidence satis-  
 2       factory to such Secretary that the applicant has  
 3       provided notice of the filing of the application  
 4       for such waiver to each affected party (as de-  
 5       fined in section 4001(a)(21) of the Employee  
 6       Retirement Income Security Act of 1974) and  
 7       in the case of a multiemployer plan, to each em-  
 8       ployer required to contribute to the plan under  
 9       subsection (b)(1). Such notice shall include a  
 10      description of the extent to which the plan is  
 11      funded for benefits which are guaranteed under  
 12      title IV and for benefit liabilities.

13       “(B) CONSIDERATION OF RELEVANT IN-  
 14      FORMATION.—The Secretary shall consider any  
 15      relevant information provided by a person to  
 16      whom notice was given under subparagraph  
 17      (A).

18       “(7) RESTRICTION ON PLAN AMENDMENTS.—

19       “(A) IN GENERAL.—No amendment of a  
 20      plan which increases the liabilities of the plan  
 21      by reason of any increase in benefits, any  
 22      change in the accrual of benefits, or any change  
 23      in the rate at which benefits become nonforfeit-  
 24      able under the plan shall be adopted if a waiver  
 25      under this subsection or an extension of time

1 under section 431(d) is in effect with respect to  
 2 the plan, or if a plan amendment described in  
 3 subsection (e)(2) has been made at any time in  
 4 the preceding 24 months. If a plan is amended  
 5 in violation of the preceding sentence, any such  
 6 waiver, or extension of time, shall not apply to  
 7 any plan year ending on or after the date on  
 8 which such amendment is adopted.

9 “(B) EXCEPTION.—Subparagraph (A)  
 10 shall not apply to any plan amendment which—

11 “(i) the Secretary determines to be  
 12 reasonable and which provides for only de  
 13 minimis increases in the liabilities of the  
 14 plan,

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

17 “(iii) is required as a condition of  
 18 qualification under part I of subchapter D,  
 19 of chapter 1 of the Internal Revenue Code  
 20 of 1986.

21 “(e) MISCELLANEOUS RULES.—For purposes of this  
 22 section—

23 “(1) CHANGE IN METHOD OR YEAR.—If the  
 24 funding method, the valuation date, or a plan year

1 for a plan is changed, the change shall take effect  
2 only if approved by the Secretary.

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

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

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

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

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

1 such amendment, or within 90 days after the date  
 2 on which such notice was filed, failed to disapprove  
 3 such amendment. No amendment described in this  
 4 subsection shall be approved by the Secretary unless  
 5 the Secretary determines that such amendment is  
 6 necessary because of a substantial business hardship  
 7 (as determined under subsection (d)(2)) and that a  
 8 waiver under subsection (d)(1) is unavailable or in-  
 9 adequate.

10 “(3) CERTAIN INSURANCE CONTRACT PLANS.—

11 A plan is described in this paragraph if—

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

14 “(B) such contracts provide for level an-  
 15 nual premium payments to be paid extending  
 16 not later than the retirement age for each indi-  
 17 vidual participating in the plan, and com-  
 18 mencing with the date the individual became a  
 19 participant in the plan (or, in the case of an in-  
 20 crease in benefits, commencing at the time such  
 21 increase becomes effective),

22 “(C) benefits provided by the plan are  
 23 equal to the benefits provided under each con-  
 24 tract at normal retirement age under the plan  
 25 and are guaranteed by an insurance carrier (li-

1 censed under the laws of a State to do business  
2 with the plan) to the extent premiums have  
3 been paid,

4 “(D) premiums payable for the plan year,  
5 and all prior plan years, under such contracts  
6 have been paid before lapse or there is rein-  
7 statement of the policy,

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

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

13 A plan funded exclusively by the purchase of group  
14 insurance contracts which are determined under reg-  
15 ulations prescribed by the Secretary to have the  
16 same characteristics as contracts described in the  
17 preceding sentence shall be treated as a plan de-  
18 scribed in this paragraph.

19 “(4) CONTROLLED GROUP.—For purposes of  
20 this section and section 430, the term ‘controlled  
21 group’ means any group treated as a single employer  
22 under subsection (b), (c), (m), or (o) of section  
23 414.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to plan years beginning after De-  
 3 cember 31, 2006.

4 **SEC. 112. FUNDING RULES APPLICABLE TO SINGLE-EM-**  
 5 **PLOYER PENSION PLANS.**

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

9 **“PART III—RULES RELATING TO MINIMUM**  
 10 **FUNDING STANDARDS AND BENEFIT LIMITATION**

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

“431. Minimum funding standards for multiemployer plans.

11 **“SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-**  
 12 **EMPLOYER DEFINED BENEFIT PLANS.**

13 “(a) MINIMUM REQUIRED CONTRIBUTION.—For  
 14 purposes of this section and section 412(a)(2)(A), except  
 15 as provided in subsection (f), the term ‘minimum required  
 16 contribution’ means, with respect to any plan year of a  
 17 defined benefit plan which is a single employer plan—

18 “(1) in any case in which the value of plan as-  
 19 sets of the plan (as reduced under subsection (f)(4))  
 20 is less than the funding target of the plan for the  
 21 plan year, the sum of—

22 “(A) the target normal cost of the plan for  
 23 the plan year,

1                   “(B) the shortfall amortization charge (if  
 2                   any) for the plan for the plan year determined  
 3                   under subsection (c), and

4                   “(C) the waiver amortization charge (if  
 5                   any) for the plan for the plan year as deter-  
 6                   mined under subsection (e); or

7                   “(2) in any case in which the value of plan as-  
 8                   sets of the plan (as reduced under subsection (f)(4))  
 9                   equals or exceeds the funding target of the plan for  
 10                  the plan year, the target normal cost of the plan for  
 11                  the plan year reduced (but not below zero) by any  
 12                  such excess.

13               “(b) TARGET NORMAL COST.—For purposes of this  
 14               section, except as provided in subsection (i)(2) with re-  
 15               spect to plans in at-risk status, the term ‘target normal  
 16               cost’ means, for any plan year, the present value of all  
 17               benefits which are expected to accrue or to be earned  
 18               under the plan during the plan year. For purposes of this  
 19               subsection, if any benefit attributable to services per-  
 20               formed in a preceding plan year is increased by reason  
 21               of any increase in compensation during the current plan  
 22               year, the increase in such benefit shall be treated as hav-  
 23               ing accrued during the current plan year.

24               “(c) SHORTFALL AMORTIZATION CHARGE.—



1           “(1) IN GENERAL.—For purposes of this sec-  
 2           tion, the shortfall amortization charge for a plan for  
 3           any plan year is the aggregate total of the shortfall  
 4           amortization installments for such plan year with re-  
 5           spect to the shortfall amortization bases for such  
 6           plan year and each of the 6 preceding plan years.

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

9                   “(A) DETERMINATION.—The plan sponsor  
 10                  shall determine the amounts necessary to amor-  
 11                  tize the shortfall amortization base of the plan  
 12                  for any plan year in level annual installments  
 13                  over the 7-plan-year period beginning with such  
 14                  plan year.

15                  “(B) SHORTFALL INSTALLMENT.—The  
 16                  shortfall amortization installment for any plan  
 17                  year in the 7-plan-year period under subpara-  
 18                  graph (A) with respect to any shortfall amorti-  
 19                  zation base is the annual installment deter-  
 20                  mined under subparagraph (A) for that year for  
 21                  that base.

22                  “(C) SEGMENT RATES.—In determining  
 23                  any shortfall amortization installment under  
 24                  this paragraph, the plan sponsor shall use the  
 25                  segment rates determined under subparagraph

1 (C) of subsection (h)(2), applied under rules  
 2 similar to the rules of subparagraph (B) of sub-  
 3 section (h)(2).

4 “(3) SHORTFALL AMORTIZATION BASE.—For  
 5 purposes of this section, the shortfall amortization  
 6 base of a plan for a plan year is the excess (if any)  
 7 of—

8 “(A) the funding shortfall of such plan for  
 9 such plan year, over

10 “(B) the present value (determined using  
 11 the segment rates determined under subpara-  
 12 graph (C) of subsection (h)(2), applied under  
 13 rules similar to the rules of subparagraph (B)  
 14 of subsection (h)(2)) of the aggregate total of  
 15 the shortfall amortization installments and  
 16 waiver amortization installments which have  
 17 been determined for such plan year and any  
 18 succeeding plan year with respect to the short-  
 19 fall amortization bases and waiver amortization  
 20 bases of the plan for any plan year preceding  
 21 such plan year.

22 “(4) FUNDING SHORTFALL.—

23 “(A) IN GENERAL.—For purposes of this  
 24 section, except as provided in subparagraph

(B), the funding shortfall of a plan for any plan year is the excess (if any) of—

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

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

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

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

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

“(I) IN GENERAL.—Except as provided in clause (ii), the applicable percentage shall be 93 percent for plan years beginning in 2007, 96 percent for plan years beginning in 2008,

1 and 100 percent for any succeeding  
2 plan year.

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

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

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

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

19 “(1) FUNDING TARGET.—Except as provided in  
20 subsection (i)(1) with respect to plans in at-risk sta-  
21 tus, the funding target of a plan for a plan year is

1 the present value of all benefits accrued or earned  
 2 under the plan as of the beginning of the plan year.

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

7 “(A) the value of plan assets for the plan  
 8 year, bears to

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

12 “(e) WAIVER AMORTIZATION CHARGE.—

13 “(1) DETERMINATION OF WAIVER AMORTIZA-  
 14 TION CHARGE.—The waiver amortization charge (if  
 15 any) for a plan for any plan year is the aggregate  
 16 total of the waiver amortization installments for  
 17 such plan year with respect to the waiver amortiza-  
 18 tion bases for each of the 5 preceding plan years.

19 “(2) WAIVER AMORTIZATION INSTALLMENT.—  
 20 For purposes of paragraph (1)—

21 “(A) DETERMINATION.—The plan sponsor  
 22 shall determine the amounts necessary to amor-  
 23 tize the waiver amortization base of the plan for  
 24 any plan year in level annual installments over

1 a period of 5 plan years beginning with the suc-  
2 ceeding plan year.

3 “(B) WAIVER INSTALLMENT.—The waiver  
4 amortization installment for any plan year in  
5 the 5-year period under subparagraph (A) with  
6 respect to any waiver amortization base is the  
7 annual installment determined under subpara-  
8 graph (A) for that year for that base.

9 “(3) INTEREST RATE.—In determining any  
10 waiver amortization installment under this sub-  
11 section, the plan sponsor shall use the segment rates  
12 determined under subparagraph (C) of subsection  
13 (h)(2), applied under rules similar to the rules of  
14 subparagraph (B) of subsection (h)(2).

15 “(4) WAIVER AMORTIZATION BASE.—The waiv-  
16 er amortization base of a plan for a plan year is the  
17 amount of the waived funding deficiency (if any) for  
18 such plan year under section 412(d).

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

1       “(f) USE OF PREFUNDING BALANCES TO SATISFY  
2 MINIMUM REQUIRED CONTRIBUTIONS.—

3               “(1) IN GENERAL.—A plan sponsor may credit  
4 any amount of a plan’s prefunding balance for a  
5 plan year against the minimum required contribu-  
6 tion for the plan year and the amount of the con-  
7 tributions an employer is required to make under  
8 section 412(c) for the plan year shall be reduced by  
9 the amount so credited. Any such amount shall be  
10 credited on the first day of the plan year.

11              “(2) PREFUNDING BALANCE.—

12                   “(A) BEGINNING BALANCE.—The begin-  
13 ning balance of a prefunding balance main-  
14 tained by a plan shall be zero, except that if a  
15 plan was in effect for a plan year beginning in  
16 2006 and had a positive balance in the funding  
17 standard account under section 412(b) (as in  
18 effect for such plan year) as of the end of such  
19 plan year, the beginning balance for the plan  
20 for its first plan year beginning after 2006 shall  
21 be such positive balance.

22                   “(B) INCREASES.—

23                           “(i) IN GENERAL.—As of the first day  
24 of each plan year beginning after 2007, the

1 prefunding balance of a plan shall be in-  
2 creased by the excess (if any) of—

3 “(I) the aggregate amount of em-  
4 ployer contributions to the plan for  
5 the preceding plan year, over

6 “(II) the minimum required con-  
7 tribution for the preceding plan year.

8 “(ii) ADJUSTMENTS FOR INTEREST.—  
9 Any excess contributions under clause (i)  
10 shall be properly adjusted for interest ac-  
11 cruing for the periods between the first  
12 day of the current plan year and the dates  
13 on which the excess contributions were  
14 made, determined by using the effective in-  
15 terest rate for the preceding plan year and  
16 by treating contributions as being first  
17 used to satisfy the minimum required con-  
18 tribution.

19 “(iii) CERTAIN CONTRIBUTIONS DIS-  
20 REGARDED.—Any contribution which is re-  
21 quired to be made under section 436 in ad-  
22 dition to any contribution required under  
23 this section shall not be taken into account  
24 for purposes of clause (i).



1           “(C) DECREASES.—As of the first day of  
2 each plan year after 2007, the prefunding bal-  
3 ance of a plan shall be decreased (but not below  
4 zero) by the amount of the balance credited  
5 under paragraph (1) against the minimum re-  
6 quired contribution of the plan for the pre-  
7 ceding plan year.

8           “(D) ADJUSTMENTS FOR INVESTMENT EX-  
9 PERIENCE.—In determining the prefunding bal-  
10 ance of a plan as of the first day of the plan  
11 year, the plan sponsor shall, in accordance with  
12 regulations prescribed by the Secretary, adjust  
13 such balance to reflect the rate of net gain or  
14 loss with respect to plan assets for the pre-  
15 ceding plan year. Notwithstanding subsection  
16 (g)(3), such rate of net gain or loss shall be de-  
17 termined on the basis of fair market value and  
18 shall properly take into account, in accordance  
19 with such regulations, all contributions, dis-  
20 tributions, and other plan payments made dur-  
21 ing such period.

22           “(3) LIMITATION FOR UNDERFUNDED PLANS.—

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

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

3 “(ii) the funding target of the plan for  
4 the preceding plan year (determined with-  
5 out regard to subsection (i)(1)),

6 is less than 80 percent, the preceding provisions  
7 of this subsection shall not apply unless employ-  
8 ers liable for contributions to the plan under  
9 section 412(c) make contributions to the plan  
10 for the plan year in an aggregate amount not  
11 less than the amount determined under sub-  
12 paragraph (B). Any contribution required by  
13 this subparagraph may not be reduced by any  
14 credit otherwise allowable under paragraph (1).

15 “(B) APPLICABLE AMOUNT.—The amount  
16 determined under this subparagraph for any  
17 plan year is the greater of—

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

20 “(ii) 25 percent of the minimum re-  
21 quired contribution under subsection (a)  
22 for the plan year without regard to this  
23 subsection.

24 “(4) REDUCTION IN VALUE OF ASSETS.—Solely  
25 for purposes of applying subsections (a) and

1 (c)(4)(A)(ii) in determining the minimum required  
2 contribution under this section, the value of the plan  
3 assets otherwise determined without regard to this  
4 paragraph shall be reduced by the amount of the  
5 prefunding balance under this subsection.

6 “(g) VALUATION OF PLAN ASSETS AND LIABIL-  
7 ITIES.—

8 “(1) TIMING OF DETERMINATIONS.—Except as  
9 otherwise provided under this subsection, all deter-  
10 minations under this section for a plan year shall be  
11 made as of the valuation date of the plan for such  
12 plan year.

13 “(2) VALUATION DATE.—For purposes of this  
14 section—

15 “(A) IN GENERAL.—Except as provided in  
16 subparagraph (B), the valuation date of a plan  
17 for any plan year shall be the first day of the  
18 plan year.

19 “(B) EXCEPTION FOR SMALL PLANS.—If,  
20 on each day during the preceding plan year, a  
21 plan had 100 or fewer participants, the plan  
22 may designate any day during the plan year as  
23 its valuation date for such plan year and suc-  
24 ceeding plan years. For purposes of this sub-  
25 paragraph, all defined benefit plans (other than

1           multiemployer plans) maintained by the same  
2           employer (or any member of such employer's  
3           controlled group) shall be treated as 1 plan, but  
4           only employees of such employer or member  
5           shall be taken into account.

6           “(C) APPLICATION OF CERTAIN RULES IN  
7           DETERMINATION OF PLAN SIZE.—For purposes  
8           of this paragraph—

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

16          “(ii) PREDECESSORS.—Any reference  
17          in subparagraph (B) to an employer shall  
18          include a reference to any predecessor of  
19          such employer.

20          “(3) DETERMINATION OF VALUE OF PLAN AS-  
21          SETS.—For purposes of this section—

22          “(A) IN GENERAL.—Except as provided in  
23          subparagraph (B), the value of plan assets shall  
24          be the fair market value of the assets.

1           “(B) AVERAGING ALLOWED.—A plan may  
 2           determine the value of plan assets on the basis  
 3           of any reasonable actuarial method of valuation  
 4           providing for the averaging of fair market val-  
 5           ues, but only if such method—

6                   “(i) is permitted under regulations  
 7                   prescribed by the Secretary, and

8                   “(ii) does not provide for averaging of  
 9                   such values over more than the period be-  
 10                  ginning on the last day of the 12th month  
 11                  preceding the valuation date and ending on  
 12                  the valuation date (or a similar period in  
 13                  the case of a valuation date which is not  
 14                  the 1st day of a month).

15           “(4) ACCOUNTING FOR CONTRIBUTION RE-  
 16           CEIPTS.—For purposes of determining the value of  
 17           assets under paragraph (3)—

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

19                           “(i) an employer makes any contribu-  
 20                           tion to the plan after the valuation date for  
 21                           the plan year in which the contribution is  
 22                           made, and

23                           “(ii) the contribution is for a pre-  
 24                           ceding plan year,

1           the contribution shall be taken into account as  
 2           an asset of the plan as of the valuation date,  
 3           except that in the case of any plan year begin-  
 4           ning after 2007, only the present value (deter-  
 5           mined as of the valuation date) of such con-  
 6           tribution may be taken into account. For pur-  
 7           poses of the preceding sentence, present value  
 8           shall be determined using the effective interest  
 9           rate for the preceding plan year to which the  
 10          contribution is properly allocable.

11           “(B) SPECIAL RULE FOR CURRENT YEAR  
 12          CONTRIBUTIONS MADE BEFORE VALUATION  
 13          DATE.—If any contributions for any plan year  
 14          are made to or under the plan during the plan  
 15          year but before the valuation date for the plan  
 16          year, the assets of the plan as of the valuation  
 17          date shall not include—

18                   “(i) such contributions, and

19                   “(ii) interest on such contributions for  
 20                   the period between the date of the con-  
 21                   tributions and the valuation date, deter-  
 22                   mined by using the effective interest rate  
 23                   for the plan year.

24          “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

5                   “(A) each of which is reasonable (taking  
 6                   into account the experience of the plan and rea-  
 7                   sonable expectations), and

8                   “(B) which, in combination, offer the actu-  
 9                   ary’s best estimate of anticipated experience  
 10                  under the plan.

11           “(2) INTEREST RATES.—

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

21                   “(B) INTEREST RATES FOR DETERMINING  
 22                   FUNDING TARGET.—For purposes of deter-  
 23                   mining the funding target of a plan for any  
 24                   plan year, the interest rate used in determining

the present value of the benefits of the plan  
shall be—

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

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

“(iii) in the case of benefits reason-  
ably determined to be payable after the pe-  
riod described in clause (ii), the third seg-  
ment 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 re-  
spect to any month, the single rate of in-  
terest which shall be determined by the  
Secretary for such month on the basis of



1 the corporate bond yield curve for such  
2 month, taking into account only that por-  
3 tion of such yield curve which is based on  
4 bonds maturing during the 5-year period  
5 commencing with such month.

6 “(ii) SECOND SEGMENT RATE.—The  
7 term ‘second segment rate’ means, with re-  
8 spect to any month, the single rate of in-  
9 terest which shall be determined by the  
10 Secretary for such month on the basis of  
11 the corporate bond yield curve for such  
12 month, taking into account only that por-  
13 tion of such yield curve which is based on  
14 bonds maturing during each of the years in  
15 the 15-year period beginning at the end of  
16 the period described in clause (i).

17 “(iii) THIRD SEGMENT RATE.—The  
18 term ‘third segment rate’ means, with re-  
19 spect to any month, the single rate of in-  
20 terest which shall be determined by the  
21 Secretary for such month on the basis of  
22 the corporate bond yield curve for such  
23 month, taking into account only that por-  
24 tion of such yield curve which is based on

1 bonds maturing during periods beginning  
2 after the period described in clause (ii).

3 “(D) CORPORATE BOND YIELD CURVE.—

4 The term ‘corporate bond yield curve’ means,  
5 with respect to any month, a yield curve which  
6 is prescribed by the Secretary for such month  
7 and which reflects the average, for the 12-  
8 month period ending with the month preceding  
9 such month, of yields on investment grade cor-  
10 porate bonds with varying maturities.

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 the election is made and  
20 all succeeding plan years, unless the election is  
21 revoked with the consent of the Secretary.

22 “(F) PUBLICATION REQUIREMENTS.—The  
23 Secretary shall publish for each month the cor-  
24 porate bond yield curve for such month and  
25 each of the rates determined under this para-

1 graph for such month. The Secretary shall also  
2 publish a description of the methodology used  
3 to determine such yield curve and such rates  
4 which is sufficiently detailed to enable plans to  
5 make reasonable projections regarding the yield  
6 curve and such rates for future months based  
7 on the plan's projection of future interest rates.

8 “(G) TRANSITION RULE.—

9 “(i) IN GENERAL.—Notwithstanding  
10 the preceding provisions of this paragraph,  
11 for plan years beginning in 2007 or 2008,  
12 the first, second, or third segment rate for  
13 a plan with respect to any month shall be  
14 equal to the sum of—

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

19 “(II) the product of the rate de-  
20 termined under the rules of section  
21 412(b)(5)(B)(ii)(II) (as in effect for  
22 plan years beginning in 2006), multi-  
23 plied by a percentage equal to 100  
24 percent minus the applicable percent-  
25 age.

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

6 “(3) MORTALITY TABLES.—

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

17 “(B) PERIODIC REVISION.—The Secretary  
 18 shall (at least every 10 years) make revisions in  
 19 any table in effect under subparagraph (A) to  
 20 reflect the actual experience of pension plans  
 21 and projected trends in such experience.

22 “(C) SUBSTITUTE MORTALITY TABLE.—

23 “(i) IN GENERAL.—Upon request by  
 24 the plan sponsor and approval by the Sec-  
 25 retary, a mortality table which meets the

1 requirements of clause (ii) shall be used in  
2 determining any present value or making  
3 any computation under this section during  
4 the 10-consecutive plan year period speci-  
5 fied in the request. A mortality table de-  
6 scribed in this clause shall cease to be in  
7 effect if the plan actuary determines at  
8 any time that such table does not meet the  
9 requirements of subclauses (I) and (II) of  
10 clause (ii).

11 “(ii) REQUIREMENTS.—A mortality  
12 table meets the requirements of this clause  
13 if the Secretary determines that—

14 “(I) there is a sufficient number  
15 of plan participants, and the pension  
16 plans have been maintained for a suf-  
17 ficient period of time, to have credible  
18 information necessary for purposes of  
19 subclause (II),

20 “(II) such table reflects the ac-  
21 tual experience of the pension plans  
22 maintained by the sponsor and pro-  
23 jected trends in general mortality ex-  
24 perience,

1                   “(III) except as provided by the  
2                   Secretary, such table will be used by  
3                   all plans maintained by the plan spon-  
4                   sor and all members of any controlled  
5                   group which includes the plan spon-  
6                   sor, and

7                   “(IV) such table is significantly  
8                   different from the table described in  
9                   subparagraph (A).

10                  “(iii) DEADLINE FOR DISPOSITION OF  
11                  APPLICATION.—Any mortality table sub-  
12                  mitted to the Secretary for approval under  
13                  this subparagraph shall be treated as in ef-  
14                  fect for the first plan year in the 10-year  
15                  period described in clause (i) unless the  
16                  Secretary, during the 180-day period be-  
17                  ginning on the date of such submission,  
18                  disapproves of such table and provides the  
19                  reasons that such table fails to meet the  
20                  requirements of clause (ii). The 180-day  
21                  period shall be extended for any period  
22                  during which the Secretary has requested  
23                  information from the plan sponsor and  
24                  such information has not been provided.

1           “(D) SEPARATE MORTALITY TABLES FOR  
 2           THE DISABLED.—Notwithstanding subpara-  
 3           graph (A)—

4           “(i) IN GENERAL.—The Secretary  
 5           shall establish mortality tables which may  
 6           be used (in lieu of the tables under sub-  
 7           paragraph (A)) under this subsection for  
 8           individuals who are entitled to benefits  
 9           under the plan on account of disability.  
 10          The Secretary shall establish separate ta-  
 11          bles for individuals whose disabilities occur  
 12          in plan years beginning before January 1,  
 13          1995, and for individuals whose disabilities  
 14          occur in plan years beginning on or after  
 15          such date.

16          “(ii) SPECIAL RULE FOR DISABILITIES  
 17          OCCURRING AFTER 1994.—In the case of  
 18          disabilities occurring in plan years begin-  
 19          ning after December 31, 1994, the tables  
 20          under clause (i) shall apply only with re-  
 21          spect to individuals described in such sub-  
 22          clause who are disabled within the meaning  
 23          of title II of the Social Security Act and  
 24          the regulations thereunder.

1                   “(iii) PERIODIC REVISION.—The Sec-  
 2                   retary shall (at least every 10 years) make  
 3                   revisions in any table in effect under clause  
 4                   (i) to reflect the actual experience of pen-  
 5                   sion plans and projected trends in such ex-  
 6                   perience.

7                   “(E) TRANSITION RULE.—Under regula-  
 8                   tions of the Secretary, any difference in as-  
 9                   sumptions as set forth in the mortality table  
 10                  specified in subparagraph (A) and assumptions  
 11                  as set forth in the mortality table described in  
 12                  section 412(l)(7)(C)(ii) (as in effect for plan  
 13                  years beginning in 2006) shall be phased in rat-  
 14                  ably over the first period of 5 plan years begin-  
 15                  ning in or after 2007 so as to be fully effective  
 16                  for the fifth plan year.

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

22                         “(A) the probability that future benefit  
 23                         payments under the plan will be made in the  
 24                         form of optional forms of benefits provided  
 25                         under the plan (including lump sum distribu-



tions, determined on the basis of the plan's experience and other related assumptions), and

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

“(5) APPROVAL OF LARGE CHANGES IN ACTUARIAL ASSUMPTIONS.—

“(A) IN GENERAL.—No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

“(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan only if—

“(i) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and mem-

bers of such sponsors' controlled groups  
 (as defined in section 4001(a)(14) of such  
 Act) which are covered by title IV of such  
 Act (disregarding plans with no unfunded  
 vested benefits) exceed \$50,000,000; and

“(ii) the change in assumptions (de-  
 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 ex-  
 ceeds \$5,000,000 and that is 5 percent or  
 more of the funding target of the plan be-  
 fore such change.

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

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

“(A) IN GENERAL.—In the case of a plan  
 to which this subsection applies for a plan year,  
 the funding target of the plan for the plan year  
 is equal to the present value of all liabilities to  
 participants and their beneficiaries under the  
 plan for the plan year, as determined by using  
 the additional actuarial assumption described in  
 subparagraph (B).

1           “(B) ADDITIONAL ACTUARIAL ASSUMP-  
 2           TIONS.—The actuarial assumptions used in de-  
 3           termining the valuation of the funding target  
 4           shall include an assumption that all partici-  
 5           pants who will be eligible to elect benefits dur-  
 6           ing the plan year and the 7 succeeding plan  
 7           years will elect benefits at such times and in  
 8           such forms as will result in the highest present  
 9           value of liabilities under subparagraph (A).

10          “(2) TARGET NORMAL COST OF AT-RISK  
 11          PLANS.—In the case of a plan to which this sub-  
 12          section applies for a plan year, the target normal  
 13          cost of the plan for such plan year shall be equal to  
 14          the present value of all benefits which are expected  
 15          to accrue or be earned under the plan during the  
 16          plan year, determined using the additional actuarial  
 17          assumptions described in paragraph (1)(B).

18          “(3) MINIMUM AMOUNT.—In no event shall—  
 19                  “(A) the at-risk target liability be less than  
 20                  the target liability, as determined without re-  
 21                  gard to this subsection, or

22                  “(B) the at-risk target normal cost be less  
 23                  than the target normal cost, as determined  
 24                  without regard to this subsection.

1 “(4) DETERMINATION OF AT-RISK STATUS.—

2 For purposes of this subsection, a plan is in at-risk  
3 status for a plan year if—

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

6 “(B) the funding target attainment per-  
7 centage for the plan year is less than 93 per-  
8 cent.

9 “(5) FINANCIALLY-WEAK EMPLOYER.—

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

13 “(i) as of the valuation date for each  
14 of the years during a period of at least 3  
15 consecutive plan years ending with the  
16 plan year—

17 “(I) the employer has an out-  
18 standing senior unsecured debt instru-  
19 ment which is rated lower than invest-  
20 ment grade by each of the nationally  
21 recognized statistical rating organiza-  
22 tions for corporate bonds that has  
23 issued a credit rating for such instru-  
24 ment, or

1                   “(II) if no such debt instrument  
 2                   has been rated by such an organiza-  
 3                   tion but 1 or more of such organiza-  
 4                   tions has made an issuer credit rating  
 5                   for such employer, all such organiza-  
 6                   tions which have so rated the em-  
 7                   ployer have rated such employer lower  
 8                   than investment grade, and

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

11                  “(B) CONTROLLED GROUP EXCEPTION.—

12                  If an employer treated as a financially-weak  
 13                  employer under subparagraph (A) is a member  
 14                  of a controlled group (as defined in section  
 15                  412(e)(4)), the employer shall not be treated as  
 16                  a financially-weak employer if a significant  
 17                  member (as determined under regulations pre-  
 18                  scribed by the Secretary) of such group has an  
 19                  outstanding senior unsecured debt instrument  
 20                  that is rated as being investment grade by an  
 21                  organization described in subparagraph (A).

22                  “(C) EMPLOYERS WITH NO RATINGS.—

23                  If—

24                         “(i) an employer has no debt instru-  
 25                         ment described in subparagraph (A)(i)

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

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

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

14               “(A) lower than the lowest rating of the  
15               employer by such organization for a preceding  
16               year in such period, or

17               “(B) the lowest rating used by such orga-  
18               nization.

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

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

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

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

“(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

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

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

1 “(C) YEARS BEFORE EFFECTIVE DATE.—

2 For purposes of this paragraph, plan years be-  
3 ginning before 2007 shall not be taken into ac-  
4 count.

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

6 “(A) IN GENERAL.—Except as provided in  
7 this paragraph, this subsection shall apply to  
8 any plan to which this section applies and  
9 which is in at-risk status for the plan year.

10 “(B) EXCEPTION FOR SMALL PLANS.—

11 This subsection shall not apply to a plan for a  
12 plan year if the plan was described in sub-  
13 section (g)(2)(B) for the preceding plan year,  
14 determined by substituting ‘500’ for ‘100’.

15 “(C) EXCEPTION FOR PLANS MAINTAINED

16 BY CERTAIN COOPERATIVES.—This subsection  
17 shall not apply to a plan for a plan year if the  
18 plan is maintained by more than 1 employer  
19 and at least 85 percent of the employers are—

20 “(i) rural cooperatives (as defined in  
21 section 401(k)(7)(B) without regard to  
22 clause (iv) thereof),

23 “(ii) rural telephone cooperative asso-  
24 ciations described in section 3(40)(B)(v) of  
25 the Employee Retirement Income Security



1 Act of 1974 which is not described in  
2 clause (i), or

3 “(iii) organizations described in sec-  
4 tion 1381(a) more than 50 percent of the  
5 ownership or capital and profits interests  
6 of which are held—

7 “(I) by producers of agricultural  
8 products, or

9 “(II) organizations described in  
10 section 1381(a) meeting the require-  
11 ments of subclause (I).

12 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
13 TIONS.—

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

18 “(2) INTEREST.—Any payment required under  
19 paragraph (1) for a plan year made after the valu-  
20 ation date for such plan year shall be increased by  
21 interest, for the period from the valuation date to  
22 the payment date, at the effective rate of interest for  
23 the plan for such plan year.

24 “(3) ACCELERATED QUARTERLY CONTRIBUTION  
25 SCHEDULE FOR UNDERFUNDED PLANS.—

1           “(A) INTEREST PENALTY FOR FAILURE TO  
 2           MEET ACCELERATED QUARTERLY PAYMENT  
 3           SCHEDULE.—A plan shall make the required in-  
 4           stallments under this paragraph for a plan year  
 5           if the plan had a funding shortfall for the pre-  
 6           ceding plan year. If the required installment is  
 7           not paid in full, then the minimum required  
 8           contribution for the plan year (as increased  
 9           under paragraph (2)) shall be further increased  
 10          by an amount equal to the interest on the  
 11          amount of the underpayment for the period of  
 12          the underpayment, using an interest rate equal  
 13          to the excess of—

14               “(i) 175 percent of the Federal mid-  
 15               term rate (as in effect under section 1274  
 16               for the 1st month of such plan year), over  
 17               “(ii) the effective rate of interest for  
 18               the plan for the plan year.

19           “(B) AMOUNT OF UNDERPAYMENT, PE-  
 20           RIOD OF UNDERPAYMENT.—For purposes of  
 21           subparagraph (A)—

22               “(i) AMOUNT.—The amount of the  
 23               underpayment shall be the excess of—

24                       “(I) the required installment,  
 25                       over

1                   “(II) the amount (if any) of the  
2                   installment contributed to or under  
3                   the plan on or before the due date for  
4                   the installment.

5                   “(ii) PERIOD OF UNDERPAYMENT.—  
6                   The period for which any interest is  
7                   charged under this paragraph with respect  
8                   to any portion of the underpayment shall  
9                   run from the due date for the installment  
10                  to the date on which such portion is con-  
11                  tributed to or under the plan.

12                  “(iii) ORDER OF CREDITING CON-  
13                  TRIBUTIONS.—For purposes of clause  
14                  (i)(II), contributions shall be credited  
15                  against unpaid required installments in the  
16                  order in which such installments are re-  
17                  quired to be paid.

18                  “(C) NUMBER OF REQUIRED INSTALL-  
19                  MENTS; DUE DATES.—For purposes of this  
20                  paragraph—

21                         “(i) PAYABLE IN 4 INSTALLMENTS.—  
22                         There shall be 4 required installments for  
23                         each plan year.

24                         “(ii) TIME FOR PAYMENT OF IN-  
25                         STALLMENTS.—The due dates for required

1 installments are set forth in the following  
 2 table:

<b>In the case of the following required installment:</b>	<b>The due date is:</b>
1st .....	April 15
2nd .....	July 15
3rd .....	October 15
4th .....	January 15 of the following year.

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

5 “(i) IN GENERAL.—The amount of  
 6 any required installment shall be 25 per-  
 7 cent of the required annual payment.

8 “(ii) REQUIRED ANNUAL PAYMENT.—  
 9 For purposes of clause (i), the term ‘re-  
 10 quired annual payment’ means the lesser  
 11 of—

12 “(I) 90 percent of the minimum  
 13 required contribution (without regard  
 14 to any waiver under section 302(c)) to  
 15 the plan for the plan year under this  
 16 section, or

17 “(II) in the case of a plan year  
 18 beginning after 2007, 100 percent of  
 19 the minimum required contribution  
 20 (without regard to any waiver under

1 section 302(c)) to the plan for the  
2 preceding plan year.

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

6 “(E) FISCAL YEARS AND SHORT YEARS.—

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

13 “(ii) SHORT PLAN YEAR.—This sub-  
14 paragraph shall be applied to plan years of  
15 less than 12 months in accordance with  
16 regulations prescribed by the Secretary of  
17 the Treasury.

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

20 “(A) IN GENERAL.—A plan to which this  
21 paragraph applies shall be treated as failing to  
22 pay the full amount of any required installment  
23 under paragraph (3) to the extent that the  
24 value of the liquid assets paid in such install-  
25 ment is less than the liquidity shortfall (wheth-

er or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

“(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to a plan (other than a plan that would be described in subsection (g)(2)(B) if ‘100’ were substituted for ‘500’ therein) which—

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

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

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

“(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan

year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

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

“(i) LIQUIDITY SHORTFALL.—The term ‘liquidity shortfall’ means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

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

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

“(ii) BASE AMOUNT.—

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

“(II) SPECIAL RULE.—If the amount determined under subclause

1 (I) exceeds an amount equal to 2  
 2 times the sum of the adjusted dis-  
 3 bursements from the plan for the 36  
 4 months ending on the last day of the  
 5 quarter and an enrolled actuary cer-  
 6 tifies to the satisfaction of the Sec-  
 7 retary that such excess is the result of  
 8 nonrecurring circumstances, the base  
 9 amount with respect to such quarter  
 10 shall be determined without regard to  
 11 amounts related to those nonrecurring  
 12 circumstances.

13 “(iii) DISBURSEMENTS FROM THE  
 14 PLAN.—The term ‘disbursements from the  
 15 plan’ means all disbursements from the  
 16 trust, including purchases of annuities,  
 17 payments of single sums and other bene-  
 18 fits, and administrative expenses.

19 “(iv) ADJUSTED DISBURSEMENTS.—  
 20 The term ‘adjusted disbursements’ means  
 21 disbursements from the plan reduced by  
 22 the product of—

23 “(I) the plan’s funding target at-  
 24 tainment percentage for the plan year,  
 25 and



1 “(II) the sum of the purchases of  
 2 annuities, payments of single sums,  
 3 and such other disbursements as the  
 4 Secretary shall provide in regulations.

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

9 “(vi) QUARTER.—The term ‘quarter’  
 10 means, with respect to any required install-  
 11 ment, the 3-month period preceding the  
 12 month in which the due date for such in-  
 13 stallment occurs.

14 “(F) REGULATIONS.—The Secretary may  
 15 prescribe such regulations as are necessary to  
 16 carry out this paragraph.

17 “(k) IMPOSITION OF LIEN WHERE FAILURE TO  
 18 MAKE REQUIRED CONTRIBUTIONS.—

19 “(1) IN GENERAL.—In the case of a plan cov-  
 20 ered under section 4021 of the Employee Retirement  
 21 Income Security Act of 1974 and to which this sub-  
 22 section applies (as provided under paragraph (2)),  
 23 if—

24 “(A) any person fails to make a contribu-  
 25 tion payment required by section 412 and this

1 section before the due date for such payment,  
2 and

3 “(B) the unpaid balance of such payment  
4 (including interest), when added to the aggregate  
5 unpaid balance of all preceding such payments  
6 for which payment was not made before  
7 the due date (including interest), exceeds  
8 \$1,000,000,

9 then there shall be a lien in favor of the plan in the  
10 amount determined under paragraph (3) upon all  
11 property and rights to property, whether real or personal,  
12 belonging to such person and any other person  
13 who is a member of the same controlled group  
14 of which such person is a member.

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

21 “(3) AMOUNT OF LIEN.—For purposes of paragraph  
22 (1), the amount of the lien shall be equal to  
23 the aggregate unpaid balance of contribution payments  
24 required under this section and section 302

1 for which payment has not been made before the due  
2 date.

3 “(4) NOTICE OF FAILURE; LIEN.—

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

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

18 “(C) CERTAIN RULES TO APPLY.—Any  
19 amount with respect to which a lien is imposed  
20 under paragraph (1) shall be treated as taxes  
21 due and owing the United States and rules  
22 similar to the rules of subsections (c), (d), and  
23 (e) of section 4068 of the Employee Retirement  
24 Income Security Act of 1974 shall apply with

1           respect to a lien imposed by subsection (a) and  
2           the amount with respect to such lien.

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

10          “(6) DEFINITIONS.—For purposes of this sub-  
11          section—

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

18                 “(B) DUE DATE; REQUIRED INSTALL-  
19                 MENT.—The terms ‘due date’ and ‘required in-  
20                 stallment’ have the meanings given such terms  
21                 by subsection (j), except that in the case of a  
22                 payment other than a required installment, the  
23                 due date shall be the date such payment is re-  
24                 quired to be made under section 303.

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after 2006.

13 SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EM-  
14 PLOYER PLANS.

(a) IN GENERAL.—Part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to rules relating to minimum funding standards) is amended by adding at the end the following new subpart:

19     **“Subpart B—Limitations on Benefit Improvements**  
20                     **by Single-Employer Plans**

“Sec. 436. Funding-based limits on benefits and benefit accruals under single-employer plans.

1 **“SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BEN-**  
 2 **EFIT ACCRUALS UNDER SINGLE-EMPLOYER**  
 3 **PLANS.**

4 “(a) GENERAL RULE.—For purposes of section  
 5 401(a)(29), a defined benefit plan which is a single-em-  
 6 ployer plan shall be treated as meeting the requirements  
 7 of this section if the plan meets the requirements of sub-  
 8 sections (b), (c), and (d).

9 “(b) LIMITATIONS ON PLAN AMENDMENTS INCREAS-  
 10 ING LIABILITY FOR BENEFITS.—

11 “(1) IN GENERAL.—Except as provided in sub-  
 12 section (e), no amendment to a single-employer plan  
 13 which has the effect of increasing liabilities of the  
 14 plan by reason of increases in benefits, establish-  
 15 ment of new benefits, changing the rate of benefit  
 16 accrual, or changing the rate at which benefits be-  
 17 come nonforfeitable may take effect during any plan  
 18 year if the adjusted funding target attainment per-  
 19 centage as of the valuation date of the plan for such  
 20 plan year is—

21 “(A) less than 80 percent, or

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

24 “(2) EXEMPTION.—Paragraph (1) shall cease  
 25 to apply with respect to any plan year, effective as  
 26 of the first date of the plan year (or if later, the ef-

1       fective date of the amendment), upon payment by  
 2       the plan sponsor of a contribution (in addition to  
 3       any minimum required contribution under section  
 4       430) equal to—

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

9               “(B) in the case of paragraph (1)(B), the  
 10              amount sufficient to result in a funding target  
 11              attainment percentage of 80 percent.

12             “(3) EXCEPTION FOR CERTAIN BENEFIT IN-  
 13             CREASES.—Paragraph (1) shall not apply to any  
 14             amendment which provides for an increase in bene-  
 15             fits under a formula which is not based on a partici-  
 16             pant’s compensation, but only if the rate of such in-  
 17             crease is not in excess of the contemporaneous rate  
 18             of increase in average wages of participants covered  
 19             by the amendment.

20             “(c) LIMITATIONS ON ACCELERATED BENEFIT DIS-  
 21             TRIBUTIONS.—

22             “(1) IN GENERAL.—The requirements of this  
 23             subsection are met if the plan provides that, with re-  
 24             spect to any plan year—

1           “(A) if the plan’s adjusted funded target  
2           liability percentage as of the valuation date for  
3           the preceding plan year was less than 60 per-  
4           cent and the preceding plan year is not other-  
5           wise in a prohibited period, the plan sponsor  
6           shall, in addition to any other contribution re-  
7           quired under section 430, contribute for the  
8           current plan year and each succeeding plan  
9           year in the prohibited period with respect to the  
10          current plan year the amount (if any) which,  
11          when added to the portion of the minimum re-  
12          quired contribution for the plan year described  
13          in subparagraphs (B) and (C) of section  
14          430(a)(1), is sufficient to result in an adjusted  
15          funded target liability percentage for the plan  
16          year of 60 percent, and

17          “(B) no prohibited payments will be made  
18          during a prohibited period.

19          “(2) PROHIBITED PAYMENT.—For purpose of  
20          this subsection—

21                 “(A) IN GENERAL.—The term ‘prohibited  
22                 payment’ means—

23                         “(i) any payment, in excess of the  
24                         monthly amount paid under a single life  
25                         annuity (plus any social security supple-



ments described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during a prohibited period,

“(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

“(iii) any other payment specified by the Secretary by regulations.

“(B) EXCEPTION FOR CERTAIN PAYMENTS.—In the case of any prohibited period described in paragraph (3)(A), the term ‘prohibited payment’ shall not include any payment if the amount of the payment does not exceed the lesser of—

“(i) 50 percent of the amount of the payment which could be made without regard to this subsection, or

“(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under sec-

1                   tion 4022 of the Employee Retirement In-  
2                   come Security Act of 1974.

3                   The exception under this subparagraph shall  
4                   only apply once with respect to any participant,  
5                   except that, for purposes of this sentence, a  
6                   participant and any beneficiary on his behalf  
7                   (including an alternate payee, as defined in sec-  
8                   tion 414(p)(8)) shall be treated as 1 partici-  
9                   pant. If the accrued benefit of a participant is  
10                  allocated to such an alternate payee and 1 or  
11                  more other persons, the amount under clause  
12                  (ii) shall be allocated among such persons in  
13                  the same manner as the accrued benefit is allo-  
14                  cated unless the qualified domestic relations  
15                  order (as defined in section 414(p)(1)(A)) pro-  
16                  vides otherwise.

17               “(3) PROHIBITED PERIOD.—For purposes of  
18               paragraph (1), the term ‘prohibited period’ means—

19                   “(A) except as provided in paragraph (4),  
20                   if a plan sponsor is required to make the con-  
21                   tribution for the current plan year under para-  
22                   graph (1), the period beginning on the 1st day  
23                   of the plan year and ending on the last day of  
24                   the 1st period of 2 consecutive plan years (be-  
25                   ginning on or after such 1st day) for which the

1 plan's adjusted funded target liability percent-  
 2 age was at least 60 percent,

3 “(B) any period the plan sponsor is in  
 4 bankruptcy, or

5 “(C) any period during which the plan has  
 6 a liquidity shortfall (as defined in section  
 7 430(j)(4)(E)(i)).

8 The prohibited period for purposes of subparagraph  
 9 (B) shall not include any portion of a plan year  
 10 (even if the plan sponsor is in bankruptcy during  
 11 such period) which occurs on or after the date the  
 12 plan's enrolled actuary certifies that, as of the valu-  
 13 ation date for the plan year, the plan's adjusted  
 14 funded target liability percentage is at least 100 per-  
 15 cent.

16 “(4) SATISFACTION OF REQUIREMENT BEFORE  
 17 CLOSE OF PLAN YEAR.—If, before the close of the  
 18 current plan year—

19 “(A) the plan sponsor makes the contribu-  
 20 tion required to be made under paragraph (1),  
 21 or

22 “(B) the plan's enrolled actuary certifies  
 23 that, as of the valuation date for the plan year,  
 24 the adjusted funded target liability percentage  
 25 of the plan is at least 60 percent,

1       this subsection shall be applied as if no prohibited  
 2       period had begun as of the beginning of such year  
 3       and the plan shall, under rules described by the Sec-  
 4       retary, restore any payments not made during the  
 5       prohibited period in effect before the application of  
 6       this paragraph.

7       “(d) LIMITATION ON BENEFIT ACCRUALS FOR  
 8 PLANS WITH SEVERE FUNDING SHORTFALLS.—

9               “(1) IN GENERAL.—Except as provided in sub-  
 10       section (e), a single-employer plan shall provide that  
 11       all future benefit accruals under the plan shall cease  
 12       during a severe funding shortfall period, but only to  
 13       the extent the cessation of such accruals would have  
 14       been permitted under section 411(d)(6) if the ces-  
 15       sation had been implemented by a plan amendment  
 16       adopted immediately before the severe funding short-  
 17       fall period.

18              “(2) SEVERE FUNDING SHORTFALL PERIOD.—  
 19       For purposes of paragraph (1), the term ‘severe  
 20       funding shortfall period’ means in the case of a plan  
 21       the adjusted funding target attainment percentage  
 22       of which as of the valuation date of the plan for any  
 23       plan year is less than 60 percent, the period—

24                   “(A) beginning on the 1st day of the suc-  
 25       ceeding plan year, and

1           “(B) ending on the date the plan’s enrolled  
2           actuary certifies that the plan’s funding target  
3           attainment percentage is at least 60 percent.

4           “(3) OPPORTUNITY FOR INCREASED FUND-  
5           ING.—For purposes of paragraph (2)(A), a plan  
6           shall not be treated as described in such paragraph  
7           for a plan year if the plan’s enrolled actuary certifies  
8           that the plan sponsor has before the end of the plan  
9           year contributed (in addition to any minimum re-  
10          quired contribution under section 430) the amount  
11          sufficient to result in an adjusted funding target at-  
12          tainment percentage as of the valuation date for the  
13          plan year of 60 percent.

14          “(e) EXCEPTION FOR CERTAIN COLLECTIVELY BAR-  
15          GAINED BENEFITS.—In the case of a plan maintained  
16          pursuant to a collective bargaining agreement between em-  
17          ployee representatives and the plan sponsor and in effect  
18          before the beginning of the first day on which a limitation  
19          would otherwise apply under subsections (b), (c), or (d)—

20               “(1) such limitations shall not apply to any  
21               amendment, prohibited payment, or accrual with re-  
22               spect to such plan, but

23               “(2) the plan sponsor shall contribute (in addi-  
24               tion to any minimum required contribution under  
25               section 430) the amount sufficient to result in a

1 funding target attainment percentage (as of the  
 2 valuation date for the plan year in which any such  
 3 limitation would otherwise apply) equal to the per-  
 4 centage necessary to prevent the limitation from ap-  
 5 plying.

6 “(f) RULES RELATING TO REQUIRED CONTRIBU-  
 7 TIONS.—

8 “(1) SECURITY MAY BE PROVIDED.—

9 “(A) IN GENERAL.—For purposes of this  
 10 section, the adjusted funding target attainment  
 11 percentage shall be determined by treating as  
 12 an asset of the plan any security provided by a  
 13 plan sponsor in a form meeting the require-  
 14 ments of subparagraph (B) .

15 “(B) FORM OF SECURITY.—The security  
 16 required under subparagraph (A) shall consist  
 17 of—

18 “(i) a bond issued by a corporate sur-  
 19 ety company that is an acceptable surety  
 20 for purposes of section 412 of the Em-  
 21 ployee Retirement Income Security Act of  
 22 1974,

23 “(ii) cash, or United States obliga-  
 24 tions which mature in 3 years or less, held

1 in escrow by a bank or similar financial in-  
2 stitution, or

3 “(iii) such other form of security as is  
4 satisfactory to the Secretary and the par-  
5 ties involved.

6 “(C) ENFORCEMENT.—Any security pro-  
7 vided under subparagraph (A) may be perfected  
8 and enforced at any time after the earlier of—

9 “(i) the date on which the plan termi-  
10 nates,

11 “(ii) if there is a failure to make a  
12 payment of the minimum required con-  
13 tribution for any plan year beginning after  
14 the security is provided, the due date for  
15 the payment under section 430(j), or

16 “(iii) if the adjusted funding target  
17 attainment percentage is less than 60 per-  
18 cent for a consecutive period of 7 years,  
19 the valuation date for the last year in the  
20 period.

21 “(D) RELEASE OF SECURITY.—The secu-  
22 rity shall be released (and any amounts there-  
23 under shall be refunded together with any inter-  
24 est accrued thereon) at such time as the Sec-  
25 retary may prescribe in regulations, including

1 regulations for partial releases of the security  
2 by reason of increases in the funding target at-  
3 tainment percentage.

4 “(2) PREFUNDING BALANCE MAY NOT BE  
5 USED.—No prefunding balance under section 430(f)  
6 may be used to satisfy any required contribution  
7 under this section.

8 “(3) TREATMENT AS UNPAID MINIMUM RE-  
9 QUIRED CONTRIBUTION.—The amount of any re-  
10 quired contribution which a plan sponsor fails to  
11 make under subsection (b) or (d) for any plan year  
12 shall be treated as an unpaid minimum required  
13 contribution for purposes of subsection (j) and (k) of  
14 section 430 and for purposes of section 4971.

15 “(f) NEW PLANS.—Subsections (b) and (d) shall not  
16 apply to a plan for the first 5 plan years of the plan. For  
17 purposes of this subsection, the reference in this sub-  
18 section to a plan shall include a reference to any prede-  
19 cessor plan. Notwithstanding the preceding sentence, sub-  
20 section (b) shall apply if the plan is in bankruptcy during  
21 any of such years.

22 “(g) PRESUMED UNDERFUNDING FOR PURPOSES OF  
23 BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUND-  
24 ING STATUS.—



1           “(1) PRESUMPTION OF CONTINUED UNDER-  
2 FUNDING.—In any case in which a benefit limitation  
3 under subsection (b), (c), or (d) has been applied to  
4 a plan with respect to the plan year preceding the  
5 current plan year, the adjusted funding target at-  
6 tainment percentage of the plan as of the valuation  
7 date of the plan for the current plan year shall be  
8 presumed to be equal to the adjusted funding target  
9 attainment percentage of the plan as of the valu-  
10 ation date of the plan for the preceding plan year  
11 until the enrolled actuary of the plan certifies the  
12 actual adjusted funding target attainment percent-  
13 age of the plan as of the valuation date of the plan  
14 for the current plan year.

15           “(2) PRESUMPTION OF UNDERFUNDING AFTER  
16 10TH MONTH.—In any case in which no such certifi-  
17 cation is made with respect to the plan before the  
18 first day of the 10th month of the current plan year,  
19 for purposes of subsections (b), (c), and (d), the  
20 plan’s adjusted funding target attainment percent-  
21 age shall be conclusively presumed to be less than 60  
22 percent as of the first day of such 10th month, and  
23 such day shall be deemed, for purposes of such sub-  
24 sections, to be the valuation date of the plan for the  
25 current plan year.

1       “(h) TREATMENT OF PLAN AS OF CLOSE OF PRO-  
 2       HIBITED OR CESSATION PERIOD.—For purposes of apply-  
 3       ing this part—

4               “(1) OPERATION OF PLAN AFTER PERIOD.—  
 5       Unless the plan provides otherwise, payments and  
 6       accruals will resume effective as of the day following  
 7       the close of a period of limitation of payment or ac-  
 8       cruel of benefits under subsection (c) or (d).

9               “(2) TREATMENT OF AFFECTED BENEFITS.—  
 10       Nothing in this subsection shall be construed as af-  
 11       fecting the plan’s treatment of benefits which would  
 12       have been paid or accrued but for this section.

13       “(i) FUNDING TARGET ATTAINMENT PERCENT-  
 14       AGE.—For purposes of this section—

15               “(1) IN GENERAL.—The term ‘funding target  
 16       attainment percentage’ has the same meaning given  
 17       such term by section 430(d)(2).

18               “(2) ADJUSTED FUNDED TARGET LIABILITY  
 19       PERCENTAGE.—The term ‘adjusted funded target li-  
 20       ability percentage’ means the funded target liability  
 21       percentage which is determined under subparagraph  
 22       (A) by increasing each of the amounts under sub-  
 23       paragraphs (A) and (B) of section 430(d)(2) by the  
 24       aggregate amount of purchases of annuities, pay-  
 25       ments of single sums, and such other disbursements

1 as the Secretary shall prescribe in regulations, which  
2 were made by the plan during the preceding 2 plan  
3 years.”.

4 (b) EFFECTIVE DATES.—

5 (1) BENEFIT RESTRICTIONS.—Except as pro-  
6 vided in paragraph (2)—

7 (A) IN GENERAL.—Subject to subpara-  
8 graph (B), the amendments made by this sec-  
9 tion shall apply with respect to plan years be-  
10 ginning after 2006.

11 (B) BENEFIT INCREASES.—Section 436(a)  
12 of the Internal Revenue Code of 1986 (as added  
13 by subsection (a)) shall apply with respect to  
14 plan years beginning after 2007.

15 (2) COLLECTIVE BARGAINING EXCEPTION.—In  
16 the case of a plan maintained pursuant to 1 or more  
17 collective bargaining agreements between employee  
18 representatives and 1 or more employers ratified  
19 January 1, 2007, the amendments made by this sec-  
20 tion shall not apply to plan years beginning before  
21 the earlier of—

22 (A) the later of—

23 (i) the date on which the last collec-  
24 tive bargaining agreement relating to the  
25 plan terminates (determined without re-

gard to any extension thereof agreed to  
after the date of the enactment of this  
Act), or

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

(B) January 1, 2010.

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

**SEC. 114. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.**

(a) IN GENERAL.—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 sub-

1 section (o), and in the case of any other plan” after  
 2 “section 501(a),”, and

3 (2) by inserting at the end the following new  
 4 subsection:

5 “(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER  
 6 PLANS.—For purposes of subsection (a)(1)(A)—

7 “(1) IN GENERAL.—In the case of a defined  
 8 benefit plan to which subsection (a)(1)(A) applies  
 9 (other than a multiemployer plan), the amount de-  
 10 termined under this subsection for any taxable year  
 11 shall be equal to the greater of—

12 “(A) the sum of the amounts determined  
 13 under paragraph (2) with respect to each plan  
 14 year ending with or within the taxable year, or

15 “(B) the sum of the minimum required  
 16 contributions under section 430 for such plan  
 17 years.

18 “(2) DETERMINATION OF AMOUNT.—

19 “(A) IN GENERAL.—The amount deter-  
 20 mined under this paragraph for any plan year  
 21 shall be equal to the excess (if any) of—

22 “(i) the sum of—

23 “(I) the funding target for the  
 24 plan year,

1 “(II) the target normal cost for  
2 the plan year, and

3 “(III) the cushion amount for the  
4 plan year, over

5 “(ii) the value (determined under sec-  
6 tion 430(g)(2)) of the assets of the plan  
7 which are held by the plan as of the valu-  
8 ation date for the plan year.

9 “(B) SPECIAL RULE FOR CERTAIN EM-  
10 PLOYERS.—If section 430(i) does not apply to  
11 a plan for a plan year, the amount determined  
12 under subparagraph (A)(i) for the plan year  
13 shall in no event be less than the sum of—

14 “(i) the funding target for the plan  
15 year (determined as if section 430(i) ap-  
16 plied to the plan), plus

17 “(ii) the target normal cost for the  
18 plan year (as so determined).

19 “(3) CUSHION AMOUNT.—For purposes of para-  
20 graph (2)(A)(i)(III)—

21 “(A) IN GENERAL.—The cushion amount  
22 for any plan year is the sum of—

23 “(i) 80 percent of the funding target  
24 for the plan year, and

1 “(ii) the amount by which the funding  
2 target for the plan year would increase if  
3 the plan were to take into account—

4 “(I) increases in compensation  
5 which are expected to occur in suc-  
6 ceeding plan years, or

7 “(II) if the plan does not base  
8 benefits for service to date on com-  
9 pensation, increases in benefits which  
10 are expected to occur in succeeding  
11 plan years (determined on the basis of  
12 the average annual increase in bene-  
13 fits over the 6 immediately preceding  
14 plan years).

15 “(B) LIMITATIONS.—

16 “(i) IN GENERAL.—In making the  
17 computation under subparagraph (A)(ii),  
18 the plan’s actuary shall assume that the  
19 limitations under subsection (l) and section  
20 415(b) shall apply.

21 “(ii) EXPECTED INCREASES.—In the  
22 case of a plan year during which a plan is  
23 covered under section 4021 of the Em-  
24 ployee Retirement Income Security Act of  
25 1974, the plan’s actuary may, notwith-

1 standing subsection (j) or (l), take into ac-  
2 count increases in the limitations which are  
3 expected to occur in succeeding plan years.

4 “(4) SPECIAL RULES FOR PLANS WITH 100 OR  
5 FEWER PARTICIPANTS.—

6 “(A) IN GENERAL.—For purposes of deter-  
7 mining the amount under paragraph (3) for any  
8 plan year, in the case of a plan which has 100  
9 or fewer participants for the plan year, the li-  
10 ability of the plan attributable to benefit in-  
11 creases for highly compensated employees (as  
12 defined in section 414(q)) resulting from a plan  
13 amendment which is made or becomes effective,  
14 whichever is later, within the last 2 years shall  
15 not be taken into account in determining the  
16 target liability.

17 “(B) RULE FOR DETERMINING NUMBER  
18 OF PARTICIPANTS.—For purposes of deter-  
19 mining the number of plan participants, all de-  
20 fined benefit plans maintained by the same em-  
21 ployer (or any member of such employer’s con-  
22 trolled group (within the meaning of section  
23 412(f)(4))) shall be treated as one plan, but  
24 only participants of such member or employer  
25 shall be taken into account.



1           “(5) SPECIAL RULE FOR TERMINATING  
2 PLANS.—In the case of a plan which, subject to sec-  
3 tion 4041 of the Employee Retirement Income Secu-  
4 rity Act of 1974, terminates during the plan year,  
5 the amount determined under paragraph (2) shall in  
6 no event be less than the amount required to make  
7 the plan sufficient for benefit liabilities (within the  
8 meaning of section 4041(d) of such Act).

9           “(6) ACTUARIAL ASSUMPTIONS.—Any computa-  
10 tion under this subsection for any plan year shall  
11 use the same actuarial assumptions which are used  
12 for the plan year under section 430.

13           “(7) DEFINITIONS.—Any term used in this sub-  
14 section which is also used in section 430 shall have  
15 the same meaning given such term by section 430.”.

16       (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
17 WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
18 DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of  
19 such Code, as amended by this Act, is amended by adding  
20 at the end the following new clause:

21                   “(iv) GUARANTEED PLANS.—In apply-  
22 ing this paragraph, any single-employer  
23 plan covered under section 4021 of the  
24 Employee Retirement Income Security Act  
25 of 1974 shall not be taken into account.”.

1 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) The last sentence of section 404(a)(1)(A) of  
3 such Code is amended by striking “section 412”  
4 each place it appears and inserting “section 431”.

5 (2) Section 404(a)(1)(B) of such Code is  
6 amended—

7 (A) by striking “In the case of a plan” and  
8 inserting “In the case of a multiemployer plan”,

9 (B) by striking “section 412(c)(7)” each  
10 place it appears and inserting “section  
11 431(c)(6)”,

12 (C) by striking “section 412(c)(7)(B)” and  
13 inserting “section 431(c)(6)(A)(ii)”,

14 (D) by striking “section 412(c)(7)(A)” and  
15 inserting “section 431(c)(6)(A)(i)”, and

16 (E) by striking “section 412” and insert-  
17 ing “section 431”.

18 (3) Section 404(a)(7)(A) of such Code, as  
19 amended by this Act, is amended—

20 (A) by adding at the end of subparagraph

21 (A) the following new sentence: “In the case of  
22 a defined benefit plan which is a single em-  
23 ployer plan, the amount necessary to satisfy the  
24 minimum funding standard provided by section

1           412 shall not be less than the plan’s funding  
2           shortfall determined under section 430.”, and

3                   (B) by striking subparagraph (D) and in-  
4           serting:

5                   “(D) INSURANCE CONTRACT PLANS.—For  
6           purposes of this paragraph, a plan described in  
7           section 412(g)(3) shall be treated as a defined  
8           benefit plan.”.

9           (4) Section 404A(g)(3)(A) of such Code is  
10          amended by striking “paragraphs (3) and (7) of sec-  
11          tion 412(c)” and inserting “paragraphs (3) and (6)  
12          of section 431(c)”.

13          (d) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to plan years beginning after De-  
15          cember 31, 2006.

16   **SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.**

17          (a) AMENDMENTS RELATED TO QUALIFICATION RE-  
18          QUIREMENTS.—

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

21                  “(29) BENEFIT LIMITATIONS ON PLANS IN AT-  
22          RISK STATUS.—In the case of a defined benefit plan  
23          (other than a multiemployer plan) to which the re-  
24          quirements of section 412 apply, the trust of which  
25          the plan is a part shall not constitute a qualified

1 trust under this subsection unless the plan meets the  
2 requirements of section 436.”.

3 (2) Section 401(a)(32) of such Code is amend-  
4 ed—

5 (A) in subparagraph (A), by striking  
6 “412(m)(5)” each place it appears and insert-  
7 ing “section 430(j)(4)”, and

8 (B) in subparagraph (C), by striking “sec-  
9 tion 412(m)” and inserting “section 430(j)”.

10 (3) Section 401(a), as amended by this Act, is  
11 amended by striking paragraph (33) and by redesign-  
12 ating paragraphs (34) and (35) as paragraph (33)  
13 and (34).

14 (b) VESTING RULES.—Section 411 of such Code is  
15 amended—

16 (1) by striking “section 412(c)(8)” in sub-  
17 section (a)(3)(C) and inserting “section 412(d)(2)”,

18 (2) in subsection (b)(1)(F)—

19 (A) by striking “paragraphs (2) and (3) of  
20 section 412(i)” in clause (ii) and inserting  
21 “subparagraphs (B) and (C) of section  
22 412(e)(3)”, and

23 (B) by striking “paragraphs (4), (5), and  
24 (6) of section 412(i)” and inserting “subpara-

1           graphs (D), (E), and (F) of section 412(e)(3)”,  
 2           and

3           (3) by striking “section 412(c)(8)” in sub-  
 4           section (d)(6)(A) and inserting “section 412(e)(2)”.

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

8                               “(I) the amount determined  
 9                               under section 431(c)(6)(A)(i) in the  
 10                              case of a multiemployer plan (and the  
 11                              sum of the funding shortfall and tar-  
 12                              get normal cost determined under sec-  
 13                              tion 430 in the case of any other  
 14                              plan), over”.

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

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

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

21                               “(A) the lesser of—

22                               “(i) the fair market value of the  
 23                              plan’s assets (reduced by the pre-funding  
 24                              balance and the funding standard carry-

1 over balance, as determined under section  
2 430(f)), or

3 “(ii) the value of plan assets as deter-  
4 mined under section 430(g)(3) after reduc-  
5 tion under section 430(f), over

6 “(B) 125 percent of the sum of the fund-  
7 ing shortfall and the target normal cost deter-  
8 mined under section 430 for such plan year.”.

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

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

15 (e) EXCISE TAXES.—

16 (1) IN GENERAL.—Subsections (a) and (b) of  
17 section 4971 of such Code are amended to read as  
18 follows:

19 “(a) INITIAL TAX.—If at any time during any taxable  
20 year an employer maintains a plan to which section 412  
21 applies, there is hereby imposed for the taxable year a tax  
22 equal to—

23 “(1) in the case of a single-employer plan, 10  
24 percent of the aggregate unpaid minimum required  
25 contributions for all plan years remaining unpaid as

1 of the end of any plan year ending with or within  
2 the taxable year, and

3 “(2) in the case of a multiemployer plan, 5 per-  
4 cent of the accumulated funding deficiency deter-  
5 mined under section 431 as of the end of any plan  
6 year ending with or within the taxable year.

7 “(b) ADDITIONAL TAX.—If—

8 “(1) a tax is imposed under subsection (a)(1)  
9 on any unpaid required minimum contribution and  
10 such amount remains unpaid as of the close of the  
11 taxable period, or

12 “(2) a tax is imposed under subsection (a)(2)  
13 on any accumulated funding deficiency and the accu-  
14 mulated funding deficiency is not corrected within  
15 the taxable period,

16 there is hereby imposed a tax equal to 100 percent of the  
17 unpaid minimum required contribution or accumulated  
18 funding deficiency, whichever is applicable, to the extent  
19 not so paid or corrected.”.

20 (2) Section 4971(c) of such Code is amended—

21 (A) by striking “the last two sentences of  
22 section 412(a)” in paragraph (1) and inserting  
23 “section 431”, and

24 (B) by adding at the end the following new  
25 paragraph:

1           “(4) UNPAID MINIMUM REQUIRED CONTRIBU-  
2           TION.—

3                   “(A) IN GENERAL.—The term ‘unpaid  
4           minimum required contribution’ means, with re-  
5           spect to any plan year, any minimum required  
6           contribution under section 430 for the plan  
7           year which is not paid on or before the due date  
8           (as determined under section 430(j)(1)) for the  
9           plan year.

10                   “(B) ORDERING RULE.—Any payment to  
11           or under a plan for any plan year shall be allo-  
12           cated first to unpaid minimum required con-  
13           tributions for all preceding plan years on a  
14           first-in, first-out basis and then to the min-  
15           imum required contribution under section 430  
16           for the plan year.”.

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

20           (4) Section 4971(f)(1) of such Code is amend-  
21           ed—

22                   (A) by striking “section 412(m)(5)” and  
23           inserting “section 430(j)(4)”, and

24                   (B) by striking “section 412(m)” and in-  
25           serting “section 430(j)”.



1           (5) Section 4972(c)(7) of such Code is amended  
 2       by striking “except to the extent that such contribu-  
 3       tions exceed the full-funding limitation (as defined in  
 4       section 412(c)(7), determined without regard to sub-  
 5       paragraph (A)(i)(I) thereof)” and inserting “except,  
 6       in the case of a multiemployer plan, to the extent  
 7       that such contributions exceed the full-funding limi-  
 8       tation (as defined in section 431(c)(6))”.

9       (f) REPORTING REQUIREMENTS.—Section 6059(b) of  
 10 such Code is amended—

11           (1) by striking “the accumulated funding defi-  
 12       ciency (as defined in section 412(a))” in paragraph  
 13       (2) and inserting “the minimum required contribu-  
 14       tion determined under section 430, or the accumu-  
 15       lated funding deficiency determined under section  
 16       431,” and

17           (2) by striking paragraph (3)(B) and inserting:  
 18               “(B) the requirements for reasonable actu-  
 19       arial assumptions under section 430(h)(1) or  
 20       431(c)(3), whichever are applicable, have been  
 21       complied with.”.

1 **Subtitle C—Interest Rate Assump-**  
 2 **tions and Deductible Amounts**  
 3 **for 2006**

4 **SEC. 121. EXTENSION OF REPLACEMENT OF 30-YEAR**  
 5 **TREASURY RATES.**

6 (a) AMENDMENTS OF ERISA.—

7 (1) DETERMINATION OF RANGE.—Subclause  
 8 (II) of section 302(b)(5)(B)(ii) of the Employee Re-  
 9 tirement Income Security Act of 1974 is amended—

10 (A) by striking “2006” and inserting  
 11 “2007”, and

12 (B) by striking “AND 2005” in the heading  
 13 and inserting “, 2005, AND 2006”.

14 (2) DETERMINATION OF CURRENT LIABILITY.—  
 15 Subclause (IV) of section 302(d)(7)(C)(i) of such  
 16 Act is amended—

17 (A) by striking “or 2005” and inserting “,  
 18 2005, or 2006”, and

19 (B) by striking “AND 2005” in the heading  
 20 and inserting “, 2005, AND 2006”.

21 (3) PBGC PREMIUM RATE.—Subclause (V) of  
 22 section 4006(a)(3)(E)(iii) of such Act is amended by  
 23 striking “2006” and inserting “2007”.

24 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

1           (1) DETERMINATION OF RANGE.—Subclause  
2           (II) of section 412(b)(5)(B)(ii) of the Internal Rev-  
3           enue Code of 1986 is amended—

4                   (A) by striking “2006” and inserting  
5                   “2007”, and

6                   (B) by striking “AND 2005” in the heading  
7                   and inserting “, 2005, AND 2006”.

8           (2) DETERMINATION OF CURRENT LIABILITY.—  
9           Subclause (IV) of section 412(l)(7)(C)(i) of such  
10          Code is amended—

11                   (A) by striking “or 2005” and inserting “,  
12                   2005, or 2006”, and

13                   (B) by striking “AND 2005” in the heading  
14                   and inserting “, 2005, AND 2006”.

15          (c) PLAN AMENDMENTS.—Clause (ii) of section  
16          101(c)(2)(A) of the Pension Funding Equity Act of 2004  
17          is amended by striking “2006” and inserting “2007”.

18   **SEC. 122. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

19          (a) IN GENERAL.—Clause (i) of section 404(a)(1)(D)  
20          of the Internal Revenue Code of 1986 (relating to special  
21          rule in case of certain plans) is amended by striking “sec-  
22          tion 412(l)” and inserting “section 412(l)(8)(A), except  
23          that section 412(l)(8)(A) shall be applied for purposes of  
24          this clause by substituting ‘180 percent (130 percent in

1 the case of a multiemployer plan) of current liability’ for  
 2 ‘the current liability’ in clause (i).”

3 (b) CONFORMING AMENDMENT.—Section 404(a)(1)  
 4 of the Internal Revenue Code of 1986 is amended by strik-  
 5 ing subparagraph (F).

6 (c) EFFECTIVE DATE.—The amendments made by  
 7 this section shall apply to years beginning after December  
 8 31, 2005.

9 **SEC. 123. UPDATING DEDUCTION RULES FOR COMBINA-**  
 10 **TION OF PLANS.**

11 (a) IN GENERAL.—Subparagraph (C) of section  
 12 404(a)(7) of the Internal Revenue Code of 1986 (relating  
 13 to limitation on deductions where combination of defined  
 14 contribution plan and defined benefit plan) is amended by  
 15 adding after clause (ii) the following new clause:

16 “(iii) LIMITATION.—In the case of  
 17 employer contributions to 1 or more de-  
 18 fined contribution plans, this paragraph  
 19 shall only apply to the extent that such  
 20 contributions exceed 6 percent of the com-  
 21 pensation otherwise paid or accrued during  
 22 the taxable year to the beneficiaries under  
 23 such plans. For purposes of this clause,  
 24 amounts carried over from preceding tax-  
 25 able years under subparagraph (B) shall

1           be treated as employer contributions to 1  
2           or more defined contributions to the extent  
3           attributable to employer contributions to  
4           such plans in such preceding taxable  
5           years.”

6           (b) CONFORMING AMENDMENT.—Subparagraph (A)  
7 of section 4972(c)(6) of such Code (relating to nondeduct-  
8 ible contributions) is amended to read as follows:

9                   “(A) so much of the contributions to 1 or  
10           more defined contribution plans which are not  
11           deductible when contributed solely because of  
12           section 404(a)(7) as does not exceed the  
13           amount of contributions described in section  
14           401(m)(4)(A), or”.

15           (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to contributions for taxable years  
17 beginning after December 31, 2005.

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

6 **Subtitle A—Funding Rules**

7 **PART I—AMENDMENTS TO EMPLOYEE**

8 **RETIREMENT INCOME SECURITY ACT OF 1974**

9 **SEC. 201. FUNDING RULES FOR MULTIEMPLOYER DEFINED**  
 10 **BENEFIT PLANS.**

11 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
 12 the Employee Retirement Income Security Act of 1974 (as  
 13 amended by this Act) is amended by inserting after section  
 14 303 the following new section:

15 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER  
 16 PLANS

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

20 “(1) except as provided in paragraph (2), the  
 21 amount, determined as of the end of the plan year,  
 22 equal to the excess (if any) of the total charges to  
 23 the funding standard account of the plan for all plan  
 24 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 4243.

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) separately, with respect to each  
21      plan year, the net increase (if any) in un-  
22      funded past service liability under the plan  
23      arising from plan amendments adopted in  
24      such year, over a period of 15 plan years,

1 “(ii) separately, with respect to each  
2 plan year, the net experience loss (if any)  
3 under the plan, over a period of 15 plan  
4 years, and

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

10 “(C) the amount necessary to amortize  
11 each waived funding deficiency (within the  
12 meaning of section 302(c)(3)) for each prior  
13 plan year in equal annual installments (until  
14 fully amortized) over a period of 15 plan years,

15 “(D) the amount necessary to amortize in  
16 equal annual installments (until fully amor-  
17 tized) over a period of 5 plan years any amount  
18 credited to the funding standard account under  
19 section 302(b)(3)(D) (as in effect on the day  
20 before the date of the enactment of the Pension  
21 Security and Transparency Act of 2005), and

22 “(E) the amount necessary to amortize in  
23 equal annual installments (until fully amor-  
24 tized) over a period of 20 years the contribu-  
25 tions which would be required to be made under



1 the plan but for the provisions of section  
2 302(c)(7)(A)(i)(I) (as in effect on the day be-  
3 fore the date of the enactment of the Pension  
4 Security and Transparency Act of 2005).

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

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

11 “(B) the amount necessary to amortize in  
12 equal annual installments (until fully amor-  
13 tized)—

14 “(i) separately, with respect to each  
15 plan year, the net decrease (if any) in un-  
16 funded past service liability under the plan  
17 arising from plan amendments adopted in  
18 such year, over a period of 15 plan years,

19 “(ii) separately, with respect to each  
20 plan year, the net experience gain (if any)  
21 under the plan, over a period of 15 plan  
22 years, and

23 “(iii) separately, with respect to each  
24 plan year, the net gain (if any) resulting  
25 from changes in actuarial assumptions

1           used under the plan, over a period of 15  
2           plan years,

3           “(C) the amount of the waived funding de-  
4           ficiency (within the meaning of section  
5           302(c)(3)) for the plan year, and

6           “(D) in the case of a plan year for which  
7           the accumulated funding deficiency is deter-  
8           mined under the funding standard account if  
9           such plan year follows a plan year for which  
10          such deficiency was determined under the alter-  
11          native minimum funding standard under section  
12          305 (as in effect on the day before the date of  
13          the enactment of the Pension Security and  
14          Transparency Act of 2005), the excess (if any)  
15          of any debit balance in the funding standard  
16          account (determined without regard to this sub-  
17          paragraph) over any debit balance in the alter-  
18          native minimum funding standard account.

19          “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-  
20          ORTIZED TO PLAN YEARS BEFORE 2007.—In the case  
21          of any amount amortized under section 302(b) (as  
22          in effect on the day before the date of the enactment  
23          of the Pension Security and Transparency Act of  
24          2005) over any period beginning with a plan year  
25          beginning before 2007, in lieu of the amortization

1 described in paragraphs (2)(B) and (3)(B), such  
2 amount shall continue to be amortized under such  
3 section as so in effect.

4 “(5) COMBINING AND OFFSETTING AMOUNTS  
5 TO BE AMORTIZED.—Under regulations prescribed  
6 by the Secretary of the Treasury, amounts required  
7 to be amortized under paragraph (2) or paragraph  
8 (3), as the case may be—

9 “(A) may be combined into one amount  
10 under such paragraph to be amortized over a  
11 period determined on the basis of the remaining  
12 amortization period for all items entering into  
13 such combined amount, and

14 “(B) may be offset against amounts re-  
15 quired to be amortized under the other such  
16 paragraph, with the resulting amount to be am-  
17 ortized over a period determined on the basis of  
18 the remaining amortization periods for all items  
19 entering into whichever of the two amounts  
20 being offset is the greater.

21 “(6) INTEREST.—The funding standard ac-  
22 count (and items therein) shall be charged or cred-  
23 ited (as determined under regulations prescribed by  
24 the Secretary of the Treasury) with interest at the

1 appropriate rate consistent with the rate or rates of  
2 interest used under the plan to determine costs.

3 “(7) 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 the Pension Security  
11 and Transparency Act of 2005) for any plan  
12 year, the funding standard account shall be  
13 charged in the plan year to which the portion  
14 of the net experience loss deferred by such elec-  
15 tion was deferred with the amount so deferred  
16 (and paragraph (2)(B)(ii) shall not apply to the  
17 amount so charged).

18 “(F) FINANCIAL ASSISTANCE.—Any  
19 amount of any financial assistance from the  
20 Pension Benefit Guaranty Corporation to any  
21 plan, and any repayment of such amount, shall  
22 be taken into account under this section and  
23 section 412 of the Internal Revenue Code of  
24 1986 in such manner as is determined by the  
25 Secretary of the Treasury.

1           “(G) SHORT-TERM BENEFITS.—To the ex-  
 2           tent that any plan amendment increases the un-  
 3           funded past service liability under the plan by  
 4           reason of an increase in benefits which are pay-  
 5           able under the terms of the plan for a period  
 6           that does not exceed 14 years from the effective  
 7           date of the amendment, paragraph (2)(B)(i)  
 8           shall be applied separately with respect to such  
 9           increase in unfunded past service liability by  
 10          substituting the number of years of the period  
 11          during which such benefits are payable for ‘15’.

12          “(c) ADDITIONAL RULES.—

13           “(1) DETERMINATIONS TO BE MADE UNDER  
 14          FUNDING METHOD.—For purposes of this part, nor-  
 15          mal costs, accrued liability, past service liabilities,  
 16          and experience gains and losses shall be determined  
 17          under the funding method used to determine costs  
 18          under the plan.

19           “(2) VALUATION OF ASSETS.—

20           “(A) IN GENERAL.—For purposes of this  
 21          part, the value of the plan’s assets shall be de-  
 22          termined on the basis of any reasonable actu-  
 23          arial method of valuation which takes into ac-  
 24          count fair market value and which is permitted

1 under regulations prescribed by the Secretary of  
2 the Treasury.

3 “(B) ELECTION WITH RESPECT TO  
4 BONDS.—The value of a bond or other evidence  
5 of indebtedness which is not in default as to  
6 principal or interest may, at the election of the  
7 plan administrator, be determined on an amor-  
8 tized basis running from initial cost at purchase  
9 to par value at maturity or earliest call date.  
10 Any election under this subparagraph shall be  
11 made at such time and in such manner as the  
12 Secretary of the Treasury shall by regulations  
13 provide, shall apply to all such evidences of in-  
14 debtedness, and may be revoked only with the  
15 consent of such Secretary.

16 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-  
17 SONABLE.—For purposes of this section, all costs, li-  
18 abilities, rates of interest, and other factors under  
19 the plan shall be determined on the basis of actu-  
20 arial assumptions and methods—

21 “(A) each of which is reasonable (taking  
22 into account the experience of the plan and rea-  
23 sonable expectations), and



1           “(B) which, in combination, offer the actu-  
2           ary’s best estimate of anticipated experience  
3           under the plan.

4           “(4) TREATMENT OF CERTAIN CHANGES AS EX-  
5           PERIENCE GAIN OR LOSS.—For purposes of this sec-  
6           tion, if—

7           “(A) a change in benefits under the Social  
8           Security Act or in other retirement benefits cre-  
9           ated under Federal or State law, or

10          “(B) a change in the definition of the term  
11          ‘wages’ under section 3121 of the Internal Rev-  
12          enue Code of 1986, or a change in the amount  
13          of such wages taken into account under regula-  
14          tions prescribed for purposes of section  
15          401(a)(5) of such Code,  
16          results in an increase or decrease in accrued liability  
17          under a plan, such increase or decrease shall be  
18          treated as an experience loss or gain.

19          “(5) FULL FUNDING.—If, as of the close of a  
20          plan year, a plan would (without regard to this para-  
21          graph) have an accumulated funding deficiency in  
22          excess of the full funding limitation—

23          “(A) the funding standard account shall be  
24          credited with the amount of such excess, and

“(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

“(6) FULL-FUNDING LIMITATION.—

“(A) IN GENERAL.—For purposes of paragraph (5), the term ‘full-funding limitation’ means the excess (if any) of—

“(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

“(ii) the lesser of—

“(I) the fair market value of the plan’s assets, or

“(II) the value of such assets determined under paragraph (2).

“(B) MINIMUM AMOUNT.—

“(i) IN GENERAL.—In no event shall the full-funding limitation determined

1 under subparagraph (A) be less than the  
2 excess (if any) of—

3 “(I) 90 percent of the current li-  
4 ability of the plan (including the ex-  
5 pected increase in current liability due  
6 to benefits accruing during the plan  
7 year), over

8 “(II) the value of the plan’s as-  
9 sets determined under paragraph (2).

10 “(ii) ASSETS.—For purposes of clause  
11 (i), assets shall not be reduced by any  
12 credit balance in the funding standard ac-  
13 count.

14 “(C) FULL FUNDING LIMITATION.—For  
15 purposes of this paragraph, unless otherwise  
16 provided by the plan, the accrued liability under  
17 a multiemployer plan shall not include benefits  
18 which are not nonforfeitable under the plan  
19 after the termination of the plan (taking into  
20 consideration section 411(d)(3) of the Internal  
21 Revenue Code of 1986).

22 “(D) CURRENT LIABILITY.—For purposes  
23 of this paragraph—

1 “(i) IN GENERAL.—The term ‘current  
2 liability’ means all liabilities to employees  
3 and their beneficiaries under the plan.

4 “(ii) TREATMENT OF UNPREDICTABLE  
5 CONTINGENT EVENT BENEFITS.—For pur-  
6 poses of clause (i), any benefit contingent  
7 on an event other than—

8 “(I) age, service, compensation,  
9 death, or disability, or

10 “(II) an event which is reason-  
11 ably and reliably predictable (as deter-  
12 mined by the Secretary of the Treas-  
13 ury),

14 shall not be taken into account until the  
15 event on which the benefit is contingent oc-  
16 curs.

17 “(iii) INTEREST RATE USED.—The  
18 rate of interest used to determine current  
19 liability under this paragraph shall be the  
20 rate of interest determined under subpara-  
21 graph (E).

22 “(iv) MORTALITY TABLES.—

23 “(I) COMMISSIONERS’ STANDARD  
24 TABLE.—In the case of plan years be-  
25 ginning before the first plan year to

1 which the first tables prescribed under  
2 subclause (II) apply, the mortality  
3 table used in determining current li-  
4 ability under this paragraph shall be  
5 the table prescribed by the Secretary  
6 of the Treasury which is based on the  
7 prevailing commissioners' standard  
8 table (described in section  
9 807(d)(5)(A) of the Internal Revenue  
10 Code of 1986) used to determine re-  
11 serves for group annuity contracts  
12 issued on January 1, 1993.

13 “(II) SECRETARIAL AUTHOR-  
14 ITY.—The Secretary of the Treasury  
15 may by regulation prescribe for plan  
16 years beginning after December 31,  
17 1999, mortality tables to be used in  
18 determining current liability under  
19 this subsection. Such tables shall be  
20 based upon the actual experience of  
21 pension plans and projected trends in  
22 such experience. In prescribing such  
23 tables, such Secretary shall take into  
24 account results of available inde-

pendent studies of mortality of individuals covered by pension plans.

“(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

“(I) IN GENERAL.—The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals 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 DISABILITIES 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-

1           dividuals described in such subclause  
2           who are disabled within the meaning  
3           of title II of the Social Security Act  
4           and the regulations thereunder.

5           “(vi) PERIODIC REVIEW.—The Sec-  
6           retary of the Treasury shall periodically (at  
7           least every 5 years) review any tables in ef-  
8           fect under this subparagraph and shall, to  
9           the extent such Secretary determines nec-  
10          essary, by regulation update the tables to  
11          reflect the actual experience of pension  
12          plans and projected trends in such experi-  
13          ence.

14          “(E) REQUIRED CHANGE OF INTEREST  
15          RATE.—For purposes of determining a plan’s  
16          current liability for purposes of this para-  
17          graph—

18               “(i) IN GENERAL.—If any rate of in-  
19               terest used under the plan under sub-  
20               section (b)(6) to determine cost is not  
21               within the permissible range, the plan shall  
22               establish a new rate of interest within the  
23               permissible range.

24               “(ii) PERMISSIBLE RANGE.—For pur-  
25               poses of this subparagraph—

1                   “(I) IN GENERAL.—Except as  
2                   provided in subclause (II), the term  
3                   ‘permissible range’ means a rate of in-  
4                   terest which is not more than 5 per-  
5                   cent above, and not more than 10 per-  
6                   cent below, the weighted average of  
7                   the rates of interest on 30-year Treas-  
8                   ury securities during the 4-year period  
9                   ending on the last day before the be-  
10                  ginning of the plan year.

11                  “(II) SECRETARIAL AUTHOR-  
12                  ITY.—If the Secretary of the Treasury  
13                  finds that the lowest rate of interest  
14                  permissible under subclause (I) is un-  
15                  reasonably high, such Secretary may  
16                  prescribe a lower rate of interest, ex-  
17                  cept that such rate may not be less  
18                  than 80 percent of the average rate  
19                  determined under such subclause.

20                  “(iii) ASSUMPTIONS.—Notwith-  
21                  standing paragraph (3)(A), the interest  
22                  rate used under the plan shall be—

23                  “(I) determined without taking  
24                  into account the experience of the  
25                  plan and reasonable expectations, but



1                   “(II) consistent with the assump-  
2                   tions which reflect the purchase rates  
3                   which would be used by insurance  
4                   companies to satisfy the liabilities  
5                   under the plan.

6                   “(7) ANNUAL VALUATION.—

7                   “(A) IN GENERAL.—For purposes of this  
8                   section, a determination of experience gains and  
9                   losses and a valuation of the plan’s liability  
10                  shall be made not less frequently than once  
11                  every year, except that such determination shall  
12                  be made more frequently to the extent required  
13                  in particular cases under regulations prescribed  
14                  by the Secretary of the Treasury.

15                  “(B) VALUATION DATE.—

16                  “(i) CURRENT YEAR.—Except as pro-  
17                  vided in clause (ii), the valuation referred  
18                  to in subparagraph (A) shall be made as of  
19                  a date within the plan year to which the  
20                  valuation refers or within one month prior  
21                  to the beginning of such year.

22                  “(ii) USE OF PRIOR YEAR VALU-  
23                  ATION.—The valuation referred to in sub-  
24                  paragraph (A) may be made as of a date  
25                  within the plan year prior to the year to

1           which the valuation refers if, as of such  
2           date, the value of the assets of the plan are  
3           not less than 100 percent of the plan's cur-  
4           rent liability (as defined in paragraph  
5           (6)(D) without regard to clause (iv) there-  
6           of).

7                   “(iii)   ADJUSTMENTS.—Information  
8           under clause (ii) shall, in accordance with  
9           regulations, be actuarially adjusted to re-  
10          flect significant differences in participants.

11                   “(iv) LIMITATION.—A change in fund-  
12          ing method to use a prior year valuation,  
13          as provided in clause (ii), may not be made  
14          unless as of the valuation date within the  
15          prior plan year, the value of the assets of  
16          the plan are not less than 125 percent of  
17          the plan's current liability (as defined in  
18          paragraph (6)(D) without regard to clause  
19          (iv) thereof).

20                   “(8) TIME WHEN CERTAIN CONTRIBUTIONS  
21          DEEMED MADE.—For purposes of this section, any  
22          contributions for a plan year made by an employer  
23          after the last day of such plan year, but not later  
24          than two and one-half months after such day, shall  
25          be deemed to have been made on such last day. For

1 purposes of this subparagraph, such two and one-  
2 half month period may be extended for not more  
3 than six months under regulations prescribed by the  
4 Secretary of the Treasury.

5 “(d) EXTENSION OF AMORTIZATION PERIODS FOR  
6 MULTIEMPLOYER PLANS.—

7 “(1) AUTOMATIC EXTENSION UPON APPLICA-  
8 TION BY CERTAIN PLANS.—

9 “(A) IN GENERAL.—If the plan sponsor of  
10 a multiemployer plan—

11 “(i) submits to the Secretary of the  
12 Treasury an application for an extension of  
13 the period of years required to amortize  
14 any unfunded liability described in any  
15 clause of subsection (b)(2)(B) or described  
16 in subsection (b)(4), and

17 “(ii) includes with the application a  
18 certification by the plan’s actuary de-  
19 scribed in subparagraph (B),

20 the Secretary of the Treasury shall extend the  
21 amortization period for the period of time (not  
22 in excess of 5 years) specified in the applica-  
23 tion. Such extension shall be in addition to any  
24 extension under paragraph (2).

“(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan’s actuary certifies that, based on reasonable assumptions—

“(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

“(ii) the plan sponsor has adopted a plan to improve the plan’s funding status,

“(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

“(iv) the notice required under paragraph (3)(A) has been provided.

“(2) ADDITIONAL EXTENSION.—

“(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may ex-

1           tend the amortization period for a period of  
2           time (not in excess of 5 years) if the Secretary  
3           of the Treasury makes the determination de-  
4           scribed in subparagraph (B). Such extension  
5           shall be in addition to any extension under  
6           paragraph (1).

7           “(B) DETERMINATION.—The Secretary  
8           make grant an extension under subparagraph  
9           (A) if the Secretary determines that—

10           “(i) such extension would carry out  
11           the purposes of this Act and would provide  
12           adequate protection for participants under  
13           the plan and their beneficiaries, and

14           “(ii) the failure to permit such exten-  
15           sion would—

16           “(I) result in a substantial risk  
17           to the voluntary continuation of the  
18           plan, or a substantial curtailment of  
19           pension benefit levels or employee  
20           compensation, and

21           “(II) be adverse to the interests  
22           of plan participants in the aggregate.

23           “(C) ACTION BY SECRETARY.—The Sec-  
24           retary of the Treasury shall act upon any appli-  
25           cation for an extension under this paragraph

1 within 180 days of the submission of such ap-  
2 plication. If the Secretary rejects the applica-  
3 tion for an extension under this paragraph, the  
4 Secretary shall provide notice to the plan detail-  
5 ing the specific reasons for the rejection, includ-  
6 ing references to the criteria set forth above.

7 “(3) ADVANCE NOTICE.—

8 “(A) IN GENERAL.—The Secretary of the  
9 Treasury shall, before granting an extension  
10 under this subsection, require each applicant to  
11 provide evidence satisfactory to such Secretary  
12 that the applicant has provided notice of the fil-  
13 ing of the application for such extension to each  
14 affected party (as defined in section  
15 4001(a)(21)) with respect to the affected plan.  
16 Such notice shall include a description of the  
17 extent to which the plan is funded for benefits  
18 which are guaranteed under title IV and for  
19 benefit liabilities.

20 “(B) CONSIDERATION OF RELEVANT IN-  
21 FORMATION.—The Secretary of the Treasury  
22 shall consider any relevant information provided  
23 by a person to whom notice was given under  
24 paragraph (1).”.

25 (b) SHORTFALL FUNDING METHOD.—

1           (1) IN GENERAL.—A multiemployer plan meet-  
 2           ing the criteria of paragraph (2) may adopt, use, or  
 3           cease using, the shortfall funding method and such  
 4           adoption, use, or cessation of use of such method,  
 5           shall be deemed approved by the Secretary of the  
 6           Treasury under section 302(d)(1) of the Employee  
 7           Retirement Income Security Act of 1974 and section  
 8           412(e)(1) of the Internal Revenue Code of 1986.

9           (2) CRITERIA.—A multiemployer pension plan  
 10          meets the criteria of this clause if—

11                 (A) the plan has not used the shortfall  
 12                 funding method during the 5-year period ending  
 13                 on the day before the date the plan is to use  
 14                 the method under paragraph (1); and

15                 (B) the plan is not operating under an am-  
 16                 ortization period extension under section 304(d)  
 17                 of such Act and did not operate under such an  
 18                 extension during such 5-year period.

19          (3) SHORTFALL FUNDING METHOD DEFINED.—  
 20          For purposes of this subsection, the term “shortfall  
 21          funding method” means the shortfall funding meth-  
 22          od described in Treasury Regulations section  
 23          1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

24          (4) BENEFIT RESTRICTIONS TO APPLY.—The  
 25          benefit restrictions under section 302(c)(7) of such

1 Act and section 412(d)(7) of such Code shall apply  
2 during any period a multiemployer plan is on the  
3 shortfall funding method pursuant to this sub-  
4 section.

5 (5) USE OF SHORTFALL METHOD NOT TO PRE-  
6 CLUDE OTHER OPTIONS.—Nothing in this subsection  
7 shall be construed to affect a multiemployer plan’s  
8 ability to adopt the shortfall funding method with  
9 the Secretary’s permission under otherwise applica-  
10 ble regulations or to affect a multiemployer plan’s  
11 right to change funding methods, with or without  
12 the Secretary’s consent, as provided in applicable  
13 rules and regulations.

14 (c) CONFORMING AMENDMENTS.—

15 (1) Section 301 of the Employee Retirement In-  
16 come Security Act of 1974 (29 U.S.C. 1081) is  
17 amended by striking subsection (d).

18 (2) The table of contents in section 1 of such  
19 Act (as amended by this Act) is amended by insert-  
20 ing after the item relating to section 303 the fol-  
21 lowing new item:

“Sec. 304. Minimum funding standards for multiemployer plans.”.

22 (d) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by  
24 this section shall apply to plan years beginning after  
25 2006.



1           (2) SPECIAL RULE FOR CERTAIN AMORTIZATION  
 2       EXTENSIONS.—If the Secretary of the Treasury  
 3       grants an extension under section 304 of the Em-  
 4       ployee Retirement Income Security Act of 1974 and  
 5       section 412(e) of the Internal Revenue Code of 1986  
 6       with respect to any application filed with the Sec-  
 7       retary of the Treasury on or before June 30, 2005,  
 8       the interest rate used for purposes of determining  
 9       any amortization payment with respect to the exten-  
 10      sion (or any modification of the extension) shall be  
 11      the rate determined under section 6621(b) of such  
 12      Code.

13 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
 14                   **PLOYER PLANS IN ENDANGERED OR CRIT-**  
 15                   **ICAL STATUS.**

16       (a) IN GENERAL.—Part 3 of subtitle B of title I of  
 17      the Employee Retirement Income Security Act of 1974 (as  
 18      amended by the preceding provisions of this Act) is  
 19      amended by inserting after section 304 the following new  
 20      section:

21       “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER  
 22       PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

23       “SEC. 305. (a) GENERAL RULE.—For purposes of  
 24      this part, in the case of a multiemployer plan—

25               “(1) if the plan is in endangered status—

1           “(A) the plan sponsor shall adopt and im-  
 2           plement a funding improvement plan in accord-  
 3           ance with the requirements of subsection (c),  
 4           and

5           “(B) the requirements of subsection (d)  
 6           shall apply during the funding plan adoption  
 7           period and the funding improvement period,  
 8           and

9           “(2) if the plan is in critical status—

10           “(A) the plan sponsor shall adopt and im-  
 11           plement a rehabilitation plan in accordance with  
 12           the requirements of subsection (e), and

13           “(B) the requirements of subsection (f)  
 14           shall apply during the rehabilitation plan adop-  
 15           tion period and the rehabilitation period.

16           “(b) DETERMINATION OF ENDANGERED AND CRIT-  
 17           ICAL STATUS.—For purposes of this section—

18           “(1) ENDANGERED STATUS.—A multiemployer  
 19           plan is in endangered status for a plan year if, as  
 20           determined by the plan actuary under paragraph  
 21           (3), the plan is not in critical status for the plan  
 22           year and either—

23           “(A) the plan’s funded percentage for such  
 24           plan year is less than 80 percent, or

1           “(B) the plan has an accumulated funding  
2           deficiency for such plan year, or is projected to  
3           have such an accumulated funding deficiency  
4           for any of the 6 succeeding plan years, taking  
5           into account any extension of amortization peri-  
6           ods under section 304(d).

7           For purposes of this section, a plan described in  
8           subparagraph (B) shall be treated as in seriously en-  
9           dangered status.

10           “(2) CRITICAL STATUS.—A multiemployer plan  
11           is in critical status for a plan year if, as determined  
12           by the plan actuary under paragraph (3), the plan  
13           is described in 1 or more of the following subpara-  
14           graphs as of the beginning of the plan year:

15           “(A) A plan is described in this subpara-  
16           graph if—

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 con-  
24           tributions for the current plan year  
25           and each of the 5 succeeding plan

1                   years, assuming that the terms of all  
2                   collective bargaining agreements pur-  
3                   suant to which the plan is maintained  
4                   for the current plan year continue in  
5                   effect for succeeding plan years,  
6                   is less than the present value of all benefits  
7                   projected to be payable under the plan dur-  
8                   ing the current plan year and each of the  
9                   5 succeeding plan years (plus administra-  
10                  tive expenses for such plan years).

11               “(B) A plan is described in this subpara-  
12               graph if—

13                   “(i) the plan has an accumulated  
14                   funding deficiency for the current plan  
15                   year, not taking into account any extension  
16                   of amortization periods under section  
17                   304(d), or

18                   “(ii) the plan is projected to have an  
19                   accumulated funding deficiency for any of  
20                   the 3 succeeding plan years (4 succeeding  
21                   plan years if the funded percentage of the  
22                   plan is 65 percent or less), not taking into  
23                   account any extension of amortization peri-  
24                   ods under section 304(d).

1           “(C) A plan is described in this subpara-  
2 graph if—

3           “(i)(I) the plan’s normal cost for the  
4 current plan year, plus interest (deter-  
5 mined at the rate used for determining  
6 costs under the plan) for the current plan  
7 year on the amount of unfunded benefit li-  
8 abilities under the plan as of the last date  
9 of the preceding plan year, exceeds

10           “(II) the present value of the reason-  
11 ably anticipated employer contributions for  
12 the current plan year,

13           “(ii) the present value of nonforfeit-  
14 able benefits of inactive participants is  
15 greater than the present value of non-  
16 forfeitable benefits of active participants,  
17 and

18           “(iii) the plan has an accumulated  
19 funding deficiency for the current plan  
20 year, or is projected to have such a defi-  
21 ciency for any of the 4 succeeding plan  
22 years, not taking into account any exten-  
23 sion of amortization periods under section  
24 304(d).

1           “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
2       ARY.—

3           “(A) IN GENERAL.—During the 90-day pe-  
4       riod beginning on the first day of each plan  
5       year of a multiemployer plan, the plan actuary  
6       shall certify to the Secretary of the Treasury—

7           “(i) whether or not the plan is in en-  
8       dangered status for such plan year and  
9       whether or not the plan is in critical status  
10      for such plan year, and

11          “(ii) in the case of a plan which is in  
12      a funding improvement or rehabilitation  
13      period, whether or not the plan is making  
14      the scheduled progress in meeting the re-  
15      quirements of its funding improvement or  
16      rehabilitation plan.

17          “(B) ACTUARIAL PROJECTIONS OF ASSETS  
18      AND LIABILITIES.—

19          “(i) IN GENERAL.—In making the de-  
20      terminations and projections under this  
21      subsection, the plan actuary shall make  
22      projections required for the current and  
23      succeeding plan years, using reasonable ac-  
24      tuarial estimates, assumptions, and meth-  
25      ods, of the current value of the assets of

1 the plan and the present value of all liabil-  
2 ities to participants and beneficiaries under  
3 the plan for the current plan year as of the  
4 beginning of such year. The projected  
5 present value of liabilities as of the begin-  
6 ning of such year shall be determined  
7 based on the actuarial statement required  
8 under section 103(d) with respect to the  
9 most recently filed annual report or the ac-  
10 tuarial valuation for the preceding plan  
11 year.

12 “(ii) DETERMINATIONS OF FUTURE  
13 CONTRIBUTIONS.—Any actuarial projection  
14 of plan assets shall assume—

15 “(I) reasonably anticipated em-  
16 ployer contributions for the current  
17 and succeeding plan years, assuming  
18 that the terms of the one or more col-  
19 lective bargaining agreements pursu-  
20 ant to which the plan is maintained  
21 for the current plan year continue in  
22 effect for succeeding plan years, or

23 “(II) that employer contributions  
24 for the most recent plan year will con-  
25 tinue indefinitely, but only if the plan

1           actuary determines there have been no  
2           significant demographic changes that  
3           would make such assumption unrea-  
4           sonable.

5           “(C) PENALTY FOR FAILURE TO SECURE  
6           TIMELY ACTUARIAL CERTIFICATION.—Any fail-  
7           ure of the plan’s actuary to certify the plan’s  
8           status under this subsection by the date speci-  
9           fied in subparagraph (A) shall be treated for  
10          purposes of section 502(c)(2) as a failure or re-  
11          fusal by the plan administrator to file the an-  
12          nual report required to be filed with the Sec-  
13          retary under section 101(b)(4).

14          “(D) NOTICE.—In any case in which a  
15          multiemployer plan is certified to be in endan-  
16          gered or critical status under subparagraph (A),  
17          the plan sponsor shall, not later than 30 days  
18          after the date of the certification, provide notifi-  
19          cation of the endangered or critical status to  
20          the participants and beneficiaries, the bar-  
21          gaining parties, the Pension Benefit Guaranty  
22          Corporation, the Secretary of the Treasury, and  
23          the Secretary.



1       “(c) FUNDING IMPROVEMENT PLAN MUST BE  
2 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED  
3 STATUS.—

4           “(1) IN GENERAL.—In any case in which a  
5 multiemployer plan is in endangered status for a  
6 plan year, the plan sponsor, in accordance with this  
7 subsection—

8           “(A) shall adopt a funding improvement  
9 plan not later than 240 days following the re-  
10 quired date for the actuarial certification of en-  
11 dangered status under subsection (b)(3)(A),  
12 and

13           “(B) within 30 days after the adoption of  
14 the funding improvement plan—

15           “(i) in the case of a plan in seriously  
16 endangered status, shall provide to the  
17 bargaining parties 1 or more schedules  
18 showing revised benefit structures, revised  
19 contribution structures, or both, which, if  
20 adopted, may reasonably be expected to en-  
21 able the multiemployer plan to meet the  
22 applicable requirements under paragraph  
23 (3) in accordance with the funding im-  
24 provement plan, including a description of  
25 the reductions in future benefit accruals

1 and increases in contributions that the  
2 plan sponsor determines are reasonably  
3 necessary to meet the applicable require-  
4 ments if the plan sponsor assumes that  
5 there are no increases in contributions  
6 under the plan other than the increases  
7 necessary to meet the applicable require-  
8 ments after future benefit accruals have  
9 been reduced to the maximum extent per-  
10 mitted by law, and

11 “(ii) may, if the plan sponsor deems  
12 appropriate, prepare and provide the bar-  
13 gaining parties with additional information  
14 relating to contribution rates or benefit re-  
15 ductions, alternative schedules, or other in-  
16 formation relevant to achieving the re-  
17 quirements under paragraph (3) in accord-  
18 ance with the funding improvement plan.

19 “(2) EXCEPTION FOR YEARS AFTER PROCESS  
20 BEGINS.—Paragraph (1) shall not apply to a plan  
21 year if such year is in a funding plan adoption pe-  
22 riod or funding improvement period by reason of the  
23 plan being in endangered status for a preceding plan  
24 year. For purposes of this section, such preceding  
25 plan year shall be the initial determination year with

1       respect to the funding improvement plan to which it  
2       relates.

3               “(3) FUNDING IMPROVEMENT PLAN.—For pur-  
4       poses of this section—

5               “(A) IN GENERAL.—A funding improve-  
6       ment plan is a plan which consists of the ac-  
7       tions, including options or a range of options to  
8       be proposed to the bargaining parties, which,  
9       under reasonable actuarial assumptions, will re-  
10      sult in the plan meeting the requirements of  
11      this paragraph.

12              “(B) PLANS OTHER THAN SERIOUSLY EN-  
13      DANGERED PLANS.—In the case of plan not in  
14      seriously endangered status, the requirements  
15      of this paragraph are met if the plan’s funded  
16      percentage as of the close of the funding im-  
17      provement period exceeds the lesser of 80 per-  
18      cent or a percentage equal to the sum of—

19                      “(i) such percentage as of the begin-  
20                      ning of such period, plus

21                      “(ii) 10 percent of the percentage  
22                      under clause (i).

23              “(C) SERIOUSLY ENDANGERED PLANS.—  
24      In the case of a plan in seriously endangered

1 status, the requirements of this paragraph are  
 2 met if—

3 “(i) the plan’s funded percentage as  
 4 of the close of the funding improvement  
 5 period equals or exceeds the percentage  
 6 which is equal to the sum of—

7 “(I) such percentage as of the  
 8 beginning of such period, plus

9 “(II) 33 percent of the difference  
 10 between 100 percent and the percent-  
 11 age under subclause (I), and

12 “(ii) there is no accumulated funding  
 13 deficiency for any plan year during the  
 14 funding improvement period (taking into  
 15 account any extension of amortization peri-  
 16 ods under section 304(d)).

17 “(4) FUNDING IMPROVEMENT PERIOD.—For  
 18 purposes of this section—

19 “(A) IN GENERAL.—The funding improve-  
 20 ment period for any funding improvement plan  
 21 adopted pursuant to this subsection is the 10-  
 22 year period beginning on the first day of the  
 23 first plan year of the multiemployer plan begin-  
 24 ning after 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 expiration of the collective  
 5 bargaining agreements in effect on the due  
 6 date for the actuarial certification of en-  
 7 dangered status for the initial determina-  
 8 tion year under subsection (b)(3)(A) and  
 9 covering, as of such due date, at least 75  
 10 percent of the active participants in such  
 11 multiemployer plan.

12 “(B) COORDINATION WITH CHANGES IN  
 13 STATUS.—

14 “(i) PLANS NO LONGER IN ENDAN-  
 15 GERED STATUS.—If the plan’s actuary cer-  
 16 tifies under subsection (b)(3)(A) for a plan  
 17 year in any funding plan adoption period  
 18 or funding improvement period that the  
 19 plan is no longer in endangered status and  
 20 is not in critical status, the funding plan  
 21 adoption period or funding improvement  
 22 period, whichever is applicable, shall end as  
 23 of the close of the preceding plan year.

24 “(ii) PLANS IN CRITICAL STATUS.—If  
 25 the plan’s actuary certifies under sub-

1 section (b)(3)(A) for a plan year in any  
2 funding plan adoption period or funding  
3 improvement period that the plan is in  
4 critical status, the funding plan adoption  
5 period or funding improvement period,  
6 whichever is applicable, shall end as of the  
7 close of the plan year preceding the first  
8 plan year in the rehabilitation period with  
9 respect to such status.

10 “(C) PLANS IN ENDANGERED STATUS AT  
11 END OF PERIOD.—If the plan’s actuary certifies  
12 under subsection (b)(3)(A) for the first plan  
13 year following the close of the period described  
14 in subparagraph (A) that the plan is in endan-  
15 gered status, the provisions of this subsection  
16 and subsection (d) shall be applied as if such  
17 first plan year were an initial determination  
18 year, except that the plan may not be amended  
19 in a manner inconsistent with the funding im-  
20 provement plan in effect for the preceding plan  
21 year until a new funding improvement plan is  
22 adopted.

23 “(5) SPECIAL RULES FOR CERTAIN UNDER-  
24 FUNDED PLANS.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), if the funded percentage of  
3           a plan in seriously endangered status was 70  
4           percent or less as of the beginning of the initial  
5           determination year, the following rules shall  
6           apply in determining whether the requirements  
7           of paragraph (3)(C)(i) are met:

8                   “(i) The plan’s funded percentage as  
9                   of the close of the funding improvement  
10                  period must equal or exceed a percentage  
11                  which is equal to the sum of—

12                           “(I) such percentage as of the  
13                           beginning of such period, plus

14                           “(II) 20 percent of the difference  
15                           between 100 percent and the percent-  
16                           age under subclause (I).

17                  “(ii) The funding improvement period  
18                  under paragraph (4)(A) shall be 15 years  
19                  rather than 10 years.

20           “(B) SPECIAL RULES FOR PLANS WITH  
21           FUNDED PERCENTAGE OVER 70 PERCENT.—If  
22           the funded percentage described in subpara-  
23           graph (A) was more than 70 percent but less  
24           than 80 percent as of the beginning of the ini-  
25           tial determination year—

1           “(i) subparagraph (A) shall apply if  
2           the plan’s actuary certifies, within 30 days  
3           after the certification under subsection  
4           (b)(3)(A) for the initial determination  
5           year, that, based on the terms of the plan  
6           and the collective bargaining agreements in  
7           effect at the time of such certification, the  
8           plan is not projected to meet the require-  
9           ments of paragraph (3)(C)(i) without re-  
10          gard to this paragraph, and

11          “(ii) if there is a certification under  
12          clause (i), the plan may, in formulating its  
13          funding improvement plan, only take into  
14          account the rules of subparagraph (A) for  
15          plan years in the funding improvement pe-  
16          riod beginning on or before the date on  
17          which the last of the collective bargaining  
18          agreements described in paragraph  
19          (4)(A)(ii) expires.

20          Notwithstanding clause (ii), if for any plan year  
21          ending after the date described in clause (ii) the  
22          plan actuary certifies (at the time of the annual  
23          certification under subsection (b)(3)(A) for such  
24          plan year) that, based on the terms of the plan  
25          and collective bargaining agreements in effect



1 at the time of that annual certification, the plan  
2 is not projected to be able to meet the require-  
3 ments of paragraph (3)(C)(i) without regard to  
4 this paragraph, the plan may continue to as-  
5 sume for such year that the funding improve-  
6 ment period is 15 years rather than 10 years.

7 “(6) UPDATES TO FUNDING IMPROVEMENT  
8 PLAN AND SCHEDULES.—

9 “(A) FUNDING IMPROVEMENT PLAN.—The  
10 plan sponsor shall annually update the funding  
11 improvement plan and shall file the update with  
12 the plan’s annual report under section 104.

13 “(B) SCHEDULES.—The plan sponsor may  
14 periodically update any schedule of contribution  
15 rates provided under this subsection to reflect  
16 the experience of the plan, except that the  
17 schedule or schedules described in paragraph  
18 (1)(B)(i) shall be updated at least once every 3  
19 years.

20 “(C) DURATION OF SCHEDULE.—A sched-  
21 ule of contribution rates provided by the plan  
22 sponsor and relied upon by bargaining parties  
23 in negotiating a collective bargaining agreement  
24 shall remain in effect for the duration of that  
25 collective bargaining agreement.

1           “(7) PENALTY IF NO FUNDING IMPROVEMENT  
 2           PLAN ADOPTED.—A failure of the plan sponsor to  
 3           adopt a funding improvement plan by the date speci-  
 4           fied in paragraph (1)(A) shall be treated for pur-  
 5           poses of section 502(c)(2) as a failure or refusal by  
 6           the plan administrator to file the annual report re-  
 7           quired to be filed with the Secretary under section  
 8           101(b)(4).

9           “(8) FUNDING PLAN ADOPTION PERIOD.—For  
 10          purposes of this section, the term ‘funding plan  
 11          adoption period’ means the period beginning on the  
 12          date of the certification under subsection (b)(3)(A)  
 13          for the initial determination year and ending on the  
 14          day before the first day of the funding improvement  
 15          period.

16          “(d) RULES FOR OPERATION OF PLAN DURING  
 17          ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO  
 18          MEET REQUIREMENTS.—

19                 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-  
 20                 RIOD.—During the plan adoption period—

21                         “(A) the plan sponsor may not accept a  
 22                         collective bargaining agreement or participation  
 23                         agreement with respect to the multiemployer  
 24                         plan that provides for—

1                   “(i) a reduction in the level of con-  
2                   tributions for any participants,

3                   “(ii) a suspension of contributions  
4                   with respect to any period of service, or

5                   “(iii) any new direct or indirect exclu-  
6                   sion of younger or newly hired employees  
7                   from plan participation,

8                   “(B) no amendment of the plan which in-  
9                   creases the liabilities of the plan by reason of  
10                  any increase in benefits, any change in the ac-  
11                  crual of benefits, or any change in the rate at  
12                  which benefits become nonforfeitable under the  
13                  plan may be adopted unless the amendment is  
14                  required as a condition of qualification under  
15                  part I of subchapter D of chapter 1 of the In-  
16                  ternal Revenue Code of 1986 or to comply with  
17                  other applicable law, and

18                  “(C) in the case of a plan in seriously en-  
19                  dangered status, the plan sponsor shall take all  
20                  reasonable actions which are consistent with the  
21                  terms of the plan and applicable law and which  
22                  are expected, based on reasonable assumptions,  
23                  to achieve—

24                  “(i) an increase in the plan’s funded  
25                  percentage, and

1 “(ii) postponement of an accumulated  
2 funding deficiency for at least 1 additional  
3 plan year.

4 Actions under subparagraph (C) include applications  
5 for extensions of amortization periods under section  
6 304(d), use of the shortfall funding method in mak-  
7 ing funding standard account computations, amend-  
8 ments to the plan’s benefit structure, reductions in  
9 future benefit accruals, and other reasonable actions  
10 consistent with the terms of the plan and applicable  
11 law.

12 “(2) COMPLIANCE WITH FUNDING IMPROVE-  
13 MENT PLAN.—

14 “(A) IN GENERAL.—A plan may not be  
15 amended after the date of the adoption of a  
16 funding improvement plan under subsection (c)  
17 so as to be inconsistent with the funding im-  
18 provement plan.

19 “(B) NO REDUCTION IN CONTRIBU-  
20 TIONS.—A plan sponsor may not during any  
21 funding improvement period accept a collective  
22 bargaining agreement or participation agree-  
23 ment with respect to the multiemployer plan  
24 that provides for—

1                   “(i) a reduction in the level of con-  
2                   tributions for any participants,

3                   “(ii) a suspension of contributions  
4                   with respect to any period of service, or

5                   “(iii) any new direct or indirect exclu-  
6                   sion of younger or newly hired employees  
7                   from plan participation,

8                   “(C) SPECIAL RULES FOR BENEFIT IN-  
9                   CREASES.—A plan may not be amended after  
10                  the date of the adoption of a funding improve-  
11                  ment plan under subsection (c) so as to in-  
12                  crease benefits, including future benefit accru-  
13                  als, unless—

14                  “(i) in the case of a plan in seriously  
15                  endangered status, the plan actuary cer-  
16                  tifies that, after taking into account the  
17                  benefit increase, the plan is still reasonably  
18                  expected to meet the requirements under  
19                  subsection (c)(3) in accordance with the  
20                  schedule contemplated in the funding im-  
21                  provement plan, and

22                  “(ii) in the case of a plan not in seri-  
23                  ously endangered status, the actuary cer-  
24                  tifies that such increase is paid for out of  
25                  contributions not required by the funding

1 improvement plan to meet the require-  
2 ments under subsection (c)(3) in accord-  
3 ance with the schedule contemplated in the  
4 funding improvement plan.

5 “(3) FAILURE TO MEET REQUIREMENTS.—

6 “(A) IN GENERAL.—Notwithstanding sec-  
7 tion 4971(g) of the Internal Revenue Code of  
8 1986, if a plan fails to meet the requirements  
9 of subsection (c)(3) by the end of the funding  
10 improvement period, the plan shall be treated  
11 as having an accumulated funding deficiency  
12 for purposes of section 4971 of such Code for  
13 the last plan year in such period (and each suc-  
14 ceeding plan year until such requirements are  
15 met) in an amount equal to the greater of the  
16 amount of the contributions necessary to meet  
17 such requirements or the amount of such accu-  
18 mulated funding deficiency without regard to  
19 this paragraph.

20 “(B) WAIVER.—In the case of a failure de-  
21 scribed in subparagraph (A) which is due to  
22 reasonable cause and not to willful neglect, the  
23 Secretary of the Treasury may waive part or all  
24 of the tax imposed by section 4971 of such  
25 Code to the extent that the payment of such tax

1           would be excessive or otherwise inequitable rel-  
2           ative to the failure involved.

3           “(e) REHABILITATION PLAN MUST BE ADOPTED  
4 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

5           “(1) IN GENERAL.—In any case in which a  
6           multiemployer plan is in critical status for a plan  
7           year, the plan sponsor, in accordance with this sub-  
8           section—

9                   “(A) shall adopt a rehabilitation plan not  
10           later than 240 days following the required date  
11           for the actuarial certification of critical status  
12           under subsection (b)(3)(A), and

13                   “(B) within 30 days after the adoption of  
14           the rehabilitation plan—

15                   “(i) shall provide to the bargaining  
16           parties 1 or more schedules showing re-  
17           vised benefit structures, revised contribu-  
18           tion structures, or both, which, if adopted,  
19           may reasonably be expected to enable the  
20           multiemployer plan to emerge from critical  
21           status in accordance with the rehabilitation  
22           plan, and

23                   “(ii) may, if the plan sponsor deems  
24           appropriate, prepare and provide the bar-  
25           gaining parties with additional information

1 relating to contribution rates or benefit re-  
2 ductions, alternative schedules, or other in-  
3 formation relevant to emerging from crit-  
4 ical status in accordance with the rehabili-  
5 tation plan.

6 The schedule or schedules described in subparagraph  
7 (B)(i) shall reflect reductions in future benefit ac-  
8 cruals and increases in contributions that the plan  
9 sponsor determines are reasonably necessary to  
10 emerge from critical status. One schedule shall be  
11 designated as the default schedule and such schedule  
12 shall assume that there are no increases in contribu-  
13 tions under the plan other than the increases nec-  
14 essary to emerge from critical status after future  
15 benefit accruals and other benefits (other than bene-  
16 fits the reduction or elimination of which are not  
17 permitted under section 204(g)) have been reduced  
18 to the maximum extent permitted by law.

19 “(2) EXCEPTION FOR YEARS AFTER PROCESS  
20 BEGINS.—Paragraph (1) shall not apply to a plan  
21 year if such year is in a rehabilitation plan adoption  
22 period or rehabilitation period by reason of the plan  
23 being in critical status for a preceding plan year.  
24 For purposes of this section, such preceding plan



1 year shall be the initial critical year with respect to  
2 the rehabilitation plan to which it relates.

3 “(3) REHABILITATION PLAN.—For purposes of  
4 this section—

5 “(A) IN GENERAL.—A rehabilitation plan  
6 is a plan which consists of—

7 “(i) actions which will enable, under  
8 reasonable actuarial assumptions, the plan  
9 to cease to be in critical status by the end  
10 of the rehabilitation period and may in-  
11 clude reductions in plan expenditures (in-  
12 cluding plan mergers and consolidations),  
13 reductions in future benefit accruals or in-  
14 creases in contributions, if agreed to by the  
15 bargaining parties, or any combination of  
16 such actions, or

17 “(ii) if the plan sponsor determines  
18 that, based on reasonable actuarial as-  
19 sumptions and upon exhaustion of all rea-  
20 sonable measures, the plan can not reason-  
21 ably be expected to emerge from critical  
22 status by the end of the rehabilitation pe-  
23 riod, reasonable measures to emerge from  
24 critical status at a later time or to forestall

1 possible insolvency (within the meaning of  
2 section 4245).

3 Such plan shall include the schedules required  
4 to be provided under paragraph (1)(B)(i). If  
5 clause (ii) applies, such plan shall set forth the  
6 alternatives considered, explain why the plan is  
7 not reasonably expected to emerge from critical  
8 status by the end of the rehabilitation period,  
9 and specify when, if ever, the plan is expected  
10 to emerge from critical status in accordance  
11 with the rehabilitation plan.

12 “(B) UPDATES TO REHABILITATION PLAN  
13 AND SCHEDULES.—

14 “(i) REHABILITATION PLAN.—The  
15 plan sponsor shall annually update the re-  
16 habilitation plan and shall file the update  
17 with the plan’s annual report under section  
18 104.

19 “(ii) SCHEDULES.—The plan sponsor  
20 may periodically update any schedule of  
21 contribution rates provided under this sub-  
22 section to reflect the experience of the  
23 plan, except that the schedule or schedules  
24 described in paragraph (1)(B)(i) shall be  
25 updated at least once every 3 years.

1                   “(iii) DURATION OF SCHEDULE.—A  
2                   schedule of contribution rates provided by  
3                   the plan sponsor and relied upon by bar-  
4                   gaining parties in negotiating a collective  
5                   bargaining agreement shall remain in ef-  
6                   fect for the duration of that collective bar-  
7                   gaining agreement.

8                   “(C) DEFAULT SCHEDULE.—If the collec-  
9                   tive bargaining agreement providing for con-  
10                  tributions under a multiemployer plan that was  
11                  in effect at the time the plan entered critical  
12                  status expires and, after receiving a schedule  
13                  from the plan sponsor under paragraph  
14                  (1)(B)(i), the bargaining parties have not  
15                  adopted a collective bargaining agreement with  
16                  terms consistent with such a schedule, the de-  
17                  fault schedule described in the last sentence of  
18                  paragraph (1) shall go into effect with respect  
19                  to those bargaining parties.

20                  “(4) REHABILITATION PERIOD.—For purposes  
21                  of this section—

22                  “(A) IN GENERAL.—The rehabilitation pe-  
23                  riod for a plan in critical status is the 10-year  
24                  period beginning on the first day of the first

1 plan year of the multiemployer plan following  
2 the earlier of—

3 “(i) the second anniversary of the  
4 date of the adoption of the rehabilitation  
5 plan, or

6 “(ii) the expiration of the collective  
7 bargaining agreements in effect on the  
8 date of the due date for the actuarial cer-  
9 tification of critical status for the initial  
10 critical year under subsection (a)(1) and  
11 covering, as of such date at least 75 per-  
12 cent of the active participants in such mul-  
13 tiemployer plan.

14 If a plan emerges from critical status as pro-  
15 vided under subparagraph (B) before the end of  
16 such 10-year period, the rehabilitation period  
17 shall end with the plan year preceding the plan  
18 year for which the determination under sub-  
19 paragraph (B) is made.

20 “(B) EMERGENCE.—A plan in critical sta-  
21 tus shall remain in such status until a plan  
22 year for which the plan actuary certifies, in ac-  
23 cordance with subsection (b)(3)(A), that the  
24 plan is not projected to have an accumulated  
25 funding deficiency for the plan year or any of

1           the 9 succeeding plan years, without regard to  
 2           use of the shortfall method or any extension of  
 3           amortization periods under section 304(d).

4           “(5) PENALTY IF NO REHABILITATION PLAN  
 5           ADOPTED.—A failure of a plan sponsor to adopt a  
 6           rehabilitation plan by the date specified in para-  
 7           graph (1)(A) shall be treated for purposes of section  
 8           502(c)(2) as a failure or refusal by the plan admin-  
 9           istrator to file the annual report required to be filed  
 10          with the Secretary under section 101(b)(4).

11          “(6) REHABILITATION PLAN ADOPTION PE-  
 12          RIOD.—For purposes of this section, the term ‘reha-  
 13          bilitation plan adoption period’ means the period be-  
 14          ginning on the date of the certification under sub-  
 15          section (b)(3)(A) for the initial critical year and end-  
 16          ing on the day before the first day of the rehabilita-  
 17          tion period.

18          “(7) LIMITATION ON REDUCTION IN RATES OF  
 19          FUTURE ACCRUALS.—Any reduction in the rate of  
 20          future accruals under any schedule described in  
 21          paragraph (1)(B)(i) shall not reduce the rate of fu-  
 22          ture accruals below—

23                 “(A) a monthly benefit (payable as a single  
 24                 life annuity commencing at the participant’s  
 25                 normal retirement age) equal to 1 percent of

the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

“(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant.

“(f) RULES FOR OPERATION OF PLAN DURING ADOPTION AND REHABILITATION PERIOD.—

“(1) COMPLIANCE WITH REHABILITATION PLAN.—

“(A) IN GENERAL.—A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

“(B) SPECIAL RULES FOR BENEFIT INCREASES.—A plan may not be amended after the date of the adoption of a rehabilitation plan

1 under subsection (e) so as to increase benefits,  
 2 including future benefit accruals, unless the  
 3 plan actuary certifies that such increase is paid  
 4 for out of additional contributions not con-  
 5 templated by the rehabilitation plan, and, after  
 6 taking into account the benefit increase, the  
 7 multiemployer plan still is reasonably expected  
 8 to emerge from critical status by the end of the  
 9 rehabilitation period on the schedule con-  
 10 templated in the rehabilitation plan.

11 “(2) RESTRICTION ON LUMP SUMS AND SIMI-  
 12 LAR BENEFITS.—

13 “(A) IN GENERAL.—Effective on the date  
 14 the notice of certification of the plan’s critical  
 15 status for the initial critical year under sub-  
 16 section (b)(3)(D) is sent, and notwithstanding  
 17 section 204(g), the plan shall not pay—

18 “(i) any payment, in excess of the  
 19 monthly amount paid under a single life  
 20 annuity (plus any social security supple-  
 21 ments described in the last sentence of sec-  
 22 tion 204(b)(1)(G)),

23 “(ii) any payment for the purchase of  
 24 an irrevocable commitment from an insurer  
 25 to pay benefits, and

1                   “(iii) any other payment specified by  
 2                   the Secretary of the Treasury by regula-  
 3                   tions.

4                   “(B)    EXCEPTION.—Subparagraph    (A)  
 5                   shall not apply to a benefit which under section  
 6                   203(e) may be immediately distributed without  
 7                   the consent of the participant.

8                   “(3)   ADJUSTMENTS DISREGARDED IN WITH-  
 9                   DRAWAL LIABILITY DETERMINATION.—Any benefit  
 10                  reductions under this subsection shall be disregarded  
 11                  in determining a plan’s unfunded vested benefits for  
 12                  purposes of determining an employer’s withdrawal li-  
 13                  ability under section 4201.

14                  “(4)   SPECIAL RULES FOR PLAN ADOPTION PE-  
 15                  RIOD.—During the rehabilitation plan adoption pe-  
 16                  riod—

17                       “(A) the plan sponsor may not accept a  
 18                       collective bargaining agreement or participation  
 19                       agreement with respect to the multiemployer  
 20                       plan that provides for—

21                               “(i) a reduction in the level of con-  
 22                               tributions for any participants,

23                               “(ii) a suspension of contributions  
 24                               with respect to any period of service, or



1                   “(iii) any new direct or indirect exclu-  
2                   sion of younger or newly hired employees  
3                   from plan participation, and

4                   “(B) no amendment of the plan which in-  
5                   creases the liabilities of the plan by reason of  
6                   any increase in benefits, any change in the ac-  
7                   crual of benefits, or any change in the rate at  
8                   which benefits become nonforfeitable under the  
9                   plan may be adopted unless the amendment is  
10                  required as a condition of qualification under  
11                  part I of subchapter D of chapter 1 of the In-  
12                  ternal Revenue Code of 1986 or to comply with  
13                  other applicable law.

14               “(5) FAILURE TO MEET REQUIREMENTS.—

15                   “(A) IN GENERAL.—Notwithstanding sec-  
16                  tion 4971(g) of the Internal Revenue Code of  
17                  1986, if a plan—

18                   “(i) fails to meet the requirements of  
19                  subsection (e) by the end of the rehabilita-  
20                  tion period, or

21                   “(ii) has received a certification under  
22                  subsection (b)(3)(A)(ii) for 3 consecutive  
23                  plan years that the plan is not making the  
24                  scheduled progress in meeting its require-  
25                  ments under the rehabilitation plan,

1 the plan shall be treated as having an accumu-  
2 lated funding deficiency for purposes of section  
3 4971 of such Code for the last plan year in  
4 such period (and each succeeding plan year  
5 until such requirements are met) in an amount  
6 equal to the greater of the amount of the con-  
7 tributions necessary to meet such requirements  
8 or the amount of such accumulated funding de-  
9 ficiency without regard to this paragraph.

10 “(B) WAIVER.—In the case of a failure de-  
11 scribed in subparagraph (A) which is due to  
12 reasonable cause and not to willful neglect, the  
13 Secretary of the Treasury may waive part or all  
14 of the tax imposed by section 4971 of such  
15 Code to the extent that the payment of such tax  
16 would be excessive or otherwise inequitable rel-  
17 ative to the failure involved.

18 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR  
19 DECISIONS.—If, within 60 days of the due date for adop-  
20 tion of a funding improvement plan under subsection (c)  
21 or a rehabilitation plan under subsection (e), the plan  
22 sponsor of a plan in endangered status or a plan in critical  
23 status has not agreed on a funding improvement plan or  
24 rehabilitation plan, then any member of the board or  
25 group that constitutes the plan sponsor may require that

1 the plan sponsor enter into an expedited dispute resolution  
2 procedure for the development and adoption of a funding  
3 improvement plan or rehabilitation plan.

4 “(h) NONBARGAINED PARTICIPATION.—

5 “(1) BOTH BARGAINED AND NONBARGAINED  
6 EMPLOYEE-PARTICIPANTS.—In the case of an em-  
7 ployer that contributes to a multiemployer plan with  
8 respect to both employees who are covered by one or  
9 more collective bargaining agreements and to em-  
10 ployees who are not so covered, if the plan is in en-  
11 dangered status or in critical status, benefits of and  
12 contributions for the nonbargained employees, in-  
13 cluding surcharges on those contributions, shall be  
14 determined as if those nonbargained employees were  
15 covered under the first to expire of the employer’s  
16 collective bargaining agreements in effect when the  
17 plan entered endangered or critical status.

18 “(2) NONBARGAINED EMPLOYEES ONLY.—In  
19 the case of an employer that contributes to a multi-  
20 employer plan only with respect to employees who  
21 are not covered by a collective bargaining agreement,  
22 this section shall be applied as if the employer were  
23 the bargaining parties, and its participation agree-  
24 ment with the plan was a collective bargaining  
25 agreement with a term ending on the first day of the

1 plan year beginning after the employer is provided  
 2 the schedule or schedules described in subsections  
 3 (c) and (e).

4 “(3) EMPLOYEES COVERED BY A COLLECTIVE  
 5 BARGAINING AGREEMENT.—The determination as to  
 6 whether an employee covered by a collective bar-  
 7 gaining agreement for purposes of this section shall  
 8 be made without regard to the special rule in Treas-  
 9 ury Regulation section 1.410(b)–6(d)(ii)(D).

10 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-  
 11 poses of this section—

12 “(1) BARGAINING PARTY.—The term ‘bar-  
 13 gaining party’ means, in connection with a multiem-  
 14 ployer plan—

15 “(A) an employer that has an obligation to  
 16 contribute under the plan, and

17 “(B) an employee organization which, for  
 18 purposes of collective bargaining, represents  
 19 plan participants employed by such an em-  
 20 ployer.

21 “(2) FUNDED PERCENTAGE.—The term ‘fund-  
 22 ed percentage’ means the percentage equal to a frac-  
 23 tion—

1           “(A) the numerator of which is the value  
2           of the plan’s assets, as determined under sec-  
3           tion 304(c)(2), and

4           “(B) the denominator of which is the ac-  
5           crued liability of the plan, determined using ac-  
6           tuarial assumptions described in section  
7           304(c)(3).

8           “(3) ACCUMULATED FUNDING DEFICIENCY.—  
9           The term ‘accumulated funding deficiency’ has the  
10          meaning given such term in section 304(a).

11          “(4) ACTIVE PARTICIPANT.—The term ‘active  
12          participant’ means, in connection with a multiem-  
13          ployer plan, a participant who is in covered service  
14          under the plan.

15          “(5) INACTIVE PARTICIPANT.—The term ‘inac-  
16          tive participant’ means, in connection with a multi-  
17          employer plan, a participant, or the beneficiary or  
18          alternate payee of a participant, who—

19                 “(A) is not in covered service under the  
20                 plan, and

21                 “(B) is in pay status under the plan or has  
22                 a nonforfeitable right to benefits under the  
23                 plan.

24          “(6) PAY STATUS.—A person is in pay status  
25          under a multiemployer plan if—

1           “(A) at any time during the current plan  
2           year, such person is a participant or beneficiary  
3           under the plan and is paid an early, late, nor-  
4           mal, or disability retirement benefit under the  
5           plan (or a death benefit under the plan related  
6           to a retirement benefit), or

7           “(B) to the extent provided in regulations  
8           of the Secretary of the Treasury, such person  
9           is entitled to such a benefit under the plan.

10          “(7) OBLIGATION TO CONTRIBUTE.—The term  
11          ‘obligation to contribute’ has the meaning given such  
12          term under section 4212(a).

13          “(8) ACTUARIAL METHOD.—Notwithstanding  
14          any other provision of this section, the actuary’s de-  
15          terminations with respect to a plan’s normal cost,  
16          actuarial accrued liability, and improvements in a  
17          plan’s funded percentage under this section shall be  
18          based upon the unit credit funding method (whether  
19          or not that method is used for the plan’s actuarial  
20          valuation).”.

21          (b) CAUSE OF ACTION TO COMPEL ADOPTION OF  
22          FUNDING IMPROVEMENT OR REHABILITATION PLAN.—  
23          Section 502(a) of the Employee Retirement Income Secu-  
24          rity Act of 1974 is amended by striking “or” at the end  
25          of paragraph (8), by striking the period at the end of para-

1 graph (9) and inserting “; or” and by adding at the end  
2 the following:

3 “(10) in the case of a multiemployer plan that  
4 has been certified by the actuary to be in endan-  
5 gered or critical status under section 305, if the plan  
6 sponsor has not adopted a funding improvement or  
7 rehabilitation plan under subsection (c) or (e) of  
8 that section by the deadline established in that sec-  
9 tion, by an employer that has an obligation to con-  
10 tribute with respect to the multiemployer plan or an  
11 employee organization that represents active partici-  
12 pants in the multiemployer plan, for an order com-  
13 pelling the plan sponsor to adopt a funding improve-  
14 ment or rehabilitation plan.”.

15 (c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971  
16 of the Internal Revenue Code of 1986 is amended by re-  
17 designating subsection (g) as subsection (h), and inserting  
18 after subsection (f) the following:

19 “(g) MULTIEMPLOYER PLANS IN CRITICAL STA-  
20 TUS.—No tax shall be imposed under this section for a  
21 taxable year with respect to a multiemployer plan if, for  
22 the plan years ending with or within the taxable year, the  
23 plan is in critical status pursuant to section 305 of the  
24 Employee Retirement Income Security Act of 1974. This  
25 subsection shall only apply if the plan adopts a rehabilita-

1 tion plan in accordance with section 305(e) of such Act  
 2 and complies with such rehabilitation plan (and any modi-  
 3 fications of the plan).”.

4 (d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

5 (1) Section 302(b) of the Employee Retirement  
 6 Income Security Act of 1974, as amended by this  
 7 Act , is amended by adding at the end the following  
 8 new paragraph:

9 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-  
 10 TUS.—Subparagraph (A) shall not apply in the case  
 11 of a multiemployer plan for any plan year in which  
 12 the plan is in critical status pursuant to section 305.  
 13 This paragraph shall only apply if the plan adopts  
 14 a rehabilitation plan in accordance with section  
 15 305(e) of such Act and complies with such rehabili-  
 16 tation plan (and any modifications of the plan).”.

17 (2) Section 412(c) of the Internal Revenue  
 18 Code of 1986, as amended by this Act, is amended  
 19 by adding at the end the following new paragraph:

20 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-  
 21 TUS.—Subparagraph (A) shall not apply in the case  
 22 of a multiemployer plan for any plan year in which  
 23 the plan is in critical status pursuant to section 305  
 24 of the Employee Retirement Income Security Act of  
 25 1974. This paragraph shall only apply if the plan



1       adopts a rehabilitation plan in accordance with sec-  
 2       tion 305(e) of such Act and complies with such re-  
 3       habilitation plan (and any modifications of the  
 4       plan).”.

5       (e) CONFORMING AMENDMENT.—The table of con-  
 6       tents in section 1 of such Act (as amended by the pre-  
 7       ceding provisions of this Act) is amended by inserting  
 8       after the item relating to section 304 the following new  
 9       item:

“Sec. 305. Additional funding rules for multiemployer plans in endangered sta-  
 tus or critical status.”.

10       (f) EFFECTIVE DATES.—

11               (1) IN GENERAL.—The amendment made by  
 12       this section shall apply with respect to plan years be-  
 13       ginning after 2006.

14               (2) SPECIAL RULE FOR CERTAIN RESTORED  
 15       BENEFITS.—In the case of a multiemployer plan—

16                       (A) with respect to which benefits were re-  
 17       duced pursuant to a plan amendment adopted  
 18       on or after January 1, 2002, and before June  
 19       30, 2005, and

20                       (B) which, pursuant to the plan document,  
 21       the trust agreement, or a formal written com-  
 22       munication from the plan sponsor to partici-  
 23       pants provided before June 30, 2005, provided  
 24       for the restoration of such benefits,

1 the amendments made by this section shall not apply  
2 to such benefit restorations to the extent that any  
3 restriction on the providing or accrual of such bene-  
4 fits would otherwise apply by reason of such amend-  
5 ments.

6 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**  
7 **TIEMPLOYER PLANS.**

8 (a) **ADVANCE DETERMINATION OF IMPENDING IN-**  
9 **SOLVENCY OVER 5 YEARS.**—Section 4245(d)(1) of the  
10 Employee Retirement Income Security Act of 1974 (29  
11 U.S.C. 1426(d)(1)) is amended—

12 (1) by striking “3 plan years” the second place  
13 it appears and inserting “5 plan years”; and

14 (2) by adding at the end the following new sen-  
15 tence: “If the plan sponsor makes such a determina-  
16 tion that the plan will be insolvent in any of the next  
17 5 plan years, the plan sponsor shall make the com-  
18 parison under this paragraph at least annually until  
19 the plan sponsor makes a determination that the  
20 plan will not be insolvent in any of the next 5 plan  
21 years.”.

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

1 **PART II—AMENDMENTS TO INTERNAL REVENUE**

2 **CODE OF 1986**

3 **SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED**

4 **BENEFIT PLANS.**

5 (a) IN GENERAL.—Subpart A of part III of sub-  
6 chapter D of chapter 1 of the Internal Revenue Code of  
7 1986 (as added by this Act) is amended by inserting after  
8 section 430 the following new section:

9 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**  
10 **PLOYER PLANS.**

11 “(a) IN GENERAL.—For purposes of section 412, the  
12 accumulated funding deficiency of a multiemployer plan  
13 for any plan year is—

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

21 “(2) if the multiemployer plan is in reorganiza-  
22 tion for any plan year, the accumulated funding de-  
23 ficiency of the plan determined under section 4243  
24 of the Employee Retirement Income Security Act of  
25 1974.

26 “(b) FUNDING STANDARD ACCOUNT.—

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

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

9                   “(A) the normal cost of the plan for the  
10                  plan year,

11                  “(B) the amounts necessary to amortize in  
12                  equal annual installments (until fully amor-  
13                  tized)—

14                          “(i) separately, with respect to each  
15                          plan year, the net increase (if any) in un-  
16                          funded past service liability under the plan  
17                          arising from plan amendments adopted in  
18                          such year, over a period of 15 plan years,

19                          “(ii) separately, with respect to each  
20                          plan year, the net experience loss (if any)  
21                          under the plan, over a period of 15 plan  
22                          years, and

23                          “(iii) separately, with respect to each  
24                          plan year, the net loss (if any) resulting  
25                          from changes in actuarial assumptions

1           used under the plan, over a period of 15  
2           plan years,

3           “(C) the amount necessary to amortize  
4           each waived funding deficiency (within the  
5           meaning of section 412(d)(3)) for each prior  
6           plan year in equal annual installments (until  
7           fully amortized) over a period of 15 plan years,

8           “(D) the amount necessary to amortize in  
9           equal annual installments (until fully amor-  
10          tized) over a period of 5 plan years any amount  
11          credited to the funding standard account under  
12          section 412(b)(3)(D) (as in effect on the day  
13          before the date of the enactment of the Pension  
14          Security and Transparency Act of 2005), and

15          “(E) the amount necessary to amortize in  
16          equal annual installments (until fully amor-  
17          tized) over a period of 20 years the contribu-  
18          tions which would be required to be made under  
19          the plan but for the provisions of section  
20          412(c)(7)(A)(i)(I) (as in effect on the day be-  
21          fore the date of the enactment of the Pension  
22          Security and Transparency Act of 2005).

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

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

4           “(B) the amount necessary to amortize in  
5           equal annual installments (until fully amor-  
6           tized)—

7                   “(i) separately, with respect to each  
8                   plan year, the net decrease (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                  “(ii) separately, with respect to each  
13                  plan year, the net experience gain (if any)  
14                  under the plan, over a period of 15 plan  
15                  years, and

16                  “(iii) separately, with respect to each  
17                  plan year, the net gain (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 of the waived funding de-  
22           ficiency (within the meaning of section  
23           412(d)(3)) for the plan year, and

24           “(D) in the case of a plan year for which  
25           the accumulated funding deficiency is deter-

1           mined under the funding standard account if  
2           such plan year follows a plan year for which  
3           such deficiency was determined under the alter-  
4           native minimum funding standard under section  
5           412(g) (as in effect on the day before the date  
6           of the enactment of the Pension Security and  
7           Transparency Act of 2005), the excess (if any)  
8           of any debit balance in the funding standard  
9           account (determined without regard to this sub-  
10          paragraph) over any debit balance in the alter-  
11          native minimum funding standard account.

12          “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-  
13          ORTIZED TO PLAN YEARS BEFORE 2007.—In the case  
14          of any amount amortized under section 412(b) (as  
15          in effect on the day before the date of the enactment  
16          of the Pension Security and Transparency Act of  
17          2005) over any period beginning with a plan year  
18          beginning before 2007, in lieu of the amortization  
19          described in paragraphs (2)(B) and (3)(B), such  
20          amount shall continue to be amortized under such  
21          section as so in effect.

22          “(5) COMBINING AND OFFSETTING AMOUNTS  
23          TO BE AMORTIZED.—Under regulations prescribed  
24          by the Secretary, amounts required to be amortized

1 under paragraph (2) or paragraph (3), as the case  
2 may be—

3 “(A) may be combined into one amount  
4 under such paragraph to be amortized over a  
5 period determined on the basis of the remaining  
6 amortization period for all items entering into  
7 such combined amount, and

8 “(B) may be offset against amounts re-  
9 quired to be amortized under the other such  
10 paragraph, with the resulting amount to be am-  
11 ortized over a period determined on the basis of  
12 the remaining amortization periods for all items  
13 entering into whichever of the two amounts  
14 being offset is the greater.

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

21 “(7) SPECIAL RULES RELATING TO CHARGES  
22 AND CREDITS TO FUNDING STANDARD ACCOUNT.—  
23 For purposes of this part—

24 “(A) WITHDRAWAL LIABILITY.—Any  
25 amount received by a multiemployer plan in



1 payment of all or part of an employer's with-  
2 drawal liability under part 1 of subtitle E of  
3 title IV of the Employee Retirement Income Se-  
4 curity Act of 1974 shall be considered an  
5 amount contributed by the employer to or  
6 under the plan. The Secretary may prescribe by  
7 regulation additional charges and credits to a  
8 multiemployer plan's funding standard account  
9 to the extent necessary to prevent withdrawal li-  
10 ability payments from being unduly reflected as  
11 advance funding for plan liabilities.

12 “(B) ADJUSTMENTS WHEN A MULTITEM-  
13 PLOYER PLAN LEAVES REORGANIZATION.—If a  
14 multiemployer plan is not in reorganization in  
15 the plan year but was in reorganization in the  
16 immediately preceding plan year, any balance in  
17 the funding standard account at the close of  
18 such immediately preceding plan year—

19 “(i) shall be eliminated by an offset-  
20 ting credit or charge (as the case may be),  
21 but

22 “(ii) shall be taken into account in  
23 subsequent plan years by being amortized  
24 in equal annual installments (until fully  
25 amortized) over 30 plan years.

1       The preceding sentence shall not apply to the  
2       extent of any accumulated funding deficiency  
3       under section 4243(a) of such Act as of the end  
4       of the last plan year that the plan was in reor-  
5       ganization.

6               “(C) PLAN PAYMENTS TO SUPPLEMENTAL  
7       PROGRAM OR WITHDRAWAL LIABILITY PAYMENT  
8       FUND.—Any amount paid by a plan during a  
9       plan year to the Pension Benefit Guaranty Cor-  
10      poration pursuant to section 4222 of such Act  
11      or to a fund exempt under section 501(c)(22)  
12      pursuant to section 4223 of such Act shall re-  
13      duce the amount of contributions considered re-  
14      ceived by the plan for the plan year.

15              “(D) INTERIM WITHDRAWAL LIABILITY  
16      PAYMENTS.—Any amount paid by an employer  
17      pending a final determination of the employer’s  
18      withdrawal liability under part 1 of subtitle E  
19      of title IV of such Act and subsequently re-  
20      funded to the employer by the plan shall be  
21      charged to the funding standard account in ac-  
22      cordance with regulations prescribed by the  
23      Secretary.

24              “(E) ELECTION FOR DEFERRAL OF  
25      CHARGE FOR PORTION OF NET EXPERIENCE

1           LOSS.—If an election is in effect under section  
2           412(b)(7)(F) (as in effect on the day before the  
3           date of the enactment of the Pension Security  
4           and Transparency Act of 2005) for any plan  
5           year, the funding standard account shall be  
6           charged in the plan year to which the portion  
7           of the net experience loss deferred by such elec-  
8           tion was deferred with the amount so deferred  
9           (and paragraph (2)(B)(ii) shall not apply to the  
10          amount so charged).

11           “(F)     FINANCIAL     ASSISTANCE.—Any  
12          amount of any financial assistance from the  
13          Pension Benefit Guaranty Corporation to any  
14          plan, and any repayment of such amount, shall  
15          be taken into account under this section and  
16          section 412 in such manner as is determined by  
17          the Secretary.

18           “(G) SHORT-TERM BENEFITS.—To the ex-  
19          tent that any plan amendment increases the un-  
20          funded past service liability under the plan by  
21          reason of an increase in benefits which are pay-  
22          able under the terms of the plan for a period  
23          that does not exceed 14 years from the effective  
24          date of the amendment, paragraph (2)(B)(i)  
25          shall be applied separately with respect to such

1           increase in unfunded past service liability by  
 2           substituting the number of years of the period  
 3           during which such benefits are payable for ‘15’.

4           “(c) ADDITIONAL RULES.—

5           “(1) DETERMINATIONS TO BE MADE UNDER  
 6           FUNDING METHOD.—For purposes of this part, nor-  
 7           mal costs, accrued liability, past service liabilities,  
 8           and experience gains and losses shall be determined  
 9           under the funding method used to determine costs  
 10          under the plan.

11          “(2) VALUATION OF ASSETS.—

12           “(A) IN GENERAL.—For purposes of this  
 13           part, the value of the plan’s assets shall be de-  
 14           termined on the basis of any reasonable actu-  
 15           arial method of valuation which takes into ac-  
 16           count fair market value and which is permitted  
 17           under regulations prescribed by the Secretary.

18           “(B) ELECTION WITH RESPECT TO  
 19           BONDS.—The value of a bond or other evidence  
 20           of indebtedness which is not in default as to  
 21           principal or interest may, at the election of the  
 22           plan administrator, be determined on an amor-  
 23           tized basis running from initial cost at purchase  
 24           to par value at maturity or earliest call date.  
 25           Any election under this subparagraph shall be

1           made at such time and in such manner as the  
 2           Secretary shall by regulations provide, shall  
 3           apply to all such evidences of indebtedness, and  
 4           may be revoked only with the consent of the  
 5           Secretary.

6           “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-  
 7           SONABLE.—For purposes of this section, all costs, li-  
 8           abilities, rates of interest, and other factors under  
 9           the plan shall be determined on the basis of actu-  
 10          arial assumptions and methods—

11                 “(A) each of which is reasonable (taking  
 12                 into account the experience of the plan and rea-  
 13                 sonable expectations), and

14                 “(B) which, in combination, offer the actu-  
 15                 ary’s best estimate of anticipated experience  
 16                 under the plan.

17           “(4) TREATMENT OF CERTAIN CHANGES AS EX-  
 18           PERIENCE GAIN OR LOSS.—For purposes of this sec-  
 19           tion, if—

20                 “(A) a change in benefits under the Social  
 21                 Security Act or in other retirement benefits cre-  
 22                 ated under Federal or State law, or

23                 “(B) a change in the definition of the term  
 24                 ‘wages’ under section 3121, or a change in the  
 25                 amount of such wages taken into account under

1 regulations prescribed for purposes of section  
2 401(a)(5),  
3 results in an increase or decrease in accrued liability  
4 under a plan, such increase or decrease shall be  
5 treated as an experience loss or gain.

6 “(5) FULL FUNDING.—If, as of the close of a  
7 plan year, a plan would (without regard to this para-  
8 graph) have an accumulated funding deficiency in  
9 excess of the full funding limitation—

10 “(A) the funding standard account shall be  
11 credited with the amount of such excess, and

12 “(B) all amounts described in subpara-  
13 graphs (B), (C), and (D) of subsection (b) (2)  
14 and subparagraph (B) of subsection (b)(3)  
15 which are required to be amortized shall be con-  
16 sidered fully amortized for purposes of such  
17 subparagraphs.

18 “(6) FULL-FUNDING LIMITATION.—

19 “(A) IN GENERAL.—For purposes of para-  
20 graph (5), the term ‘full-funding limitation’  
21 means the excess (if any) of—

22 “(i) the accrued liability (including  
23 normal cost) under the plan (determined  
24 under the entry age normal funding meth-  
25 od if such accrued liability cannot be di-

rectly calculated under the funding method  
used for the plan), over

“(ii) the lesser of—

“(I) the fair market value of the  
plan’s assets, or

“(II) the value of such assets de-  
termined under paragraph (2).

“(B) MINIMUM AMOUNT.—

“(i) IN GENERAL.—In no event shall  
the full-funding limitation determined  
under subparagraph (A) be less than the  
excess (if any) of—

“(I) 90 percent of the current li-  
ability of the plan (including the ex-  
pected increase in current liability due  
to benefits accruing during the plan  
year), over

“(II) the value of the plan’s as-  
sets determined under paragraph (2).

“(ii) ASSETS.—For purposes of clause  
(i), assets shall not be reduced by any  
credit balance in the funding standard ac-  
count.

“(C) FULL FUNDING LIMITATION.—For  
purposes of this paragraph, unless otherwise

provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

“(D) CURRENT LIABILITY.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘current liability’ means all liabilities to employees and their beneficiaries under the plan.

“(ii) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—For purposes of clause (i), any benefit contingent on an event other than—

“(I) age, service, compensation, death, or disability, or

“(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

“(iii) INTEREST RATE USED.—The rate of interest used to determine current liability under this paragraph shall be the



1 rate of interest determined under subpara-  
2 graph (E).

3 “(iv) MORTALITY TABLES.—

4 “(I) COMMISSIONERS’ STANDARD  
5 TABLE.—In the case of plan years be-  
6 ginning before the first plan year to  
7 which the first tables prescribed under  
8 subclause (II) apply, the mortality  
9 table used in determining current li-  
10 ability under this paragraph shall be  
11 the table prescribed by the Secretary  
12 which is based on the prevailing com-  
13 missioners’ standard table (described  
14 in section 807(d)(5)(A)) used to de-  
15 termine reserves for group annuity  
16 contracts issued on January 1, 1993.

17 “(II) SECRETARIAL AUTHOR-  
18 ITY.—The Secretary may by regula-  
19 tion prescribe for plan years beginning  
20 after December 31, 1999, mortality  
21 tables to be used in determining cur-  
22 rent liability under this subsection.  
23 Such tables shall be based upon the  
24 actual experience of pension plans and  
25 projected trends in such experience.

1 In prescribing such tables, the Sec-  
2 retary shall take into account results  
3 of available independent studies of  
4 mortality of individuals covered by  
5 pension plans.

6 “(v) SEPARATE MORTALITY TABLES  
7 FOR THE DISABLED.—Notwithstanding  
8 clause (iv)—

9 “(I) IN GENERAL.—The Sec-  
10 retary shall establish mortality tables  
11 which may be used (in lieu of the ta-  
12 bles under clause (iv)) to determine  
13 current liability under this subsection  
14 for individuals who are entitled to  
15 benefits under the plan on account of  
16 disability. The Secretary shall estab-  
17 lish separate tables for individuals  
18 whose disabilities occur in plan years  
19 beginning before January 1, 1995,  
20 and for individuals whose disabilities  
21 occur in plan years beginning on or  
22 after such date.

23 “(II) SPECIAL RULE FOR DIS-  
24 ABILITIES OCCURRING AFTER 1994.—  
25 In the case of disabilities occurring in

1 plan years beginning after December  
2 31, 1994, the tables under subclause  
3 (I) shall apply only with respect to in-  
4 dividuals described in such subclause  
5 who are disabled within the meaning  
6 of title II of the Social Security Act  
7 and the regulations thereunder.

8 “(vi) PERIODIC REVIEW.—The Sec-  
9 retary shall periodically (at least every 5  
10 years) review any tables in effect under  
11 this subparagraph and shall, to the extent  
12 such Secretary determines necessary, by  
13 regulation update the tables to reflect the  
14 actual experience of pension plans and pro-  
15 jected trends in such experience.

16 “(E) REQUIRED CHANGE OF INTEREST  
17 RATE.—For purposes of determining a plan’s  
18 current liability for purposes of this para-  
19 graph—

20 “(i) IN GENERAL.—If any rate of in-  
21 terest used under the plan under sub-  
22 section (b)(6) to determine cost is not  
23 within the permissible range, the plan shall  
24 establish a new rate of interest within the  
25 permissible range.

1 “(ii) PERMISSIBLE RANGE.—For pur-  
 2 poses of this subparagraph—

3 “(I) IN GENERAL.—Except as  
 4 provided in subclause (II), the term  
 5 ‘permissible range’ means a rate of in-  
 6 terest which is not more than 5 per-  
 7 cent above, and not more than 10 per-  
 8 cent below, the weighted average of  
 9 the rates of interest on 30-year Treas-  
 10 ury securities during the 4-year period  
 11 ending on the last day before the be-  
 12 ginning of the plan year.

13 “(II) SECRETARIAL AUTHOR-  
 14 ITY.—If the Secretary finds that the  
 15 lowest rate of interest permissible  
 16 under subclause (I) is unreasonably  
 17 high, the Secretary may prescribe a  
 18 lower rate of interest, except that  
 19 such rate may not be less than 80  
 20 percent of the average rate deter-  
 21 mined under such subclause.

22 “(iii) ASSUMPTIONS.—Notwith-  
 23 standing paragraph (3)(A), the interest  
 24 rate used under the plan shall be—

1                   “(I) determined without taking  
2                   into account the experience of the  
3                   plan and reasonable expectations, but  
4                   “(II) consistent with the assump-  
5                   tions which reflect the purchase rates  
6                   which would be used by insurance  
7                   companies to satisfy the liabilities  
8                   under the plan.

9                   “(7) ANNUAL VALUATION.—

10                   “(A) IN GENERAL.—For purposes of this  
11                   section, a determination of experience gains and  
12                   losses and a valuation of the plan’s liability  
13                   shall be made not less frequently than once  
14                   every year, except that such determination shall  
15                   be made more frequently to the extent required  
16                   in particular cases under regulations prescribed  
17                   by the Secretary.

18                   “(B) VALUATION DATE.—

19                   “(i) CURRENT YEAR.—Except as pro-  
20                   vided in clause (ii), the valuation referred  
21                   to in subparagraph (A) shall be made as of  
22                   a date within the plan year to which the  
23                   valuation refers or within one month prior  
24                   to the beginning of such year.

1           “(ii) USE OF PRIOR YEAR VALU-  
2           ATION.—The valuation referred to in sub-  
3           paragraph (A) may be made as of a date  
4           within the plan year prior to the year to  
5           which the valuation refers if, as of such  
6           date, the value of the assets of the plan are  
7           not less than 100 percent of the plan’s cur-  
8           rent liability (as defined in paragraph  
9           (6)(D) without regard to clause (iv) there-  
10          of).

11          “(iii) ADJUSTMENTS.—Information  
12          under clause (ii) shall, in accordance with  
13          regulations, be actuarially adjusted to re-  
14          flect significant differences in participants.

15          “(iv) LIMITATION.—A change in fund-  
16          ing method to use a prior year valuation,  
17          as provided in clause (ii), may not be made  
18          unless as of the valuation date within the  
19          prior plan year, the value of the assets of  
20          the plan are not less than 125 percent of  
21          the plan’s current liability (as defined in  
22          paragraph (6)(D) without regard to clause  
23          (iv) thereof).

24          “(8) TIME WHEN CERTAIN CONTRIBUTIONS  
25          DEEMED MADE.—For purposes of this section, any

1 contributions for a plan year made by an employer  
 2 after the last day of such plan year, but not later  
 3 than two and one-half months after such day, shall  
 4 be deemed to have been made on such last day. For  
 5 purposes of this subparagraph, such two and one-  
 6 half month period may be extended for not more  
 7 than six months under regulations prescribed by the  
 8 Secretary.

9 “(d) EXTENSION OF AMORTIZATION PERIODS FOR  
 10 MULTIEMPLOYER PLANS.—

11 “(1) AUTOMATIC EXTENSION UPON APPLICA-  
 12 TION BY CERTAIN PLANS.—

13 “(A) IN GENERAL.—If the plan sponsor of  
 14 a multiemployer plan—

15 “(i) submits to the Secretary an appli-  
 16 cation for an extension of the period of  
 17 years required to amortize any unfunded  
 18 liability described in any clause of sub-  
 19 section (b)(2)(B) or described in subsection  
 20 (b)(4), and

21 “(ii) includes with the application a  
 22 certification by the plan’s actuary de-  
 23 scribed in subparagraph (B),

24 the Secretary shall extend the amortization pe-  
 25 riod for the period of time (not in excess of 5

years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

“(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan’s actuary certifies that, based on reasonable assumptions—

“(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

“(ii) the plan sponsor has adopted a plan to improve the plan’s funding status,

“(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

“(iv) the notice required under paragraph (3)(A) has been provided.

“(2) ADDITIONAL EXTENSION.—

“(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liabil-



1           ity described in any clause of subsection  
2           (b)(2)(B) or described in subsection (b)(4), the  
3           Secretary may extend the amortization period  
4           for a period of time (not in excess of 5 years)  
5           if the Secretary of the Treasury makes the de-  
6           termination described in subparagraph (B).  
7           Such extension shall be in addition to any ex-  
8           tension under paragraph (1).

9           “(B) DETERMINATION.—The Secretary  
10          may grant an extension under subparagraph  
11          (A) if the Secretary determines that—

12               “(i) such extension would carry out  
13               the purposes of this Act and would provide  
14               adequate protection for participants under  
15               the plan and their beneficiaries, and

16               “(ii) the failure to permit such exten-  
17               sion would—

18                       “(I) result in a substantial risk  
19                       to the voluntary continuation of the  
20                       plan, or a substantial curtailment of  
21                       pension benefit levels or employee  
22                       compensation, and

23                       “(II) be adverse to the interests  
24                       of plan participants in the aggregate.

1           “(C) ACTION BY SECRETARY.—The Sec-  
2           retary shall act upon any application for an ex-  
3           tension under this paragraph within 180 days  
4           of the submission of such application. If the  
5           Secretary rejects the application for an exten-  
6           sion under this paragraph, the Secretary shall  
7           provide notice to the plan detailing the specific  
8           reasons for the rejection, including references to  
9           the criteria set forth above.

10          “(3) ADVANCE NOTICE.—

11               “(A) IN GENERAL.—The Secretary shall,  
12           before granting an extension under this sub-  
13           section, require each applicant to provide evi-  
14           dence satisfactory to such Secretary that the  
15           applicant has provided notice of the filing of the  
16           application for such extension to each affected  
17           party (as defined in section 4001(a)(21) of the  
18           Employee Retirement Income Security Act of  
19           1974) with respect to the affected plan. Such  
20           notice shall include a description of the extent  
21           to which the plan is funded for benefits which  
22           are guaranteed under title IV of such Act and  
23           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 paragraph (1).”.

3       (b) EFFECTIVE DATE.—

4           (1) IN GENERAL.—The amendments made by  
5       this section shall apply to plan years beginning after  
6       2006.

7           (2) SPECIAL RULE FOR CERTAIN AMORTIZATION  
8       EXTENSIONS.—If the Secretary of the Treasury  
9       grants an extension under section 304 of the Em-  
10      ployee Retirement Income Security Act of 1974 and  
11      section 412(e) of the Internal Revenue Code of 1986  
12      with respect to any application filed with the Sec-  
13      retary of the Treasury on or before June 30, 2005,  
14      the interest rate used for purposes of determining  
15      any amortization payment with respect to the exten-  
16      sion (or any modification of the extension) shall be  
17      the rate determined under section 6621(b) of such  
18      Code.

19 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
20 **PLOYER PLANS IN ENDANGERED OR CRIT-**  
21 **ICAL STATUS.**

22       (a) IN GENERAL.—Subpart A of part III of sub-  
23      chapter D of chapter 1 of the Internal Revenue Code of  
24      1986 (as amended by this Act) is amended by inserting  
25      after section 431 the following new section:

1 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMP-**  
 2 **LOYER PLANS IN ENDANGERED STATUS OR**  
 3 **CRITICAL STATUS.**

4 “(a) GENERAL RULE.—For purposes of this part, in  
 5 the case of a multiemployer plan—

6 “(1) if the plan is in endangered status—

7 “(A) the plan sponsor shall adopt and im-  
 8 plement a funding improvement plan in accord-  
 9 ance with the requirements of subsection (c),  
 10 and

11 “(B) the requirements of subsection (d)  
 12 shall apply during the funding plan adoption  
 13 period and the funding improvement period,  
 14 and

15 “(2) if the plan is in critical status—

16 “(A) the plan sponsor shall adopt and im-  
 17 plement a rehabilitation plan in accordance with  
 18 the requirements of subsection (e), and

19 “(B) the requirements of subsection (f)  
 20 shall apply during the rehabilitation plan adop-  
 21 tion period and the rehabilitation period.

22 “(b) DETERMINATION OF ENDANGERED AND CRIT-  
 23 ICAL STATUS.—For purposes of this section—

24 “(1) ENDANGERED STATUS.—A multiemployer  
 25 plan is in endangered status for a plan year if, as  
 26 determined by the plan actuary under paragraph

1       (3), the plan is not in critical status for the plan  
2       year and either—

3               “(A) the plan’s funded percentage for such  
4       plan year is less than 80 percent, or

5               “(B) the plan has an accumulated funding  
6       deficiency for such plan year, or is projected to  
7       have such an accumulated funding deficiency  
8       for any of the 6 succeeding plan years, taking  
9       into account any extension of amortization peri-  
10      ods under section 431(d).

11      For purposes of this section, a plan described in  
12      subparagraph (B) shall be treated as in seriously en-  
13      dangered status.

14              “(2) CRITICAL STATUS.—A multiemployer plan  
15      is in critical status for a plan year if, as determined  
16      by the plan actuary under paragraph (3), the plan  
17      is described in 1 or more of the following subpara-  
18      graphs as of the beginning of the plan year:

19              “(A) A plan is described in this subpara-  
20      graph if—

21                      “(i) the funded percentage of the plan  
22                      is less than 65 percent, and

23                      “(ii) the sum of—

24                              “(I) the market value of plan as-  
25                              sets, plus

1                   “(II) the present value of the  
2                   reasonably anticipated employer con-  
3                   tributions for the current plan year  
4                   and each of the 5 succeeding plan  
5                   years, assuming that the terms of all  
6                   collective bargaining agreements pur-  
7                   suant to which the plan is maintained  
8                   for the current plan year continue in  
9                   effect for succeeding plan years,  
10                  is less than the present value of all benefits  
11                  projected to be payable under the plan dur-  
12                  ing the current plan year and each of the  
13                  5 succeeding plan years (plus administra-  
14                  tive expenses for such plan years).

15                  “(B) A plan is described in this subpara-  
16                  graph if—

17                       “(i) the plan has an accumulated  
18                       funding deficiency for the current plan  
19                       year, not taking into account any extension  
20                       of amortization periods under section  
21                       431(d), or

22                       “(ii) the plan is projected to have an  
23                       accumulated funding deficiency for any of  
24                       the 3 succeeding plan years (4 succeeding  
25                       plan years if the funded percentage of the

1 plan is 65 percent or less), not taking into  
2 account any extension of amortization peri-  
3 ods under section 431(d).

4 “(C) A plan is described in this subpara-  
5 graph if—

6 “(i)(I) the plan’s normal cost for the  
7 current plan year, plus interest (deter-  
8 mined at the rate used for determining  
9 costs under the plan) for the current plan  
10 year on the amount of unfunded benefit li-  
11 abilities under the plan as of the last date  
12 of the preceding plan year, exceeds

13 “(II) the present value of the reason-  
14 ably anticipated employer contributions for  
15 the current plan year,

16 “(ii) the present value of nonforfeit-  
17 able benefits of inactive participants is  
18 greater than the present value of non-  
19 forfeitable benefits of active participants,  
20 and

21 “(iii) the plan has an accumulated  
22 funding deficiency for the current plan  
23 year, or is projected to have such a defi-  
24 ciency for any of the 4 succeeding plan  
25 years, not taking into account any exten-

1                   sion of amortization periods under section  
2                   431(d).

3                   “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
4            ARY.—

5                   “(A) IN GENERAL.—During the 90-day pe-  
6                   riod beginning on the first day of each plan  
7                   year of a multiemployer plan, the plan actuary  
8                   shall certify to the Secretary—

9                   “(i) whether or not the plan is in en-  
10                  dangered status for such plan year and  
11                  whether or not the plan is in critical status  
12                  for such plan year, and

13                  “(ii) in the case of a plan which is in  
14                  a funding improvement or rehabilitation  
15                  period, whether or not the plan is making  
16                  the scheduled progress in meeting the re-  
17                  quirements of its funding improvement or  
18                  rehabilitation plan.

19                  “(B) ACTUARIAL PROJECTIONS OF ASSETS  
20            AND LIABILITIES.—

21                  “(i) IN GENERAL.—In making the de-  
22                  terminations and projections under this  
23                  subsection, the plan actuary shall make  
24                  projections required for the current and  
25                  succeeding plan years, using reasonable ac-



1           tuarial estimates, assumptions, and meth-  
2           ods, of the current value of the assets of  
3           the plan and the present value of all liabil-  
4           ities to participants and beneficiaries under  
5           the plan for the current plan year as of the  
6           beginning of such year. The projected  
7           present value of liabilities as of the begin-  
8           ning of such year shall be determined  
9           based on the actuarial statement required  
10          under section 103(d) of the Employee Re-  
11          tirement Income Security Act of 1974 with  
12          respect to the most recently filed annual  
13          report or the actuarial valuation for the  
14          preceding plan year.

15               “(ii) DETERMINATIONS OF FUTURE  
16          CONTRIBUTIONS.—Any actuarial projection  
17          of plan assets shall assume—

18                       “(I) reasonably anticipated em-  
19                       ployer contributions for the current  
20                       and succeeding plan years, assuming  
21                       that the terms of the one or more col-  
22                       lective bargaining agreements pursu-  
23                       ant to which the plan is maintained  
24                       for the current plan year continue in  
25                       effect for succeeding plan years, or

1                   “(II) that employer contributions  
2                   for the most recent plan year will con-  
3                   tinue indefinitely, but only if the plan  
4                   actuary determines there have been no  
5                   significant demographic changes that  
6                   would make such assumption unrea-  
7                   sonable.

8                   “(C) PENALTY FOR FAILURE TO SECURE  
9                   TIMELY ACTUARIAL CERTIFICATION.—Any fail-  
10                  ure of the plan’s actuary to certify the plan’s  
11                  status under this subsection by the date speci-  
12                  fied in subparagraph (A) shall be treated for  
13                  purposes of section 502(c)(2) of such Act as a  
14                  failure or refusal by the plan administrator to  
15                  file the annual report required to be filed with  
16                  the Secretary under section 101(b)(4) of such  
17                  Act.

18                  “(D) NOTICE.—In any case in which a  
19                  multiemployer plan is certified to be in endan-  
20                  gered or critical status under subparagraph (A),  
21                  the plan sponsor shall, not later than 30 days  
22                  after the date of the certification, provide notifi-  
23                  cation of the endangered or critical status to  
24                  the participants and beneficiaries, the bar-  
25                  gaining parties, the Pension Benefit Guaranty

1 Corporation, the Secretary, and the Secretary  
2 of Labor.

3 “(c) FUNDING IMPROVEMENT PLAN MUST BE  
4 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED  
5 STATUS.—

6 “(1) IN GENERAL.—In any case in which a  
7 multiemployer plan is in endangered status for a  
8 plan year, the plan sponsor, in accordance with this  
9 subsection—

10 “(A) shall adopt a funding improvement  
11 plan not later than 240 days following the re-  
12 quired date for the actuarial certification of en-  
13 dangered status under subsection (b)(3)(A),  
14 and

15 “(B) within 30 days after the adoption of  
16 the funding improvement plan—

17 “(i) in the case of a plan in seriously  
18 endangered status, shall provide to the  
19 bargaining parties 1 or more schedules  
20 showing revised benefit structures, revised  
21 contribution structures, or both, which, if  
22 adopted, may reasonably be expected to en-  
23 able the multiemployer plan to meet the  
24 applicable requirements under paragraph  
25 (3) in accordance with the funding im-

1           provement plan, including a description of  
2           the reductions in future benefit accruals  
3           and increases in contributions that the  
4           plan sponsor determines are reasonably  
5           necessary to meet the applicable require-  
6           ments if the plan sponsor assumes that  
7           there are no increases in contributions  
8           under the plan other than the increases  
9           necessary to meet the applicable require-  
10          ments after future benefit accruals have  
11          been reduced to the maximum extent per-  
12          mitted by law, and

13               “(ii) may, if the plan sponsor deems  
14               appropriate, prepare and provide the bar-  
15               gaining parties with additional information  
16               relating to contribution rates or benefit re-  
17               ductions, alternative schedules, or other in-  
18               formation relevant to achieving the re-  
19               quirements under paragraph (3) in accord-  
20               ance with the funding improvement plan.

21               “(2) EXCEPTION FOR YEARS AFTER PROCESS  
22               BEGINS.—Paragraph (1) shall not apply to a plan  
23               year if such year is in a funding plan adoption pe-  
24               riod or funding improvement period by reason of the  
25               plan being in endangered status for a preceding plan

1 year. For purposes of this section, such preceding  
2 plan year shall be the initial determination year with  
3 respect to the funding improvement plan to which it  
4 relates.

5 “(3) FUNDING IMPROVEMENT PLAN.—For pur-  
6 poses of this section—

7 “(A) IN GENERAL.—A funding improve-  
8 ment plan is a plan which consists of the ac-  
9 tions, including options or a range of options to  
10 be proposed to the bargaining parties, which,  
11 under reasonable actuarial assumptions, will re-  
12 sult in the plan meeting the requirements of  
13 this paragraph.

14 “(B) PLANS OTHER THAN SERIOUSLY EN-  
15 DANGERED PLANS.—In the case of plan not in  
16 seriously endangered status, the requirements  
17 of this paragraph are met if the plan’s funded  
18 percentage as of the close of the funding im-  
19 provement period exceeds the lesser of 80 per-  
20 cent or a percentage equal to the sum of—

21 “(i) such percentage as of the begin-  
22 ning of such period, plus

23 “(ii) 10 percent of the percentage de-  
24 termined under clause (i).

1           “(C) SERIOUSLY ENDANGERED PLANS.—

2           In the case of a plan in seriously endangered  
3           status, the requirements of this paragraph are  
4           met if—

5                   “(i) the plan’s funded percentage as  
6                   of the close of the funding improvement  
7                   period equals or exceeds the percentage  
8                   which is equal to the sum of—

9                           “(I) such percentage as of the  
10                           beginning of such period, plus

11                           “(II) 33 percent of the difference  
12                           between 100 percent and the percent-  
13                           age under subclause (I), and

14                           “(ii) there is no accumulated funding  
15                           deficiency for any plan year during the  
16                           funding improvement period (taking into  
17                           account any extension of amortization peri-  
18                           ods under section 431(d)).

19           “(4) FUNDING IMPROVEMENT PERIOD.—For  
20           purposes of this section—

21                   “(A) IN GENERAL.—The funding improve-  
22                   ment period for any funding improvement plan  
23                   adopted pursuant to this subsection is the 10-  
24                   year period beginning on the first day of the

1 first plan year of the multiemployer plan begin-  
2 ning after the earlier of—

3 “(i) the second anniversary of the  
4 date of the adoption of the funding im-  
5 provement plan, or

6 “(ii) the expiration of the collective  
7 bargaining agreements in effect on the due  
8 date for the actuarial certification of en-  
9 dangered status for the initial determina-  
10 tion year under subsection (b)(3)(A) and  
11 covering, as of such due date, at least 75  
12 percent of the active participants in such  
13 multiemployer plan.

14 “(B) COORDINATION WITH CHANGES IN  
15 STATUS.—

16 “(i) PLANS NO LONGER IN ENDAN-  
17 GERED STATUS.—If the plan’s actuary cer-  
18 tifies under subsection (b)(3)(A) for a plan  
19 year in any funding plan adoption period  
20 or funding improvement period that the  
21 plan is no longer in endangered status and  
22 is not in critical status, the funding plan  
23 adoption period or funding improvement  
24 period, whichever is applicable, shall end as  
25 of the close of the preceding plan year.

1                   “(ii) PLANS IN CRITICAL STATUS.—If  
2                   the plan’s actuary certifies under sub-  
3                   section (b)(3)(A) for a plan year in any  
4                   funding plan adoption period or funding  
5                   improvement period that the plan is in  
6                   critical status, the funding plan adoption  
7                   period or funding improvement period,  
8                   whichever is applicable, shall end as of the  
9                   close of the plan year preceding the first  
10                  plan year in the rehabilitation period with  
11                  respect to such status.

12               “(5) SPECIAL RULES FOR CERTAIN UNDER-  
13               FUNDED PLANS.—

14               “(A) IN GENERAL.—Except as provided in  
15               subparagraph (B), if the funded percentage of  
16               a plan in seriously endangered status was 70  
17               percent or less as of the beginning of the initial  
18               determination year, the following rules shall  
19               apply in determining whether the requirements  
20               of paragraph (3)(C)(i) are met:

21               “(i) The plan’s funded percentage as  
22               of the close of the funding improvement  
23               period must equal or exceed a percentage  
24               which is equal to the sum of—



1                   “(I) such percentage as of the  
2                   beginning of such period, plus

3                   “(II) 20 percent of the difference  
4                   between 100 percent and the percent-  
5                   age under subclause (I).

6                   “(ii) The funding improvement period  
7                   under paragraph (4)(A) shall be 15 years  
8                   rather than 10 years.

9                   “(B) SPECIAL RULES FOR PLANS WITH  
10                  FUNDED PERCENTAGE OVER 70 PERCENT.—If  
11                  the funded percentage described in subpara-  
12                  graph (A) was more than 70 percent but less  
13                  than 80 percent as of the beginning of the ini-  
14                  tial determination year—

15                  “(i) subparagraph (A) shall apply if  
16                  the plan’s actuary certifies, within 30 days  
17                  after the certification under subsection  
18                  (b)(3)(A) for the initial determination  
19                  year, that, based on the terms of the plan  
20                  and the collective bargaining agreements in  
21                  effect at the time of such certification, the  
22                  plan is not projected to meet the require-  
23                  ments of paragraph (3)(C)(i) without re-  
24                  gard to this paragraph, and

“(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

“(6) UPDATES TO FUNDING IMPROVEMENT PLAN AND SCHEDULES.—

“(A) FUNDING IMPROVEMENT PLAN.—The plan sponsor shall annually update the funding

1 improvement plan and shall file the update with  
2 the plan's annual report under section 104 of  
3 the Employee Retirement Income Security Act  
4 of 1974.

5 “(B) SCHEDULES.—The plan sponsor may  
6 periodically update any schedule of contribution  
7 rates provided under this subsection to reflect  
8 the experience of the plan, except that the  
9 schedule or schedules described in paragraph  
10 (1)(B)(i) shall be updated at least once every 3  
11 years.

12 “(C) DURATION OF SCHEDULE.—A sched-  
13 ule of contribution rates provided by the plan  
14 sponsor and relied upon by bargaining parties  
15 in negotiating a collective bargaining agreement  
16 shall remain in effect for the duration of that  
17 collective bargaining agreement.

18 “(7) PENALTY IF NO FUNDING IMPROVEMENT  
19 PLAN ADOPTED.—A failure of the plan sponsor to  
20 adopt a funding improvement plan by the date speci-  
21 fied in paragraph (1)(A) shall be treated for pur-  
22 poses of section 502(c)(2) of such Act as a failure  
23 or refusal by the plan administrator to file the an-  
24 nual report required to be filed with the Secretary  
25 of Labor under section 101(b)(4) of such Act.

1           “(8) FUNDING PLAN ADOPTION PERIOD.—For  
 2           purposes of this section, the term ‘funding plan  
 3           adoption period’ means the period beginning on the  
 4           date of the certification under subsection (b)(3)(A)  
 5           for the initial determination year and ending on the  
 6           day before the first day of the funding improvement  
 7           period.

8           “(d) RULES FOR OPERATION OF PLAN DURING  
 9           ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO  
 10          MEET REQUIREMENTS.—

11           “(1) SPECIAL RULES FOR PLAN ADOPTION PE-  
 12          RIOD.—During the plan adoption period—

13           “(A) the plan sponsor may not accept a  
 14           collective bargaining agreement or participation  
 15           agreement with respect to the multiemployer  
 16           plan that provides for—

17           “(i) a reduction in the level of con-  
 18           tributions for any participants,

19           “(ii) a suspension of contributions  
 20           with respect to any period of service, or

21           “(iii) any new direct or indirect exclu-  
 22           sion of younger or newly hired employees  
 23           from plan participation,

24           “(B) no amendment of the plan which in-  
 25           creases the liabilities of the plan by reason of

1 any increase in benefits, any change in the ac-  
2 crual of benefits, or any change in the rate at  
3 which benefits become nonforfeitable under the  
4 plan may be adopted unless the amendment is  
5 required as a condition of qualification under  
6 part I of subchapter D of chapter 1 or to com-  
7 ply with other applicable law, and

8 “(C) in the case of a plan in seriously en-  
9 dangered status, the plan sponsor shall take all  
10 reasonable actions which are consistent with the  
11 terms of the plan and applicable law and which  
12 are expected, based on reasonable assumptions,  
13 to achieve—

14 “(i) an increase in the plan’s funded  
15 percentage, and

16 “(ii) postponement of an accumulated  
17 funding deficiency for at least 1 additional  
18 plan year.

19 Actions under subparagraph (C) include applications  
20 for extensions of amortization periods under section  
21 431(d), use of the shortfall funding method in mak-  
22 ing funding standard account computations, amend-  
23 ments to the plan’s benefit structure, reductions in  
24 future benefit accruals, and other reasonable actions

1 consistent with the terms of the plan and applicable  
2 law.

3 “(2) COMPLIANCE WITH FUNDING IMPROVE-  
4 MENT PLAN.—

5 “(A) IN GENERAL.—A plan may not be  
6 amended after the date of the adoption of a  
7 funding improvement plan under subsection (c)  
8 so as to be inconsistent with the funding im-  
9 provement plan.

10 “(B) NO REDUCTION IN CONTRIBU-  
11 TIONS.—A plan sponsor may not during any  
12 funding improvement period accept a collective  
13 bargaining agreement or participation agree-  
14 ment with respect to the multiemployer plan  
15 that provides for—

16 “(i) a reduction in the level of con-  
17 tributions for any participants,

18 “(ii) a suspension of contributions  
19 with respect to any period of service, or

20 “(iii) any new direct or indirect exclu-  
21 sion of younger or newly hired employees  
22 from plan participation,

23 “(C) SPECIAL RULES FOR BENEFIT IN-  
24 CREASES.—A plan may not be amended after  
25 the date of the adoption of a funding improve-

1           ment plan under subsection (c) so as to in-  
2           crease benefits, including future benefit accru-  
3           als, unless—

4                   “(i) in the case of a plan in seriously  
5                   endangered status, the plan actuary cer-  
6                   tifies that, after taking into account the  
7                   benefit increase, the plan is still reasonably  
8                   expected to meet the requirements under  
9                   subsection (c)(3) in accordance with the  
10                  schedule contemplated in the funding im-  
11                  provement plan, and

12                  “(ii) in the case of a plan not in seri-  
13                  ously endangered status, the actuary cer-  
14                  tifies that such increase is paid for out of  
15                  contributions not required by the funding  
16                  improvement plan to meet the require-  
17                  ments under subsection (c)(3) in accord-  
18                  ance with the schedule contemplated in the  
19                  funding improvement plan.

20           “(3) FAILURE TO MEET REQUIREMENTS.—

21                   “(A) IN GENERAL.—Notwithstanding sec-  
22                   tion 4971(g), if a plan fails to meet the require-  
23                   ments of subsection (c)(3) by the end of the  
24                   funding improvement period, the plan shall be  
25                   treated as having an accumulated funding defi-

1           ciency for purposes of section 4971 for the last  
2           plan year in such period (and each succeeding  
3           plan year until such requirements are met) in  
4           an amount equal to the greater of the amount  
5           of the contributions necessary to meet such re-  
6           quirements or the amount of such accumulated  
7           funding deficiency without regard to this para-  
8           graph.

9           “(B) WAIVER.—In the case of a failure de-  
10          scribed in subparagraph (A) which is due to  
11          reasonable cause and not to willful neglect, the  
12          Secretary of the Treasury may waive part or all  
13          of the tax imposed by section 4971 of such  
14          Code to the extent that the payment of such tax  
15          would be excessive or otherwise inequitable rel-  
16          ative to the failure involved.

17          “(e) REHABILITATION PLAN MUST BE ADOPTED  
18          FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

19               “(1) IN GENERAL.—In any case in which a  
20          multiemployer plan is in critical status for a plan  
21          year, the plan sponsor, in accordance with this sub-  
22          section—

23               “(A) shall adopt a rehabilitation plan not  
24          later than 240 days following the required date



1           for the actuarial certification of critical status  
2           under subsection (b)(3)(A), and

3           “(B) within 30 days after the adoption of  
4           the rehabilitation plan—

5                   “(i) shall provide to the bargaining  
6                   parties 1 or more schedules showing re-  
7                   vised benefit structures, revised contribu-  
8                   tion structures, or both, which, if adopted,  
9                   may reasonably be expected to enable the  
10                  multiemployer plan to emerge from critical  
11                  status in accordance with the rehabilitation  
12                  plan, and

13                   “(ii) may, if the plan sponsor deems  
14                   appropriate, prepare and provide the bar-  
15                   gaining parties with additional information  
16                   relating to contribution rates or benefit re-  
17                   ductions, alternative schedules, or other in-  
18                   formation relevant to emerging from crit-  
19                   ical status in accordance with the rehabili-  
20                  tation plan.

21       The schedule or schedules described in subparagraph  
22       (B)(i) shall reflect reductions in future benefit ac-  
23       cruals and increases in contributions that the plan  
24       sponsor determines are reasonably necessary to  
25       emerge from critical status. One schedule shall be

1 designated as the default schedule and such schedule  
2 shall assume that there are no increases in contribu-  
3 tions under the plan other than the increases nec-  
4 essary to emerge from critical status after future  
5 benefit accruals and other benefits (other than bene-  
6 fits the reduction or elimination of which are not  
7 permitted under section 411(d)(6)) have been re-  
8 duced to the maximum extent permitted by law.

9 “(2) EXCEPTION FOR YEARS AFTER PROCESS  
10 BEGINS.—Paragraph (1) shall not apply to a plan  
11 year if such year is in a rehabilitation plan adoption  
12 period or rehabilitation period by reason of the plan  
13 being in critical status for a preceding plan year.  
14 For purposes of this section, such preceding plan  
15 year shall be the initial critical year with respect to  
16 the rehabilitation plan to which it relates.

17 “(3) REHABILITATION PLAN.—For purposes of  
18 this section—

19 “(A) IN GENERAL.—A rehabilitation plan  
20 is a plan which consists of—

21 “(i) actions which will enable, under  
22 reasonable actuarial assumptions, the plan  
23 to cease to be in critical status by the end  
24 of the rehabilitation period and may in-  
25 clude reductions in plan expenditures (in-

cluding plan mergers and consolidations),  
reductions in future benefit accruals or in-  
creases in contributions, if agreed to by the  
bargaining parties, or any combination of  
such actions, or

“(ii) if the plan sponsor determines  
that, based on reasonable actuarial as-  
sumptions and upon exhaustion of all rea-  
sonable measures, the plan can not reason-  
ably be expected to emerge from critical  
status by the end of the rehabilitation pe-  
riod, reasonable measures to emerge from  
critical status at a later time or to forestall  
possible insolvency (within the meaning of  
section 4245 of the Employee Retirement  
Income Security Act of 1974).

Such plan shall include the schedules required  
to be provided under paragraph (1)(B)(i). If  
clause (ii) applies, such plan shall set forth the  
alternatives considered, explain why the plan is  
not reasonably expected to emerge from critical  
status by the end of the rehabilitation period,  
and specify when, if ever, the plan is expected  
to emerge from critical status in accordance  
with the rehabilitation plan.

1           “(B) UPDATES TO REHABILITATION PLAN  
2           AND SCHEDULES.—

3           “(i) REHABILITATION PLAN.—The  
4           plan sponsor shall annually update the re-  
5           habilitation plan and shall file the update  
6           with the plan’s annual report under section  
7           104 of the Employee Retirement Income  
8           Security Act of 1974.

9           “(ii) SCHEDULES.—The plan sponsor  
10          may periodically update any schedule of  
11          contribution rates provided under this sub-  
12          section to reflect the experience of the  
13          plan, except that the schedule or schedules  
14          described in paragraph (1)(B)(i) shall be  
15          updated at least once every 3 years.

16          “(iii) DURATION OF SCHEDULE.—A  
17          schedule of contribution rates provided by  
18          the plan sponsor and relied upon by bar-  
19          gaining parties in negotiating a collective  
20          bargaining agreement shall remain in ef-  
21          fect for the duration of that collective bar-  
22          gaining agreement.

23          “(C) DEFAULT SCHEDULE.—If the collec-  
24          tive bargaining agreement providing for con-  
25          tributions under a multiemployer plan that was

1 in effect at the time the plan entered critical  
2 status expires and, after receiving a schedule  
3 from the plan sponsor under paragraph  
4 (1)(B)(i), the bargaining parties have not  
5 adopted a collective bargaining agreement with  
6 terms consistent with such a schedule, the de-  
7 fault schedule described in the last sentence of  
8 paragraph (1) shall go into effect with respect  
9 to those bargaining parties.

10 “(4) REHABILITATION PERIOD.—For purposes  
11 of this section—

12 “(A) IN GENERAL.—The rehabilitation pe-  
13 riod for a plan in critical status is the 10-year  
14 period beginning on the first day of the first  
15 plan year of the multiemployer plan following  
16 the earlier of—

17 “(i) the second anniversary of the  
18 date of the adoption of the rehabilitation  
19 plan, or

20 “(ii) the expiration of the collective  
21 bargaining agreements in effect on the  
22 date of the due date for the actuarial cer-  
23 tification of critical status for the initial  
24 critical year under subsection (a)(1) and  
25 covering, as of such date at least 75 per-

1                   cent of the active participants in such mul-  
2                   tiemployer plan.

3           If a plan emerges from critical status as pro-  
4           vided under subparagraph (B) before the end of  
5           such 10-year period, the rehabilitation period  
6           shall end with the plan year preceding the plan  
7           year for which the determination under sub-  
8           paragraph (B) is made.

9                   “(B) EMERGENCE.—A plan in critical sta-  
10           tus shall remain in such status until a plan  
11           year for which the plan actuary certifies, in ac-  
12           cordance with subsection (b)(3)(A), that the  
13           plan is not projected to have an accumulated  
14           funding deficiency for the plan year or any of  
15           the 9 succeeding plan years, without regard to  
16           use of the shortfall method or any extension of  
17           amortization periods under section 431(d).

18                   “(5) PENALTY IF NO REHABILITATION PLAN  
19           ADOPTED.—A failure of a plan sponsor to adopt a  
20           rehabilitation plan by the date specified in para-  
21           graph (1)(A) shall be treated for purposes of section  
22           502(c)(2) of the Employee Retirement Income Secu-  
23           rity Act of 1974 as a failure or refusal by the plan  
24           administrator to file the annual report required to

1 be filed with the Secretary of Labor under section  
2 101(b)(4) of such Act.

3 “(6) REHABILITATION PLAN ADOPTION PE-  
4 RIOD.—For purposes of this section, the term ‘reha-  
5 bilitation plan adoption period’ means the period be-  
6 ginning on the date of the certification under sub-  
7 section (b)(3)(A) for the initial critical year and end-  
8 ing on the day before the first day of the rehabilita-  
9 tion period.

10 “(7) LIMITATION ON REDUCTION IN RATES OF  
11 FUTURE ACCRUALS.—Any reduction in the rate of  
12 future accruals under any schedule described in  
13 paragraph (1)(B)(i) shall not reduce the rate of fu-  
14 ture accruals below—

15 “(A) a monthly benefit (payable as a single  
16 life annuity commencing at the participant’s  
17 normal retirement age) equal to 1 percent of  
18 the contributions required to be made with re-  
19 spect to a participant, or the equivalent stand-  
20 ard accrual rate for a participant or group of  
21 participants under the collective bargaining  
22 agreements in effect as of the first day of the  
23 initial critical year, or

24 “(B) if lower, the accrual rate under the  
25 plan on such first day.

1       The equivalent standard accrual rate shall be deter-  
2       mined by the plan sponsor based on the standard or  
3       average contribution base units which the plan spon-  
4       sor determines to be representative for active partici-  
5       pants and such other factors as the plan sponsor de-  
6       termines to be relevant.

7       “(f) RULES FOR OPERATION OF PLAN DURING  
8       ADOPTION AND REHABILITATION PERIOD.—

9               “(1) COMPLIANCE WITH REHABILITATION  
10       PLAN.—

11               “(A) IN GENERAL.—A plan may not be  
12       amended after the date of the adoption of a re-  
13       habilitation plan under subsection (e) so as to  
14       be inconsistent with the rehabilitation plan.

15               “(B) SPECIAL RULES FOR BENEFIT IN-  
16       CREASES.—A plan may not be amended after  
17       the date of the adoption of a rehabilitation plan  
18       under subsection (e) so as to increase benefits,  
19       including future benefit accruals, unless the  
20       plan actuary certifies that such increase is paid  
21       for out of additional contributions not con-  
22       templated by the rehabilitation plan, and, after  
23       taking into account the benefit increase, the  
24       multiemployer plan still is reasonably expected  
25       to emerge from critical status by the end of the



1           rehabilitation period on the schedule con-  
2           templated in the rehabilitation plan.

3           “(2) RESTRICTION ON LUMP SUMS AND SIMI-  
4           LAR BENEFITS.—

5                   “(A) IN GENERAL.—Effective on the date  
6           the notice of certification of the plan’s critical  
7           status for the initial critical year under sub-  
8           section (b)(3)(D) is sent, and notwithstanding  
9           section 411(d)(6), the plan shall not pay—

10                   “(i) any payment, in excess of the  
11           monthly amount paid under a single life  
12           annuity (plus any social security supple-  
13           ments described in the last sentence of sec-  
14           tion 411(b)(1)(A)),

15                   “(ii) any payment for the purchase of  
16           an irrevocable commitment from an insurer  
17           to pay benefits, and

18                   “(iii) any other payment specified by  
19           the Secretary by regulations.

20                   “(B) EXCEPTION.—Subparagraph (A)  
21           shall not apply to a benefit which under section  
22           411(a)(11) may be immediately distributed  
23           without the consent of the participant.

24           “(3) ADJUSTMENTS DISREGARDED IN WITH-  
25           DRAWAL LIABILITY DETERMINATION.—Any benefit

1 reductions under this subsection shall be disregarded  
2 in determining a plan's unfunded vested benefits for  
3 purposes of determining an employer's withdrawal li-  
4 ability under section 4201 of the Employee Retirement  
5 Income Security Act of 1974.

6 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-  
7 RIOD.—During the rehabilitation plan adoption pe-  
8 riod—

9 “(A) the plan sponsor may not accept a  
10 collective bargaining agreement or participation  
11 agreement with respect to the multiemployer  
12 plan that provides for—

13 “(i) a reduction in the level of con-  
14 tributions for any participants,

15 “(ii) a suspension of contributions  
16 with respect to any period of service, or

17 “(iii) any new direct or indirect exclu-  
18 sion of younger or newly hired employees  
19 from plan participation, and

20 “(B) no amendment of the plan which in-  
21 creases the liabilities of the plan by reason of  
22 any increase in benefits, any change in the ac-  
23 crual of benefits, or any change in the rate at  
24 which benefits become nonforfeitable under the  
25 plan may be adopted unless the amendment is

1 required as a condition of qualification under  
2 part I of subchapter D of chapter 1 or to com-  
3 ply with other applicable law.

4 “(5) FAILURE TO MEET REQUIREMENTS.—

5 “(A) IN GENERAL.—Notwithstanding sec-  
6 tion 4971(g), if a plan—

7 “(i) fails to meet the requirements of  
8 subsection (e) by the end of the rehabilita-  
9 tion period, or

10 “(ii) has received a certification under  
11 subsection (b)(3)(A)(ii) for 3 consecutive  
12 plan years that the plan is not making the  
13 scheduled progress in meeting its require-  
14 ments under the rehabilitation plan,

15 the plan shall be treated as having an accumu-  
16 lated funding deficiency for purposes of section  
17 4971 for the last plan year in such period (and  
18 each succeeding plan year until such require-  
19 ments are met) in an amount equal to the  
20 greater of the amount of the contributions nec-  
21 essary to meet such requirements or the  
22 amount of such accumulated funding deficiency  
23 without regard to this paragraph.

24 “(B) WAIVER.—In the case of a failure de-  
25 scribed in subparagraph (A) which is due to

1           reasonable cause and not to willful neglect, the  
2           Secretary may waive part or all of the tax im-  
3           posed by section 4971 to the extent that the  
4           payment of such tax would be excessive or oth-  
5           erwise inequitable relative to the failure in-  
6           volved.

7           “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR  
8   DECISIONS.—If, within 60 days of the due date for adop-  
9   tion of a funding improvement plan under subsection (c)  
10   or a rehabilitation plan under subsection (e), the plan  
11   sponsor of a plan in endangered status or a plan in critical  
12   status has not agreed on a funding improvement plan or  
13   rehabilitation plan, then any member of the board or  
14   group that constitutes the plan sponsor may require that  
15   the plan sponsor enter into an expedited dispute resolution  
16   procedure for the development and adoption of a funding  
17   improvement plan or rehabilitation plan.

18          “(h) NONBARGAINED PARTICIPATION.—

19               “(1) BOTH BARGAINED AND NONBARGAINED  
20   EMPLOYEE-PARTICIPANTS.—In the case of an em-  
21   ployer that contributes to a multiemployer plan with  
22   respect to both employees who are covered by one or  
23   more collective bargaining agreements and to em-  
24   ployees who are not so covered, if the plan is in en-  
25   dangered status or in critical status, benefits of and

1 contributions for the nonbargained employees, in-  
2 cluding surcharges on those contributions, shall be  
3 determined as if those nonbargained employees were  
4 covered under the first to expire of the employer's  
5 collective bargaining agreements in effect when the  
6 plan entered endangered or critical status.

7 “(2) NONBARGAINED EMPLOYEES ONLY.—In  
8 the case of an employer that contributes to a multi-  
9 employer plan only with respect to employees who  
10 are not covered by a collective bargaining agreement,  
11 this section shall be applied as if the employer were  
12 the bargaining parties, and its participation agree-  
13 ment with the plan was a collective bargaining  
14 agreement with a term ending on the first day of the  
15 plan year beginning after the employer is provided  
16 the schedule or schedules described in subsections  
17 (c) and (e).

18 “(3) EMPLOYEES COVERED BY A COLLECTIVE  
19 BARGAINING AGREEMENT.—The determination as to  
20 whether an employee covered by a collective bar-  
21 gaining agreement for purposes of this section shall  
22 be made without regard to the special rule in Treas-  
23 ury Regulation section 1.410(b)–6(d)(ii)(D).

24 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-  
25 poses 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 that 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) FUNDED PERCENTAGE.—The term ‘fund-  
11           ed percentage’ means the percentage equal to a frac-  
12           tion—

13                   “(A) the numerator of which is the value  
14                   of the plan’s assets, as determined under sec-  
15                   tion 431(c)(2), and

16                   “(B) the denominator of which is the ac-  
17                   crued liability of the plan, determined using ac-  
18                   tuarial assumptions described in section  
19                   431(c)(3).

20           “(3) ACCUMULATED FUNDING DEFICIENCY.—  
21           The term ‘accumulated funding deficiency’ has the  
22           meaning given such term in section 412(a).

23           “(4) ACTIVE PARTICIPANT.—The term ‘active  
24           participant’ means, in connection with a multiem-

1        ployer plan, a participant who is in covered service  
2        under the plan.

3            “(5) INACTIVE PARTICIPANT.—The term ‘inac-  
4        tive participant’ means, in connection with a multi-  
5        employer plan, a participant, or the beneficiary or  
6        alternate payee of a participant, who—

7            “(A) is not in covered service under the  
8        plan, and

9            “(B) is in pay status under the plan or has  
10       a nonforfeitable right to benefits under the  
11       plan.

12           “(6) PAY STATUS.—A person is in pay status  
13       under a multiemployer plan if—

14           “(A) at any time during the current plan  
15       year, such person is a participant or beneficiary  
16       under the plan and is paid an early, late, nor-  
17       mal, or disability retirement benefit under the  
18       plan (or a death benefit under the plan related  
19       to a retirement benefit), or

20           “(B) to the extent provided in regulations  
21       of the Secretary, such person is entitled to such  
22       a benefit under the plan.

23           “(7) OBLIGATION TO CONTRIBUTE.—The term  
24       ‘obligation to contribute’ has the meaning given such

term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

“(8) ACTUARIAL METHOD.—Notwithstanding any other provision of this section, the actuary’s determinations with respect to a plan’s normal cost, actuarial accrued liability, and improvements in a plan’s funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan’s actuarial valuation).”

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to plan years beginning after 2006.

(2) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,



1 the amendments made by this section shall not apply  
2 to such benefit restorations to the extent that any  
3 restriction on the providing or accrual of such bene-  
4 fits would otherwise apply by reason of such amend-  
5 ments.

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

7 **SEC. 216. SUNSET OF FUNDING RULES.**

8 (a) REPORT.—Not later than December 31, 2011,  
9 the Secretary of Labor, the Secretary of the Treasury, and  
10 the Executive Director of the Pension Benefit Guaranty  
11 Corporation shall conduct a study of the effect of the  
12 amendments made by this subtitle on the operation and  
13 funding status of multiemployer plans and shall report the  
14 results of such study, including any recommendations for  
15 legislation, to the Congress.

16 (b) SUNSET.—Notwithstanding any other provision  
17 of this Act, the provisions of, and the amendments made  
18 by, this subtitle shall not apply to plan years after Decem-  
19 ber 31, 2014.

1   **Subtitle B—Deduction and Related**  
 2                   **Provisions**

3   **SEC. 221. DEDUCTION LIMITS FOR MULTIEMPLOYER**  
 4                   **PLANS.**

5           (a)    INCREASE       IN       DEDUCTION.—Section  
 6   404(a)(1)(D) of the Internal Revenue Code of 1986, as  
 7   amended by this Act, is amended to read as follows:

8                   “(D) AMOUNT DETERMINED ON BASIS OF  
 9           UNFUNDED CURRENT LIABILITY.—

10                   “(i) IN GENERAL.—In the case of a  
 11           defined benefit plan which is a multiem-  
 12           ployer plan, except as provided in regula-  
 13           tions, the maximum amount deductible  
 14           under the limitations of this paragraph  
 15           shall not be less than the unfunded current  
 16           liability of the plan.

17                   “(ii) UNFUNDED CURRENT LIABIL-  
 18           ITY.—For purposes of clause (i), the term  
 19           ‘unfunded current liability’ means the ex-  
 20           cess (if any) of—

21                   “(I) 130 percent of the current  
 22           liability of the plan determined under  
 23           section 431(c)(6)(C), over

1                   “(II) the value of the plan’s as-  
 2                   sets     determined     under     section  
 3                   431(c)(2).”.

4       (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
 5 WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
 6 DEFINED BENEFIT PLANS.—

7           (1) IN GENERAL.—Section 404(a)(7)(C) of such  
 8       Code, as amended by this Act, is amended by adding  
 9       at the end the following new clause:

10                   “(v) MULTIEMPLOYER PLANS.—In ap-  
 11                   plying this paragraph, any multiemployer  
 12                   plan shall not be taken into account.”.

13       (2) CONFORMING AMENDMENT.—Section  
 14       404(a)(7)(A) of such Code is amended by striking  
 15       the last sentence.

16       (c) EFFECTIVE DATES.—

17           (1) DEDUCTION LIMIT.—The amendment made  
 18       by subsection (a) shall apply to years beginning after  
 19       December 31, 2006.

20           (2) EXCEPTION.—The amendments made by  
 21       subsection (b) shall apply to years beginning after  
 22       December 31, 2005.

1 **SEC. 222. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**  
 2 **TIEMPLOYER HEALTH PLAN.**

3 (a) IN GENERAL.—Section 420(e) of the Internal  
 4 Revenue Code of 1986 (relating to definitions and special  
 5 rules) is amended by adding at the end the following new  
 6 paragraph:

7 “(5) APPLICATION TO MULTIEMPLOYER  
 8 PLAN.—In the case of any plan to which section  
 9 404(c) applies (or any successor plan primarily cov-  
 10 ering employees in the building and construction in-  
 11 dustry)—

12 “(A) the prohibition under subsection (a)  
 13 on the application of this section to a multiem-  
 14 ployer plan shall not apply, and

15 “(B) this section shall be applied to any  
 16 such plan—

17 “(i) by treating any reference in this  
 18 section to an employer as a reference to all  
 19 employers maintaining the plan (or, if ap-  
 20 propriate, the plan sponsor), and

21 “(ii) in accordance with such modi-  
 22 fications of this section (and the provisions  
 23 of this title and the Employee Retirement  
 24 Income Security Act of 1974 relating to  
 25 this section) as the Secretary determines

1 appropriate to reflect the fact the plan is  
 2 not maintained by a single employer.”

3 (b) AMENDMENTS OF ERISA.—

4 (1) Section 101(e)(3) of the Employee Retirement  
 5 Income Security Act of 1974 (29 U.S.C.  
 6 1021(e)(3)) is amended by striking “American Jobs  
 7 Creation Act of 2004” and inserting “Pension Security  
 8 and Transparency Act of 2005”.

9 (2) Section 403(c)(1) of such Act (29 U.S.C.  
 10 1103(c)(1)) is amended by striking “American Jobs  
 11 Creation Act of 2004” and inserting “Pension Security  
 12 and Transparency Act of 2005”.

13 (3) Section 408(b)(13) of such Act (29 U.S.C.  
 14 1108(b)(13)) is amended by striking “American  
 15 Jobs Creation Act of 2004” and inserting “Pension  
 16 Security and Transparency Act of 2005”.

17 (c) EFFECTIVE DATE.—The amendment made by  
 18 this section shall apply to transfers made in taxable years  
 19 beginning after December 31, 2004.

## 20 **TITLE III—INTEREST RATE** 21 **ASSUMPTIONS**

### 22 **SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINA-** 23 **TION OF LUMP SUM DISTRIBUTIONS.**

24 (a) AMENDMENTS OF ERISA.—

1           (1) IN GENERAL.—Section 205(g)(3)(A) of the  
 2       Employee Retirement Income Security Act of 1974  
 3       (29 U.S.C. 1055(g)(3)(A)) is amended by adding at  
 4       the end the following new sentence: “In the case of  
 5       plan years beginning after 2006, the preceding sen-  
 6       tence shall be applied by using the applicable yield  
 7       curve method under subparagraph (C) rather than  
 8       the applicable interest rate.”.

9           (2) APPLICABLE YIELD CURVE METHOD.—Sec-  
 10      tion 205(g)(3) of such Act (29 U.S.C. 1055(g)(3))  
 11      is amended by adding at the end the following new  
 12      subparagraphs:

13               “(C) APPLICABLE YIELD CURVE METH-  
 14      OD.—For purposes of subparagraph (A), the  
 15      term ‘applicable yield curve method’ means—

16                   “(i) the phase-in yield curve method  
 17                   in the case of plan years beginning in  
 18                   2007, 2008, and 2009, and

19                   “(ii) the yield curve method for years  
 20                   beginning after 2009.

21           “(D) YIELD CURVE METHOD.—For pur-  
 22      poses of this paragraph—

23                   “(i) IN GENERAL.—The yield curve  
 24                   method is a method under which present  
 25                   value is determined—

1                   “(I) by using interest rates  
2 drawn from a yield curve which is pre-  
3 scribed by the Secretary of the Treas-  
4 ury and which reflects the yield on  
5 high-quality corporate bonds with  
6 varying maturities, and

7                   “(II) by matching the timing of  
8 the expected benefit payments under  
9 the plan to the interest rates on such  
10 yield curve.

11                  “(ii) PUBLICATION.—Each month the  
12 Secretary of the Treasury shall publish any  
13 yield curve prescribed under this subpara-  
14 graph which shall apply to plan years be-  
15 ginning in such month and such yield  
16 curve shall be based on average interest  
17 rates for business days occurring during  
18 the 3 preceding months.

19                  “(E) PHASE-IN YIELD CURVE METHOD.—

20                   “(i) IN GENERAL.—Present value de-  
21 termined under the phase-in yield curve  
22 method shall be equal to the sum of—

23                   “(I) the applicable percentage of  
24 such amount determined under the

1                   yield curve method described in sub-  
2                   paragraph (D), and

3                   “(II) the product of such amount  
4                   determined by using the applicable in-  
5                   terest rate and a percentage equal to  
6                   100 percent minus the applicable per-  
7                   centage.

8                   “(ii) APPLICABLE PERCENTAGE.—For  
9                   purposes of clause (i), the applicable per-  
10                  centage is 25 percent for plan years begin-  
11                  ning in 2007, 50 percent for plan years be-  
12                  ginning in 2008, and 75 percent for plan  
13                  years beginning in 2009.”.

14               (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

15               (1) IN GENERAL.—Section 417(e)(3)(A) of the  
16               Internal Revenue Code of 1986 (relating to deter-  
17               mination of present value) is amended by adding at  
18               the end the following new sentence: “In the case of  
19               plan years beginning after 2006, the preceding sen-  
20               tence shall be applied by using the applicable yield  
21               curve method under subparagraph (C) rather than  
22               the applicable interest rate.”

23               (2) APPLICABLE YIELD CURVE METHOD.—Sec-  
24               tion 417(e) of such Code is amended by adding at  
25               the end the following new subparagraphs:



1           “(C) APPLICABLE YIELD CURVE METH-  
2           OD.—For purposes of subparagraph (A), the  
3           term ‘applicable yield curve method’ means—

4                   “(i) the phase-in yield curve method  
5                   in the case of plan years beginning in  
6                   2007, 2008, and 2009, and

7                   “(ii) the yield curve method for years  
8                   beginning after 2009.

9           “(D) YIELD CURVE METHOD.—For pur-  
10          poses of this paragraph—

11                   “(i) IN GENERAL.—The yield curve  
12                   method is a method under which present  
13                   value is determined—

14                           “(I) by using interest rates  
15                           drawn from a yield curve which is pre-  
16                           scribed by the Secretary and which re-  
17                           flects the yield on high-quality cor-  
18                           porate bonds with varying maturities,  
19                           and

20                           “(II) by matching the timing of  
21                           the expected benefit payments under  
22                           the plan to the interest rates on such  
23                           yield curve.

24                   “(ii) PUBLICATION.—Each month the  
25                   Secretary shall publish any yield curve pre-

scribed under this subparagraph which shall apply to plan years beginning in such month and such yield curve shall be based on average interest rates for business days occurring during the 3 preceding months.

“(E) PHASE-IN YIELD CURVE METHOD.—

“(i) IN GENERAL.—Present value determined under the phase-in yield curve method shall be equal to the sum of—

“(I) the applicable percentage of such amount determined under the yield curve method described in subparagraph (D), and

“(II) the product of such amount determined by using the applicable interest rate and a percentage equal to 100 percent minus the applicable percentage.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is 25 percent for plan years beginning in 2007, 50 percent for plan years beginning in 2008, and 75 percent for plan years beginning in 2009.”.

1 (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A  
 2 plan shall not fail to meet the requirements of section  
 3 204(g) of the Employee Retirement Income Security Act  
 4 of 1974 or section 411(d)(6) of the Internal Revenue Code  
 5 of 1986 solely by reason of the adoption by the plan of  
 6 an amendment necessary to meet the requirements of the  
 7 amendments made by this section.

8 (d) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply with respect to plan years begin-  
 10 ning after 2006.

11 **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**  
 12 **BENEFIT LIMITATIONS TO LUMP SUM DIS-**  
 13 **TRIBUTIONS.**

14 (a) IN GENERAL.—Clause (ii) of section  
 15 415(b)(2)(E) of the Internal Revenue Code of 1986 is  
 16 amended to read as follows:

17 “(ii) For purposes of adjusting any  
 18 benefit under subparagraph (B) for any  
 19 form of benefit subject to section  
 20 417(e)(3), clause (i) shall be applied by  
 21 substituting ‘5.5 percent’ for ‘5 percent’.”.

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 subsection (a) shall apply to years beginning after Decem-  
 24 ber 31, 2005.

1 **SEC. 303. RESTRICTIONS ON FUNDING OF NONQUALIFIED**  
 2 **DEFERRED COMPENSATION PLANS BY EM-**  
 3 **PLOYERS MAINTAINING UNDERFUNDED OR**  
 4 **TERMINATED SINGLE-EMPLOYER PLANS.**

5 (a) AMENDMENTS OF ERISA.—

6 (1) IN GENERAL.—Part 3 of subtitle A of title  
 7 I of the Employee Retirement Income Security Act  
 8 of 1974 (29 U.S.C. 1081 et seq.), as amended by  
 9 this Act, is amended by adding at the end the fol-  
 10 lowing new section:

11 “NOTICE OF FUNDING OF NONQUALIFIED DEFERRED  
 12 COMPENSATION PLANS

13 “SEC. 306. (a) NOTICE AND ACCESS.—

14 “(1) NOTICE RELATING TO RESTRICTED PE-  
 15 RIOD.—The plan administrator of a defined benefit  
 16 plan which is a single-employer plan shall notify  
 17 each plan sponsor of the plan within a reasonable  
 18 period of time after the occurrence of an event which  
 19 results in a restricted period with respect to the  
 20 plan. Such notice shall include information—

21 “(A) as to the duration of the restricted  
 22 period, and

23 “(B) the restrictions under section  
 24 409A(b)(3) of the Internal Revenue Code of  
 25 1986 which apply during the restricted period

1 to the plan sponsor and any member of a con-  
2 trolled group which includes such sponsor.

3 “(2) NOTICE OF EXISTENCE OF, AND TRANS-  
4 FERS TO, NONQUALIFIED DEFERRED COMPENSATION  
5 PLANS.—

6 “(A) INITIAL NOTICE.—Within 30 days of  
7 receipt of a notice under paragraph (1), each  
8 plan sponsor shall notify the plan administrator  
9 of the plan described in paragraph (1)—

10 “(i) of nonqualified deferred com-  
11 pensation plans maintained by the plan  
12 sponsor or any member of a controlled  
13 group which includes such sponsor, and

14 “(ii) the amount of any assets trans-  
15 ferred or otherwise reserved by the plan  
16 sponsor or such member in violation of sec-  
17 tion 409A(b)(3) of such Code during any  
18 portion of the restricted period occurring  
19 on or before the date the plan sponsor pro-  
20 vides such notice.

21 “(B) ADDITIONAL NOTICES.—If, after the  
22 date on which notice is provided under subpara-  
23 graph (A) and during any portion of the re-  
24 maining restricted period specified in the notice  
25 provided under paragraph (1), the plan sponsor

1 of a plan described in paragraph (1) or a mem-  
2 ber of a controlled group which includes such  
3 sponsor—

4 “(i) transfers or reserves assets in vio-  
5 lation of section 409A(b)(3) of such Code,  
6 or

7 “(ii) establishes a new nonqualified  
8 deferred compensation plan,  
9 the plan sponsor shall notify the plan adminis-  
10 trator of the plan described in paragraph (1) of  
11 such transfer, reservation, or establishment  
12 within 3 days of the date of such action.

13 “(3) ACCESS TO FINANCIAL DATA.—Any fidu-  
14 ciary of the plan shall have access to the financial  
15 records of a plan sponsor or any member of a con-  
16 trolled group which includes such sponsor to deter-  
17 mine if assets were transferred or otherwise reserved  
18 in violation of section 409A(b)(3) of such Code.

19 “(4) FORM AND MANNER.—The Secretary may  
20 prescribe the form and manner of a notice required  
21 under this section. Such a notice shall be written in  
22 a manner calculated to be understood by the average  
23 plan participant and may be delivered in written,  
24 electronic, or other appropriate form to the extent

1       that such form is reasonably accessible to the recipi-  
2       ent.

3       “(b) RESTRICTED PERIOD.—For purposes of this  
4 section, the term ‘restricted period’ means, with respect  
5 to any plan described in subsection (a)(1)—

6               “(1) any period—

7                       “(A) beginning on the first day of a plan  
8                       year following a plan year for which the plan’s  
9                       adjusted funding target attainment percentage  
10                      (as defined in section 303) was less than 60  
11                      percent (determined as of the close of such  
12                      year), and

13                     “(B) ending on the last day of the first pe-  
14                     riod of 2 consecutive plan years (beginning on  
15                     or after such first day) for which such percent-  
16                     age was at least 60 percent,

17               “(2) any period the plan sponsor is in bank-  
18       ruptcy, and

19               “(3) the 12-month period beginning on the date  
20       which is 6 months before the termination date of the  
21       plan if, as of the termination date, the plan is not  
22       sufficient for benefit liabilities (within the meaning  
23       of section 4041).

1 In the case of a plan which is in at-risk status, paragraph  
 2 (1) shall be applied by substituting ‘80 percent’ for ‘60  
 3 percent’ each place it appears.

4 “(c) NONQUALIFIED DEFERRED COMPENSATION  
 5 PLAN.—For purposes of this section—

6 “(1) IN GENERAL.—The term ‘nonqualified de-  
 7 ferred compensation plan’ means any plan that pro-  
 8 vides for the deferral of compensation, other than—

9 “(A) a qualified employer plan, and

10 “(B) any bona fide vacation leave, sick  
 11 leave, compensatory time, disability pay, or  
 12 death benefit plan.

13 “(2) QUALIFIED EMPLOYER PLAN.—The term  
 14 ‘qualified employer plan’ means—

15 “(A) any plan, contract, pension, account,  
 16 or trust described in subparagraph (A) or (B)  
 17 of section 219(g)(5) of the Internal Revenue  
 18 Code of 1986 (without regard to subparagraph  
 19 (A)(iii)),

20 “(B) any eligible deferred compensation  
 21 plan (within the meaning of section 457(b)) of  
 22 such Code, and

23 “(C) any plan described in section 415(m)  
 24 of such Code.



1           “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—

2           The term ‘plan’ includes any agreement or arrange-  
3           ment, including an agreement or arrangement that  
4           includes one person.

5           “(d) OTHER DEFINITIONS.—For purposes of this  
6           section—

7           “(1) APPLICABLE COVERED EMPLOYEE.—

8           “(A) IN GENERAL.—The term ‘applicable  
9           covered employee’ mean any—

10           “(i) covered employee of a plan spon-  
11           sor,

12           “(ii) covered employee of a member of  
13           a controlled group which includes the plan  
14           sponsor, and

15           “(iii) former employee who was a cov-  
16           ered employee at the time of termination of  
17           employment with the plan sponsor or a  
18           member of a controlled group which in-  
19           cludes the plan sponsor.

20           “(B) COVERED EMPLOYEE.—The term  
21           ‘covered employee’ has the meaning given such  
22           term by section 162(m)(3) of the Internal Rev-  
23           enue Code of 1986.

1           “(2) CONTROLLED GROUP.—The term ‘con-  
2           trolled group’ has the meaning given such term by  
3           section 302(d)(3).”.

4           (2) ENFORCEMENT.—

5           (A) IN GENERAL.—Section 502(a) of the  
6           Employee Retirement Income Security Act (29  
7           U.S.C. 1132(a)), as amended by this Act, is  
8           amended—

9                   (i) by striking “or” at the end of  
10                  paragraph (9), by striking the period at  
11                  the end of paragraph (10) and inserting “;  
12                  or”, and by adding at the end the following  
13                  new paragraph:

14           “(11) by a fiduciary of a defined benefit plan  
15           which is a single-employer plan against—

16                   “(A) a plan sponsor, a member of a con-  
17                  trolled group which includes the plan sponsor,  
18                  an applicable covered employee, or a person  
19                  holding assets which are part of a nonqualified  
20                  deferred compensation plan to recover on behalf  
21                  of the plan—

22                   “(i) assets which were set aside or  
23                  transferred in violation of section  
24                  409A(b)(3) of the Internal Revenue Code

1 of 1986 (and any earnings properly allo-  
2 cable to the assets); or

3 “(ii) amounts equivalent to the assets  
4 and earnings described in clause (i); or

5 “(B) a plan sponsor, or a member of a  
6 controlled group which includes the plan spon-  
7 sor, to compel the production of records the fi-  
8 duciary is entitled to under section 306.”; and

9 (ii) by adding at the end the following  
10 new flush sentence:

11 “For purposes of paragraph (11), any term used in such  
12 paragraph which is also used in section 306 shall have  
13 the meaning given such term by section 306.”.

14 (B) AWARDING OF FEES.—Section 502(g)  
15 of such Act (29 U.S.C. 1132(g)) is amended by  
16 adding at the end the following new paragraph:

17 “(3) ACTIONS TO RECOVER ASSETS TRANS-  
18 FERRED TO NONQUALIFIED DEFERRED COMPENSA-  
19 TION PLANS.—If, in any action under subsection  
20 (a)(11) by a fiduciary for or on behalf of a plan to  
21 enforce section 306 of this Act and section  
22 409A(b)(3), a judgment is awarded in favor of the  
23 plan, the court may, in addition to any other  
24 amount, award the plan reasonable attorney’s fees

1 and costs of the action, to be paid by the defend-  
 2 ant”.

3 (3) CLERICAL AMENDMENT.—The table of con-  
 4 tents in section 1 of such Act, as amended by this  
 5 Act, is amended by adding at the end the following  
 6 new item:

“Sec. 306. Restrictions on funding of nonqualified deferred compensation  
 plans.”.

7 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

8 (1) IN GENERAL.—Subsection (b) of section  
 9 409A of the Internal Revenue Code of 1986 (pro-  
 10 viding rules relating to funding) is amended by re-  
 11 designating paragraphs (3) and (4) as paragraphs  
 12 (4) and (5), respectively, and by inserting after  
 13 paragraph (2) the following new paragraph:

14 “(3) EMPLOYERS OF UNDERFUNDED OR TERMI-  
 15 NATED DEFINED BENEFIT PLANS.—During any re-  
 16 stricted period—

17 “(A) a plan sponsor of a defined benefit  
 18 plan which is a single-employer plan, or

19 “(B) any member of a controlled group  
 20 which includes such sponsor,

21 shall not directly or indirectly transfer assets, or di-  
 22 rectly or indirectly otherwise reserve assets, in a  
 23 trust (or other arrangement determined by the Sec-  
 24 retary) for purposes of paying deferred compensa-

1       tion of an applicable covered employee under a non-  
2       qualified deferred compensation plan of the plan  
3       sponsor or member. Any assets transferred or re-  
4       served in violation of the preceding sentence shall,  
5       for purposes of section 83, be treated as property  
6       transferred in connection with the performance of  
7       services whether or not such assets are available to  
8       satisfy claims of general creditors. For purposes of  
9       this paragraph, any term used in this paragraph  
10      which is also used in section 306 of the Employee  
11      Retirement Income Security Act of 1974 shall have  
12      the meaning given such term by such section.”.

13           (2) CONFORMING AMENDMENTS.—Paragraphs  
14      (4) and (5) of section 409A(b) of such Code, as re-  
15      designated by subsection (a) of this subsection, are  
16      each amended by striking “paragraph (1) or (2)”  
17      each place it appears and inserting “paragraph (1),  
18      (2), or (3)”.

19           (c) EFFECTIVE DATE.—The amendments made by  
20      this section shall apply to transfers or other reservation  
21      of assets after December 31, 2006.

1 **SEC. 304. MODIFICATION OF PENSION FUNDING REQUIRE-**  
2 **MENTS FOR PLANS SUBJECT TO CURRENT**  
3 **TRANSITION RULE.**

4 (a) **PLAN YEAR BEFORE NEW FUNDING RULES.—**

5 Section 769(c)(3) of the Retirement Protection Act of  
6 1994, as added by section 201 of the Pension Funding  
7 Equity Act of 2004, is amended by striking “and 2005”  
8 and inserting “, 2005, and 2006”.

9 (b) **PLAN YEARS AFTER NEW FUNDING RULES.—**

10 (1) **IN GENERAL.**—In the case of a plan that—

11 (A) was not required to pay a variable rate  
12 premium for the plan year beginning in 1996,

13 (B) has not, in any plan year beginning  
14 after 1995, merged with another plan (other  
15 than a plan sponsored by an employer that was  
16 in 1996 within the controlled group of the plan  
17 sponsor), and

18 (C) is sponsored by a company that is en-  
19 gaged primarily in the interurban or interstate  
20 passenger bus service,

21 the rules described in subsection (b) shall apply for  
22 any plan year beginning after 2006.

23 (2) **MODIFIED RULES.**—The rules described in  
24 this subsection are as follows:

25 (A) For purposes of—

1 (i) determining unfunded target liabil-  
2 ity under section 4006(a)(3)(E)(ii) of the  
3 Employee Retirement Income Security Act  
4 of 1974, and

5 (ii) determining any present value or  
6 making any computation under section 412  
7 of the Internal Revenue Code of 1986 or  
8 section 302 of such Act,

9 the mortality table shall be the mortality table used  
10 by the plan.

11 (B) Notwithstanding section 303(e)(3) of  
12 such Act or 430(e)(3) of such Code, for pur-  
13 poses of section 303(c)(2)(B) of such Act and  
14 430(c)(2)(B) of such Code, the value of plan  
15 assets shall not be reduced by the amount of  
16 the prefunding balance if, pursuant to a binding  
17 written agreement with the Pension Benefit  
18 Guaranty Corporation entered into before Janu-  
19 ary 1, 2006, the prefunding balance is not  
20 available to reduce the minimum required con-  
21 tribution for the plan year.

22 (3) DEFINITIONS.—Any term used in this sec-  
23 tion which is also used in section 303 of such Act  
24 or section 430 of such Code shall have the meaning  
25 provided such term in such section.

1 (4) CONFORMING AMENDMENT.—Section 769  
 2 of the Retirement Protection Act of 1994 is amend-  
 3 ed by striking subsection (c).

4 (5) EFFECTIVE DATE.—The amendments made  
 5 by this subsection shall apply to plan years begin-  
 6 ning after 2006.

7 **TITLE IV—IMPROVEMENTS IN**  
 8 **PBGC GUARANTEE PROVISIONS**

9 **SEC. 401. INCREASES IN PBGC PREMIUMS.**

10 (a) FLAT-RATE PREMIUMS.—Section  
 11 4006(a)(3)(A)(i) of the Employee Retirement Income Se-  
 12 curity Act of 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amend-  
 13 ed to read as follows:

14 “(i) in the case of a single-employer plan, an  
 15 amount equal to—

16 “(I) for plan years beginning after Decem-  
 17 ber 31, 1990, and before January 1, 2006, \$19,  
 18 or

19 “(II) for plan years beginning after De-  
 20 cember 31, 2005, \$30,  
 21 plus the additional premium (if any) determined  
 22 under subparagraph (E) for each individual who is  
 23 a participant in such plan during the plan year;”.

24 (b) RISK-BASED PREMIUMS.—



1           (1) CONFORMING AMENDMENTS RELATED TO  
 2           FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—  
 3           Section 4006(a)(3)(E) of such Act (as amended by  
 4           paragraph (1)) is amended by striking clauses (iii)  
 5           and (iv) and inserting the following:

6           “(iii)(I) For purposes of clause (ii), except as pro-  
 7           vided in subclause (II), the term ‘unfunded vested bene-  
 8           fits’ means, for a plan year, the amount which would be  
 9           the plan’s funding shortfall (as defined in section  
 10          303(c)(4)), if the value of plan assets of the plan were  
 11          equal to the fair market value of such assets and only vest-  
 12          ed benefits were taken into account.

13          “(II) The interest rate used in valuing vested benefits  
 14          for purposes of subclause (I) shall be equal to the first,  
 15          second, or third segment rate which would be determined  
 16          under section 303(h)(2)(C) if section 303(h)(2)(D) were  
 17          applied by using the yields on investment grade corporate  
 18          bonds with varying maturities rather than the average of  
 19          such yields for a 12-month period.”.

20           (2) EFFECTIVE DATE.—The amendments made  
 21           by paragraph (1) shall apply with respect to plan  
 22           years beginning after 2005.

23           (c) FLAT-RATE PREMIUM ADJUSTMENT.—

24           (1) IN GENERAL.—Beginning in 2011, and  
 25           every 5 years thereafter, the Board of Directors of

1 the Pension Benefit Guaranty Corporation under  
2 title IV of the Employee Retirement Income Security  
3 Act (29 U.S.C. 1301 et seq.) shall submit to Con-  
4 gress a report that describes any recommendations  
5 for adjusting the premium rate payable to the Cor-  
6 poration described under section 4006(a)(3)(A)(i) of  
7 such Act (as amended by subsection (a)).

8 (2) CONSIDERATIONS.—In developing the re-  
9 port described under paragraph (1), the Corporation  
10 shall consider—

11 (A) the national average wage index (as  
12 defined in section 209(k)(1) of the Social Secu-  
13 rity Act (42 U.S.C. 409(k)(1)));

14 (B) the finances of the Corporation as of  
15 the date of such report and an actuarial evalua-  
16 tion of the expected operations and status of  
17 the funds established under section 4005 of  
18 such title IV (29 U.S.C. 1305) for the 5 years  
19 succeeding such date;

20 (C) the impact of any increases in such  
21 premium rate on plan sponsors subject to such  
22 title IV; and

23 (D) such other factors determined relevant  
24 by the Corporation.

1 **SEC. 402. AUTHORITY TO ENTER ALTERNATIVE FUNDING**  
 2 **AGREEMENTS TO PREVENT PLAN TERMI-**  
 3 **NATIONS.**

4 (a) AUTHORITY TO ENTER INTO AGREEMENTS.—

5 (1) DISTRESS TERMINATIONS.—Section 4041(c)  
 6 of the Employee Retirement Income Security Act of  
 7 1974 (29 U.S.C. 1341(c)) is amended by adding at  
 8 the end the following:

9 “(4) ALTERNATIVE FUNDING AGREEMENTS.—

10 “(A) IN GENERAL.—If the corporation de-  
 11 termines that—

12 “(i) a plan meets the requirements for  
 13 a distress termination under this sub-  
 14 section without regard to an alternative  
 15 funding agreement under section 4047(a),  
 16 and

17 “(ii) the termination of the plan  
 18 would not be necessary if such an agree-  
 19 ment were entered into,

20 the corporation may request that the Secretary  
 21 of the Treasury, in consultation with the cor-  
 22 poration, may enter into such an agreement  
 23 with the contributing sponsors under the plan.

24 “(B) EARLY ACTION INITIATIVES.—Sub-  
 25 ject to the limitations in subsection (a)(3), if—

1 “(i) the corporation determines that it  
 2 is reasonable to believe that a plan may be  
 3 subject to a distress termination within 6  
 4 months unless action is taken, the corpora-  
 5 tion may request that the Secretary of the  
 6 Treasury, in consultation with the corpora-  
 7 tion, enter into an alternative funding  
 8 agreement under section 4047(a); and

9 “(ii) the corporation, upon the request  
 10 of the contributing sponsor of a plan or  
 11 other person, determines that it is reason-  
 12 able to believe that a plan may be subject  
 13 to a distress termination within 2 years  
 14 unless action is taken, the corporation may  
 15 request that the Secretary of the Treasury,  
 16 in consultation with the corporation, enter  
 17 into an alternative funding agreement  
 18 under section 4047(a).”.

19 (2) INVOLUNTARY TERMINATIONS.—Section  
 20 4042 of the Employee Retirement Income Security  
 21 Act of 1974 (29 U.S.C. 1342) is amended by adding  
 22 at the end the following:

23 “(i) ALTERNATIVE FUNDING AGREEMENTS.—If—

24 “(1) the corporation determines that it is rea-  
 25 sonable to believe that a plan will meet the require-

1       ments for an involuntary termination under this sec-  
2       tion without regard to an alternative funding agree-  
3       ment under section 4047(a) within 6 months unless  
4       action is taken, or

5               “(B) the corporation, upon the request of the  
6       contributing sponsor of a plan or other person, de-  
7       termines that it is reasonable to believe that a plan  
8       may be subject to an involuntary termination within  
9       2 years unless action is taken,  
10   and such a termination would not be necessary if such  
11   an agreement is entered into, the corporation may request  
12   that the Secretary of the Treasury, in consultation with  
13   the corporation, enter into an alternative funding agree-  
14   ment under section 4047(a).”.

15       (b) ALTERNATIVE FUNDING SCHEDULES TO PRE-  
16   VENT PLAN TERMINATION.—

17               (1) IN GENERAL.—Section 4047 of the Em-  
18       ployee Retirement Income Security Act of 1974 (29  
19       U.S.C. 1347) is amended by—

20               (A) striking the section heading and all  
21       that follows though “Whenever” and insert-  
22       ing—

1 **“SEC. 4047. ALTERNATIVE FUNDING SCHEDULES TO PRE-**  
2 **VENT TERMINATION; RESTORATION OF TER-**  
3 **MINATED PLANS.**

4 “(a) ALTERNATIVE FUNDING AGREEMENTS.—

5 “(1) IN GENERAL.—If the requirements of sec-  
6 tion 4041(c)(4) or 4042(i) are met with respect to  
7 any plan, the Secretary of the Treasury, in consulta-  
8 tion with the corporation, may enter into an alter-  
9 native funding agreement with the contributing  
10 sponsors under the plan that meets the requirements  
11 of this subsection.

12 “(2) OTHER REQUIREMENTS.—An alternative  
13 funding agreement may be entered into by the Sec-  
14 retary of the Treasury, in consultation with corpora-  
15 tion, only if—

16 “(A) such Secretary finds the agreement to  
17 be in the best interests of the participants and  
18 beneficiaries; and

19 “(B) the agreement meets the require-  
20 ments set forth by such Secretaryin regulations.

21 “(3) ALTERNATIVE FUNDING AGREEMENT.—

22 “(A) IN GENERAL.—An agreement meets  
23 the requirements of this subsection if the agree-  
24 ment—

1 “(i) provides for an additional amorti-  
2 zation schedule for a period not to exceed  
3 10 years;

4 “(ii) requires the plan to pay at the  
5 time the agreement is entered into any  
6 professional fees or other expenses in-  
7 curred by the Secretary of the Treasury or  
8 the corporation in connection with the  
9 agreements,

10 “(iii) requires approval by the cor-  
11 poration before the contributing sponsor  
12 establishes or maintains any other defined  
13 benefit plan other than any multiemployer  
14 plan that covers a substantial number of  
15 employees who are covered by the plan  
16 subject to the agreement or who perform  
17 substantially the same type of work with  
18 respect to the same business operations as  
19 employees covered by such plan, and

20 “(iv) provides for a termination date,  
21 or a schedule of termination dates, for the  
22 purpose of the guarantee under section  
23 4022, to apply if a plan terminates during  
24 the period that the agreement is in effect.

1           “(B)     OTHER     CONDITIONS.—Notwith-  
2           standing any other provision of this Act, an  
3           agreement meeting the requirements of this  
4           subsection may provide—

5                   “(i) for restrictions on, or the elimi-  
6                   nation of, future accruals, but only to the  
7                   extent that such restrictions or elimi-  
8                   nations would have been permitted under  
9                   section 204(g) or section 411(d)(6) of the  
10                  Internal Revenue Code of 1986 if they had  
11                  been implemented by a plan amendment  
12                  adopted immediately before the effective  
13                  date of the agreement,

14                  “(ii) that the contributing sponsors  
15                  will provide security or other collateral in  
16                  such form and amount as specified in the  
17                  agreement,

18                  “(iii) conditions under which the plan  
19                  could be terminated in a standard termi-  
20                  nation under section 4041(b) or conditions  
21                  under which accruals to which clause (i)  
22                  applies could resume in the future, and

23                  “(iv) for such other terms and condi-  
24                  tions as the Secretary of the Treasury, in  
25                  consultation with the corporation, deter-



1 mines necessary to protect the interests of  
2 the corporation.

3 “(C) EMPLOYEE REQUIREMENTS.—

4 “(i) IN GENERAL.—An agreement  
5 meets the requirements of this subsection  
6 only if—

7 “(I) at least 60 days before the  
8 agreement is to take effect the con-  
9 tributing sponsors notify affected par-  
10 ties (other than the corporation) of  
11 the terms of the agreement and its ef-  
12 fect on such parties, and

13 “(II) each employee organization  
14 representing participants in the plan  
15 approves the agreement before it  
16 takes effect.

17 “(ii) FORM AND MANNER OF NO-  
18 TICE.—The notice under clause (i) shall be  
19 written in a manner calculated to be un-  
20 derstood by the average plan participant  
21 and may be provided to a person des-  
22 ignated, in writing, by the person to which  
23 it would otherwise be provided. Such notice  
24 may be provided in written, electronic, or  
25 other appropriate form to the extent such

1 form is reasonably accessible to persons to  
 2 whom the notice is required to be provided.

3 “(4) COORDINATION WITH MINIMUM FUNDING  
 4 REQUIREMENTS.—Any alternative funding schedule  
 5 under an agreement meeting the requirements under  
 6 this subsection shall supersede the minimum funding  
 7 requirements of this Act and the Internal Revenue  
 8 Code of 1986. For purposes of applying this Act or  
 9 such Code, any contribution required under such  
 10 schedule shall be treated in the same manner as con-  
 11 tributions required under section 302 of this Act  
 12 and section 412 of such Code.

13 “(b) RESTORATION OF TERMINATED PLANS.—  
 14 Whenever”.

15 (2) CONFORMING AMENDMENT.—The table of  
 16 contents for title IV of such Act is amended by  
 17 striking the item relating to section 4047 and insert-  
 18 ing the following:

“4047. Alternative funding schedules to prevent terminations; restoration of  
 terminated plans.”.

19 (c) AMENDMENTS TO OTHER PROVISIONS.—

20 (1) QUALIFICATION REQUIREMENT.—Section  
 21 401(a) of the Internal Revenue Code of 1986 is  
 22 amended by inserting after paragraph (34) the fol-  
 23 lowing new paragraph:

1           “(35) SUCCESSOR PLANS TO CERTAIN PLANS.—

2       If—

3           “(A) an alternative funding agreement de-  
4       scribed in section 4047(a) of the Employee Re-  
5       tirement Income Security Act of 1974 is in ef-  
6       fect with respect to any plan, and

7           “(B) the plan is maintained by an em-  
8       ployer that establishes or maintains 1 or more  
9       other defined benefit plans (other than any  
10      multiemployer plan), and such other plans in  
11      combination provide benefit accruals to any  
12      substantial number of successor employees,  
13      the Secretary may, in the Secretary’s discretion, de-  
14      termine that any trust of which any other such plan  
15      is a part does not constitute a qualified trust under  
16      this subsection unless all benefit obligations of the  
17      plan to which the alternative funding agreement ap-  
18      plies have been satisfied. For purposes of this para-  
19      graph, the term ‘successor employee’ means any em-  
20      ployee who is or was covered by the plan to which  
21      the alternative funding agreement applies and any  
22      employee who performs substantially the same type  
23      of work with respect to the same business operations  
24      as an employee covered by such plan.”.

1           (2) LIMITATION ON DEDUCTIONS UNDER CER-  
 2           TAIN PLANS.—Section 404(a)(7)(C) of the Internal  
 3           Revenue Code of 1986 is amended by adding at the  
 4           end the following:

5                       “(iii) PLANS SUBJECT TO ALTER-  
 6                       NATIVE FUNDING AGREEMENTS.—This  
 7                       paragraph shall not apply to any plan for  
 8                       a plan year if an alternative funding agree-  
 9                       ment described in section 4047(a) of the  
 10                      Employee Retirement Income Security Act  
 11                      of 1974 is in effect for such year.”.

12          (d) EFFECTIVE DATE.—The amendments made by  
 13          this section shall take effect on the date of enactment of  
 14          this Act.

15   **SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAIN-**  
 16                       **TAINED BY COMMERCIAL AIRLINES THAT**  
 17                       **ARE AMENDED TO CEASE FUTURE BENEFIT**  
 18                       **ACCRUALS.**

19          (a) IN GENERAL.—If an election is made to have this  
 20          section apply to an eligible plan—

21               (1) in the case of any applicable plan year be-  
 22               ginning before January 1, 2007, the plan shall not  
 23               have an accumulated funding deficiency for purposes  
 24               of section 302 of the Employee Retirement Income  
 25               Security Act of 1974 and sections 412 and 4971 of

1 the Internal Revenue Code of 1986 if contributions  
2 to the plan for the plan year are not less than the  
3 minimum required contribution determined under  
4 subsection (d) for the plan for the plan year, and

5 (2) in the case of any applicable plan year be-  
6 ginning on or after January 1, 2007, the minimum  
7 required contribution determined under sections 303  
8 of such Act and 430 of such Code shall, for purposes  
9 of sections 302 and 303 of such Act and sections  
10 412, 430, and 4971 of such Code, be equal to the  
11 minimum required contribution determined under  
12 subsection (d) for the plan for the plan year.

13 (b) ELIGIBLE PLAN.—For purposes of this section—

14 (1) IN GENERAL.—The term “eligible plan”  
15 means a defined benefit plan (other than a multiem-  
16 ployer plan) to which sections 302 of such Act and  
17 412 of such Code applies—

18 (A) which is sponsored by an employer  
19 which is a commercial passenger airline, and

20 (B) with respect to which the requirements  
21 of paragraphs (2) and (3) are met.

22 (2) ACCRUAL RESTRICTIONS.—The require-  
23 ments of this paragraph are met if, effective as of  
24 the first day of the first applicable plan year and at  
25 all times thereafter, the plan provides that—

1 (A) the accrued benefit, any death or dis-  
2 ability benefit, and any social security supple-  
3 ment described in the last sentence of section  
4 411(a)(9) of such Code and section  
5 204(b)(1)(G) of such Act, of each participant  
6 are frozen at the amount of such benefit or  
7 supplement immediately before such first day,  
8 and

9 (B) all other benefits under the plan are  
10 eliminated,

11 but only to the extent the freezing or elimination of  
12 such benefits would have been permitted under sec-  
13 tion 411(d)(6) of such Code and section 204(g) of  
14 such Act if they had been implemented by a plan  
15 amendment adopted immediately before such first  
16 day.

17 (3) RESTRICTION ON APPLICABLE BENEFIT IN-  
18 CREASES.—The requirements of this paragraph are  
19 met if no applicable benefit increase (as defined in  
20 section 436(b)(3) of such Code and section  
21 305(b)(3) of such Act, but determined without re-  
22 gard to subparagraph (B) or (C) thereof) takes ef-  
23 fect at any time during the period beginning on July  
24 26, 2005, and ending on the day before the first day  
25 of the first applicable plan year.

1 (c) ELECTIONS AND RELATED TERMS.—

2 (1) IN GENERAL.—A plan sponsor shall make  
3 the election under subsection (a) at such time and  
4 in such manner as the Secretary of the Treasury  
5 may prescribe. Such election, once made, may be re-  
6 voked only with the consent of such Secretary.

7 (2) YEARS FOR WHICH ELECTION MADE.—

8 (A) IN GENERAL.—The plan sponsor may  
9 select the first plan year to which the election  
10 under subsection (a) applies from among plan  
11 years ending after the date of the election. The  
12 election shall apply to such plan year and all  
13 subsequent years.

14 (B) ELECTION OF NEW PLAN YEAR.—The  
15 plan sponsor may specify a new plan year in the  
16 election under subsection (a) and the plan year  
17 of the plan may be changed to such new plan  
18 year without the approval of the Secretary of  
19 the Treasury.

20 (3) APPLICABLE PLAN YEAR.—The term “ap-  
21 plicable plan year” means each plan year to which  
22 the election under subsection (a) applies under para-  
23 graph (1).

24 (d) MINIMUM REQUIRED CONTRIBUTION.—

1           (1) IN GENERAL.—In the case of any applicable  
 2           plan year during the amortization period, the min-  
 3           imum required contribution shall be the amount nec-  
 4           essary to amortize the unfunded liability of the plan,  
 5           determined as of the first day of the plan year, in  
 6           equal annual installments (until fully amortized)  
 7           over the remainder of the amortization period. Such  
 8           amount shall be separately determined for each ap-  
 9           plicable plan year.

10           (2) YEARS AFTER AMORTIZATION PERIOD.—In  
 11           the case of any plan year beginning after the end of  
 12           the amortization period, section 302(a)(2)(A) of  
 13           such Act and section 412(a)(2)(A) of such Code  
 14           shall apply to such plan, but the prefunding balance  
 15           as of the first day of the first of such years under  
 16           section 303(f) of such Act and section 430(f) of such  
 17           Code shall be zero.

18           (3) DEFINITIONS.—For purposes of this sec-  
 19           tion—

20                   (A) UNFUNDED LIABILITY.—The term  
 21                   “unfunded liability” means the unfunded ac-  
 22                   crued liability under the plan, determined under  
 23                   the unit credit funding method.

24                   (B) AMORTIZATION PERIOD.—The term  
 25                   “amortization period” means the 14-plan year



1           period beginning with the first applicable plan  
2           year.

3           (4) OTHER RULES.—In determining the min-  
4           imum required contribution and amortization  
5           amount under this subsection—

6                   (A) the provisions of section 302(c)(3) of  
7                   such Act and section 412(c)(3) of such Code, as  
8                   in effect before the date of enactment of this  
9                   section, shall apply,

10                   (B) the rate of interest under section  
11                   302(b) of such Act and section 412(b) of such  
12                   Code, as so in effect, shall be used for all cal-  
13                   culations requiring an interest rate, and

14                   (C) the value of plan assets shall be equal  
15                   to their fair market value.

16           (e) FUNDING STANDARD ACCOUNT AND  
17           PREFUNDING BALANCE.—Any charge or credit in the  
18           funding standard account under section 302 of such Act  
19           or section 412 of such Code, and any prefunding balance  
20           under section 303 of such Act or section 430 of such Code,  
21           as of the day before the first day of the first applicable  
22           plan year, shall be reduced to zero.

23           (f) AMENDMENTS TO OTHER PROVISIONS.—

24                   (1) QUALIFICATION REQUIREMENT.—Section  
25                   401(a)(35) of the Internal Revenue Code of 1986, as

1 added by this Act, is amended by adding at the end  
2 the following: “This paragraph shall also apply to  
3 any plan during any period during which an amorti-  
4 zation schedule under section 403 of the Pension Se-  
5 curity and Transparency Act of 2005 is in effect.”

6 (2) PBGC LIABILITY LIMITED.—Section 4022  
7 of the Employee Retirement Income Security Act of  
8 1974, as amended by this Act, is amended by adding  
9 at the end the following new subsection:

10 “(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN  
11 FUNDING REQUIREMENTS.—If any plan makes an elec-  
12 tion under section 403 of the Pension Security and Trans-  
13 parency Act of 2005, then this section and section  
14 4044(a)(3) shall be applied by treating the first day of  
15 the first applicable plan year as the termination date of  
16 the plan.”.

17 (3) LIMITATION ON DEDUCTIONS UNDER CER-  
18 TAIN PLANS.—Section 404(a)(7)(C)(iii) of the Inter-  
19 nal Revenue Code of 1986, as added by this Act, is  
20 amended by adding at the end the following new  
21 sentence: “This clause shall also apply to any plan  
22 for a plan year if an election under section 403 of  
23 the Pension Security and Transparency Act of 2005  
24 is in effect for such year.”

1           (4) NOTICE.—In the case of a plan amendment  
 2       adopted in order to comply with this section, any no-  
 3       tice required under section 204(h) of such Act or  
 4       section 4980F(e) of such Code shall be provided  
 5       within 15 days of the effective date of such plan  
 6       amendment. This subsection shall not apply to any  
 7       plan unless such plan is maintained pursuant to one  
 8       or more collective bargaining agreements between  
 9       employee representatives and 1 or more employers.

10       (g) EFFECTIVE DATE.—The amendments made by  
 11      this section shall apply to plan years ending after the date  
 12      of the enactment of this Act.

13      **SEC. 404. LIMITATION ON PBGC GUARANTEE OF SHUT-**  
 14                                   **DOWN AND OTHER BENEFITS.**

15       (a) IN GENERAL.—Section 4022(b) of the Employee  
 16      Retirement Income Security Act of 1974 (29 U.S.C.  
 17      1322(b)) is amended by adding at the end the following:

18                   “(8) If a benefit is payable by reason of—  
 19                   “(A) a plant shutdown or similar event; or  
 20                   “(B) any event other than attainment of  
 21                   any age, performance of any service, receipt or  
 22                   derivation of any compensation, or the occur-  
 23                   rence of death or disability,

1       this section shall be applied as if a plan amendment  
 2       had been adopted on the date such event occurred  
 3       that provides for the payment of such benefit.”.

4       (b) EFFECTIVE DATE.—The amendment made by  
 5       this section shall apply to benefits that become payable  
 6       as a result of a plant shutdown or other similar event,  
 7       as such terms are used in the amendment made by sub-  
 8       section (a), that occurs after July 26, 2005.

9       **SEC. 405. RULES RELATING TO BANKRUPTCY OF EM-**  
 10       **PLOYER.**

11       (a) GUARANTEE.—Section 4022 of the Employee Re-  
 12       tirement Income Security Act of 1974 (29 U.S.C. 1322),  
 13       as amended by this Act, is amended by adding at the end  
 14       the following:

15       “(i) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
 16       MINATION DATE.—If a contributing sponsor of a plan has  
 17       filed or has had filed against such person a petition seek-  
 18       ing liquidation or reorganization in a case under title 11,  
 19       United States Code, or under any similar Federal law or  
 20       law of a State or political subdivision, and the case has  
 21       not been dismissed as of the termination date, then this  
 22       section shall be applied by treating the date such petition  
 23       was filed as the date of plan termination.”.

24       (b) ALLOCATION OF ASSETS AMONG PRIORITY  
 25       GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044

1 of the Employee Retirement Income Security Act of 1974  
 2 (29 U.S.C. 1344) is amended by adding at the end the  
 3 following:

4 “(e) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
 5 MINATION DATE.—If a contributing sponsor of a plan has  
 6 filed or has had filed against such person a petition seek-  
 7 ing liquidation or reorganization in a case under title 11,  
 8 United States Code, or under any similar Federal law or  
 9 law of a State or political subdivision, and the case has  
 10 not been dismissed as of the termination date, then sub-  
 11 section (a)(3) shall be applied by treating the date such  
 12 petition was filed as the termination date of the plan.”.

13 (c) EFFECTIVE DATE.—The amendments made this  
 14 section shall apply with respect to proceedings initiated  
 15 under title 11, United States Code, or under any similar  
 16 Federal law or law of a State or political subdivision, on  
 17 or after the date that is 30 days after the date of enact-  
 18 ment of this Act.

19 **SEC. 406. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**  
 20 **LOYERS.**

21 (a) IN GENERAL.—Subparagraph (A) of section  
 22 4006(a)(3) of the Employee Retirement Income Security  
 23 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

24 (1) in clause (i), by inserting “other than a new  
 25 single-employer plan (as defined in subparagraph

1 (F)) maintained by a small employer (as so de-  
2 fined),” after “single-employer plan,”

3 (2) in clause (iii), by striking the period at the  
4 end and inserting “, and”, and

5 (3) by adding at the end the following new  
6 clause:

7 “(v) in the case of a new single-employer plan  
8 (as defined in subparagraph (F)) maintained by a  
9 small employer (as so defined) for the plan year, \$5  
10 for each individual who is a participant in such plan  
11 during the plan year.”

12 (b) DEFINITION OF NEW SINGLE-EMPLOYER  
13 PLAN.—Section 4006(a)(3) of the Employee Retirement  
14 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is  
15 amended by adding at the end the following new subpara-  
16 graph:

17 “(F)(i) For purposes of this paragraph, a single-em-  
18 ployer plan maintained by a contributing sponsor shall be  
19 treated as a new single-employer plan for each of its first  
20 5 plan years if, during the 36-month period ending on the  
21 date of the adoption of such plan, the sponsor or any  
22 member of such sponsor’s controlled group (or any prede-  
23 cessor of either) did not establish or maintain a plan to  
24 which this title applies with respect to which benefits were

1 accrued for substantially the same employees as are in the  
2 new single-employer plan.

3 “(ii)(I) For purposes of this paragraph, the term  
4 ‘small employer’ means an employer which on the first day  
5 of any plan year has, in aggregation with all members of  
6 the controlled group of such employer, 100 or fewer em-  
7 ployees.

8 “(II) In the case of a plan maintained by two or more  
9 contributing sponsors that are not part of the same con-  
10 trolled group, the employees of all contributing sponsors  
11 and controlled groups of such sponsors shall be aggregated  
12 for purposes of determining whether any contributing  
13 sponsor is a small employer.”

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to plans first effective after Decem-  
16 ber 31, 2005.

17 **SEC. 407. PBGC PREMIUMS FOR SMALL AND NEW PLANS.**

18 (a) NEW PLANS.—Subparagraph (E) of section  
19 4006(a)(3) of the Employee Retirement Income Security  
20 Act of 1974 (29 U.S.C. 1306(a)(3)), as amended by this  
21 Act, is amended by adding at the end the following new  
22 clause:

23 “(iv) In the case of a new defined benefit plan, the  
24 amount determined under clause (ii) for any plan year  
25 shall be an amount equal to the product of the amount

1 determined under clause (ii) and the applicable percent-  
 2 age. For purposes of this clause, the term ‘applicable per-  
 3 centage’ means—

4 “(I) 0 percent, for the first plan year.

5 “(II) 20 percent, for the second plan year.

6 “(III) 40 percent, for the third plan year.

7 “(IV) 60 percent, for the fourth plan year.

8 “(V) 80 percent, for the fifth plan year.

9 For purposes of this clause, a defined benefit plan (as de-  
 10 fined in section 3(35)) maintained by a contributing spon-  
 11 sor shall be treated as a new defined benefit plan for each  
 12 of its first 5 plan years if, during the 36-month period  
 13 ending on the date of the adoption of the plan, the sponsor  
 14 and each member of any controlled group including the  
 15 sponsor (or any predecessor of either) did not establish  
 16 or maintain a plan to which this title applies with respect  
 17 to which benefits were accrued for substantially the same  
 18 employees as are in the new plan.”

19 (b) SMALL PLANS.—Paragraph (3) of section  
 20 4006(a) of the Employee Retirement Income Security Act  
 21 of 1974 (29 U.S.C. 1306(a)), is amended—

22 (1) by striking “The” in subparagraph (E)(i)  
 23 and inserting “Except as provided in subparagraph  
 24 (G), the”, and



1           (2) by inserting after subparagraph (F) the fol-  
 2           lowing new subparagraph:

3           “(G)(i) In the case of an employer who has 25 or  
 4           fewer employees on the first day of the plan year, the addi-  
 5           tional premium determined under subparagraph (E) for  
 6           each participant shall not exceed \$5 multiplied by the  
 7           number of participants in the plan as of the close of the  
 8           preceding plan year.

9           “(ii) For purposes of clause (i), whether an employer  
 10          has 25 or fewer employees on the first day of the plan  
 11          year is determined by taking into consideration all of the  
 12          employees of all members of the contributing sponsor’s  
 13          controlled group. In the case of a plan maintained by two  
 14          or more contributing sponsors, the employees of all con-  
 15          tributing sponsors and their controlled groups shall be ag-  
 16          gregated for purposes of determining whether the 25-or-  
 17          fewer-employees limitation has been satisfied.”

18          (c) EFFECTIVE DATES.—

19               (1) SUBSECTION (a).—The amendments made  
 20               by subsection (a) shall apply to plans first effective  
 21               after December 31, 2005.

22               (2) SUBSECTION (b).—The amendments made  
 23               by subsection (b) shall apply to plan years beginning  
 24               after December 31, 2005.

1   **SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**  
2                   **PREMIUM OVERPAYMENT REFUNDS.**

3           (a) IN GENERAL.—Section 4007(b) of the Employ-  
4   ment Retirement Income Security Act of 1974 (29 U.S.C.  
5   1307(b)) is amended—

6                   (1) by striking “(b)” and inserting “(b)(1)”,  
7           and

8                   (2) by inserting at the end the following new  
9   paragraph:

10           “(2) The corporation is authorized to pay, subject to  
11   regulations prescribed by the corporation, interest on the  
12   amount of any overpayment of premium refunded to a des-  
13   ignated payor. Interest under this paragraph shall be cal-  
14   culated at the same rate and in the same manner as inter-  
15   est is calculated for underpayments under paragraph (1).”

16           (b) EFFECTIVE DATE.—The amendments made by  
17   subsection (a) shall apply to interest accruing for periods  
18   beginning not earlier than the date of the enactment of  
19   this Act.

20   **SEC. 409. RULES FOR SUBSTANTIAL OWNER BENEFITS IN**  
21                   **TERMINATED PLANS.**

22           (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—  
23   Section 4022(b)(5) of the Employee Retirement Income  
24   Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended  
25   to read as follows:

1       “(5)(A) For purposes of this paragraph, the term  
2 ‘majority owner’ means an individual who, at any time  
3 during the 60-month period ending on the date the deter-  
4 mination is being made—

5           “(i) owns the entire interest in an unincor-  
6 porated trade or business,

7           “(ii) in the case of a partnership, is a partner  
8 who owns, directly or indirectly, 50 percent or more  
9 of either the capital interest or the profits interest  
10 in such partnership, or

11           “(iii) in the case of a corporation, owns, directly  
12 or indirectly, 50 percent or more in value of either  
13 the voting stock of that corporation or all the stock  
14 of that corporation.

15 For purposes of clause (iii), the constructive ownership  
16 rules of section 1563(e) of the Internal Revenue Code of  
17 1986 shall apply (determined without regard to section  
18 1563(e)(3)(C)).

19       “(B) In the case of a participant who is a majority  
20 owner, the amount of benefits guaranteed under this sec-  
21 tion shall equal the product of—

22           “(i) a fraction (not to exceed 1) the numerator  
23 of which is the number of years from the later of the  
24 effective date or the adoption date of the plan to the

1 termination date, and the denominator of which is  
 2 10, and

3 “(ii) the amount of benefits that would be guar-  
 4 anteed under this section if the participant were not  
 5 a majority owner.”

6 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

7 (1) Section 4044(a)(4)(B) of the Employee Re-  
 8 tirement Income Security Act of 1974 (29 U.S.C.  
 9 1344(a)(4)(B)) is amended by striking “section  
 10 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

11 (2) Section 4044(b) of such Act (29 U.S.C.  
 12 1344(b)) is amended—

13 (A) by striking “(5)” in paragraph (2) and  
 14 inserting “(4), (5),” and

15 (B) by redesignating paragraphs (3)  
 16 through (6) as paragraphs (4) through (7), re-  
 17 spectively, and by inserting after paragraph (2)  
 18 the following new paragraph:

19 “(3) If assets available for allocation under  
 20 paragraph (4) of subsection (a) are insufficient to  
 21 satisfy in full the benefits of all individuals who are  
 22 described in that paragraph, the assets shall be allo-  
 23 cated first to benefits described in subparagraph (A)  
 24 of that paragraph. Any remaining assets shall then  
 25 be allocated to benefits described in subparagraph

1 (B) of that paragraph. If assets allocated to such  
 2 subparagraph (B) are insufficient to satisfy in full  
 3 the benefits described in that subparagraph, the as-  
 4 sets shall be allocated pro rata among individuals on  
 5 the basis of the present value (as of the termination  
 6 date) of their respective benefits described in that  
 7 subparagraph.”

8 (c) CONFORMING AMENDMENTS.—

9 (1) Section 4021 of the Employee Retirement  
 10 Income Security Act of 1974 (29 U.S.C. 1321) is  
 11 amended—

12 (A) in subsection (b)(9), by striking “as  
 13 defined in section 4022(b)(6)”, and

14 (B) by adding at the end the following new  
 15 subsection:

16 “(d) For purposes of subsection (b)(9), the term ‘sub-  
 17 stantial owner’ means an individual who, at any time dur-  
 18 ing the 60-month period ending on the date the determina-  
 19 tion is being made—

20 “(1) owns the entire interest in an unincor-  
 21 porated trade or business,

22 “(2) in the case of a partnership, is a partner  
 23 who owns, directly or indirectly, more than 10 per-  
 24 cent of either the capital interest or the profits inter-  
 25 est in such partnership, or

1           “(3) in the case of a corporation, owns, directly  
 2           or indirectly, more than 10 percent in value of either  
 3           the voting stock of that corporation or all the stock  
 4           of that corporation.

5 For purposes of paragraph (3), the constructive ownership  
 6 rules of section 1563(e) of the Internal Revenue Code of  
 7 1986 shall apply (determined without regard to section  
 8 1563(e)(3)(C)).”

9           (2) Section 4043(c)(7) of such Act (29 U.S.C.  
 10          1343(c)(7)) is amended by striking “section  
 11          4022(b)(6)” and inserting “section 4021(d)”.

12          (d) EFFECTIVE DATES.—

13           (1) IN GENERAL.—Except as provided in para-  
 14          graph (2), the amendments made by this section  
 15          shall apply to plan terminations—

16           (A) under section 4041(c) of the Employee  
 17          Retirement Income Security Act of 1974 (29  
 18          U.S.C. 1341(c)) with respect to which notices  
 19          of intent to terminate are provided under sec-  
 20          tion 4041(a)(2) of such Act (29 U.S.C.  
 21          1341(a)(2)) after December 31, 2005, and

22           (B) under section 4042 of such Act (29  
 23          U.S.C. 1342) with respect to which proceedings  
 24          are instituted by the corporation after such  
 25          date.

1           (2) CONFORMING AMENDMENTS.—The amend-  
2           ments made by subsection (c) shall take effect on  
3           January 1, 2006.

4   **SEC. 410. ACCELERATION OF PBGC COMPUTATION OF BEN-**  
5                   **EFITS ATTRIBUTABLE TO RECOVERIES FROM**  
6                   **EMPLOYERS.**

7           (a) MODIFICATION OF AVERAGE RECOVERY PER-  
8           CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-  
9           ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS  
10          AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the  
11          Employee Retirement Income Security Act of 1974 (29  
12          U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

13                   “(ii) notices of intent to terminate  
14                   were provided (or in the case of a termi-  
15                   nation by the corporation, a notice of de-  
16                   termination under section 4042 was  
17                   issued) during the 5-Federal fiscal year pe-  
18                   riod ending with the third fiscal year pre-  
19                   ceding the fiscal year in which occurs the  
20                   date of the notice of intent to terminate  
21                   (or the notice of determination under sec-  
22                   tion 4042) with respect to the plan termi-  
23                   nation for which the recovery ratio is being  
24                   determined.”

1 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR  
 2 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
 3 PARTICIPANTS AND BENEFICIARIES.—Section 4044 of the  
 4 Employee Retirement Income Security Act of 1974 (29  
 5 U.S.C. 1362), as amended by this Act, is amended by add-  
 6 ing at the end the following new subsection:

7 “(f) VALUATION OF SECTION 4062(c) LIABILITY FOR  
 8 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
 9 PARTICIPANTS AND BENEFICIARIES.—

10 “(1) IN GENERAL.—In the case of a terminated  
 11 plan, the value of the recovery of liability under sec-  
 12 tion 4062(c) allocable as a plan asset under this sec-  
 13 tion for purposes of determining the amount of ben-  
 14 efits payable by the corporation shall be determined  
 15 by multiplying—

16 “(A) the amount of liability under section  
 17 4062(c) as of the termination date of the plan,  
 18 by

19 “(B) the applicable section 4062(c) recov-  
 20 ery ratio.

21 “(2) SECTION 4062(c) RECOVERY RATIO.—For  
 22 purposes of this subsection—

23 “(A) IN GENERAL.—Except as provided in  
 24 subparagraph (C), the term ‘section 4062(c) re-  
 25 covery ratio’ means the average, determined



1 with respect to prior plan terminations de-  
2 scribed in subparagraph (B), of the ratio  
3 which—

4 “(i) the value of the recovery under  
5 section 4062(c) determined by the corpora-  
6 tion in connection with any such prior ter-  
7 mination, bears to

8 “(ii) the amount of liability under sec-  
9 tion 4062(c) with respect to such plans as  
10 of the termination date in connection with  
11 any such prior termination.

12 “(B) PRIOR TERMINATIONS.—A plan ter-  
13 mination described in this subparagraph is a  
14 termination with respect to which—

15 “(i) the value of recoveries under sec-  
16 tion 4062(c) have been determined by the  
17 corporation, and

18 “(ii) notices of intent to terminate  
19 were provided (or in the case of a termi-  
20 nation by the corporation, a notice of de-  
21 termination under section 4042 was  
22 issued) during the 5-Federal fiscal year pe-  
23 riod ending with the third fiscal year pre-  
24 ceding the fiscal year in which occurs the  
25 date of the notice of intent to terminate

1 (or the notice of determination under sec-  
2 tion 4042) with respect to the plan termi-  
3 nation for which the recovery ratio is being  
4 determined.

5 “(C) EXCEPTION.—In the case of a termi-  
6 nated plan with respect to which the out-  
7 standing amount of benefit liabilities exceeds  
8 \$20,000,000, the term ‘section 4062(c) recovery  
9 ratio’ means, with respect to the termination of  
10 such plan, the ratio of—

11 “(i) the value of the recoveries on be-  
12 half of the plan under section 4062(c), to

13 “(ii) the amount of the liability owed  
14 under section 4062(c) as of the date of  
15 plan termination to the trustee appointed  
16 under section 4042 (b) or (c).

17 “(3) SUBSECTION NOT TO APPLY.—This sub-  
18 section shall not apply with respect to the deter-  
19 mination of—

20 “(A) whether the amount of outstanding  
21 benefit liabilities exceeds \$20,000,000, or

22 “(B) the amount of any liability under sec-  
23 tion 4062 to the corporation or the trustee ap-  
24 pointed under section 4042 (b) or (c).

1           “(4) DETERMINATIONS.—Determinations under  
 2           this subsection shall be made by the corporation.  
 3           Such determinations shall be binding unless shown  
 4           by clear and convincing evidence to be unreason-  
 5           able.”

6           (c) EFFECTIVE DATE.—The amendments made by  
 7           this section shall apply for any termination for which no-  
 8           tices of intent to terminate are provided (or in the case  
 9           of a termination by the corporation, a notice of determina-  
 10          tion under section 4042 under the Employee Retirement  
 11          Income Security Act of 1974 is issued) on or after the  
 12          date which is 30 days after the date of enactment of this  
 13          section.

## 14           **TITLE V—DISCLOSURE**

### 15          **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.**

16          (a) IN GENERAL.—Section 101(f) of the Employee  
 17          Retirement Income Security Act of 1974 (29 U.S.C.  
 18          1021(f)) is amended to read as follows:

19          “(f) DEFINED BENEFIT PLAN FUNDING NOTICES.—

20               “(1) IN GENERAL.—The administrator of a de-  
 21               fined benefit plan shall for each plan year provide a  
 22               plan funding notice to the Pension Benefit Guaranty  
 23               Corporation, to each plan participant and bene-  
 24               ficiary, to each labor organization representing such  
 25               participants or beneficiaries, and, in the case of a

1       multiemployer plan, to each employer that has an  
2       obligation to contribute to the plan.

3               “(2) INFORMATION CONTAINED IN NOTICES.—

4               “(A) IDENTIFYING INFORMATION.—Each  
5       notice required under paragraph (1) shall con-  
6       tain identifying information, including the name  
7       of the plan, the address and phone number of  
8       the plan administrator and the plan’s principal  
9       administrative officer, each plan sponsor’s em-  
10      ployer identification number, and the plan num-  
11      ber of the plan.

12              “(B) SPECIFIC INFORMATION.—A plan  
13      funding notice under paragraph (1) shall in-  
14      clude—

15              “(i)(I) in the case of a single-employer  
16      plan, a statement as to whether the plan’s  
17      funding target attainment percentage (as  
18      defined in section 303(d)(2)) for the plan  
19      year to which the notice relates, and for  
20      the 2 preceding plan years, is at least 100  
21      percent (and, if not, the actual percent-  
22      ages), or

23              “(II) in the case of a multiemployer  
24      plan, a statement as to whether the plan’s  
25      funded percentage (as defined in section

1 305(i)) for the plan year to which the no-  
2 tice relates, and for the 2 preceding plan  
3 years, is at least 100 percent (and, if not,  
4 the actual percentages),

5 “(ii)(I) in the case of a single-em-  
6 ployer plan, a statement of the value of the  
7 plan’s assets and liabilities for the plan  
8 year to which the notice relates as of the  
9 last day of the plan year to which the no-  
10 tice relates determined using the asset  
11 valuation under subclause (I) of section  
12 4006(a)(3)(E)(iii) and the interest rate  
13 under subclause (II) of such section, and

14 “(II) in the case of a multiemployer  
15 plan, a statement of the value of the plan’s  
16 assets and liabilities for the plan year to  
17 which the notice relates as the last day of  
18 such plan year,

19 “(iii) a statement of the number of  
20 participants who are—

21 “(I) retired or separated from  
22 service and are receiving benefits;

23 “(II) retired or separated partici-  
24 pants entitled to future benefits, and

1                   “(II) active participants under  
2                   the plan,

3                   “(iv) a statement setting forth the  
4                   funding policy of the plan and the asset al-  
5                   location of investments under the plan (ex-  
6                   pressed as percentages of total assets) as  
7                   of the end of the plan year to which the  
8                   notice relates,

9                   “(v) in the case of a multiemployer  
10                  plan, whether the plan was in critical or  
11                  endangered status under section 305 for  
12                  such plan year and, if so—

13                  “(I) a list of the actions taken by  
14                  the plan to improve its funding status,  
15                  and

16                  “(II) a statement describing how  
17                  a person may obtain a copy of the  
18                  plan’s improvement or rehabilitation  
19                  plan, as appropriate, adopted under  
20                  section 305 and the actuarial and fi-  
21                  nancial data that demonstrate any ac-  
22                  tion taken by the plan toward fiscal  
23                  improvement,

24                  “(vi) a summary of any funding im-  
25                  provement plan, rehabilitation plan, or

1 modification thereof adopted under section  
2 305 during the plan year to which the no-  
3 tice relates,

4 “(vii) in the case of any plan amend-  
5 ments, scheduled benefit increase or reduc-  
6 tion, or other known event taking effect in  
7 the current plan year and having a mate-  
8 rial effect on plan liabilities or assets for  
9 the year (as defined in regulations by the  
10 Secretary), an explanation of the amend-  
11 ment, schedule increase or reduction, or  
12 event, and a projection to the end of such  
13 plan year of the effect of the amendment,  
14 scheduled increase or reduction, or event  
15 on plan liabilities,

16 “(viii)(I) in the case of a single-em-  
17 ployer plan, a summary of the rules gov-  
18 erning termination of single-employer plans  
19 under subtitle C of title IV, or

20 “(II) in the case of a multiemployer  
21 plan, a summary of the rules governing re-  
22 organization or insolvency, including the  
23 limitations on benefit payments and any  
24 potential benefit reductions and suspen-  
25 sions (and the potential effects of such lim-

1            itations, reductions, and suspensions on  
2            the plan), and

3            “(ix) a general description of the ben-  
4            efits under the plan which are eligible to be  
5            guaranteed by the Pension Benefit Guar-  
6            anty Corporation, along with an expla-  
7            nation of the limitations on the guarantee  
8            and the circumstances under which such  
9            limitations apply.

10           “(C) OTHER INFORMATION.—Each notice  
11           under paragraph (1) shall include—

12           “(i) in the case of a multiemployer  
13           plan, a statement that the plan adminis-  
14           trator shall provide, upon written request,  
15           to any labor organization representing plan  
16           participants and beneficiaries and any em-  
17           ployer that has an obligation to contribute  
18           to the plan, a copy of the annual report  
19           filed with the Secretary under section  
20           104(a), and

21           “(ii) any additional information which  
22           the plan administrator elects to include to  
23           the extent not inconsistent with regulations  
24           prescribed by the Secretary.

25           “(3) TIME FOR PROVIDING NOTICE.—



1           “(A) IN GENERAL.—Any notice under  
2           paragraph (1) shall be provided not later than  
3           90 days after the end of the plan year to which  
4           the notice relates.

5           “(B) EXCEPTION FOR SMALL PLANS.—In  
6           the case of a small plan (as such term is used  
7           under section 303(g)(2)(B)) any notice under  
8           paragraph (1) shall be provided upon filing of  
9           the annual report under section 104(a).

10          “(4) FORM AND MANNER.—Any notice under  
11          paragraph (1)—

12               “(A) shall be provided in a form and man-  
13               ner prescribed in regulations of the Secretary,

14               “(B) shall be written in a manner so as to  
15               be understood by the average plan participant,  
16               and

17               “(C) may be provided in written, elec-  
18               tronic, or other appropriate form to the extent  
19               such form is reasonably accessible to persons to  
20               whom the notice is required to be provided.”.

21          (b) MODEL NOTICE.—Not later than 180 days after  
22          the date of the enactment of this Act, the Secretary of  
23          Labor shall publish a model version of the notice required  
24          by section 101(f) of the Employee Retirement Income Se-  
25          curity Act of 1974.

1       (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to plan years beginning after De-  
 3 cember 31, 2005.

4       **SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN IN-**  
 5                                   **FORMATION.**

6       (a) FINANCIAL INFORMATION WITH RESPECT TO  
 7 MULTIEMPLOYER PLANS.—

8               (1) IN GENERAL.—Section 101 of the Employee  
 9 Retirement Income Security Act of 1974 (29 U.S.C.  
 10 1021) is amended—

11                       (A) by redesignating subsection (j) as sub-  
 12 section (k); and

13                       (B) by inserting after subsection (i) the  
 14 following new subsection:

15       “(j) MULTIEMPLOYER PLAN INFORMATION MADE  
 16 AVAILABLE ON REQUEST.—

17               “(1) IN GENERAL.—Each administrator of a  
 18 multiemployer plan shall, upon written request, fur-  
 19 nish to any plan participant or beneficiary, employee  
 20 representative, or any employer that has an obliga-  
 21 tion to contribute to the plan—

22                       “(A) a copy of any periodic actuarial re-  
 23 port (including sensitivity testing) received by  
 24 the plan for any plan year which has been in  
 25 the plan’s possession for at least 30 days, and

1           “(B)(i) a copy of any quarterly, semi-an-  
2           nual, or annual financial report prepared for  
3           the plan by any plan investment manager or ad-  
4           visor or other fiduciary which has been in the  
5           plan’s possession for at least 30 days, or

6           “(ii) at the discretion of the person sub-  
7           mitting the written request, a copy of a quar-  
8           terly summary of the financial reports described  
9           clause (i).

10          “(2) COMPLIANCE.—Information required to be  
11          provided under paragraph (1) —

12           “(A) shall be provided to the requesting  
13           participant, beneficiary, or employer within 30  
14           days after the request in a form and manner  
15           prescribed in regulations of the Secretary,

16           “(B) may be provided in written, elec-  
17           tronic, or other appropriate form to the extent  
18           such form is reasonably accessible to persons to  
19           whom the information is required to be pro-  
20           vided, and

21           “(C) shall not—

22           “(i) include any individually identifi-  
23           able information regarding any plan partic-  
24           ipant, beneficiary, employee, fiduciary, or  
25           contributing employer, or

1                   “(ii) reveal any proprietary informa-  
2                   tion regarding the plan, any contributing  
3                   employer, or entity providing services to  
4                   the plan.

5                   “(3) LIMITATIONS.—In no case shall a partici-  
6                   pant, beneficiary, or employer be entitled under this  
7                   subsection to receive more than one copy of any re-  
8                   port described in paragraph (1) during any one 12-  
9                   month period. The administrator may make a rea-  
10                  sonable charge to cover copying, mailing, and other  
11                  costs of furnishing copies of information pursuant to  
12                  paragraph (1). The Secretary may by regulations  
13                  prescribe the maximum amount which will constitute  
14                  a reasonable charge under the preceding sentence.”.

15                  (2) ENFORCEMENT.—Section 502(c)(4) of such  
16                  Act (29 U.S.C. 1132(c)(4)) is amended by striking  
17                  “section 101(f)(1)” and inserting “subsection (f)(1)  
18                  or (j) of section 101”.

19                  (3) REGULATIONS.—The Secretary shall pre-  
20                  scribe regulations under section 101(j)(2) of the  
21                  Employee Retirement Income Security Act of 1974  
22                  (added by paragraph (1)) not later than 270 days  
23                  after the date of the enactment of this Act.

24                  (b) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY  
25                  TO MULTIEMPLOYER PLANS.—

1           (1) IN GENERAL.—Section 101 of such Act (as  
2       amended by subsection (a)) is amended—

3           (A) by redesignating subsection (k) as sub-  
4       section (l); and

5           (B) by inserting after subsection (j) the  
6       following new subsection:

7       “(k) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-  
8       ITY.—

9           “(1) IN GENERAL.—The plan sponsor or ad-  
10      ministrators of a multiemployer plan shall, upon writ-  
11      ten request, furnish to any employer who has an ob-  
12      ligation to contribute to the plan a notice of—

13           “(A) the estimated amount which would be  
14      the amount of such employer’s withdrawal li-  
15      ability under part 1 of subtitle E of title IV if  
16      such employer withdrew on the last day of the  
17      plan year preceding the date of the request, in-  
18      cluding separate calculations of the share of the  
19      employer’s withdrawal liability attributable to  
20      participant’s service with the employer and an  
21      estimate of the employer’s proportional share of  
22      any unfunded vested benefits which are not at-  
23      tributable to service with the employer, as de-  
24      termined under section 4211(c)(4), and

1 “(B) an explanation of how such estimated  
2 liability amount was determined, including the  
3 actuarial assumptions and methods used to de-  
4 termine the value of the plan liabilities and as-  
5 sets, the data regarding employer contributions,  
6 unfunded vested benefits, annual changes in the  
7 plan’s unfunded vested benefits, and the appli-  
8 cation of any relevant limitations on the esti-  
9 mated withdrawal liability.

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—

18 “(i) 180 days after the request in a  
19 form and manner prescribed in regulations  
20 of the Secretary, or

21 “(ii) subject to regulations of the Sec-  
22 retary, such longer time as may be nec-  
23 essary in the case of a plan that deter-  
24 mines withdrawal liability based on any

1 method described under paragraph (4) or  
2 (5) of section 4211(c); and

3 “(B) may be provided in written, elec-  
4 tronic, or other appropriate form to the extent  
5 such form is reasonably accessible to employers  
6 to whom the information is required to be pro-  
7 vided.

8 “(3) LIMITATIONS.—In no case shall an em-  
9 ployer be entitled under this subsection to receive  
10 more than one notice described in paragraph (1)  
11 during any one 12-month period. The person re-  
12 quired to provide such notice may make a reasonable  
13 charge to cover copying, mailing, and other costs of  
14 furnishing such notice pursuant to paragraph (1).  
15 The Secretary may by regulations prescribe the max-  
16 imum amount which will constitute a reasonable  
17 charge under the preceding sentence.”.

18 (2) ENFORCEMENT.—Section 502(c)(4) of such  
19 Act (29 U.S.C. 1132(c)(4)) is amended by striking  
20 “subsection (f)(1) or (j)” and inserting “subsection  
21 (f)(1), (j), or (k)”.

22 (c) NOTICE OF AMENDMENT REDUCING FUTURE AC-  
23 CRUALS.—Section 204(h)(1) of such Act (29 U.S.C.  
24 1054(h)(1)) is amended by inserting at the end before the

1 period “and to each employer who has an obligation to  
2 contribute to the plan.”.

3 (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to plan years beginning after De-  
5 cember 31, 2005.

6 **SEC. 503. ADDITIONAL ANNUAL REPORTING REQUIRE-**  
7 **MENTS.**

8 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-  
9 MENTS WITH RESPECT TO DEFINED BENEFIT PLANS.—

10 (1) IN GENERAL.—Section 103 of the Employee  
11 Retirement Income Security Act of 1974 (29 U.S.C.  
12 1023) is amended—

13 (A) in subsection (a)(1)(B), by striking  
14 “subsections (d) and (e)” and inserting “sub-  
15 sections (d), (e), and (f)”; and

16 (B) by adding at the end the following new  
17 subsection:

18 “(f) ADDITIONAL INFORMATION WITH RESPECT TO  
19 DEFINED BENEFIT PLANS.—

20 “(1) GENERAL INFORMATION.—With respect to  
21 any defined benefit plan, an annual report under  
22 this section for a plan year shall include the fol-  
23 lowing:

24 “(A) In any case in which any liabilities to  
25 participants or their beneficiaries under such



1 plan as of the end of such plan year consist (in  
2 whole or in part) of liabilities to such partici-  
3 pants and beneficiaries under 2 or more pen-  
4 sion plans as of immediately before such plan  
5 year, the funded percentage of each of such 2  
6 or more pension plans as of the last day of such  
7 plan year and the funded percentage of the plan  
8 with respect to which the annual report is filed  
9 as of the last day of such plan year.

10 “(B) For purposes of this paragraph, the  
11 term ‘funded percentage’—

12 “(i) in the case of a single-employer  
13 plan, means the funding target attainment  
14 percentage, as defined in section  
15 303(d)(2), and

16 “(ii) in the case of a multiemployer  
17 plan, has the meaning given such term in  
18 section 305(i)(2).

19 “(2) ADDITIONAL INFORMATION FOR MULTIEM-  
20 PLOYER PLANS.—With respect to any defined ben-  
21 efit plan which is a multiemployer plan, an annual  
22 report under this section for a plan year shall in-  
23 clude, in addition to the information required under  
24 paragraph (1), the following, as of the end of the  
25 plan year to which the notice relates:

1           “(A) The number of employers obligated to  
2           contribute to the plan.

3           “(B) A list of the employers that contrib-  
4           uted more than 5 percent of the total contribu-  
5           tions to the plan during such plan year.

6           “(C) The number of participants under the  
7           plan on whose behalf no employer contributions  
8           have been made to the plan for such plan year  
9           and for each of the 2 preceding plan years. For  
10          purposes of this paragraph, the term ‘employer  
11          contribution’ means, in connection with a par-  
12          ticipant, a contribution made by an employer as  
13          an employer of such participant.

14          “(D) The ratio of—

15               “(i) the number of participants under  
16               the plan on whose behalf no employer had  
17               an obligation to make an employer con-  
18               tribution during the plan year, to

19               “(ii) the number of participants under  
20               the plan on whose behalf no employer had  
21               an obligation to make an employer con-  
22               tribution during each of the 2 preceding  
23               plan years.

24          “(E) Whether the plan received an amorti-  
25          zation extension under section 304(d) or section

1           431(d) of the Internal Revenue Code of 1986  
2           for such plan year and, if so, the amount of the  
3           difference between the minimum required con-  
4           tribution for the year and the minimum re-  
5           quired contribution which would have been re-  
6           quired without regard to the extension, and the  
7           period of such extension.

8           “(F) Whether the plan used the shortfall  
9           funding method (as such term is used in section  
10          305) for such plan year and, if so, the amount  
11          of the difference between the minimum required  
12          contribution for the year and the minimum re-  
13          quired contribution which would have been re-  
14          quired without regard to the use of such meth-  
15          od, and the period of use of such method.

16          “(G) Whether the plan was in critical or  
17          endangered status under section 305 for such  
18          plan year, and if so, a summary of any funding  
19          improvement or rehabilitation plan (or modi-  
20          fication thereto) adopted during the plan year,  
21          and the funding ratio of the plan.

22          “(H) The number of employers that with-  
23          drew from the plan during the preceding plan  
24          year and the aggregate amount of withdrawal

1 liability assessed, or estimated to be assessed,  
2 against such withdrawn employers.

3 “(I) In the case of a multiemployer plan  
4 that has merged with another plan or to which  
5 assets and liabilities have been transferred, the  
6 actuarial valuation of the assets and liabilities  
7 of each affected plan during the year preceding  
8 the effective date of the merger or transfer,  
9 based upon the most recent data available as of  
10 the day before the first day of the plan year, or  
11 other valuation method performed under stand-  
12 ards and procedures as the Secretary may pre-  
13 scribe by regulation.”.

14 (2) GUIDANCE BY SECRETARY OF LABOR.—

15 (A) IN GENERAL.—Not later than 180  
16 days after the date of enactment of this Act,  
17 the Secretary of Labor (referred to in this para-  
18 graph as the “Secretary”) shall publish guid-  
19 ance to assist multiemployer defined benefit  
20 plans to—

21 (i) identify and enumerate plan par-  
22 ticipants for whom there is no employer  
23 with an obligation to make an employer  
24 contribution under the plan; and

1 (ii) report such information under sec-  
2 tion 103(f)(2)(D) of the Employee Retire-  
3 ment Income Security Act of 1974 (as  
4 added by this section).

5 (B) WAIVER OF REQUIREMENT.—The Sec-  
6 retary shall waive the requirement under sec-  
7 tion 103(f)(2)(D) of such Act (as added by this  
8 section) for the construction and entertainment  
9 industries.

10 (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-  
11 ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-  
12 JECTIONS.—Section 103(d) of such Act (29 U.S.C.  
13 1023(d)) is amended—

14 (1) by redesignating paragraphs (12) and (13)  
15 as paragraphs (13) and (14), respectively; and

16 (2) by inserting after paragraph (11) the fol-  
17 lowing new paragraph:

18 “(12) A statement explaining the actuarial as-  
19 sumptions and methods used in projecting future re-  
20 tirements and forms of benefit distributions under  
21 the plan.”.

22 (c) FORM AND MANNER OF REPORT.—Section  
23 104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended  
24 by—

25 (1) striking “(3) Within” and inserting—

1 “(A) IN GENERAL.—Within”; and

2 (2) adding at the end the following:

3 “(B) FORM OF REPORT.—The material  
4 provided pursuant to subparagraph (A) to sum-  
5 marize the latest annual report shall be written  
6 in a manner calculated to be understood by the  
7 average plan participant.

8 (d) FURNISHING SUMMARY PLAN INFORMATION TO  
9 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF  
10 MULTIEMPLOYER PLANS.—

11 (1) IN GENERAL.—Section 104 of such Act (29  
12 U.S.C. 1024) is amended—

13 (A) in the header, by striking “PARTICI-  
14 PANTS” and inserting “PARTICIPANTS AND CER-  
15 TAIN EMPLOYERS”;

16 (B) redesignating subsection (d) as sub-  
17 section (e); and

18 (C) inserting after subsection (c) the fol-  
19 lowing:

20 “(d) FURNISHING SUMMARY PLAN INFORMATION TO  
21 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF  
22 MULTIEMPLOYER PLANS.—

23 “(1) IN GENERAL.—With respect to a multiem-  
24 ployer plan subject to this section, within 30 days  
25 after the due date under subsection (a)(1) for the

1 filing of the annual report for the fiscal year of the  
2 plan, the administrators shall furnish to each em-  
3 ployee organization, employer with an obligation to  
4 contribute to the plan, and the Pension Benefit  
5 Guaranty Corporations, a report that contains—

6 “(A) a description of the contribution  
7 schedules and benefit formulas under the plan,  
8 and any modification to such schedules and for-  
9 mulas, during such plan year;

10 “(B) the number of employers obligated to  
11 contribute to the plan;

12 “(C) a list of the employers that contrib-  
13 uted more than 5 percent of the total contribu-  
14 tions to the plan during such plan year;

15 “(D) the number of participants under the  
16 plan on whose behalf no employer contributions  
17 (which, for purposes of this paragraph, means,  
18 in connection with a participant, a contribution  
19 made by an employer as an employer of such  
20 participant) have been made to the plan for  
21 such plan year and for each of the 2 preceding  
22 plan years;

23 “(E) whether the plan was in critical or  
24 endangered status under section 305 for such  
25 plan year and, if so, include—

1                   “(i) a list of the actions taken by the  
2                   plan to improve its funding status; and

3                   “(ii) a statement describing how a  
4                   person may obtain a copy of the plan’s im-  
5                   provement or rehabilitation plan, as appro-  
6                   priate, adopted under section 305 and the  
7                   actuarial and financial data that dem-  
8                   onstrate any action taken by the plan to-  
9                   ward fiscal improvement;

10                  “(H) the number of employers that with-  
11                  drew from the plan during the preceding plan  
12                  year and the aggregate amount of withdrawal  
13                  liability assessed, or estimated to be assessed,  
14                  against such withdrawn employers;

15                  “(I) in the case of a multiemployer plan  
16                  that has merged with another plan or to which  
17                  assets and liabilities have been transferred, the  
18                  actuarial valuation of the assets and liabilities  
19                  of each affected plan during the year preceding  
20                  the effective date of the merger or transfer,  
21                  based upon the most recent data available as of  
22                  the day before the first day of the plan year, or  
23                  other valuation method performed under stand-  
24                  ards and procedures as the Secretary may pre-  
25                  scribe by regulation;



1           “(J) a description as to whether the  
2 plan—

3           “(i) sought or received an amortiza-  
4 tion extension under section 304(d) or sec-  
5 tion 431(d) of the Internal Revenue Code  
6 of 1986 for such plan year;

7           “(ii) used the shortfall funding meth-  
8 od (as such term is used in section 305)  
9 for such plan year; or

10           “(iii) was in critical or endangered  
11 status under section 305 for such plan  
12 year; and

13           “(K) notification of the right under this  
14 section of the recipient to a copy of the annual  
15 report filed with the Secretary under subsection  
16 (a), summary annual report, summary plan de-  
17 scription, summary of any material modification  
18 of the plan, upon written request, but that—

19           “(i) in no case shall a recipient be en-  
20 titled to receive more than one copy of any  
21 such report described during any one 12-  
22 month period; and

23           “(ii) the administrator may make a  
24 reasonable charge to cover copying, mail-  
25 ing, and other costs of furnishing copies of

1 information pursuant to this subpara-  
2 graph.

3 “(2) EFFECT OF SECTION.—Nothing in this  
4 section waives any other provision under this title re-  
5 quiring plan administrators to provide, upon request,  
6 information to employers that have an obligation to  
7 contribution under the plan.”.

8 (e) MODEL FORM.—Not later than 270 days after  
9 the date of the enactment of this Act, the Secretary of  
10 Labor shall publish a model form for providing the state-  
11 ments, schedules, and other material required to be pro-  
12 vided under section 104(b)(3) of the Employee Retirement  
13 Income Security Act of 1974, as amended by this section.

14 (f) FIVE-YEAR REPORT WITH RESPECT TO MULTI-  
15 EMPLOYER PLANS.—Section 4022A(f) of such Act (29  
16 U.S.C. 1322a(f)) is amended by adding at the end the fol-  
17 lowing:

18 “(6) Not later than 5 years after the date of  
19 the enactment of the Pension Security and Trans-  
20 parency Act of 2005, and at least every fifth year  
21 thereafter, the corporation shall submit to Congress  
22 a report that contains a description of the fiscal con-  
23 ditions of the multiemployer pension plan system as  
24 of the date of such report based on the information  
25 submitted to the corporation under section 104(d).”.

1 (g) CONFORMING AMENDMENT.—Title IV of such  
 2 Act (29 U.S.C. 1301 et seq.) is amended by striking sec-  
 3 tion 4011.

4 (h) EFFECTIVE DATES.—

5 (1) IN GENERAL.—The amendments made by  
 6 this section shall apply to plan years beginning after  
 7 December 31, 2005.

8 (2) SPECIAL RULE.—Notwithstanding the pro-  
 9 visions of paragraph (1), the requirement under sec-  
 10 tion 103(f)(2)(D) of the Employee Retirement In-  
 11 come Security Act (as added by this section) shall  
 12 apply to plan years beginning after December 31,  
 13 2007.

14 **SEC. 504. TIMING OF ANNUAL REPORTING REQUIREMENTS.**

15 (a) FILING AFTER 285 DAYS AFTER PLAN YEAR  
 16 ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of  
 17 such Act (29 U.S.C. 1024(a)(1)) is amended by inserting  
 18 after the first sentence the following new sentence: “In  
 19 the case of a pension plan, the Secretary may extend the  
 20 deadline for filing the annual report for any plan year past  
 21 285 days after the close of the plan year only on a case  
 22 by case basis and only in cases of hardship, in accordance  
 23 with regulations which shall be prescribed by the Sec-  
 24 retary.”.

1 (b) INTERNET DISPLAY OF INFORMATION.—Section  
2 104(b) of such Act (29 U.S.C. 1024(b)) is amended by  
3 adding at the end the following:

4 “(5) Identification and basic plan information and ac-  
5 tual information included in the annual report for any  
6 plan year shall be filed with the Secretary in an electronic  
7 format which accommodates display on the Internet, in ac-  
8 cordance with regulations which shall be prescribed by the  
9 Secretary. The Secretary shall provide for display of such  
10 information included in the annual report, within 90 days  
11 after the date of the filing of the annual report, on an  
12 Internet website maintained by the Secretary and other  
13 appropriate media. Such information shall also be dis-  
14 played on any Internet website maintained by the plan  
15 sponsor (or by the plan administrator on behalf of the plan  
16 sponsor), in accordance with regulations which shall be  
17 prescribed by the Secretary.”.

18 (c) SUMMARY ANNUAL REPORT FILED WITHIN 30  
19 DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-  
20 PORT.—Section 104(b)(3) of such Act (29 U.S.C.  
21 1024(b)(3)), as amended by section 503, is amended by—

22 (1) striking “(3)(A) Within 210 days after the  
23 close of the fiscal year,” and inserting “(3)(A) With-  
24 in 30 days after the due date under subsection

1 (a)(1) for the filing of the annual report for the fis-  
 2 cal year of the plan”;

3 (2) striking “the latest” and inserting “such”;  
 4 and

5 (3) adding at the end the following

6 “(C) DATE OF INTERNET DISPLAY.—Dis-  
 7 play of the summary annual report on the  
 8 Internet website maintained by the plan spon-  
 9 sor (or by the plan administrator on behalf of  
 10 the plan sponsor) by the date required under  
 11 subparagraph (A) shall be treated as furnishing  
 12 such report to each participant and beneficiary  
 13 receiving benefits under the plan by such date,  
 14 except that such report shall be furnished to  
 15 each such participant and beneficiary as soon  
 16 as practicable thereafter, and in no event later  
 17 the 30 days after such date.”.

18 (d) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to plan years beginning after De-  
 20 cember 31, 2005.

21 **SEC. 505. SECTION 4010 FILINGS WITH THE PBGC.**

22 (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED  
 23 TO PROVIDE INFORMATION TO PBGC.—Section 4010(b)  
 24 of the Employee Retirement Income Security Act of 1974  
 25 (29 U.S.C. 1310(b)) is amended—

1 (1) in paragraph (1)—

2 (A) by striking “(1) the aggregate” and in-  
3 serting “(1)(A) the aggregate”;

4 (B) by striking the semicolon and inserting  
5 “; and”;

6 (C) by inserting after subparagraph (A)  
7 the following:

8 “(B)(i) the aggregate funding targets attain-  
9 ment percentage of the plan (as defined in sub-  
10 section (d)) is less than 90 percent; or

11 “(ii) any debt instrument of the plan sponsor or  
12 the plan sponsor has received a rating described in  
13 subclause (I) or (II) of section 303(i)(5)(A);”;

14 (2) by redesignating paragraphs (2) and (3) as  
15 paragraphs (4) and (5), respectively, and by insert-  
16 ing before paragraph (4) (as so redesignated) the  
17 following new paragraphs:

18 “(2) the aggregate funding targets attainment  
19 percentage of the plan (as defined in subsection (d))  
20 is less than 60 percent;

21 “(3)(A) the aggregate funding targets attain-  
22 ment percentage of the plan (as defined in sub-  
23 section (d)) is less than 75 percent, and

24 “(B) the plan sponsor is in an industry with re-  
25 spect to which the corporation determines that there

1 is substantial unemployment or underemployment  
2 and the sales and profits are depressed or declin-  
3 ing;”.

4 (b) ADDITIONAL INFORMATION REQUIRED.—Section  
5 4010 of the Employee Retirement Income Security Act of  
6 1974 (29 U.S.C. 1310) is amended by adding at the end  
7 the following new subsection:

8 “(d) ADDITIONAL INFORMATION REQUIRED.—

9 “(1) IN GENERAL.—The information submitted  
10 to the corporation under subsection (a) shall in-  
11 clude—

12 “(A) the amount of benefit liabilities under  
13 the plan determined using the assumptions used  
14 by the corporation in determining liabilities;

15 “(B) the funding target of the plan deter-  
16 mined as if the plan has been in at-risk status  
17 for at least 5 plan years; and

18 “(C) the funding target attainment per-  
19 centage of the plan.

20 “(2) DEFINITIONS.—For purposes of this sub-  
21 section:

22 “(A) VALUE OF PLAN ASSETS.—The term  
23 ‘value of plan assets’ means the value of plan  
24 assets, as determined under section 303(g)(3).

1           “(B) FUNDING TARGET.—The term ‘fund-  
2           ing target’ has the meaning provided under sec-  
3           tion 303(d)(1).

4           “(C) FUNDING TARGET ATTAINMENT PER-  
5           CENTAGE.—The term ‘funding target attain-  
6           ment percentage’ has the meaning provided in  
7           section 303(d)(2).

8           “(D) AGGREGATE FUNDING TARGETS AT-  
9           TAINMENT PERCENTAGE.—The term ‘aggregate  
10          funding targets attainment percentage’ means,  
11          with respect to a contributing sponsor for a  
12          plan year, the percentage, taking into account  
13          all plans maintained by the contributing spon-  
14          sor and the members of its controlled group as  
15          of the end of such plan year, which—

16               “(i) the aggregate total of the values  
17               of plan assets, as of the end of such plan  
18               year, of such plans, is of

19               “(ii) the aggregate total of the fund-  
20               ing targets of such plans, as of the end of  
21               such plan year, taking into account only  
22               benefits to which participants and bene-  
23               ficiaries have a nonforfeitable right.



1                   “(E) AT-RISK STATUS.—The term ‘at-risk  
2                   status’ has the meaning provided in section  
3                   303(i)(4).

4                   “(e) NOTICE TO CONGRESS.—The Corporation shall,  
5                   on an annual basis, submit to the Committee on Health,  
6                   Education, Labor, and Pensions of the Senate and the  
7                   Committee on Education and the Workforce of the House  
8                   of Representatives, a summary report of the information  
9                   submitted to the Corporation under this section.”.

10                  (c) EFFECTIVE DATE.—The amendment made by  
11                  this section shall apply with respect to plan years begin-  
12                  ning after 2006.

13                  **SEC. 506. DISCLOSURE OF TERMINATION INFORMATION TO**  
14                  **PLAN PARTICIPANTS.**

15                  (a) DISTRESS TERMINATIONS.—

16                         (1) IN GENERAL.—Section 4041(c)(2) of the  
17                         Employee Retirement Income Security Act of 1974  
18                         (29 U.S.C. 1341(c)(2)) is amended by adding at the  
19                         end the following:

20                                 “(D) DISCLOSURE OF TERMINATION IN-  
21                                 FORMATION.—

22   “(i) IN GENERAL.—A plan adminis-  
23   trator that has filed a notice of intent to  
24   terminate under subsection (a)(2) shall  
25   provide to an affected party any informa-

1           tion provided to the corporation under  
2           paragraph (2) not later than 15 days  
3           after—

4                   “(I) receipt of a request from the  
5                   affected party for the information; or

6                   “(II) the provision of new infor-  
7                   mation to the corporation relating to  
8                   the previous request.

9                   “(ii) CONFIDENTIALITY.—

10                   “(I) IN GENERAL.—The plan ad-  
11                   ministrator shall not provide informa-  
12                   tion under clause (i) in a form that  
13                   includes any information that may di-  
14                   rectly or indirectly be associated with,  
15                   or otherwise identify, an individual  
16                   participant or beneficiary.

17                   “(II) LIMITATION.—A court may  
18                   limit disclosure under this subpara-  
19                   graph of confidential information de-  
20                   scribed in section 552(b) of title 5,  
21                   United States Code, to any authorized  
22                   representative of the participants or  
23                   beneficiaries that agrees to ensure the  
24                   confidentiality of such information.

1 “(iii) FORM AND MANNER OF INFOR-  
2 MATION; CHARGES.—

3 “(I) FORM AND MANNER.—The  
4 corporation may prescribe the form  
5 and manner of the provision of infor-  
6 mation under this subparagraph,  
7 which shall include delivery in written,  
8 electronic, or other appropriate form  
9 to the extent that such form is rea-  
10 sonably accessible to individuals to  
11 whom the information is required to  
12 be provided.

13 “(II) REASONABLE CHARGES.—A  
14 plan sponsor may charge a reasonable  
15 fee for any information provided  
16 under this subparagraph in other than  
17 electronic form.

18 “(iv) AUTHORIZED REPRESENTA-  
19 TIVE.—For purposes of this subparagraph,  
20 the term ‘authorized representative’ means  
21 any employee organization representing  
22 participants in the pension plan.”.

23 (2) CONFORMING AMENDMENT.—Section  
24 4041(c)(1) of the Employee Retirement Income Se-  
25 curity Act of 1974 (29 U.S.C. 1341(c)(1)) is amend-

ed in subparagraph (C) by striking “subparagraph (B)” and inserting “subparagraphs (B) and (D)”.

(b) INVOLUNTARY TERMINATIONS.—

(1) IN GENERAL.—Section 4042(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342(c)) is amended by—

(A) striking “(c) If the” and inserting

“(c)(1) If the”;

(B) redesignating paragraph (3) as paragraph (2); and

(C) adding at the end the following:

“(3) DISCLOSURE OF TERMINATION INFORMATION.—

“(A) IN GENERAL.—

“(i) INFORMATION FROM PLAN SPONSOR OR ADMINISTRATOR.—A plan sponsor or plan administrator of a single-employer plan that has received a notice from the corporation of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in conjunction with the plan termination.

“(ii) INFORMATION FROM CORPORATION.—The corporation shall provide a

1 copy of the administrative record, includ-  
2 ing the trusteeship decision record of a ter-  
3 mination of a plan described under clause  
4 (i).

5 “(B) TIMING OF DISCLOSURE.—The plan  
6 sponsor, plan administrator, or the corporation,  
7 as applicable, shall provide the information de-  
8 scribed in subparagraph (A) not later than 15  
9 days after—

10 “(i) receipt of a request from an af-  
11 fected party for such information; or

12 “(ii) in the case of information de-  
13 scribed under subparagraph (A)(i), the  
14 provision of any new information to the  
15 corporation relating to a previous request  
16 by an affected party.

17 “(C) CONFIDENTIALITY.—

18 “(i) IN GENERAL.—The plan adminis-  
19 trator and plan sponsor shall not provide  
20 information under subparagraph (A)(i) in  
21 a form which includes any information that  
22 may directly or indirectly be associated  
23 with, or otherwise identify, an individual  
24 participant or beneficiary.

1                   “(ii) LIMITATION.—A court may limit  
 2                   disclosure under this paragraph of con-  
 3                   fidential information described in section  
 4                   552(b) of title 5, United States Code, to  
 5                   authorized representatives (within the  
 6                   meaning of section 4041(c)(2)(D)(iv)) of  
 7                   the participants or beneficiaries that agree  
 8                   to ensure the confidentiality of such infor-  
 9                   mation.

10                   “(D) FORM AND MANNER OF INFORMA-  
 11                   TION; CHARGES.—

12                   “(i) FORM AND MANNER.—The cor-  
 13                   poration may prescribe the form and man-  
 14                   ner of the provision of information under  
 15                   this paragraph, which shall include delivery  
 16                   in written, electronic, or other appropriate  
 17                   form to the extent that such form is rea-  
 18                   sonably accessible to individuals to whom  
 19                   the information is required to be provided.

20                   “(ii) REASONABLE CHARGES.—A plan  
 21                   sponsor may charge a reasonable fee for  
 22                   any information provided under this para-  
 23                   graph in other than electronic form.”.

24                   (c) EFFECTIVE DATE.—The amendments made by  
 25                   this section shall apply to any plan termination under title

1 IV of the Employee Retirement Income Security Act of  
2 1974 (29 U.S.C. 1301 et seq.) with respect to which the  
3 notice of intent to terminate (or in the case of a termi-  
4 nation by the Pension Benefit Guaranty Corporation, a  
5 notice of determination under section 4042 of such Act  
6 (29 U.S.C. 1342)) occurs after the date of enactment of  
7 this Act.

8 **SEC. 507. STUDY AND REPORT BY GOVERNMENT ACCOUNT-**  
9 **ABILITY OFFICE.**

10 (a) IN GENERAL.—The Comptroller General of the  
11 United States shall conduct a study to determine the effec-  
12 tiveness of the enforcement of provisions in the Employee  
13 Retirement Income Security Act of 1974 (29 U.S.C. 1001  
14 et seq.) and in other Federal laws designed to protect pen-  
15 sion plans and the assets and participants of such plan  
16 from fraud and mismanagement, including excessive in-  
17 vestment management fees, violations of fiduciary duties  
18 under Title I of such Act, and the quality of plan assets.

19 (b) CONTENT OF STUDY.—The study described in  
20 subsection (a) shall include:

21 (1) An identification of which Federal depart-  
22 ments and agencies have responsibility for enforce-  
23 ment of these provisions, including the recovery of  
24 lost plan assets due to fraud and mismanagement.

1           (2) Identification of all administrative enforce-  
2           ment powers, procedures, and strategies used by the  
3           Securities and Exchange Commission that have the  
4           potential to improve the Department of Labor's en-  
5           forcement of the fiduciary provisions of the Em-  
6           ployee Retirement Income Security Act of 1974 (29  
7           U.S.C. 1001 et seq.).

8           (3) Identification of any statutory or other bar-  
9           riers that restrict the Department of Labor's author-  
10          ity to use such powers, procedures, and strategies  
11          identified in paragraph (2).

12          (4) An evaluation of whether giving additional  
13          investigative or enforcement authority to the Pension  
14          Benefit Guaranty Corporation or the Securities and  
15          Exchange Commission would significantly improve  
16          enforcement of those provisions.

17          (5) An evaluation of the current authority of  
18          the Pension Benefit Guaranty Corporation to bring  
19          actions to recover any funds lost by pension plans  
20          due to violations of any fiduciary standards under  
21          Title I of such Act or other Federal statutes.

22          (6) The impact that expanding any such au-  
23          thority by the Pension Benefit Guaranty Corpora-  
24          tion to bring such actions would have on the Cor-  
25          poration's solvency.



(c) REPORT.—Not later than 6 months after the enactment of this Act, the Comptroller General shall submit a report to Congress on the study conducted under subsection (a) that includes such recommendations for legislation or administrative action as the Comptroller General determines are appropriate.

## **TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HY- BRID DEFINED BENEFIT PEN- SION PLANS**

### **SEC. 601. PROSPECTIVE APPLICATION OF AGE DISCRIMINATION, CONVERSION, AND PRESENT VALUE ASSUMPTION RULES.**

(a) APPLICATION OF AGE DISCRIMINATION PROHIBITIONS.—

(1) AMENDMENT OF ERISA.—Section 204(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(b)) is amended by adding at the end the following:

“(5) SPECIAL RULES FOR CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PLANS.—

“(A) IN GENERAL.—A qualified cash balance plan shall not be treated as violating the requirements of paragraph (1)(H) merely because it may reasonably be expected that the

1 period over which interest credits will be made  
 2 to a participant's accumulation account (or its  
 3 equivalent) is longer for a younger participant.  
 4 This paragraph shall not apply to any plan if  
 5 the rate of any pay credit or interest credit to  
 6 such an account under the plan decreases by  
 7 reason of the participant's attainment of any  
 8 age.

9 “(B) QUALIFIED CASH BALANCE PLAN.—

10 For purposes of this paragraph—

11 “(i) IN GENERAL.—The term ‘quali-  
 12 fied cash balance plan’ means a cash bal-  
 13 ance plan which meets the vesting require-  
 14 ment under clause (ii) and the interest  
 15 credit requirement under clause (iii).

16 “(ii) VESTING REQUIREMENTS.—A  
 17 plan meets the requirements of this clause  
 18 if an employee who has completed at least  
 19 3 years of service has a nonforfeitable  
 20 right to 100 percent of the employee's ac-  
 21 crued benefit derived from employer con-  
 22 tributions.

23 “(iii) INTEREST CREDITS.—A plan  
 24 meets the requirements of this clause if the  
 25 terms of the plan provide that any interest

1 credit (or equivalent amount) for any plan  
2 year shall be at a rate which—

3 “(I) is not less than the applica-  
4 ble Federal mid-term interest rate (as  
5 determined under section 1274(d)(1)  
6 of the Internal Revenue Code of  
7 1986), and

8 “(II) is not greater than the  
9 greater of the rate determined under  
10 subclause (I) or a rate equal to the  
11 rate of interest on amounts invested  
12 conservatively in long-term investment  
13 grade corporate bonds.

14 “(iv) DETERMINATION OF RATES.—  
15 For purposes of clause (iii)(II), the rate of  
16 interest on amounts invested conservatively  
17 in long-term investment grade corporate  
18 bonds shall be determined by the Secretary  
19 of the Treasury on the basis of 2 or more  
20 indices that are selected periodically by the  
21 Secretary of the Treasury. The Secretary  
22 of the Treasury shall make publicly avail-  
23 able the indices and methodology used to  
24 determine the rate.

1 “(v) VARIABLE RATE OF INTEREST.—

2 If the interest credit rate under the plan is  
 3 a variable rate, the plan shall provide that,  
 4 upon the termination of the plan, the rate  
 5 of interest used to determine accrued bene-  
 6 fits under the plan shall be equal to the av-  
 7 erage of the rates of interest used under  
 8 the plan during the 5-year period ending  
 9 on the termination date.

10 “(C) CASH BALANCE PLAN.—For purposes  
 11 of this paragraph, the term ‘cash balance plan’  
 12 means a defined benefit plan under which—

13 “(i) the accrued benefit is determined  
 14 by reference to the balance of a hypo-  
 15 thetical accumulation account, and

16 “(ii) pay credits and interest credits  
 17 are credited to such account.

18 “(D) REGULATIONS TO INCLUDE SIMILAR  
 19 OR OTHER HYBRID PLANS.—

20 “(i) CASH BALANCE PLAN.—The Sec-  
 21 retary of the Treasury shall issue regula-  
 22 tions which include in the definition of  
 23 cash balance plan any defined benefit plan  
 24 (or any portion of such a plan) which has  
 25 an effect similar to a cash balance plan.

Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding sentence, such plan shall be treated as a cash balance plan.

“(ii) QUALIFIED CASH BALANCE PLAN.—The Secretary of the Treasury may in the regulations issued under clause (i) provide for the treatment of a cash balance plan as a qualified cash balance plan in cases where the cash balance plan has an effect similar to the qualified cash balance plan.”.

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4(i)(2) of the Age Discrimination of Employment Act of 1967 (29 U.S.C. 623(i)(2)) is amended—

(A) by inserting “(A)” after “(2)”, and

(B) by adding at the end the following new

subparagraph:

“(B) A defined benefit plan which is treated as a qualified cash balance plan for purposes of section 204(b)(5) of the Employee Retirement Income Security

1 Act of 1974 shall not be treated as violating the require-  
 2 ments of paragraph (1)(A) merely because it may reason-  
 3 ably be expected that the period over which interest credits  
 4 will be made under the plan to a participant's accumula-  
 5 tion account (or its equivalent) is longer for a younger  
 6 participant. This subparagraph shall not apply to any plan  
 7 if the rate of any pay credit or interest credit to such an  
 8 account under the plan decreases by reason of the partici-  
 9 pant's attainment of any age.”.

10 (3) AMENDMENT OF INTERNAL REVENUE  
 11 CODE.—Section 411(b) of the Internal Revenue  
 12 Code of 1986 (relating to accrued benefit require-  
 13 ments) is amended by adding at the end the fol-  
 14 lowing:

15 “(5) SPECIAL RULES FOR CASH BALANCE AND  
 16 OTHER HYBRID DEFINED BENEFIT PLANS.—

17 “(A) IN GENERAL.—A qualified cash bal-  
 18 ance plan shall not be treated as violating the  
 19 requirements of paragraph (1)(H) merely be-  
 20 cause it may reasonably be expected that the  
 21 period over which interest credits will be made  
 22 to a participant's accumulation account (or its  
 23 equivalent) is longer for a younger participant.  
 24 This paragraph shall not apply to any plan if  
 25 the rate of any pay credit or interest credit to

1           such an account under the plan decreases by  
 2           reason of the participant's attainment of any  
 3           age.

4           “(B) QUALIFIED CASH BALANCE PLAN.—

5           For purposes of this paragraph—

6           “(i) IN GENERAL.—The term ‘quali-  
 7           fied cash balance plan’ means a cash bal-  
 8           ance plan which meets the vesting require-  
 9           ment under clause (ii) and the interest  
 10          credit requirement under clause (iii).

11          “(ii) VESTING REQUIREMENTS.—A  
 12          plan meets the requirements of this clause  
 13          if an employee who has completed at least  
 14          3 years of service has a nonforfeitable  
 15          right to 100 percent of the employee's ac-  
 16          crued benefit derived from employer con-  
 17          tributions.

18          “(iii) INTEREST CREDITS.—A plan  
 19          meets the requirements of this clause if the  
 20          terms of the plan provide that any interest  
 21          credit (or equivalent amount) for any plan  
 22          year shall be at a rate which—

23                  “(I) is not less than the applica-  
 24                  ble Federal mid-term interest rate (as

1 determined under section 1274(d)(1)),  
2 and

3 “(II) is not greater than the  
4 greater of the rate determined under  
5 subclause (I) or a rate equal to the  
6 rate of interest on amounts invested  
7 conservatively in long-term investment  
8 grade corporate bonds.

9 “(iv) DETERMINATION OF RATES.—  
10 For purposes of clause (iii)(II), the rate of  
11 interest on amounts invested conservatively  
12 in long-term investment grade corporate  
13 bonds shall be determined by the Secretary  
14 on the basis of 2 or more indices that are  
15 selected periodically by the Secretary. The  
16 Secretary shall make publicly available the  
17 indices and methodology used to determine  
18 the rate.

19 “(v) VARIABLE RATE OF INTEREST.—  
20 If the interest credit rate under the plan is  
21 a variable rate, the plan shall provide that,  
22 upon the termination of the plan, the rate  
23 of interest used to determine accrued bene-  
24 fits under the plan shall be equal to the av-  
25 erage of the rates of interest used under



1 the plan during the 5-year period ending  
2 on the termination date.

3 “(C) CASH BALANCE PLAN.—For purposes  
4 of this paragraph, the term ‘cash balance plan’  
5 means a defined benefit plan under which—

6 “(i) the accrued benefit is determined  
7 by reference to the balance of a hypo-  
8 thetical accumulation account, and

9 “(ii) pay credits and interest credits  
10 are credited to such account.

11 “(D) REGULATIONS TO INCLUDE SIMILAR  
12 OR OTHER HYBRID PLANS.—

13 “(i) CASH BALANCE PLAN.—The Sec-  
14 retary shall issue regulations which include  
15 in the definition of cash balance plan any  
16 defined benefit plan (or any portion of  
17 such a plan) which has an effect similar to  
18 a cash balance plan. Such regulations may  
19 provide that if a plan sponsor represents in  
20 communications to participants and bene-  
21 ficiaries that a plan amendment results in  
22 a plan being described in the preceding  
23 sentence, such plan shall be treated as a  
24 cash balance plan.

1                   “(ii) QUALIFIED CASH BALANCE  
 2                   PLAN.—The Secretary may in the regula-  
 3                   tions issued under clause (i) provide for  
 4                   the treatment of a cash balance plan as a  
 5                   qualified cash balance plan in cases where  
 6                   the cash balance plan has an effect similar  
 7                   to the qualified cash balance plan.”.

8           (b) RULES APPLICABLE TO ACCRUED BENEFITS  
 9 UNDER CONVERTED PLANS.—

10           (1) AMENDMENT OF ERISA.—Section 204(g) of  
 11           the Employee Retirement Income Security Act of  
 12           1974 (29 U.S.C. 1054(g)) is amended by adding at  
 13           the end the following new paragraph:

14                   “(6) TREATMENT OF CONVERSIONS TO CASH  
 15                   BALANCE OR OTHER HYBRID PLANS.—

16                   “(A) IN GENERAL.—For purposes of this  
 17                   subsection, an applicable plan amendment shall  
 18                   be treated as reducing the accrued benefit of a  
 19                   participant if, under the terms of the plan as in  
 20                   effect after the amendment, the accrued benefit  
 21                   of any participant who was a participant as of  
 22                   the effective date of the amendment may at any  
 23                   time be less than the accrued benefit deter-  
 24                   mined under the method under subparagraph  
 25                   (B), (C), or (D) which is specified in the plan

1 and applies uniformly to all participants. An  
2 applicable plan amendment shall in no event be  
3 treated as meeting the requirements of any  
4 such subparagraph if the conversion described  
5 in subparagraph (G)(i) is into a cash balance  
6 plan other than a qualified cash balance plan  
7 (as defined in subsection (b)(5)(B)).

8 “(B) NO WEARAWAY.—

9 “(i) IN GENERAL.—The accrued ben-  
10 efit determined under this subparagraph is  
11 the sum of—

12 “(I) the participant’s accrued  
13 benefit for years of service before the  
14 effective date of the amendment, de-  
15 termined under the terms of the plan  
16 as in effect before the amendment,  
17 plus

18 “(II) except as provided in clause  
19 (ii), the participant’s accrued benefit  
20 for years of service after the effective  
21 date of the amendment, determined  
22 under the terms of the plan as in ef-  
23 fect after the amendment.

1           “(ii) REQUIRED AMOUNTS FOR CER-  
2 TAIN PERIODS.—Notwithstanding clause  
3 (i)(II), the plan shall provide that either—

4           “(I) the accrued benefit of all  
5 participants for each of the first 5  
6 plan years to which the amendment  
7 applies shall be equal to the greater of  
8 the accrued benefit determined under  
9 the terms of the plan as in effect both  
10 before and after the amendment, or

11           “(II) the accrued benefit for peri-  
12 ods after the effective date of the  
13 amendment of all participants who, as  
14 of the effective date of the amend-  
15 ment, had attained the age of 40 and  
16 had a combined age and years of serv-  
17 ice under the plan of not less than 55  
18 shall be determined under either of  
19 the methods described in clause (iii)  
20 which is selected by the plan and  
21 which is specified in the amendment.

22           “(iii) APPLICABLE METHOD.—For  
23 purposes of clause (ii)(II), the plan shall  
24 select 1 of the following methods:

1                   “(I) The accrued benefit shall be  
2                   equal to the greater of the accrued  
3                   benefit determined under the terms of  
4                   the plan as in effect both before and  
5                   after the amendment.

6                   “(II) At the election of the par-  
7                   ticipant, the accrued benefit shall be  
8                   determined under the terms of the  
9                   plan as in effect either before or after  
10                  the amendment.

11                  “(C) GREATER OF OLD OR NEW OR ELEC-  
12                  TION OF EITHER.—The accrued benefit deter-  
13                  mined under this subparagraph is the accrued  
14                  benefit determined under 1 of the following  
15                  methods which is selected by the plan and  
16                  which is specified in the amendment:

17                  “(i) The accrued benefit shall be equal  
18                  to the greater of the accrued benefit deter-  
19                  mined under the terms of the plan as in ef-  
20                  fect both before and after the amendment.

21                  “(ii) At the election of the participant,  
22                  the accrued benefit shall be determined  
23                  under the terms of the plan as in effect ei-  
24                  ther before or after the amendment.

1           “(D) METHOD PRESCRIBED BY SEC-  
2           RETARY.—The accrued benefit determined  
3           under this subparagraph shall be determined  
4           under regulations prescribed by the Secretary  
5           which require a plan to provide a credit of addi-  
6           tional amounts or increases in initial account  
7           balances in amounts substantially equivalent to  
8           the benefits that would be required to be pro-  
9           vided to meet the requirements of subpara-  
10          graphs (B) or (C).

11          “(E) INCLUSION OF PRIOR ACCRUED BEN-  
12          EFIT INTO INITIAL ACCOUNT BALANCE.—

13               “(i) IN GENERAL.—If, for purposes of  
14               subparagraphs (B), (C), or (D), an appli-  
15               cable plan amendment provides that an  
16               amount will be initially credited to a par-  
17               ticipant’s accumulation account (or its  
18               equivalent) on the effective date of the  
19               amendment with respect to the partici-  
20               pant’s accrued benefit for periods before  
21               such date, the requirements of such sub-  
22               paragraph shall be treated as met with re-  
23               spect to such accrued benefit if the amount  
24               initially credited is not less than the  
25               present value of the participant’s accrued

benefit determined by using the applicable mortality table and the lower of the applicable interest rate under section 205(g)(3)(A), or the interest rate used to credit interest under the plan, as of such date.

“(ii) ADJUSTMENTS FOR CERTAIN SUBSIDIZED BENEFITS.—For purposes of subparagraph (B), if any early retirement benefit or retirement-type subsidy (within the meaning of paragraph (6)(B)(i)) is not included in the initial account balance under clause (i), the plan shall credit the accumulation account with the amount of such benefit or subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

“(F) REQUIREMENTS WHERE PARTICIPANT OFFERED CHOICE.—If a plan provides a participant with an election described in subparagraph (B)(iii)(II) or (C)(ii), the following rules shall apply:

1           “(i) NOTICE.—The plan shall not be  
2           treated as meeting the requirements of ei-  
3           ther such subparagraph unless the plan  
4           provides the participant a notice of the  
5           right to make such election which includes  
6           information (meeting such requirements as  
7           may be prescribed by the Secretary of the  
8           Treasury)—

9                   “(I) by which the participant  
10                  may project benefits under the for-  
11                  mulas from which the participant may  
12                  choose and may model the impact of  
13                  any such choice, and

14                  “(II) with respect to cir-  
15                  cumstances under which a participant  
16                  may not receive the projected accrued  
17                  benefits by reason of a plan termi-  
18                  nation or otherwise.

19           “(ii) SIGNIFICANT REDUCTION OF  
20           RATE OF ACCRUAL.—The plan shall pro-  
21           vide that if, during any of the first 5 plan  
22           years during which such an election is in  
23           effect, the plan adopts an amendment  
24           which results in a significant reduction in  
25           the rate of future benefit accrual (within



the meaning of section 204(h)), the accrued benefit of the participant shall be determined as if the participant had made the election which resulted in the greatest accrued benefit.

“(iii) BENEFITS MUST NOT BE CONTINGENT ON ELECTION.—The plan shall not be treated as meeting the requirements of either such subparagraph if any other benefit is conditioned (directly or indirectly) on such election.

“(G) APPLICABLE PLAN AMENDMENT.—

For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘applicable plan amendment’ means an amendment to a defined benefit plan which has the effect of converting the plan to a cash balance plan.

“(ii) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in clause (i), the sponsor of the defined ben-

1           efit plan or plans providing for such co-  
2           ordination shall be treated as having  
3           adopted such a plan amendment as of the  
4           date such coordination begins.

5           “(iii) MULTIPLE AMENDMENTS.—The  
6           Secretary of the Treasury shall issue regu-  
7           lations to prevent the avoidance of the pur-  
8           poses of this paragraph through the use of  
9           2 or more plan amendments rather than a  
10          single amendment.

11          “(iv) CASH BALANCE PLAN.—For pur-  
12          poses of this paragraph, the term ‘cash  
13          balance plan’ has the meaning given such  
14          term by subsection (b)(5)(C).

15          “(v) COORDINATION WITH ACCRUAL  
16          RULES.—If a plan amendment is treated  
17          as meeting the requirements of this para-  
18          graph with respect to any participant be-  
19          cause such participant is eligible to con-  
20          tinue to accrue benefits in the same man-  
21          ner as under the terms of the plan in ef-  
22          fect before the amendment, the Secretary  
23          of the Treasury shall prescribe regulations  
24          under which the plan shall not be treated  
25          as failing to meet the requirements of sub-

1 paragraph (A), (B), or (C) of section  
2 204(b)(1) if the requirements of this para-  
3 graph are met.

4 “(H) APPLICATION OF CERTAIN RULES TO  
5 EARLY-RETIREMENT BENEFITS.—Rules similar  
6 to the rules of clauses (i), (ii), and (iii) of sub-  
7 paragraph (B) and subparagraph (C) shall  
8 apply in the case of any early retirement benefit  
9 or retirement-type subsidy (within the meaning  
10 of section 204(g)(2)(A)).”.

11 (2) AMENDMENT OF INTERNAL REVENUE  
12 CODE.—Section 411(d) of the Internal Revenue  
13 Code of 1986 (relating to special rules) is amended  
14 by adding at the end the following new paragraph:

15 “(7) TREATMENT OF CONVERSIONS TO CASH  
16 BALANCE OR OTHER HYBRID PLANS.—

17 “(A) IN GENERAL.—For purposes of para-  
18 graph (6), an applicable plan amendment shall  
19 be treated as reducing the accrued benefit of a  
20 participant if, under the terms of the plan as in  
21 effect after the amendment, the accrued benefit  
22 of any participant who was a participant as of  
23 the effective date of the amendment may at any  
24 time be less than the accrued benefit deter-  
25 mined under the method under subparagraph

1 (B), (C), or (D) which is specified in the plan  
2 and applies uniformly to all participants. An  
3 applicable plan amendment shall in no event be  
4 treated as meeting the requirements of any  
5 such subparagraph if the conversion described  
6 in subparagraph (G)(i) is into a cash balance  
7 plan other than a qualified cash balance plan  
8 (as defined in subsection (b)(5)(B)).

9 “(B) NO WEARAWAY.—

10 “(i) IN GENERAL.—The accrued ben-  
11 efit determined under this subparagraph is  
12 the sum of—

13 “(I) the participant’s accrued  
14 benefit for years of service before the  
15 effective date of the amendment, de-  
16 termined under the terms of the plan  
17 as in effect before the amendment,  
18 plus

19 “(II) except as provided in clause  
20 (ii), the participant’s accrued benefit  
21 for years of service after the effective  
22 date of the amendment, determined  
23 under the terms of the plan as in ef-  
24 fect after the amendment.

1 A similar rule shall apply in the case of  
2 any early retirement benefit or retirement-  
3 type subsidy (within the meaning of section  
4 411(d)(6)(B)(i)).

5 “(ii) REQUIRED AMOUNTS FOR CER-  
6 TAIN PERIODS.—Notwithstanding clause  
7 (i)(II), the plan shall provide that either—

8 “(I) the accrued benefit of all  
9 participants for each of the first 5  
10 plan years to which the amendment  
11 applies shall be equal to the greater of  
12 the accrued benefit determined under  
13 the terms of the plan as in effect both  
14 before and after the amendment, or

15 “(II) the accrued benefit for peri-  
16 ods after the effective date of the  
17 amendment of all participants who, as  
18 of the effective date of the amend-  
19 ment, had attained the age of 40 and  
20 had a combined age and years of serv-  
21 ice under the plan of not less than 55  
22 shall be determined under either of  
23 the methods described in clause (iii)  
24 which is selected by the plan and  
25 which is specified in the amendment.

1                   “(iii) APPLICABLE METHOD.—For  
2 purposes of clause (ii)(II), the plan shall  
3 select 1 of the following methods:

4                   “(I) The accrued benefit shall be  
5 equal to the greater of the accrued  
6 benefit determined under the terms of  
7 the plan as in effect both before and  
8 after the amendment.

9                   “(II) At the election of the par-  
10 ticipant, the accrued benefit shall be  
11 determined under the terms of the  
12 plan as in effect either before or after  
13 the amendment.

14                   “(C) GREATER OF OLD OR NEW OR ELEC-  
15 TION OF EITHER.—The accrued benefit deter-  
16 mined under this subparagraph is the accrued  
17 benefit determined under 1 of the following  
18 methods which is selected by the plan and  
19 which is specified in the amendment:

20                   “(i) The accrued benefit shall be equal  
21 to the greater of the accrued benefit deter-  
22 mined under the terms of the plan as in ef-  
23 fect both before and after the amendment.

24                   “(ii) At the election of the participant,  
25 the accrued benefit shall be determined

1 under the terms of the plan as in effect ei-  
2 ther before or after the amendment.

3 “(D) METHOD PRESCRIBED BY SEC-  
4 RETARY.—The accrued benefit determined  
5 under this subparagraph shall be determined  
6 under regulations prescribed by the Secretary  
7 which require a plan to provide a credit of addi-  
8 tional amounts or increases in initial account  
9 balances in amounts substantially equivalent to  
10 the benefits that would be required to be pro-  
11 vided to meet the requirements of subpara-  
12 graphs (B) or (C).

13 “(E) INCLUSION OF PRIOR ACCRUED BEN-  
14 EFIT INTO INITIAL ACCOUNT BALANCE.—

15 “(i) IN GENERAL.—If, for purposes of  
16 subparagraphs (B), (C), or (D), an appli-  
17 cable plan amendment provides that an  
18 amount will be initially credited to a par-  
19 ticipant’s accumulation account (or its  
20 equivalent) on the effective date of the  
21 amendment with respect to the partici-  
22 pant’s accrued benefit for periods before  
23 such date, the requirements of such sub-  
24 paragraph shall be treated as met with re-  
25 spect to such accrued benefit if the amount

1 initially credited is not less than the  
2 present value of the participant's accrued  
3 benefit determined by using the applicable  
4 mortality table and the lower of the appli-  
5 cable interest rate under section  
6 417(e)(3)(A), or the interest rate used to  
7 credit interest under the plan, as of such  
8 date.

9 “(ii) ADJUSTMENTS FOR CERTAIN  
10 SUBSIDIZED BENEFITS.—For purposes of  
11 subparagraph (B), if any early retirement  
12 benefit or retirement-type subsidy (within  
13 the meaning of paragraph (6)(B)(i)) is not  
14 included in the initial account balance  
15 under clause (i), the plan shall credit the  
16 accumulation account with the amount of  
17 such benefit or subsidy for the plan year in  
18 which the participant retires if, as of such  
19 time, the participant has met the age,  
20 years of service, and other requirements  
21 under the plan for entitlement to such ben-  
22 efit or subsidy.

23 “(F) REQUIREMENTS WHERE PARTICIPANT  
24 OFFERED CHOICE.—If a plan provides a partici-  
25 pant with an election described in subparagraph



1 (B)(iii)(II) or (C)(ii), the following rules shall  
2 apply:

3 “(i) NOTICE.—The plan shall not be  
4 treated as meeting the requirements of ei-  
5 ther such subparagraph unless the plan  
6 provides the participant a notice of the  
7 right to make such election which includes  
8 information (meeting such requirements as  
9 may be prescribed by the Secretary)—

10 “(I) by which the participant  
11 may project benefits under the for-  
12 mulas from which the participant may  
13 choose and may model the impact of  
14 any such choice, and

15 “(II) with respect to cir-  
16 cumstances under which a participant  
17 may not receive the projected accrued  
18 benefits by reason of a plan termi-  
19 nation or otherwise.

20 “(ii) SIGNIFICANT REDUCTION OF  
21 RATE OF ACCRUAL.—The plan shall pro-  
22 vide that if, during any of the first 5 plan  
23 years during which such an election is in  
24 effect, the plan adopts an amendment  
25 which results in a significant reduction in

1 the rate of future benefit accrual (within  
 2 the meaning of section 4980F(e)), the ac-  
 3 crued benefit of the participant shall be de-  
 4 termined as if the participant had made  
 5 the election which resulted in the greatest  
 6 accrued benefit.

7 “(iii) BENEFITS MUST NOT BE CON-  
 8 TINGENT ON ELECTION.—The plan shall  
 9 not be treated as meeting the requirements  
 10 of either such subparagraph if any other  
 11 benefit is conditioned (directly or indi-  
 12 rectly) on such election.

13 “(G) APPLICABLE PLAN AMENDMENT.—

14 For purposes of this paragraph—

15 “(i) IN GENERAL.—The term ‘applica-  
 16 ble plan amendment’ means an amendment  
 17 to a defined benefit plan which has the ef-  
 18 fect of converting the plan to a cash bal-  
 19 ance plan.

20 “(ii) SPECIAL RULE FOR COORDI-  
 21 NATED BENEFITS.—If the benefits of 2 or  
 22 more defined benefit plans established or  
 23 maintained by an employer are coordinated  
 24 in such a manner as to have the effect of  
 25 the adoption of an amendment described in

1 clause (i), the sponsor of the defined ben-  
2 efit plan or plans providing for such co-  
3 ordination shall be treated as having  
4 adopted such a plan amendment as of the  
5 date such coordination begins.

6 “(iii) MULTIPLE AMENDMENTS.—The  
7 Secretary shall issue regulations to prevent  
8 the avoidance of the purposes of this para-  
9 graph through the use of 2 or more plan  
10 amendments rather than a single amend-  
11 ment.

12 “(iv) CASH BALANCE PLAN.—For pur-  
13 poses of this paragraph, the term ‘cash  
14 balance plan’ has the meaning given such  
15 term by subsection (b)(5)(C).

16 “(v) COORDINATION WITH ACCRUAL  
17 AND NONDISCRIMINATION RULES.—If a  
18 plan amendment is treated as meeting the  
19 requirements of this paragraph with re-  
20 spect to any participant because such par-  
21 ticipant is eligible to continue to accrue  
22 benefits in the same manner as under the  
23 terms of the plan in effect before the  
24 amendment, the Secretary shall prescribe  
25 regulations under which—

1           “(I) the plan shall not be treated  
2           as failing to meet the requirements of  
3           subparagraph (A), (B), or (C) of sec-  
4           tion 411(b)(1) if the requirements of  
5           this paragraph are met, and

6           “(II) the plan shall, subject to  
7           such terms and conditions as may be  
8           provided in such regulations, not be  
9           treated as failing to meet the require-  
10          ments of section 401(a)(4) merely be-  
11          cause the plan provides any accrual or  
12          benefit which is required to be pro-  
13          vided under subparagraph (B), (C), or  
14          (D) or because only participants as of  
15          the effective date of the amendment  
16          are so eligible, except that this sub-  
17          clause shall only apply if the plan met  
18          the requirements of section 401(a)(4)  
19          under the terms of the plan as in ef-  
20          fect before the amendment.

21           “(H) APPLICATION OF CERTAIN RULES TO  
22          EARLY-RETIREMENT BENEFITS.—Rules similar  
23          to the rules of clauses (i), (ii), and (iii) of sub-  
24          paragraph (B) and subparagraph (C) shall  
25          apply in the case of any early retirement benefit

1 or retirement-type subsidy (within the meaning  
2 of section 204(g)(2)(A)).”.

3 (c) ASSUMPTIONS USED IN COMPUTING PRESENT  
4 VALUE OF ACCRUED BENEFIT.—

5 (1) AMENDMENT OF ERISA.—Section 205(g)(3)  
6 of such Act (29 U.S.C. 1055(g)(3)), is amended—

7 (A) by striking “or (B)” in subparagraph  
8 (A)(i) and inserting “, (B), or (C)”, and

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

11 “(C) PRESENT VALUE OF ACCRUED BEN-  
12 EFIT UNDER CASH BALANCE PLAN.—Except as  
13 provided in regulations, in the case of a quali-  
14 fied cash balance plan (as defined in section  
15 204(g)(6)(B)), the present value of the accrued  
16 benefit of any participant shall, for purposes of  
17 paragraphs (1) and (2), be equal to the balance  
18 in the participant’s accumulation account (or  
19 its equivalent) as of the time the present value  
20 determination is being made.”.

21 (2) AMENDMENT OF INTERNAL REVENUE  
22 CODE.—Section 417(e)(3) of such Code, is amend-  
23 ed—

24 (A) by striking “or (B)” in subparagraph  
25 (A)(i) and inserting “, (B), or (C)”, and

1 (B) by adding at the end the following new  
2 subparagraph:

3 “(C) PRESENT VALUE OF ACCRUED BEN-  
4 EFIT UNDER CASH BALANCE PLAN.—Except as  
5 provided in regulations, in the case of a quali-  
6 fied cash balance plan (as defined in section  
7 411(d)(7)(B)), the present value of the accrued  
8 benefit of any participant shall, for purposes of  
9 paragraphs (1) and (2), be equal to the balance  
10 in the participant’s accumulation account (or  
11 its equivalent) as of the time the present value  
12 determination is being made.”

13 (d) NO INFERENCE.—Nothing in the amendments  
14 made by this section shall be construed to infer the proper  
15 treatment of cash balance plans or conversions to cash bal-  
16 ance plans under sections 204(b)(1)(H) of the Employee  
17 Retirement Income Security Act of 1974, 4(i)(1) of the  
18 Age Discrimination in Employment Act of 1967, and  
19 411(b)(1)(H) of the Internal Revenue Code of 1986, as  
20 in effect before such amendments.

21 (e) EFFECTIVE DATES.—

22 (1) AGE DISCRIMINATION AND LUMP-SUM DIS-  
23 TRIBUTIONS.—

1 (A) IN GENERAL.—The amendments made  
2 by subsections (a) and (c) shall apply to periods  
3 after July 31, 2005.

4 (B) VESTING AND INTEREST CREDIT RE-  
5 QUIREMENTS.—In the case of a plan in exist-  
6 ence on July 31, 2005, the requirements of  
7 clauses (ii) and (iii) of section 411(b)(5)(B) of  
8 the Internal Revenue Code of 1986, and of  
9 clauses (ii) and (iii) of 204(b)(5)(B) of the Em-  
10 ployee Retirement Income Security Act of 1974  
11 shall, for purposes of applying the amendments  
12 made by subsections (a) and (c), apply to years  
13 beginning after December 31, 2006, unless the  
14 plan sponsor elects the application of such re-  
15 quirements for any period after July 31, 2005,  
16 and before the first year beginning after De-  
17 cember 31, 2006.

18 (C) SPECIAL RULE FOR COLLECTIVELY  
19 BARGAINED PLANS.—In the case of a plan  
20 maintained pursuant to 1 or more collective  
21 bargaining agreements between employee rep-  
22 resentatives and 1 or more employers ratified  
23 on or before the date of the enactment of this  
24 Act, the requirements described in subpara-  
25 graph (B) shall, for purposes of applying the

1 amendments made by subsections (a) and (c),  
2 not apply to plan years beginning before—

3 (i) the earlier of—

4 (I) the date on which the last of  
5 such collective bargaining agreements  
6 terminates (determined without re-  
7 gard to any extension thereof on or  
8 after such date of enactment), or

9 (II) January 1, 2007, or

10 (ii) January 1, 2009.

11 (2) CONVERSIONS.—The amendments made by  
12 subsection (b) shall apply to plan amendments  
13 adopted after, and taking effect after, July 31,  
14 2005.

15 **SEC. 602. REGULATIONS RELATING TO MERGERS AND AC-**  
16 **QUISITIONS.**

17 The Secretary of the Treasury or his delegate shall,  
18 not later than 12 months after the date of the enactment  
19 of this Act, prescribe regulations for the application of the  
20 amendments made by, and the provisions of, this title in  
21 cases where the conversion of a plan to a cash balance  
22 plan is made with respect to a group of employees who  
23 become employees by reason of a merger, acquisition, or  
24 similar transaction.



1 **TITLE VII—DIVERSIFICATION**  
 2 **RIGHTS AND OTHER PARTICI-**  
 3 **PANT PROTECTIONS UNDER**  
 4 **DEFINED CONTRIBUTION**  
 5 **PLANS**

6 **SEC. 701. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 7 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**  
 8 **VEST THEIR PLAN ASSETS.**

9 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

10 (1) QUALIFICATION REQUIREMENT.—Section  
 11 401(a) of the Internal Revenue Code of 1986 (relat-  
 12 ing to qualified pension, profit-sharing, and stock  
 13 bonus plans) is amended by inserting after para-  
 14 graph (34) the following new paragraph:

15 “(35) DIVERSIFICATION REQUIREMENTS FOR  
 16 CERTAIN DEFINED CONTRIBUTION PLANS.—

17 “(A) IN GENERAL.—A trust which is part  
 18 of an applicable defined contribution plan shall  
 19 not be treated as a qualified trust unless the  
 20 plan meets the diversification requirements of  
 21 subparagraphs (B), (C), and (D).

22 “(B) EMPLOYEE CONTRIBUTIONS AND  
 23 ELECTIVE DEFERRALS INVESTED IN EMPLOYER  
 24 SECURITIES OR REAL PROPERTY.—In the case  
 25 of the portion of an applicable individual’s ac-

1 count attributable to employee contributions  
2 and elective deferrals which is invested in em-  
3 ployer securities or employer real property, a  
4 plan meets the requirements of this subpara-  
5 graph if the applicable individual may elect to  
6 direct the plan to divest any such securities or  
7 real property and to reinvest an equivalent  
8 amount in other investment options meeting the  
9 requirements of subparagraph (D).

10 “(C) EMPLOYER CONTRIBUTIONS IN-  
11 VESTED IN EMPLOYER SECURITIES OR REAL  
12 PROPERTY.—In the case of the portion of the  
13 account attributable to employer contributions  
14 other than elective deferrals which is invested in  
15 employer securities or employer real property, a  
16 plan meets the requirements of this subpara-  
17 graph if each applicable individual who—

18 “(i) is a participant who has com-  
19 pleted at least 3 years of service, or

20 “(ii) is a beneficiary of a participant  
21 described in clause (i) or of a deceased  
22 participant,

23 may elect to direct the plan to divest any such  
24 securities or real property and to reinvest an

1 equivalent amount in other investment options  
2 meeting the requirements of subparagraph (D).

3 “(D) INVESTMENT OPTIONS.—

4 “(i) IN GENERAL.—The requirements  
5 of this subparagraph are met if the plan  
6 offers not less than 3 investment options,  
7 other than employer securities or employer  
8 real property, to which an applicable indi-  
9 vidual may direct the proceeds from the di-  
10 vestment of employer securities or em-  
11 ployer real property pursuant to this para-  
12 graph, each of which is diversified and has  
13 materially different risk and return charac-  
14 teristics.

15 “(ii) TREATMENT OF CERTAIN RE-  
16 STRICTIONS AND CONDITIONS.—

17 “(I) TIME FOR MAKING INVEST-  
18 MENT CHOICES.—A plan shall not be  
19 treated as failing to meet the require-  
20 ments of this subparagraph merely be-  
21 cause the plan limits the time for di-  
22 vestment and reinvestment to peri-  
23 odic, reasonable opportunities occur-  
24 ring no less frequently than quarterly.

1                   “(II) CERTAIN RESTRICTIONS  
 2                   AND CONDITIONS NOT ALLOWED.—  
 3                   Except as provided in regulations, a  
 4                   plan shall not meet the requirements  
 5                   of this subparagraph if the plan im-  
 6                   poses restrictions or conditions with  
 7                   respect to the investment of employer  
 8                   securities or employer real property  
 9                   which are not imposed on the invest-  
 10                  ment of other assets of the plan. This  
 11                  subclause shall not apply to any re-  
 12                  strictions or conditions imposed by  
 13                  reason of the application of securities  
 14                  laws.

15                  “(E) APPLICABLE DEFINED CONTRIBU-  
 16                  TION PLAN.—For purposes of this paragraph—

17                   “(i) IN GENERAL.—The term ‘applica-  
 18                   ble defined contribution plan’ means any  
 19                   defined contribution plan which holds any  
 20                   publicly traded employer securities.

21                   “(ii) EXCEPTION FOR CERTAIN  
 22                   ESOPS.—Such term does not include an  
 23                   employee stock ownership plan if—

24                   “(I) there are no contributions to  
 25                   such plan (or earnings thereunder)

1           which are held within such plan and  
2           are subject to subsection (k) or (m),  
3           and

4                   “(II) such plan is a separate plan  
5           for purposes of section 414(l) with re-  
6           spect to any other defined benefit plan  
7           or defined contribution plan main-  
8           tained by the same employer or em-  
9           ployers.

10                   “(iii) EXCEPTION FOR ONE PARTICI-  
11           PANT PLANS.—Such term does not include  
12           a one-participant retirement plan.

13                   “(iv) ONE-PARTICIPANT RETIREMENT  
14           PLAN.—For purposes of clause (iii), the  
15           term ‘one-participant retirement plan’  
16           means a retirement plan that—

17                           “(I) on the first day of the plan  
18           year covered only one individual (or  
19           the individual and the individual’s  
20           spouse) and the individual owned 100  
21           percent of the plan sponsor (whether  
22           or not incorporated), or covered only  
23           one or more partners (or partners and  
24           their spouses) in the plan sponsor,

1           “(II) meets the minimum cov-  
2           erage requirements of section 410(b)  
3           without being combined with any  
4           other plan of the business that covers  
5           the employees of the business,

6           “(III) does not provide benefits  
7           to anyone except the individual (and  
8           the individual’s spouse) or the part-  
9           ners (and their spouses),

10          “(IV) does not cover a business  
11          that is a member of an affiliated serv-  
12          ice group, a controlled group of cor-  
13          porations, or a group of businesses  
14          under common control, and

15          “(V) does not cover a business  
16          that uses the services of leased em-  
17          ployees (within the meaning of section  
18          414(n)).

19          For purposes of this clause, the term ‘part-  
20          ner’ includes a 2-percent shareholder (as  
21          defined in section 1372(b)) of an S cor-  
22          poration.

23          “(F) CERTAIN PLANS TREATED AS HOLD-  
24          ING PUBLICLY TRADED EMPLOYER SECURI-  
25          TIES.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in regulations or in clause (ii), a plan  
3           holding employer securities which are not  
4           publicly traded employer securities shall be  
5           treated as holding publicly traded employer  
6           securities if any employer corporation, or  
7           any member of a controlled group of cor-  
8           porations which includes such employer  
9           corporation, has issued a class of stock  
10          which is a publicly traded employer secu-  
11          rity.

12          “(ii) EXCEPTION FOR CERTAIN CON-  
13          TROLLED GROUPS WITH PUBLICLY TRAD-  
14          ED SECURITIES.—Clause (i) shall not  
15          apply to a plan if—

16               “(I) no employer corporation, or  
17               parent corporation of an employer  
18               corporation, has issued any publicly  
19               traded employer security, and

20               “(II) no employer corporation, or  
21               parent corporation of an employer  
22               corporation, has issued any special  
23               class of stock which grants particular  
24               rights to, or bears particular risks for,  
25               the holder or issuer with respect to

1 any corporation described in clause (i)  
 2 which has issued any publicly traded  
 3 employer security.

4 “(iii) DEFINITIONS.—For purposes of  
 5 this subparagraph, the term—

6 “(I) ‘controlled group of corpora-  
 7 tions’ has the meaning given such  
 8 term by section 1563(a), except that  
 9 ‘50 percent’ shall be substituted for  
 10 ‘80 percent’ each place it appears,

11 “(II) ‘employer corporation’  
 12 means a corporation which is an em-  
 13 ployer maintaining the plan, and

14 “(III) ‘parent corporation’ has  
 15 the meaning given such term by sec-  
 16 tion 424(e).

17 “(G) OTHER DEFINITIONS.—For purposes  
 18 of this paragraph—

19 “(i) APPLICABLE INDIVIDUAL.—The  
 20 term ‘applicable individual’ means—

21 “(I) any participant in the plan,  
 22 and

23 “(II) any beneficiary who has an  
 24 account under the plan with respect to



1           which the beneficiary is entitled to ex-  
2           ercise the rights of a participant.

3           “(ii) ELECTIVE DEFERRAL.—The  
4           term ‘elective deferral’ means an employer  
5           contribution described in section  
6           402(g)(3)(A).

7           “(iii) EMPLOYER SECURITY.—The  
8           term ‘employer security’ has the meaning  
9           given such term by section 407(d)(1) of  
10          the Employee Retirement Income Security  
11          Act of 1974.

12          “(iv) EMPLOYER REAL PROPERTY.—  
13          The term ‘employer real property’ has the  
14          meaning given such term by section  
15          407(d)(2) of the Employee Retirement In-  
16          come Security Act of 1974.

17          “(v) EMPLOYEE STOCK OWNERSHIP  
18          PLAN.—The term ‘employee stock owner-  
19          ship plan’ has the meaning given such  
20          term by section 4975(e)(7).

21          “(vi) PUBLICLY TRADED EMPLOYER  
22          SECURITIES.—The term ‘publicly traded  
23          employer securities’ means employer secu-  
24          rities which are readily tradable on an es-  
25          tablished securities market.

1 “(vii) YEAR OF SERVICE.—The term  
 2 ‘year of service’ has the meaning given  
 3 such term by section 411(a)(5).

4 “(H) TRANSITION RULE FOR SECURITIES  
 5 OR REAL PROPERTY ATTRIBUTABLE TO EM-  
 6 PLOYER CONTRIBUTIONS.—

7 “(i) RULES PHASED IN OVER 3  
 8 YEARS.—

9 “(I) IN GENERAL.—In the case  
 10 of the portion of an account to which  
 11 subparagraph (C) applies and which  
 12 consists of employer securities or em-  
 13 ployer real property acquired in a plan  
 14 year beginning before January 1,  
 15 2006, subparagraph (C) shall only  
 16 apply to the applicable percentage of  
 17 such securities or real property. This  
 18 subparagraph shall be applied sepa-  
 19 rately with respect to each class of se-  
 20 curities and employer real property.

21 “(II) EXCEPTION FOR CERTAIN  
 22 PARTICIPANTS AGED 55 OR OVER.—  
 23 Subclause (I) shall not apply to an  
 24 applicable individual who is a partici-  
 25 pant who has attained age 55 and

1 completed at least 3 years of service  
 2 before the first plan year beginning  
 3 after December 31, 2005.

4 “(ii) APPLICABLE PERCENTAGE.—For  
 5 purposes of clause (i), the applicable per-  
 6 centage shall be determined as follows:

<b>Plan year to which subparagraph (C) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d and following .....	100.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) Section 401(a)(28)(B) of such Code  
 9 (relating to additional requirements relating to  
 10 employee stock ownership plans) is amended by  
 11 adding at the end the following new clause:

12 “(v) EXCEPTION.—This subparagraph  
 13 shall not apply to an applicable defined  
 14 contribution plan (as defined in paragraph  
 15 (35)(E)).”

16 (B) Section 409(h)(7) of such Code is  
 17 amended by inserting “or subparagraph (B) or  
 18 (C) of section 401(a)(35)” before the period at  
 19 the end.

20 (C) Section 4980(c)(3)(A) of such Code is  
 21 amended by striking “if—” and all that follows  
 22 and inserting “if the requirements of subpara-  
 23 graphs (B), (C), and (D) are met.”

1 (b) AMENDMENTS OF ERISA.—

2 (1) IN GENERAL.—Section 204 of the Employee  
3 Retirement Income Security Act of 1974 (29 U.S.C.  
4 1054) is amended by redesignating subsection (j) as  
5 subsection (k) and by inserting after subsection (i)  
6 the following new subsection:

7 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN  
8 INDIVIDUAL ACCOUNT PLANS.—

9 “(1) IN GENERAL.—An applicable individual ac-  
10 count plan shall meet the diversification require-  
11 ments of paragraphs (2), (3), and (4).

12 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-  
13 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-  
14 TIES OR REAL PROPERTY.—In the case of the por-  
15 tion of an applicable individual’s account attrib-  
16 utable to employee contributions and elective defer-  
17 rals which is invested in employer securities or em-  
18 ployer real property, a plan meets the requirements  
19 of this paragraph if the applicable individual may  
20 elect to direct the plan to divest any such securities  
21 or real property and to reinvest an equivalent  
22 amount in other investment options meeting the re-  
23 quirements of paragraph (4).

24 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN  
25 EMPLOYER SECURITIES OR REAL PROPERTY.—In the

1 case of the portion of the account attributable to  
2 employer contributions other than elective deferrals  
3 which is invested in employer securities or employer  
4 real property, a plan meets the requirements of this  
5 paragraph if each applicable individual who—

6 “(A) is a participant who has completed at  
7 least 3 years of service, or

8 “(B) is a beneficiary of a participant de-  
9 scribed in subparagraph (A) or of a deceased  
10 participant,

11 may elect to direct the plan to divest any such secu-  
12 rities or real property and to reinvest an equivalent  
13 amount in other investment options meeting the re-  
14 quirements of paragraph (4).

15 “(4) INVESTMENT OPTIONS.—

16 “(A) IN GENERAL.—The requirements of  
17 this paragraph are met if the plan offers not  
18 less than 3 investment options, other than em-  
19 ployer securities or employer real property, to  
20 which an applicable individual may direct the  
21 proceeds from the divestment of employer secu-  
22 rities or employer real property pursuant to this  
23 subsection, each of which is diversified and has  
24 materially different risk and return characteris-  
25 tics.

1           “(B) TREATMENT OF CERTAIN RESTRIC-  
2           TIONS AND CONDITIONS.—

3           “(i) TIME FOR MAKING INVESTMENT  
4           CHOICES.—A plan shall not be treated as  
5           failing to meet the requirements of this  
6           paragraph merely because the plan limits  
7           the time for divestment and reinvestment  
8           to periodic, reasonable opportunities occur-  
9           ring no less frequently than quarterly.

10          “(ii) CERTAIN RESTRICTIONS AND  
11          CONDITIONS NOT ALLOWED.—Except as  
12          provided in regulations, a plan shall not  
13          meet the requirements of this paragraph if  
14          the plan imposes restrictions or conditions  
15          with respect to the investment of employer  
16          securities or employer real property which  
17          are not imposed on the investment of other  
18          assets of the plan. This subparagraph shall  
19          not apply to any restrictions or conditions  
20          imposed by reason of the application of se-  
21          curities laws.

22          “(5) APPLICABLE INDIVIDUAL ACCOUNT  
23          PLAN.—For purposes of this subsection—

24               “(A) IN GENERAL.—The term ‘applicable  
25               individual account plan’ means any individual

1 account plan (as defined in section 3(34)) which  
2 holds any publicly traded employer securities.

3 “(B) EXCEPTION FOR CERTAIN ESOPS.—  
4 Such term does not include an employee stock  
5 ownership plan if—

6 “(i) there are no contributions to such  
7 plan (or earnings thereunder) which are  
8 held within such plan and are subject to  
9 subsection (k) or (m) of section 401 of the  
10 Internal Revenue Code of 1986, and

11 “(ii) such plan is a separate plan (for  
12 purposes of section 414(l) of such Code)  
13 with respect to any other defined benefit  
14 plan or individual account plan maintained  
15 by the same employer or employers.

16 “(C) EXCEPTION FOR ONE PARTICIPANT  
17 PLANS.—Such term shall not include a one-par-  
18 ticipant retirement plan (as defined in section  
19 101(i)(8)(B)).

20 “(D) CERTAIN PLANS TREATED AS HOLD-  
21 ING PUBLICLY TRADED EMPLOYER SECURI-  
22 TIES.—

23 “(i) IN GENERAL.—Except as pro-  
24 vided in regulations or in clause (ii), a plan  
25 holding employer securities which are not

1 publicly traded employer securities shall be  
2 treated as holding publicly traded employer  
3 securities if any employer corporation, or  
4 any member of a controlled group of cor-  
5 porations which includes such employer  
6 corporation, has issued a class of stock  
7 which is a publicly traded employer secu-  
8 rity.

9 “(ii) EXCEPTION FOR CERTAIN CON-  
10 TROLLED GROUPS WITH PUBLICLY TRAD-  
11 ED SECURITIES.—Clause (i) shall not  
12 apply to a plan if—

13 “(I) no employer corporation, or  
14 parent corporation of an employer  
15 corporation, has issued any publicly  
16 traded employer security, and

17 “(II) no employer corporation, or  
18 parent corporation of an employer  
19 corporation, has issued any special  
20 class of stock which grants particular  
21 rights to, or bears particular risks for,  
22 the holder or issuer with respect to  
23 any corporation described in clause (i)  
24 which has issued any publicly traded  
25 employer security.



1 “(iii) DEFINITIONS.—For purposes of  
2 this subparagraph, the term—

3 “(I) ‘controlled group of corpora-  
4 tions’ has the meaning given such  
5 term by section 1563(a) of the Inter-  
6 nal Revenue Code of 1986, except  
7 that ‘50 percent’ shall be substituted  
8 for ‘80 percent’ each place it appears,

9 “(II) ‘employer corporation’  
10 means a corporation which is an em-  
11 ployer maintaining the plan, and

12 “(III) ‘parent corporation’ has  
13 the meaning given such term by sec-  
14 tion 424(e) of such Code.

15 “(6) OTHER DEFINITIONS.—For purposes of  
16 this paragraph—

17 “(A) APPLICABLE INDIVIDUAL.—The term  
18 ‘applicable individual’ means—

19 “(i) any participant in the plan, and

20 “(ii) any beneficiary who has an ac-  
21 count under the plan with respect to which  
22 the beneficiary is entitled to exercise the  
23 rights of a participant.

24 “(B) ELECTIVE DEFERRAL.—The term  
25 ‘elective deferral’ means an employer contribu-

1           tion described in section 402(g)(3)(A) of the In-  
2           ternal Revenue Code of 1986.

3           “(C) EMPLOYER SECURITY.—The term  
4           ‘employer security’ has the meaning given such  
5           term by section 407(d)(1).

6           “(D) EMPLOYER REAL PROPERTY.—The  
7           term ‘employer real property’ has the meaning  
8           given such term by section 407(d)(2).

9           “(E) EMPLOYEE STOCK OWNERSHIP  
10          PLAN.—The term ‘employee stock ownership  
11          plan’ has the meaning given such term by sec-  
12          tion 4975(e)(7) of such Code.

13          “(F) PUBLICLY TRADED EMPLOYER SECUR-  
14          ITIES.—The term ‘publicly traded employer  
15          securities’ means employer securities which are  
16          readily tradable on an established securities  
17          market.

18          “(G) YEAR OF SERVICE.—The term ‘year  
19          of service’ has the meaning given such term by  
20          section 203(b)(2).

21          “(7) TRANSITION RULE FOR SECURITIES OR  
22          REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-  
23          TRIBUTIONS.—

24          “(A) RULES PHASED IN OVER 3 YEARS.—

1                   “(i) IN GENERAL.—In the case of the  
 2                   portion of an account to which paragraph  
 3                   (3) applies and which consists of employer  
 4                   securities or employer real property ac-  
 5                   quired in a plan year beginning before  
 6                   January 1, 2006, paragraph (3) shall only  
 7                   apply to the applicable percentage of such  
 8                   securities or real property. This subpara-  
 9                   graph shall be applied separately with re-  
 10                  spect to each class of securities and em-  
 11                  ployer real property.

12                  “(ii) EXCEPTION FOR CERTAIN PAR-  
 13                  TICIPANTS AGED 55 OR OVER.—Clause (i)  
 14                  shall not apply to an applicable individual  
 15                  who is a participant who has attained age  
 16                  55 and completed at least 3 years of serv-  
 17                  ice before the first plan year beginning  
 18                  after December 31, 2005.

19                  “(B) APPLICABLE PERCENTAGE.—For  
 20                  purposes of subparagraph (A), the applicable  
 21                  percentage shall be determined as follows:

<b>Plan year to which paragraph (3) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d and following .....	100.”.

1           (2) CONFORMING AMENDMENT.—Section  
 2       407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is  
 3       amended by adding at the end the following:

**“(D) For diversification requirements for qualifying employer securities and qualifying real property held in certain individual account plans, see section 204(j).”**

4       (c) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this  
 6       section shall apply to plan years beginning after December 31, 2005.

9           (2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining  
 10       agreements between employee representatives and 1  
 11       or more employers ratified on or before the date of  
 12       the enactment of this Act, paragraph (1) shall be  
 13       applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for  
 14       “December 31, 2005” the earlier of—  
 15       “December 31, 2005” the earlier of—

18           (A) the later of—

19                   (i) December 31, 2006, or

20                   (ii) the date on which the last of such  
 21       collective bargaining agreements terminates  
 22       (determined without regard to any

1 extension thereof after such date of enact-  
2 ment), or

3 (B) December 31, 2007.

4 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-  
5 CURITIES HELD IN AN ESOP.—

6 (A) IN GENERAL.—In the case of employer  
7 securities to which this paragraph applies, the  
8 amendments made by this section shall apply to  
9 plan years beginning after the earlier of—

10 (i) December 31, 2006, or

11 (ii) the first date on which the fair  
12 market value of such securities exceeds the  
13 guaranteed minimum value described in  
14 subparagraph (B)(ii).

15 (B) APPLICABLE SECURITIES.—This para-  
16 graph shall apply to employer securities which  
17 are attributable to employer contributions other  
18 than elective deferrals, and which, on Sep-  
19 tember 17, 2003—

20 (i) consist of preferred stock, and

21 (ii) are within an employee stock own-  
22 ership plan (as defined in section  
23 4975(e)(7) of the Internal Revenue Code  
24 of 1986), the terms of which provide that  
25 the value of the securities cannot be less

1           than the guaranteed minimum value speci-  
 2           fied by the plan on such date.

3           (C) COORDINATION WITH TRANSITION  
 4           RULE.—In applying section 401(a)(35)(H) of  
 5           the Internal Revenue Code of 1986 and section  
 6           204(j)(7) of the Employee Retirement Income  
 7           Security Act of 1974 (as added by this section)  
 8           to employer securities to which this paragraph  
 9           applies, the applicable percentage shall be de-  
 10          termined without regard to this paragraph.

11 **SEC. 702. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**  
 12 **CURITIES OR REAL PROPERTY.**

13          (a) IN GENERAL.—Section 101 of the Employee Re-  
 14          tirement Income Security Act of 1974 (29 U.S.C. 1021),  
 15          as amended by this Act, is amended by redesignating sub-  
 16          section (l) as subsection (m) and by inserting after sub-  
 17          section (k) the following new subsection:

18          “(l) NOTICE OF RIGHT TO DIVEST.—Not later than  
 19          30 days before the first date on which an applicable indi-  
 20          vidual of an applicable individual account plan is eligible  
 21          to exercise the right under section 204(j) to direct the pro-  
 22          ceeds from the divestment of employer securities or em-  
 23          ployer real property with respect to any type of contribu-  
 24          tion, the administrator shall provide to such individual a  
 25          notice—

1           “(1) setting forth such right under such sec-  
2           tion, and

3           “(2) describing the importance of diversifying  
4           the investment of retirement account assets.

5   The notice required by this subsection shall be written in  
6   a manner calculated to be understood by the average plan  
7   participant and may be delivered in written, electronic, or  
8   other appropriate form to the extent that such form is rea-  
9   sonably accessible to the applicable individual.”

10       (b) PENALTIES.—Section 502(c)(7) of the Employee  
11   Retirement Income Security Act of 1974 (29 U.S.C.  
12   1132(c)(7)) is amended by striking “section 101(i)” and  
13   inserting “subsection (i) or (l) of section 101”.

14       (c) MODEL NOTICE.—The Secretary of the Treasury  
15   shall, within 180 days after the date of the enactment of  
16   this subsection, prescribe a model notice for purposes of  
17   satisfying the requirements of the amendments made by  
18   this section.

19       (d) EFFECTIVE DATES.—

20           (1) IN GENERAL.—The amendments made by  
21   this section shall apply to plan years beginning after  
22   December 31, 2005.

23           (2) TRANSITION RULE.—If notice under section  
24   101(l) of the Employee Retirement Income Security  
25   Act of 1974 (as added by this section) would other-

1       wise be required to be provided before the 90th day  
 2       after the date of the enactment of this Act, such no-  
 3       tice shall not be required to be provided until such  
 4       90th day.

5   **SEC. 703. PERIODIC PENSION BENEFIT STATEMENTS.**

6       (a) AMENDMENTS OF ERISA.—

7           (1) IN GENERAL.—Section 105(a) of the Em-  
 8       ployee Retirement Income Security Act of 1974 (29  
 9       U.S.C. 1025(a)) is amended to read as follows:

10       “(a) REQUIREMENTS TO PROVIDE PENSION BEN-  
 11       EFIT STATEMENTS.—

12           “(1) REQUIREMENTS.—

13           “(A) INDIVIDUAL ACCOUNT PLAN.—The  
 14       administrator of an individual account plan  
 15       (other than a one-participant retirement plan  
 16       described in section 101(i)(8)(B)) shall furnish  
 17       a pension benefit statement—

18           “(i) at least once each calendar quar-  
 19       ter to a participant or beneficiary who has  
 20       the right to direct the investment of assets  
 21       in his or her account under the plan,

22           “(ii) at least once each calendar year  
 23       to a participant or beneficiary who has his  
 24       or her own account under the plan but



1 does not have the right to direct the invest-  
 2 ment of assets in that account, and

3 “(iii) upon written request to a plan  
 4 beneficiary not described in clause (i) or  
 5 (ii).

6 “(B) DEFINED BENEFIT PLAN.—The ad-  
 7 ministrator of a defined benefit plan (other  
 8 than a one-participant retirement plan de-  
 9 scribed in section 101(i)(8)(B)) shall furnish a  
 10 pension benefit statement—

11 “(i) at least once every 3 years to  
 12 each participant with a nonforfeitable ac-  
 13 crued benefit and who is employed by the  
 14 employer maintaining the plan at the time  
 15 the statement is to be furnished, and

16 “(ii) to a participant or beneficiary of  
 17 the plan upon written request.

18 Information furnished under clause (i) to a par-  
 19 ticipant may be based on reasonable estimates  
 20 determined under regulations prescribed by the  
 21 Secretary, in consultation with the Pension  
 22 Benefit Guaranty Corporation.

23 “(2) STATEMENTS.—

24 “(A) IN GENERAL.—A pension benefit  
 25 statement under paragraph (1)—

1 “(i) shall indicate, on the basis of the  
2 latest available information—

3 “(I) the total benefits accrued,  
4 and

5 “(II) the nonforfeitable pension  
6 benefits, if any, which have accrued,  
7 or the earliest date on which benefits  
8 will become nonforfeitable,

9 “(ii) shall include an explanation of  
10 any permitted disparity under section  
11 401(l) of the Internal Revenue Code of  
12 1986 or any floor-offset arrangement that  
13 may be applied in determining any accrued  
14 benefits described in clause (i),

15 “(iii) shall be written in a manner cal-  
16 culated to be understood by the average  
17 plan participant, and

18 “(iv) may be delivered in written, elec-  
19 tronic, or other appropriate form to the ex-  
20 tent such form is reasonably accessible to  
21 the participant or beneficiary.

22 “(B) ADDITIONAL INFORMATION.—In the  
23 case of an individual account plan, any pension  
24 benefit statement under clause (i) or (ii) of  
25 paragraph (1)(A) shall include—

1 “(i) the value of each investment to  
2 which assets in the individual account have  
3 been allocated, determined as of the most  
4 recent valuation date under the plan, in-  
5 cluding the value of any assets held in the  
6 form of employer securities or employer  
7 real property, without regard to whether  
8 such securities or real property were con-  
9 tributed by the plan sponsor or acquired at  
10 the direction of the plan or of the partici-  
11 pant or beneficiary, and

12 “(ii) in the case of a pension benefit  
13 statement under paragraph (1)(A)(i)—

14 “(I) an explanation of any limita-  
15 tions or restrictions on any right of  
16 the participant or beneficiary under  
17 the plan to direct an investment, and

18 “(II) a notice that investments in  
19 any individual account may not be  
20 adequately diversified if the value of  
21 any investment in the account exceeds  
22 20 percent of the fair market value of  
23 all investments in the account.

24 “(C) ALTERNATIVE NOTICE.—The require-  
25 ments of subparagraph (A)(i)(II) are met if, at

1 least annually and in accordance with require-  
 2 ments of the Secretary, the plan—

3 “(i) updates the information described  
 4 in such paragraph which is provided in the  
 5 pension benefit statement, or

6 “(ii) provides in a separate statement  
 7 such information as is necessary to enable  
 8 a participant or beneficiary to determine  
 9 their nonforfeitable vested benefits.

10 “(3) DEFINED BENEFIT PLANS.—

11 “(A) ALTERNATIVE NOTICE.—In the case  
 12 of a defined benefit plan, the requirements of  
 13 paragraph (1)(B)(i) shall be treated as met  
 14 with respect to a participant if at least once  
 15 each year the administrator provides to the par-  
 16 ticipant notice of the availability of the pension  
 17 benefit statement and the ways in which the  
 18 participant may obtain such statement. Such  
 19 notice may be delivered in written, electronic, or  
 20 other appropriate form to the extent such form  
 21 is reasonably accessible to the participant.

22 “(B) YEARS IN WHICH NO BENEFITS AC-  
 23 CRUE.—The Secretary may provide that years  
 24 in which no employee or former employee bene-  
 25 fits (within the meaning of section 410(b) of

1 the Internal Revenue Code of 1986) under the  
 2 plan need not be taken into account in deter-  
 3 mining the 3-year period under paragraph  
 4 (1)(B)(i).”

5 (2) CONFORMING AMENDMENTS.—

6 (A) Section 105 of the Employee Retire-  
 7 ment Income Security Act of 1974 (29 U.S.C.  
 8 1025) is amended by striking subsection (d).

9 (B) Section 105(b) of such Act (29 U.S.C.  
 10 1025(b)) is amended to read as follows:

11 “(b) LIMITATION ON NUMBER OF STATEMENTS.—In  
 12 no case shall a participant or beneficiary of a plan be enti-  
 13 tled to more than 1 statement described in subparagraph  
 14 (A)(iii) or (B)(ii) of subsection (a)(1), whichever is appli-  
 15 cable, in any 12-month period.”

16 (C) Section 502(c)(1) of such Act (29  
 17 U.S.C. 1132(c)(1)) is amended by striking “or  
 18 section 101(f)” and inserting “section 101(f),  
 19 or section 105(a)”.

20 (b) MODEL STATEMENTS.—

21 (1) IN GENERAL.—The Secretary of Labor  
 22 shall, within 180 days after the date of the enact-  
 23 ment of this section, develop 1 or more model benefit  
 24 statements that are written in a manner calculated  
 25 to be understood by the average plan participant and

1 that may be used by plan administrators in com-  
2 plying with the requirements of section 105 of the  
3 Employee Retirement Income Security Act of 1974.

4 (2) INTERIM FINAL RULES.—The Secretary of  
5 Labor may promulgate any interim final rules as the  
6 Secretary determines appropriate to carry out the  
7 provisions of this subsection.

8 (d) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendments made by  
10 this section shall apply to plan years beginning after  
11 December 31, 2006.

12 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
13 GAINED AGREEMENTS.—In the case of a plan main-  
14 tained pursuant to 1 or more collective bargaining  
15 agreements between employee representatives and 1  
16 or more employers ratified on or before the date of  
17 the enactment of this Act, paragraph (1) shall be  
18 applied to benefits pursuant to, and individuals cov-  
19 ered by, any such agreement by substituting for  
20 “December 31, 2006” the earlier of—

21 (A) the later of—

22 (i) December 31, 2007, or

23 (ii) the date on which the last of such  
24 collective bargaining agreements termi-  
25 nates (determined without regard to any

1 extension thereof after such date of enact-  
 2 ment), or

3 (B) December 31, 2008.

4 **SEC. 704. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**  
 5 **BLACKOUT PERIODS.**

6 (a) AMENDMENTS OF ERISA.—

7 (1) IN GENERAL.—Section 101(i) of the Em-  
 8 ployee Retirement Income Security Act of 1974 (29  
 9 U.S.C. 1021(i)) is amended—

10 (A) by striking clause (i) of paragraph  
 11 (8)(B) and inserting:

12 “(i) on the first day of the plan  
 13 year—

14 “(I) covered only one individual  
 15 (or the individual and the individual’s  
 16 spouse) and the individual owned 100  
 17 percent of the plan sponsor (whether  
 18 or not incorporated), or

19 “(II) covered only one or more  
 20 partners (or partners and their  
 21 spouses) in the plan sponsor,”

22 (B) by striking “employer” and “employ-  
 23 er’s” in paragraph (8)(B)(iii) and inserting “in-  
 24 dividual” and “individual’s”, respectively,

1 (C) by striking “leases employees” in para-  
 2 graph (8)(B)(v) and inserting “uses the services  
 3 of leased employees (within the meaning of sec-  
 4 tion 414(n) of the Internal Revenue Code of  
 5 1986)”, and

6 (D) by adding at the end of paragraph  
 7 (8)(B) the following flush sentence:

8 “For purposes of this paragraph, an individual  
 9 shall be treated as a partner if the individual is  
 10 so treated under section 401(a)(35)(E)(iv) of  
 11 the Internal Revenue Code of 1986.”

12 (2) EFFECTIVE DATE.—The amendments made  
 13 by this subsection shall take effect as if included in  
 14 the provisions of section 306 of Public Law 107–204  
 15 (116 Stat. 745 et seq.).

16 **SEC. 705. ALLOWANCE OF, AND CREDIT FOR, ADDITIONAL**  
 17 **IRA PAYMENTS IN CERTAIN BANKRUPTCY**  
 18 **CASES.**

19 (a) ALLOWANCE OF CONTRIBUTIONS.—Section  
 20 219(b)(5) of the Internal Revenue Code of 1986 (relating  
 21 to deductible amount) is amended by redesignating sub-  
 22 paragraph (C) as subparagraph (D) and by inserting after  
 23 subparagraph (B) the following new subparagraph:

24 “(C) CATCHUP CONTRIBUTIONS FOR CER-  
 25 TAIN INDIVIDUALS.—



1           “(i) IN GENERAL.—In the case of an  
2           applicable individual who elects to make a  
3           qualified retirement contribution in addi-  
4           tion to the deductible amount determined  
5           under subparagraph (A)—

6                   “(I) the deductible amount for  
7                   any taxable year shall be increased by  
8                   an amount equal to 3 times the appli-  
9                   cable amount determined under sub-  
10                  paragraph (B) for such taxable year,  
11                  and

12                  “(II) subparagraph (B) shall not  
13                  apply.

14           “(ii) APPLICABLE INDIVIDUAL.—For  
15           purposes of this subparagraph, the term  
16           ‘applicable individual’ means, with respect  
17           to any taxable year, any individual who  
18           was a qualified participant in a qualified  
19           cash or deferred arrangement (as defined  
20           in section 401(k)) of an employer described  
21           in clause (iii) under which the employer  
22           matched at least 50 percent of the employ-  
23           ee’s contributions to such arrangement  
24           with stock of such employer.

1           “(iii) EMPLOYER DESCRIBED.—An  
 2 employer is described in this clause if, in  
 3 any taxable year preceding the taxable year  
 4 described in clause (ii)—

5           “(I) such employer (or any con-  
 6 trolling corporation of such employer)  
 7 was a debtor in a case under title 11  
 8 of the United States Code, or similar  
 9 Federal or State law, and

10           “(II) such employer (or any other  
 11 person) was subject to an indictment  
 12 or conviction resulting from business  
 13 transactions related to such case.

14           “(iv) QUALIFIED PARTICIPANT.—For  
 15 purposes of clause (ii), the term ‘qualified  
 16 participant’ means any applicable indi-  
 17 vidual who was a participant in the cash or  
 18 deferred arrangement described in clause  
 19 (i) on the date that is 6 months before the  
 20 filing of the case described in clause (iii).

21           “(v) TERMINATION.—This subpara-  
 22 graph shall not apply to taxable years be-  
 23 ginning after December 31, 2009.”

24           (b) SAVER’S CREDIT EXPANDED TO INCLUDE  
 25 CATCHUP CONTRIBUTIONS.—

1           (1) IN GENERAL.—Section 25B of the Internal  
 2       Revenue Code of 1986 (relating to credit for elective  
 3       deferrals and IRA contributions by certain individ-  
 4       uals) is amended by redesignating subsection (h) as  
 5       subsection (i) and by inserting after subsection (g)  
 6       the following new subsection:

7       “(h) ADDITIONAL CREDIT FOR CERTAIN CATCHUP  
 8       CONTRIBUTIONS.—

9           “(1) IN GENERAL.—In the case of an eligible  
 10      individual who is an applicable individual under sec-  
 11      tion 219(b)(5)(C) for any taxable year, the amount  
 12      of the credit allowable under subsection (a) for the  
 13      taxable year shall be increased by 50 percent of so  
 14      much of the qualified retirement contributions (as  
 15      defined in section 219(e)) of the individual for the  
 16      taxable year as exceeds the deductible amount for  
 17      the taxable year under section 219(b)(5) (without  
 18      regard to subparagraphs (B) and (C) thereof).

19          “(2) COORDINATION WITH OTHER CONTRIBU-  
 20      TIONS.—For purposes of this section—

21           “(A) any contribution to which this sub-  
 22      section applies shall not be taken into account  
 23      in determining the amount of the credit allow-  
 24      able under subsection (a) without regard to this  
 25      subsection, and

1           “(B) in applying any reduction in qualified  
 2           retirement savings contributions under sub-  
 3           section (d)(2), the reduction shall be applied  
 4           first to qualified retirement savings contribu-  
 5           tions other than contributions to which this  
 6           subsection applies.”.

7           (2) EXTENSION OF TERMINATION DATE FOR  
 8           CATCHUP CREDIT.—Section 25B(i) of such Code, as  
 9           redesignated by paragraph (1), is amended by in-  
 10          serting “(December 31, 2007, in the case of the por-  
 11          tion of the credit allowed under subsection (h))”  
 12          after “2006”.

13          (c) EFFECTIVE DATE.—The amendments made by  
 14          this section shall apply to taxable years beginning after  
 15          December 31, 2004.

## 16   **TITLE VIII—INFORMATION TO** 17       **ASSIST PENSION PLAN PAR-** 18       **TICIPANTS**

### 19   **SEC. 801. DEFINED CONTRIBUTION PLANS REQUIRED TO** 20               **PROVIDE ADEQUATE INVESTMENT EDU-** 21               **CATION TO PARTICIPANTS.**

22          (a) ADEQUATE INVESTMENT EDUCATION.—

23               (1) IN GENERAL.—Section 101 of the Employee  
 24          Retirement Income Security Act of 1974 (29 U.S.C.  
 25          1024), as amended by this Act, is amended by redес-

ignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) BASIC INVESTMENT GUIDELINES.—

“(1) IN GENERAL.—The administrator of an individual account plan (other than a one-participant retirement plan described in subsection (i)(8)(B)) shall furnish at least once each year to each participant or beneficiary who has the right to direct the investment of assets in his or her account the model form relating to basic investment guidelines which is described in paragraph (2).

“(2) MODEL FORM.—

“(A) IN GENERAL.—The Secretary shall, in consultation with the Secretary of Treasury, develop and make available to individual account plans for distribution under paragraph (1) a model form containing basic guidelines for investing for retirement. Except as otherwise provided by the Secretary, such guidelines shall include—

“(i) information on the benefits of diversification,

“(ii) information on the essential differences, in terms of risk and return, of

1 pension plan investments, including stocks,  
2 bonds, mutual funds, and money market  
3 investments,

4 “(iii) information on how an individ-  
5 ual’s pension plan investment allocations  
6 may differ depending on the individual’s  
7 age and years to retirement and on other  
8 factors determined by the Secretary,

9 “(iv) sources of information where in-  
10 dividuals may learn more about pension  
11 rights, individual investing, and investment  
12 advice, and

13 “(v) such other information related to  
14 individual investing as the Secretary deter-  
15 mines appropriate.

16 “(B) CALCULATION INFORMATION.—The  
17 model form under subparagraph (A) shall in-  
18 clude addresses for Internet sites, and a work-  
19 sheet, which a participant or beneficiary may  
20 use to calculate—

21 “(i) the retirement age value of the  
22 participant’s or beneficiary’s nonforfeitable  
23 pension benefits under the plan (expressed  
24 as an annuity amount and determined by

1 reference to varied historical annual rates  
2 of return and annuity interest rates), and

3 “(ii) other important amounts relating  
4 to retirement savings, including the  
5 amount which a participant or beneficiary  
6 would be required to save annually to pro-  
7 vide a retirement income equal to various  
8 percentages of their current salary (ad-  
9 justed for expected growth prior to retire-  
10 ment).

11 The Secretary shall develop an Internet site  
12 which an individual may use in making such  
13 calculations and the address for such site shall  
14 be included with the form.

15 “(C) PUBLIC COMMENT.—The Secretary of  
16 Labor shall provide at least 90 days for public  
17 comment before publishing final notice of the  
18 model form.

19 “(3) RULES RELATING TO FORM AND STATE-  
20 MENT.—The model form under paragraph (2)—

21 “(A) shall be written in a manner cal-  
22 culated to be understood by the average plan  
23 participant, and

24 “(B) may be delivered in written, elec-  
25 tronic, or other appropriate form to the extent

1           such form is reasonably accessible to partici-  
2           pants and beneficiaries.”

3           (2) ENFORCEMENT.—Section 502(c)(7) of such  
4           Act (29 U.S.C. 1132(c)(7)), as amended by this Act,  
5           is amended by striking “or (l)” and inserting “, (l),  
6           or (m)”.

7           (c) EFFECTIVE DATE.—

8           (1) IN GENERAL.—The amendments made by  
9           this section shall apply to plan years beginning after  
10          December 31, 2006.

11          (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
12          GAINED AGREEMENTS.—In the case of a plan main-  
13          tained pursuant to 1 or more collective bargaining  
14          agreements between employee representatives and 1  
15          or more employers ratified on or before the date of  
16          the enactment of this Act, paragraph (1) shall be  
17          applied to benefits pursuant to, and individuals cov-  
18          ered by, any such agreement by substituting for  
19          “December 31, 2006” the earlier of—

20                 (A) the later of—

21                         (i) December 31, 2007, or

22                         (ii) the date on which the last of such  
23                         collective bargaining agreements termi-  
24                         nates (determined without regard to any



1 extension thereof after such date of enact-  
2 ment), or

3 (B) December 31, 2008.

4 **SEC. 802. INDEPENDENT INVESTMENT ADVICE PROVIDED**  
5 **TO PLAN PARTICIPANTS.**

6 (a) IN GENERAL.—Section 404 of the Employee Re-  
7 tirement Income Security Act of 1974 (29 U.S.C. 1104)  
8 is amended by adding at the end the following new sub-  
9 section:

10 “(e) INDEPENDENT INVESTMENT ADVISER.—

11 “(1) IN GENERAL.—In the case of an individual  
12 account plan which permits a plan participant or  
13 beneficiary to direct the investment of the assets in  
14 his or her account, if a plan sponsor or other person  
15 who is a fiduciary designates and monitors a quali-  
16 fied investment adviser pursuant to the requirements  
17 of paragraph (3), such fiduciary—

18 “(A) shall be deemed to have satisfied the  
19 requirements under this section for the prudent  
20 designation and periodic review of an invest-  
21 ment adviser with whom the plan sponsor or  
22 other person who is a fiduciary enters into an  
23 arrangement for the provision of advice referred  
24 to in section 3(21)(A)(ii),

1           “(B) shall not be liable under this section  
 2           for any loss, or by reason of any breach, with  
 3           respect to the provision of investment advice  
 4           given by such adviser to any plan participant or  
 5           beneficiary, and

6           “(C) shall not be liable for any co-fiduciary  
 7           liability under subsections (a)(2) and (b) of sec-  
 8           tion 405 with respect to the provision of invest-  
 9           ment advice given by such adviser to any plan  
 10          participant or beneficiary.

11          “(2) QUALIFIED INVESTMENT ADVISER.—

12           “(A) IN GENERAL.—For purposes of this  
 13           subsection, the term ‘qualified investment ad-  
 14           viser’ means, with respect to a plan, a person—

15                   “(i) who is a fiduciary of the plan by  
 16                   reason of the provision of investment ad-  
 17                   vice by such person to a plan participant  
 18                   or beneficiary;

19                   “(ii) who—

20                           “(I) is registered as an invest-  
 21                           ment adviser under the Investment  
 22                           Advisers Act of 1940 (15 U.S.C. 80b-  
 23                           1 et seq.),

24                           “(II) is registered as an invest-  
 25                           ment adviser under the laws of the

1 State in which such adviser maintains  
2 the principal office and place of busi-  
3 ness of such adviser, but only if such  
4 State laws are consistent with section  
5 203A of the Investment Advisers Act  
6 of 1940 (15 U.S.C. 80b–3a),

7 “(III) is a bank or similar finan-  
8 cial institution referred to in section  
9 408(b)(4),

10 “(IV) is an insurance company  
11 qualified to do business under the  
12 laws of a State, or

13 “(V) is any other comparably  
14 qualified entity which satisfies such  
15 criteria as the Secretary determines  
16 appropriate, consistent with the pur-  
17 poses of this subsection, and

18 “(iii) who meets the requirements of  
19 subparagraph (B).

20 “(B) ADVISER REQUIREMENTS.—The re-  
21 quirements of this subparagraph are met if  
22 every individual employed (or otherwise com-  
23 pensated) by a person described in subpara-  
24 graph (A)(ii) who provides investment advice on

1           behalf of such person to any plan participant or  
2           beneficiary is—

3                   “(i) an individual described in sub-  
4                   clause (I) of subparagraph (A)(ii),

5                   “(ii) an individual described in sub-  
6                   clause (II) of subparagraph (A)(ii), but  
7                   only if such State has an examination re-  
8                   quirement to qualify for registration,

9                   “(iii) registered as a broker or dealer  
10                  under the Securities Exchange Act of 1934  
11                  (15 U.S.C. 78a et seq.),

12                  “(iv) a registered representative as de-  
13                  scribed in section 3(a)(18) of the Securi-  
14                  ties Exchange Act of 1934 (15 U.S.C.  
15                  78c(a)(18)) or section 202(a)(17) of the  
16                  Investment Advisers Act of 1940 (15  
17                  U.S.C. 80b–2(a)(17)), or

18                  “(v) any other comparably qualified  
19                  individual who satisfies such criteria as the  
20                  Secretary determines appropriate, con-  
21                  sistent with the purposes of this sub-  
22                  section.

23                  “(3) VERIFICATION REQUIREMENTS.—The re-  
24                  quirements of this paragraph are met if—

1           “(A) the plan sponsor or other person who  
2           is a fiduciary in designating a qualified invest-  
3           ment adviser receives at the time of the des-  
4           ignation, and annually thereafter, a written  
5           verification from the qualified investment ad-  
6           viser that the investment adviser—

7                   “(i) is and remains a qualified invest-  
8                   ment adviser,

9                   “(ii) acknowledges that the investment  
10                  adviser is a fiduciary with respect to the  
11                  plan and is solely responsible for its invest-  
12                  ment advice,

13                  “(iii) has reviewed the plan documents  
14                  (including investment options) and has de-  
15                  termined that its relationship with the plan  
16                  and the investment advice provided to any  
17                  plan participant or beneficiary, including  
18                  any fees or other compensation it will re-  
19                  ceive, will not constitute a violation of sec-  
20                  tion 406,

21                  “(iv) will, in providing investment ad-  
22                  vice to any participant or beneficiary, con-  
23                  sider any employer securities or employer  
24                  real property allocated to his or her ac-  
25                  count, and

1           “(v) has the necessary insurance cov-  
2           erage (as determined by the Secretary) for  
3           any claim by any plan participant or bene-  
4           ficiary,

5           “(B) the plan sponsor or other person who  
6           is a fiduciary in designating a qualified invest-  
7           ment adviser reviews the documents described  
8           in paragraph (4) provided by such adviser and  
9           determines that there is no material reason not  
10          to enter into an arrangement for the provision  
11          of advice by such qualified investment adviser,  
12          and

13          “(C) the plan sponsor or other person who  
14          is a fiduciary in designating a qualified invest-  
15          ment adviser, within 30 days of having informa-  
16          tion brought to its attention that the invest-  
17          ment adviser is no longer qualified or that a  
18          substantial number of plan participants or  
19          beneficiaries have raised concerns about the  
20          services being provided by the investment ad-  
21          viser—

22                 “(i) investigates such information and  
23                 concerns, and

24                 “(ii) determines that there is no mate-  
25                 rial reason not to continue the designation

1 of the adviser as a qualified investment ad-  
2 viser.

3 “(4) DOCUMENTATION.—A qualified investment  
4 adviser shall provide the following documents to the  
5 plan sponsor or other person who is a fiduciary in  
6 designating the adviser:

7 “(A) The contract with the plan sponsor or  
8 other person who is a fiduciary for the services  
9 to be provided by the investment adviser to the  
10 plan participants and beneficiaries.

11 “(B) A disclosure as to any fees or other  
12 compensation that will be received by the in-  
13 vestment adviser for the provision of such in-  
14 vestment advice and as to any fees and other  
15 compensation that will be received as a result of  
16 a participant’s investment election.

17 “(C) The Uniform Application for Invest-  
18 ment Adviser Registration as filed with the Se-  
19 curities and Exchange Commission or a sub-  
20 stantially similar disclosure application as de-  
21 termined by and filed with the Secretary.

22 “(5) TREATMENT AS FIDUCIARY.—Any quali-  
23 fied investment adviser that acknowledges it is a fi-  
24 duciary pursuant to paragraph (3)(A)(ii) shall be  
25 deemed a fiduciary under this part with respect to

1 the provision of investment advice to a plan partici-  
 2 pant or beneficiary.”

3 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of  
 4 such Act is amended by inserting “(other than a qualified  
 5 investment adviser)” after “fiduciary”.

6 (c) EFFECTIVE DATE.—The amendments made by  
 7 this section shall apply with respect to investment advisers  
 8 designated after the date of the enactment of this Act.

9 **SEC. 803. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
 10 **NING SERVICES.**

11 (a) IN GENERAL.—Subsection (m) of section 132 of  
 12 the Internal Revenue Code of 1986 (defining qualified re-  
 13 tirement services) is amended by adding at the end the  
 14 following new paragraph:

15 “(4) NO CONSTRUCTIVE RECEIPT.—

16 “(A) IN GENERAL.—No amount shall be  
 17 included in the gross income of any employee  
 18 solely because the employee may choose between  
 19 any qualified retirement planning services pro-  
 20 vided by an eligible investment advisor and  
 21 compensation which would otherwise be includ-  
 22 ible in the gross income of such employee. The  
 23 preceding sentence shall apply to highly com-  
 24 pensated employees only if the choice described  
 25 in such sentence is available on substantially



1 the same terms to each member of the group of  
2 employees normally provided education and in-  
3 formation regarding the employer's qualified  
4 employer plan.

5 “(B) LIMITATION.—The maximum amount  
6 which may be excluded under subparagraph (A)  
7 with respect to any employee for any taxable  
8 year shall not exceed \$1,000.

9 “(C) ELIGIBLE INVESTMENT ADVISER.—  
10 For purposes of this paragraph, the term ‘eligi-  
11 ble investment adviser’ means, with respect to  
12 a plan, a person—

13 “(i) who—

14 “(I) is registered as an invest-  
15 ment adviser under the Investment  
16 Advisers Act of 1940 (15 U.S.C. 80b–  
17 1 et seq.),

18 “(II) is registered as an invest-  
19 ment adviser under the laws of the  
20 State in which such adviser maintains  
21 the principal office and place of busi-  
22 ness of such adviser, but only if such  
23 State laws are consistent with section  
24 203A of the Investment Advisers Act  
25 of 1940 (15 U.S.C. 80b–3a),

1           “(III) is a bank or similar finan-  
2           cial institution referred to in section  
3           408(b)(4),

4           “(IV) is an insurance company  
5           qualified to do business under the  
6           laws of a State, or

7           “(V) is any other comparably  
8           qualified entity which satisfies such  
9           criteria as the Secretary determines  
10          appropriate, consistent with the pur-  
11          poses of this subsection, and

12          “(ii) who meets the requirements of  
13          subparagraph (D).

14          “(D) ADVISER REQUIREMENTS.—The re-  
15          quirements of this subparagraph are met if  
16          every individual employed (or otherwise com-  
17          pensated) by a person described in subpara-  
18          graph (C)(i) who provides investment advice on  
19          behalf of such person to any plan participant or  
20          beneficiary is—

21                  “(i) an individual described in sub-  
22                  clause (I) of subparagraph (C)(i),

23                  “(ii) an individual described in sub-  
24                  clause (II) of subparagraph (C)(i), but

only if such State has an examination requirement to qualify for registration,

“(iii) registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

“(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or

“(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this paragraph.

“(E) TERMINATION.—This paragraph shall not apply to taxable years beginning after December 31, 2010.”

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting “132(m)(4),” after “132(f)(4),”.

(2) Section 414(s)(2) of such Code is amended by inserting “132(m)(4),” after “132(f)(4),”.

1           (3) Section 415(c)(3)(D)(ii) of such Code is  
2       amended by inserting “132(m)(4),” after  
3       “132(f)(4),”.

4       (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2005.

7 **SEC. 804. ADMINISTRATIVE PROVISIONS.**

8       (a) AUTHORITY OF THE SECRETARY OF THE TREAS-  
9       URY.—The Secretary of the Treasury shall have the au-  
10      thority to prescribe rules applicable to the statements re-  
11      quired under section 101(l) of the Employee Retirement  
12      Income Security Act of 1974 (as added by this Act).

13      (b) AUTHORITY OF THE SECRETARY OF LABOR.—  
14      The Secretary of Labor shall have the authority to pre-  
15      scribe rules applicable to the statements required under—

16           (1) section 105(a) of such Act (as added by this  
17      Act); and

18           (2) and section 101(i) such Act (as amended by  
19      this Act).

1 **TITLE IX—PROVISIONS RELAT-**  
2 **ING TO SPOUSAL PENSION**  
3 **PROTECTION**

4 **SEC. 901. REGULATIONS ON TIME AND ORDER OF**  
5 **ISSUANCE OF DOMESTIC RELATIONS OR-**  
6 **DERS.**

7 Not later than 1 year after the date of the enactment  
8 of this Act, the Secretary of Labor shall issue regulations  
9 under section 206(d)(3) of the Employee Retirement Secu-  
10 rity Act of 1974 and section 414(p) of the Internal Rev-  
11 enue Code of 1986 which clarify that—

12 (1) a domestic relations order otherwise meet-  
13 ing the requirements to be a qualified domestic rela-  
14 tions order, including the requirements of section  
15 206(d)(3)(D) of such Act and section 414(p)(3) of  
16 such Code, shall not fail to be treated as a qualified  
17 domestic relations order solely because—

18 (A) the order is issued after, or revises, an-  
19 other domestic relations order or qualified do-  
20 mestic relations order; or

21 (B) of the time at which it is issued; and

22 (2) any order described in paragraph (1) shall  
23 be subject to the same requirements and protections  
24 which apply to qualified domestic relations orders,

1 including the provisions of section 206(d)(3)(H) of  
2 such Act and section 414(p)(7) of such Code.

3 **SEC. 902. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**  
4 **ROAD RETIREMENT ANNUITIES INDE-**  
5 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**  
6 **PLOYEE.**

7 (a) IN GENERAL.—Section 2 of the Railroad Retire-  
8 ment Act of 1974 (45 U.S.C. 231a) is amended—

9 (1) in subsection (c)(4)(i), by striking “(A) is  
10 entitled to an annuity under subsection (a)(1) and  
11 (B)”;

12 (2) in subsection (e)(5), by striking “or di-  
13 vorced wife” the second place it appears.

14 (b) EFFECTIVE DATE.—The amendments made by  
15 this section shall take effect 1 year after the date of the  
16 enactment of this Act.

17 **SEC. 903. EXTENSION OF TIER II RAILROAD RETIREMENT**  
18 **BENEFITS TO SURVIVING FORMER SPOUSES**  
19 **PURSUANT TO DIVORCE AGREEMENTS.**

20 (a) IN GENERAL.—Section 5 of the Railroad Retire-  
21 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
22 at the end the following:

23 “(d) Notwithstanding any other provision of law, the  
24 payment of any portion of an annuity computed under sec-  
25 tion 3(b) to a surviving former spouse in accordance with

1 a court decree of divorce, annulment, or legal separation  
 2 or the terms of any court-approved property settlement  
 3 incident to any such court decree shall not be terminated  
 4 upon the death of the individual who performed the service  
 5 with respect to which such annuity is so computed unless  
 6 such termination is otherwise required by the terms of  
 7 such court decree.”

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this section shall take effect 1 year after the date of the  
 10 enactment of this Act.

11 **SEC. 904. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**  
 12 **NUITY OPTION.**

13 (a) AMENDMENTS TO INTERNAL REVENUE CODE.—

14 (1) ELECTION OF SURVIVOR ANNUITY.—Section  
 15 417(a)(1)(A) of the Internal Revenue Code of 1986  
 16 is amended—

17 (A) in clause (i), by striking “, and” and  
 18 inserting a comma;

19 (B) by redesignating clause (ii) as clause  
 20 (iii); and

21 (C) by inserting after clause (i) the fol-  
 22 lowing:

23 “(ii) if the participant elects a waiver  
 24 under clause (i), may elect the qualified op-

1           tional survivor annuity at any time during the  
2           applicable election period, and”.

3           (2) DEFINITION.—Section 417 of such Code is  
4           amended by adding at the end the following:

5           “(g) DEFINITION OF QUALIFIED OPTIONAL SUR-  
6           VIVOR ANNUITY.—

7           “(1) IN GENERAL.—For purposes of this sec-  
8           tion, the term ‘qualified optional survivor annuity’  
9           means an annuity—

10           “(A) for the life of the participant with a  
11           survivor annuity for the life of the spouse which  
12           is equal to the applicable percentage of the  
13           amount of the annuity which is payable during  
14           the joint lives of the participant and the spouse,  
15           and

16           “(B) which is the actuarial equivalent of a  
17           single annuity for the life of the participant.

18           Such term also includes any annuity in a form hav-  
19           ing the effect of an annuity described in the pre-  
20           ceding sentence.

21           “(2) APPLICABLE PERCENTAGE.—

22           “(A) IN GENERAL.—For purposes of para-  
23           graph (1), if the survivor annuity percentage—

24           “(i) is less than 75 percent, the appli-  
25           cable percentage is 75 percent, and



1                   “(ii) is greater than or equal to 75  
2                   percent, the applicable percentage is 50  
3                   percent.

4                   “(B) SURVIVOR ANNUITY PERCENTAGE.—  
5                   For purposes of subparagraph (A), the term  
6                   ‘survivor annuity percentage’ means the per-  
7                   centage which the survivor annuity under the  
8                   plan’s qualified joint and survivor annuity bears  
9                   to the annuity payable during the joint lives of  
10                  the participant and the spouse.”

11                  (3) NOTICE.—Section 417(a)(3)(A)(i) of such  
12                  Code is amended by inserting “and of the qualified  
13                  optional survivor annuity” after “annuity”.

14                  (b) AMENDMENTS TO ERISA.—

15                  (1) ELECTION OF SURVIVOR ANNUITY.—Section  
16                  205(c)(1)(A) of the Employee Retirement Income  
17                  Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is  
18                  amended—

19                         (A) in clause (i), by striking “, and” and  
20                         inserting a comma;

21                         (B) by redesignating clause (ii) as clause  
22                         (iii); and

23                         (C) by inserting after clause (i) the fol-  
24                         lowing:

1           “(ii) if the participant elects a waiver  
2           under clause (i), may elect the qualified op-  
3           tional survivor annuity at any time during the  
4           applicable election period, and”.

5           (2) DEFINITION.—Section 205(d) of such Act  
6           (29 U.S.C. 1055(d)) is amended—

7                   (A) by inserting “(1)” after “(d)”;

8                   (B) by redesignating paragraphs (1) and  
9                   (2) as subparagraphs (A) and (B), respectively;  
10                  and

11                  (C) by adding at the end the following:

12           “(2)(A) For purposes of this section, the term ‘quali-  
13           fied optional survivor annuity’ means an annuity—

14                   “(i) for the life of the participant with a sur-  
15                   vivor annuity for the life of the spouse which is  
16                   equal to the applicable percentage of the amount of  
17                   the annuity which is payable during the joint lives  
18                   of the participant and the spouse, and

19                   “(ii) which is the actuarial equivalent of a sin-  
20                   gle annuity for the life of the participant.

21           Such term also includes any annuity in a form having the  
22           effect of an annuity described in the preceding sentence.

23           “(B)(i) For purposes of subparagraph (A), if the sur-  
24           vivor annuity percentage—

1           “(I) is less than 75 percent, the applicable per-  
2           centage is 75 percent, and

3           “(II) is greater than or equal to 75 percent, the  
4           applicable percentage is 50 percent.

5           “(ii) For purposes of clause (i), the term ‘survivor  
6           annuity percentage’ means the percentage which the sur-  
7           vivor annuity under the plan’s qualified joint and survivor  
8           annuity bears to the annuity payable during the joint lives  
9           of the participant and the spouse.”

10           (3) NOTICE.—Section 205(c)(3)(A)(i) of such  
11           Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-  
12           serting “and of the qualified optional survivor annu-  
13           ity” after “annuity”.

14           (c) EFFECTIVE DATES.—

15           (1) IN GENERAL.—The amendments made by  
16           this section shall apply to plan years beginning after  
17           December 31, 2005.

18           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
19           GAINED PLANS.—In the case of a plan maintained  
20           pursuant to 1 or more collective bargaining agree-  
21           ments between employee representatives and 1 or  
22           more employers ratified on or before the date of the  
23           enactment of this Act, the amendments made by this  
24           section shall apply to the first plan year beginning  
25           on or after the earlier of—

1 (A) the later of—

2 (i) January 1, 2006, or

3 (ii) the date on which the last of such  
4 collective bargaining agreements termi-  
5 nates (determined without regard to any  
6 extension thereof after the date of enact-  
7 ment of this Act), or

8 (B) January 1, 2007.

9 **TITLE X—IMPROVEMENTS IN**  
10 **PORTABILITY AND DISTRIBUTION RULES**  
11

12 **SEC. 1001. CLARIFICATIONS REGARDING PURCHASE OF**  
13 **PERMISSIVE SERVICE CREDIT.**

14 (a) IN GENERAL.—Section 415(n) of the Internal  
15 Revenue Code of 1986 (relating to special rules for the  
16 purchase of permissive service credit) is amended—

17 (1) by striking “an employee” in paragraph (1)  
18 and inserting “a participant”, and

19 (2) by adding at the end of paragraph (3)(A)  
20 the following new flush sentence:

21 “Such term may include service credit for peri-  
22 ods for which there is no performance of serv-  
23 ice, and notwithstanding clause (ii), may in-  
24 clude service credited in order to provide an in-

1           creased benefit for service credit which a partic-  
 2           ipant is receiving under the plan.”

3           (b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE  
 4 TRANSFERS.—Section 415(n)(3) of such Code is amended  
 5 by adding at the end the following new subparagraph:

6                   “(D) SPECIAL RULES FOR TRUSTEE-TO-  
 7 TRUSTEE TRANSFERS.—In the case of a trust-  
 8 ee-to-trustee transfer to which section  
 9 403(b)(13)(A) or 457(e)(17)(A) applies (with-  
 10 out regard to whether the transfer is made be-  
 11 tween plans maintained by the same em-  
 12 ployer)—

13                   “(i) the limitations of subparagraph  
 14 (B) shall not apply in determining whether  
 15 the transfer is for the purchase of permis-  
 16 sive service credit, and

17                   “(ii) the distribution rules applicable  
 18 under this title to the defined benefit gov-  
 19 ernmental plan to which any amounts are  
 20 so transferred shall apply to such amounts  
 21 and any benefits attributable to such  
 22 amounts.”

23           (c) NONQUALIFIED SERVICE.—Section 415(n)(3) of  
 24 such Code is amended—

1           (1) by striking “permissive service credit attrib-  
 2           utable to nonqualified service” each place it appears  
 3           in subparagraph (B) and inserting “nonqualified  
 4           service credit”,

5           (2) by striking so much of subparagraph (C) as  
 6           precedes clause (i) and inserting:

7                       “(C) NONQUALIFIED SERVICE CREDIT.—  
 8           For purposes of subparagraph (B), the term  
 9           ‘nonqualified service credit’ means permissive  
 10          service credit other than that allowed with re-  
 11          spect to—”, and

12          (3) by striking “elementary or secondary edu-  
 13          cation (through grade 12), as determined under  
 14          State law” and inserting “elementary or secondary  
 15          education (through grade 12), or a comparable level  
 16          of education, as determined under the applicable law  
 17          of the jurisdiction in which the service was per-  
 18          formed”.

19          (d) EFFECTIVE DATES.—

20               (1) IN GENERAL.—The amendments made by  
 21          subsections (a) and (c) shall take effect as if in-  
 22          cluded in the amendments made by section 1526 of  
 23          the Taxpayer Relief Act of 1997.

24               (2) SUBSECTION (b).—The amendments made  
 25          by subsection (b) shall take effect as if included in

1 the amendments made by section 647 of the Eco-  
2 nomic Growth and Tax Relief Reconciliation Act of  
3 2001.

4 **SEC. 1002. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**  
5 **ANNUITY CONTRACTS.**

6 (a) IN GENERAL.—Subparagraph (A) of section  
7 402(c)(2) (relating to the maximum amount which may  
8 be rolled over) is amended—

9 (1) by striking “which is part of a plan which  
10 is a defined contribution plan and which agrees to  
11 separately account” and inserting “or to an annuity  
12 contract described in section 403(b) and such trust  
13 or contract provides for separate accounting”; and

14 (2) by inserting “(and earnings thereon)” after  
15 “so transferred”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 subsection (a) shall apply to taxable years beginning after  
18 December 31, 2005.

19 **SEC. 1003. CLARIFICATION OF MINIMUM DISTRIBUTION**  
20 **RULES FOR GOVERNMENTAL PLANS.**

21 The Secretary of the Treasury shall issue regulations  
22 under which a governmental plan (as defined in section  
23 414(d) of the Internal Revenue Code of 1986) shall, for  
24 all years to which section 401(a)(9) of such Code applies  
25 to such plan, be treated as having complied with such sec-

tion 401(a)(9) if such plan complies with a reasonable  
good faith interpretation of such section 401(a)(9).

**SEC. 1004. WAIVER OF 10 PERCENT EARLY WITHDRAWAL  
PENALTY TAX ON CERTAIN DISTRIBUTIONS  
OF PENSION PLANS FOR PUBLIC SAFETY EM-  
PLOYEES.**

(a) IN GENERAL.—Section 72(t) of the Internal Rev-  
enue Code of 1986 (relating to subsection not to apply  
to certain distributions) is amended by adding at the end  
the following new paragraph:

“(10) DISTRIBUTIONS TO QUALIFIED PUBLIC  
SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

“(A) IN GENERAL.—In the case of a dis-  
tribution to a qualified public safety employee  
from a governmental plan (within the meaning  
of section 414(d)) which is a defined benefit  
plan, paragraph (2)(A)(v) shall be applied by  
substituting ‘age 50’ for ‘age 55’.

“(B) QUALIFIED PUBLIC SAFETY EM-  
PLOYEE.—For purposes of this paragraph, the  
term ‘qualified public safety employee’ means  
any employee of a State or political subdivision  
of a State who provides police protection, fire-  
fighting services, or emergency medical services



1           for any area within the jurisdiction of such  
2           State or political subdivision.”

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to distributions after the date of  
5 the enactment of this Act.

6 **SEC. 1005. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
7 **FICIARIES OF CERTAIN RETIREMENT PLAN**  
8 **DISTRIBUTIONS.**

9           (a) **IN GENERAL.**—

10           (1) **QUALIFIED PLANS.**—Section 402(c) of the  
11 Internal Revenue Code of 1986 (relating to rollovers  
12 from exempt trusts) is amended by adding at the  
13 end the following new paragraph:

14           “(11) **DISTRIBUTIONS TO INHERITED INDIV-**  
15 **IDUAL RETIREMENT PLAN OF NONSPOUSE BENE-**  
16 **FICIARY.**—

17           “(A) **IN GENERAL.**—If, with respect to any  
18 portion of a distribution from an eligible retire-  
19 ment plan of a deceased employee, a direct  
20 trustee-to-trustee transfer is made to an indi-  
21 vidual retirement plan described in clause (i) or  
22 (ii) of paragraph (8)(B) established for the pur-  
23 poses of receiving the distribution on behalf of  
24 an individual who is a designated beneficiary  
25 (as defined by section 401(a)(9)(E)) of the em-

1            ployee and who is not the surviving spouse of  
 2            the employee—

3                    “(i) the transfer shall be treated as an  
 4                    eligible rollover distribution for purposes of  
 5                    this subsection,

6                    “(ii) the individual retirement plan  
 7                    shall be treated as an inherited individual  
 8                    retirement account or individual retirement  
 9                    annuity (within the meaning of section  
 10                    408(d)(3)(C)) for purposes of this title,  
 11                    and

12                    “(iii) section 401(a)(9)(B) (other than  
 13                    clause (iv) thereof) shall apply to such  
 14                    plan.

15                    “(B) CERTAIN TRUSTS TREATED AS BENE-  
 16                    FICIARIES.—For purposes of this paragraph, to  
 17                    the extent provided in rules prescribed by the  
 18                    Secretary, a trust maintained for the benefit of  
 19                    one or more designated beneficiaries shall be  
 20                    treated in the same manner as a designated  
 21                    beneficiary.”

22                    (2) SECTION 403(a) PLANS.—Subparagraph  
 23                    (B) of section 403(a)(4) of such Code (relating to  
 24                    rollover amounts) is amended by striking “and (9)”  
 25                    and inserting “, (9), and (11)”.

1           (3) SECTION 403(b) PLANS.—Subparagraph  
 2           (B) of section 403(b)(8) of such Code (relating to  
 3           rollover amounts) is amended by striking “and (9)”  
 4           and inserting “, (9), and (11)”.

5           (4) SECTION 457 PLANS.—Subparagraph (B) of  
 6           section 457(e)(16) of such Code (relating to rollover  
 7           amounts) is amended by striking “and (9)” and in-  
 8           serting “, (9), and (11)”.

9           (b) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply to distributions after December 31,  
 11          2005.

12   **SEC. 1006. FASTER VESTING OF EMPLOYER NONELECTIVE**  
 13                           **CONTRIBUTIONS.**

14          (a) AMENDMENTS TO THE INTERNAL REVENUE  
 15          CODE OF 1986.—

16               (1) IN GENERAL.—Paragraph (2) of section  
 17               411(a) of the Internal Revenue Code of 1986 (relat-  
 18               ing to employer contributions) is amended to read as  
 19               follows:

20                       “(2) EMPLOYER CONTRIBUTIONS.—

21                               “(A) DEFINED BENEFIT PLANS.—

22                                       “(i) IN GENERAL.—In the case of a  
 23                                       defined benefit plan, a plan satisfies the  
 24                                       requirements of this paragraph if it satis-  
 25                                       fies the requirements of clause (ii) or (iii).

“(ii) 5-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.

“(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

“(B) DEFINED CONTRIBUTION PLANS.—

“(i) IN GENERAL.—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) 3-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 3

1                   years of service has a nonforfeitable right  
 2                   to 100 percent of the employee’s accrued  
 3                   benefit derived from employer contribu-  
 4                   tions.

5                   “(iii) 2 TO 6 YEAR VESTING.—A plan  
 6                   satisfies the requirements of this clause if  
 7                   an employee has a nonforfeitable right to  
 8                   a percentage of the employee’s accrued  
 9                   benefit derived from employer contribu-  
 10                  tions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

11               (2) CONFORMING AMENDMENT.—Section  
 12               411(a) of such Code (relating to general rule for  
 13               minimum vesting standards) is amended by striking  
 14               paragraph (12).

15               (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
 16 INCOME SECURITY ACT OF 1974.—

17               (1) IN GENERAL.—Paragraph (2) of section  
 18               203(a) of the Employee Retirement Income Security  
 19               Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to  
 20               read as follows:

1           “(2)(A)(i) In the case of a defined benefit plan,  
2           a plan satisfies the requirements of this paragraph  
3           if it satisfies the requirements of clause (ii) or (iii).

4           “(ii) A plan satisfies the requirements of this  
5           clause if an employee who has completed at least 5  
6           years of service has a nonforfeitable right to 100  
7           percent of the employee’s accrued benefit derived  
8           from employer contributions.

9           “(iii) A plan satisfies the requirements of this  
10          clause if an employee has a nonforfeitable right to  
11          a percentage of the employee’s accrued benefit de-  
12          rived from employer contributions determined under  
13          the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

14          “(B)(i) In the case of an individual account  
15          plan, a plan satisfies the requirements of this para-  
16          graph if it satisfies the requirements of clause (ii) or  
17          (iii).

18          “(ii) A plan satisfies the requirements of this  
19          clause if an employee who has completed at least 3  
20          years of service has a nonforfeitable right to 100  
21          percent of the employee’s accrued benefit derived  
22          from employer contributions.

1           “(iii) A plan satisfies the requirements of this  
 2           clause if an employee has a nonforfeitable right to  
 3           a percentage of the employee’s accrued benefit de-  
 4           rived from employer contributions determined under  
 5           the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

6           (2) CONFORMING AMENDMENT.—Section  
 7           203(a) of such Act is amended by striking para-  
 8           graph (4).

9           (c) EFFECTIVE DATES.—

10           (1) IN GENERAL.—Except as provided in para-  
 11           graph (2), the amendments made by this section  
 12           shall apply to contributions for plan years beginning  
 13           after December 31, 2005.

14           (2) COLLECTIVE BARGAINING AGREEMENTS.—  
 15           In the case of a plan maintained pursuant to one or  
 16           more collective bargaining agreements between em-  
 17           ployee representatives and one or more employers  
 18           ratified before the date of the enactment of this Act,  
 19           the amendments made by this section shall not apply  
 20           to contributions on behalf of employees covered by  
 21           any such agreement for plan years beginning before  
 22           the earlier of—

1 (A) the later of—

2 (i) the date on which the last of such  
3 collective bargaining agreements termi-  
4 nates (determined without regard to any  
5 extension thereof on or after such date of  
6 the enactment); or

7 (ii) January 1, 2006; or

8 (B) January 1, 2008.

9 (3) SERVICE REQUIRED.—With respect to any  
10 plan, the amendments made by this section shall not  
11 apply to any employee before the date that such em-  
12 ployee has 1 hour of service under such plan in any  
13 plan year to which the amendments made by this  
14 section apply.

15 **SEC. 1007. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
16 **PLANS TO ROTH IRAS.**

17 (a) IN GENERAL.—Subsection (e) of section 408A of  
18 the Internal Revenue Code of 1986 (defining qualified roll-  
19 over contribution) is amended to read as follows:

20 “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For  
21 purposes of this section, the term ‘qualified rollover con-  
22 tribution’ means a rollover contribution—

23 “(1) to a Roth IRA from another such account,

24 “(2) from an eligible retirement plan, but only

25 if—



1           “(A) in the case of an individual retire-  
 2           ment plan, such rollover contribution meets the  
 3           requirements of section 408(d)(3), and

4           “(B) in the case of any eligible retirement  
 5           plan (as defined in section 402(c)(8)(B) other  
 6           than clauses (i) and (ii) thereof), such rollover  
 7           contribution meets the requirements of section  
 8           402(c), 403(b)(8), or 457(e)(16), as applicable.

9           For purposes of section 408(d)(3)(B), there shall be dis-  
 10          regarded any qualified rollover contribution from an indi-  
 11          vidual retirement plan (other than a Roth IRA) to a Roth  
 12          IRA.”

13          (b) CONFORMING AMENDMENTS.—

14           (1) Section 408A(c)(3)(B) of such Code is  
 15          amended—

16           (A) in the text by striking “individual re-  
 17           tirement plan” and inserting “an eligible retire-  
 18           ment plan (as defined by section  
 19           402(c)(8)(B))”, and

20           (B) in the heading by striking “IRA” and  
 21           inserting “ELIGIBLE RETIREMENT PLAN”.

22           (2) Section 408A(d)(3) of such Code is amend-  
 23          ed—

1 (A) in subparagraph (A), by striking “sec-  
 2 tion 408(d)(3)” inserting “sections 402(c),  
 3 403(b)(8), 408(d)(3), and 457(e)(16)”,

4 (B) in subparagraph (B), by striking “in-  
 5 dividual retirement plan” and inserting “eligible  
 6 retirement plan (as defined by section  
 7 402(c)(8)(B))”,

8 (C) in subparagraph (D), by inserting “or  
 9 6047” after “408(i)”,

10 (D) in subparagraph (D), by striking “or  
 11 both” and inserting “persons subject to section  
 12 6047(d)(1), or all of the foregoing persons”,  
 13 and

14 (E) in the heading, by striking “IRA” and  
 15 inserting “ELIGIBLE RETIREMENT PLAN”.

16 (c) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to distributions after December 31,  
 18 2005.

19 **SEC. 1008. ELIMINATION OF HIGHER PENALTY ON CERTAIN**  
 20 **SIMPLE PLAN DISTRIBUTIONS.**

21 (a) IN GENERAL.—Subsection (t) of section 72 of the  
 22 Internal Revenue Code of 1986 (relating to 10-percent ad-  
 23 ditional tax on early distributions from qualified retire-  
 24 ment plans), as amended by section 1004, is amended by  
 25 striking paragraph (6) and redesignating paragraphs (7),

1 (8), (9), and (10) as paragraphs (6), (7), (8), and (9),  
2 respectively.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 72(t)(2)(E) of such Code is amend-  
5 ed by striking “paragraph (7)” and inserting “para-  
6 graph (6)”.

7 (2) Section 72(t)(2)(F) of such Code is amend-  
8 ed by striking “paragraph (8)” and inserting “para-  
9 graph (7)”.

10 (3) Section 408(d)(3)(G) of such Code is  
11 amended by striking “applies” and inserting “ap-  
12 plied on the day before the date of the enactment of  
13 the Pension Security and Transparency Act of  
14 2005”.

15 (4) Section 457(a)(2) of such Code is amended  
16 by striking “section 72(t)(9)” and inserting “section  
17 72(t)(8)”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to years beginning after December  
20 31, 2005.

21 **SEC. 1009. SIMPLE PLAN PORTABILITY.**

22 (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-  
23 tion 408(d) of the Internal Revenue Code of 1986 (relat-  
24 ing to rollover contributions), as amended by this Act, is  
25 amended by striking subparagraph (G) and redesignating

1 subparagraphs (H) and (I) as subparagraphs (G) and (H),  
2 respectively.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to years beginning after December  
5 31, 2005.

6 **SEC. 1010. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
7 **MENT PLANS.**

8 An individual shall not be precluded from partici-  
9 pating in an eligible deferred compensation plan by reason  
10 of having received a distribution under section 457(e)(9)  
11 of the Internal Revenue Code of 1986, as in effect prior  
12 to the enactment of the Small Business Job Protection  
13 Act of 1996.

14 **SEC. 1011. TRANSFERS TO THE PBGC.**

15 (a) MANDATORY DISTRIBUTIONS TO PBGC.—Clause  
16 (i) of section 401(a)(31)(B) of the Internal Revenue Code  
17 of 1986 (relating to general rule for certain mandatory  
18 distributions) is amended by inserting “to the Pension  
19 Benefit Guaranty Corporation in accordance with section  
20 4050(e) of the Employee Retirement Income Security Act  
21 of 1974 or” after “such transfer”.

22 (b) TAX TREATMENT OF DISTRIBUTIONS.—Subpara-  
23 graph (B) of section 401(a)(31) of such Code is amended  
24 by adding at the end the following new clause:

1                   “(iii) INCOME TAX TREATMENT OF  
2                   TRANSFERS TO PBGC.—For purposes of  
3                   determining the income tax treatment re-  
4                   lating to transfers to the Pension Benefit  
5                   Guaranty Corporation under clause (i)—

6                   “(I) the transfer of amounts to  
7                   the Pension Benefit Guaranty Cor-  
8                   poration pursuant to clause (i) shall  
9                   be treated as a transfer to an indi-  
10                  vidual retirement plan under such  
11                  clause, and

12                  “(II) the distribution of such  
13                  amounts from the Pension Benefit  
14                  Guaranty Corporation shall be treated  
15                  as a distribution from an individual  
16                  retirement plan.”

17           (c) MISSING PARTICIPANTS AND BENEFICIARIES.—  
18   Section 4050 of the Employee Retirement Income Security  
19   Act of 1974 (29 U.S.C. 1350), as amended by section  
20   1012, is amended by redesignating subsection (e) as sub-  
21   section (g) and by inserting after subsection (d) the fol-  
22   lowing new subsections:

23           “(e) INVOLUNTARY CASHOUTS.—

24                   “(1) PAYMENT BY THE CORPORATION.—If ben-  
25                  efits under a plan described in paragraph (3) were

1 transferred to the corporation under section  
2 401(a)(31)(B) of the Internal Revenue Code of  
3 1986, the corporation shall, upon application filed by  
4 the participant or beneficiary with the corporation in  
5 such form and manner as may be prescribed in regu-  
6 lations of the corporation, pay to the participant or  
7 beneficiary the amount transferred (or the appro-  
8 priate survivor benefit) either—

9 “(A) in a single sum (plus interest), or

10 “(B) in such other form as is specified in  
11 regulations of the corporation.

12 “(2) INFORMATION TO THE CORPORATION.—To  
13 the extent provided in regulations, the plan adminis-  
14 trator of a plan described in paragraph (3) shall,  
15 upon a transfer of benefits to the corporation under  
16 section 401(a)(31)(B) of such Code, provide the cor-  
17 poration information with respect to benefits of the  
18 participant or beneficiary so transferred.

19 “(3) PLANS DESCRIBED.—A plan is described  
20 in this paragraph if the plan is a pension plan (with-  
21 in the meaning of section 3(2))—

22 “(A) which provides for mandatory dis-  
23 tributions under section 401(a)(31)(B) of the  
24 Internal Revenue Code of 1986, and

1                   “(B) which is not a plan described in para-  
2                   graphs (2) through (11) of section 4021(b).

3                   “(4) CERTAIN PROVISIONS NOT TO APPLY.—  
4                   Subsections (a)(1) and (a)(3) shall not apply to a  
5                   plan described in paragraph (3).

6                   “(f) AUTHORITY TO CHARGE FEE.—The corporation  
7                   may charge a reasonable fee for costs incurred in connec-  
8                   tion with the transfer and management of amounts trans-  
9                   ferred to the corporation under this section. Such fee may  
10                  be imposed on the transferor and may be deducted from  
11                  amounts so transferred.”

12                  (d) EFFECTIVE DATES.—

13                   (1) INTERNAL REVENUE CODE PROVISIONS.—  
14                   The amendments made by subsections (a) and (b)  
15                   shall take effect as if included in the amendments  
16                   made by section 657 of the Economic Growth and  
17                   Tax Relief Reconciliation Act of 2001.

18                   (2) EMPLOYEE RETIREMENT INCOME SECURITY  
19                   ACT OF 1974 PROVISIONS.—The amendments made  
20                   by subsection (c) shall apply to distributions made  
21                   after final regulations implementing subsections (e)  
22                   and (f) of section 4050 of the Employee Retirement  
23                   Income Security Act of 1974 (as added by sub-  
24                   section (c)) are prescribed.

1           (3) REGULATIONS.—The Pension Benefit Guar-  
 2           anty Corporation shall issue regulations necessary to  
 3           carry out the amendments made by subsection (c)  
 4           not later than December 31, 2006.

5 **SEC. 1012. MISSING PARTICIPANTS.**

6           (a) IN GENERAL.—Section 4050 of the Employee Re-  
 7           tirement Income Security Act of 1974 (29 U.S.C. 1350)  
 8           is amended by redesignating subsection (c) as subsection  
 9           (e) and by inserting after subsection (b) the following new  
 10          subsections:

11          “(c) MULTIEMPLOYER PLANS.—The corporation  
 12          shall prescribe rules similar to the rules in subsection (a)  
 13          for multiemployer plans covered by this title that termi-  
 14          nate under section 4041A.

15          “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

16                 “(1) TRANSFER TO CORPORATION.—The plan  
 17                 administrator of a plan described in paragraph (4)  
 18                 may elect to transfer a missing participant’s benefits  
 19                 to the corporation upon termination of the plan.

20                 “(2) INFORMATION TO THE CORPORATION.—To  
 21                 the extent provided in regulations, the plan adminis-  
 22                 trator of a plan described in paragraph (4) shall,  
 23                 upon termination of the plan, provide the corpora-  
 24                 tion information with respect to benefits of a miss-  
 25                 ing participant if the plan transfers such benefits—



1 “(A) to the corporation, or

2 “(B) to an entity other than the corpora-  
3 tion or a plan described in paragraph (4)(B)(ii).

4 “(3) PAYMENT BY THE CORPORATION.—If ben-  
5 efits of a missing participant were transferred to the  
6 corporation under paragraph (1), the corporation  
7 shall, upon location of the participant or beneficiary,  
8 pay to the participant or beneficiary the amount  
9 transferred (or the appropriate survivor benefit) ei-  
10 ther—

11 “(A) in a single sum (plus interest), or

12 “(B) in such other form as is specified in  
13 regulations of the corporation.

14 “(4) PLANS DESCRIBED.—A plan is described  
15 in this paragraph if—

16 “(A) the plan is a pension plan (within the  
17 meaning of section 3(2))—

18 “(i) to which the provisions of this  
19 section do not apply (without regard to  
20 this subsection), and

21 “(ii) which is not a plan described in  
22 paragraphs (2) through (11) of section  
23 4021(b), and

24 “(B) at the time the assets are to be dis-  
25 tributed upon termination, the plan—

1 “(i) has missing participants, and  
 2 “(ii) has not provided for the transfer  
 3 of assets to pay the benefits of all missing  
 4 participants to another pension plan (with-  
 5 in the meaning of section 3(2)).

6 “(5) CERTAIN PROVISIONS NOT TO APPLY.—  
 7 Subsections (a)(1) and (a)(3) shall not apply to a  
 8 plan described in paragraph (4).”

9 (b) CONFORMING AMENDMENTS.—Section 206(f) of  
 10 such Act (29 U.S.C. 1056(f)) is amended—

11 (1) by striking “title IV” and inserting “section  
 12 4050”; and

13 (2) by striking “the plan shall provide that,”.

14 (c) EFFECTIVE DATE.—The amendments made by  
 15 this section shall apply to distributions made after final  
 16 regulations implementing subsections (c) and (d) of sec-  
 17 tion 4050 of the Employee Retirement Income Security  
 18 Act of 1974 (as added by subsection (a)), respectively, are  
 19 prescribed.

## 20 **TITLE XI—ADMINISTRATIVE** 21 **PROVISIONS**

### 22 **SEC. 1101. EMPLOYEE PLANS COMPLIANCE RESOLUTION** 23 **SYSTEM.**

24 (a) IN GENERAL.—The Secretary of the Treasury  
 25 shall have full authority to establish and implement the

1 Employee Plans Compliance Resolution System (or any  
2 successor program) and any other employee plans correc-  
3 tion policies, including the authority to waive income, ex-  
4 cise, or other taxes to ensure that any tax, penalty, or  
5 sanction is not excessive and bears a reasonable relation-  
6 ship to the nature, extent, and severity of the failure.

7 (b) IMPROVEMENTS.—The Secretary of the Treasury  
8 shall continue to update and improve the Employee Plans  
9 Compliance Resolution System (or any successor pro-  
10 gram), giving special attention to—

11 (1) increasing the awareness and knowledge of  
12 small employers concerning the availability and use  
13 of the program;

14 (2) taking into account special concerns and  
15 circumstances that small employers face with respect  
16 to compliance and correction of compliance failures;

17 (3) extending the duration of the self-correction  
18 period under the Self-Correction Program for signifi-  
19 cant compliance failures;

20 (4) expanding the availability to correct insig-  
21 nificant compliance failures under the Self-Correc-  
22 tion Program during audit; and

23 (5) assuring that any tax, penalty, or sanction  
24 that is imposed by reason of a compliance failure is

1 not excessive and bears a reasonable relationship to  
 2 the nature, extent, and severity of the failure.

3 **SEC. 1102. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
 4 **MORATORIUM ON APPLICATION OF CERTAIN**  
 5 **NONDISCRIMINATION RULES APPLICABLE TO**  
 6 **STATE AND LOCAL PLANS.**

7 (a) IN GENERAL.—The following provisions are each  
 8 amended by striking “maintained by a State or local gov-  
 9 ernment or political subdivision thereof (or agency or in-  
 10 strumentality thereof)”:

11 (1) Section 401(a)(5)(G) of the Internal Rev-  
 12 enue Code of 1986.

13 (2) Section 401(a)(26)(H) of such Code.

14 (3) Section 401(k)(3)(G) of such Code.

15 (4) Section 1505(d)(2) of the Taxpayer Relief  
 16 Act of 1997.

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading for section 401(a)(5)(G) of  
 19 such Code is amended to read as follows: “GOVERN-  
 20 MENTAL PLANS.—”.

21 (2) The heading for section 401(a)(26)(H) of  
 22 such Code is amended to read as follows: “EXCEP-  
 23 TION FOR GOVERNMENTAL PLANS.—”.

1           (3) Section 401(k)(3)(G) of such Code is  
 2           amended by inserting “GOVERNMENTAL PLANS.—”  
 3           after “(G)”.

4           (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to plan years beginning after De-  
 6 cember 31, 2005.

7   **SEC. 1103. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
 8                           **TRIBUTIONS.**

9           (a) EXPANSION OF PERIOD.—

10           (1) AMENDMENT OF INTERNAL REVENUE  
 11           CODE.—

12                   (A) IN GENERAL.—Section 417(a)(6)(A) of  
 13           the Internal Revenue Code of 1986 is amended  
 14           by striking “90-day” and inserting “180-day”.

15                   (B) MODIFICATION OF REGULATIONS.—

16           The Secretary of the Treasury shall modify the  
 17           regulations under sections 402(f), 411(a)(11),  
 18           and 417 of the Internal Revenue Code of 1986  
 19           by substituting “180 days” for “90 days” each  
 20           place it appears in Treasury Regulations sec-  
 21           tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–  
 22           1(b).

23           (2) AMENDMENT OF ERISA.—

24                   (A) IN GENERAL.—Section 205(c)(7)(A) of  
 25           the Employee Retirement Income Security Act

1 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended  
2 by striking “90-day” and inserting “180-day”.

3 (B) MODIFICATION OF REGULATIONS.—

4 The Secretary of the Treasury shall modify the  
5 regulations under part 2 of subtitle B of title  
6 I of the Employee Retirement Income Security  
7 Act of 1974 relating to sections 203(e) and 205  
8 of such Act by substituting “180 days” for “90  
9 days” each place it appears.

10 (3) EFFECTIVE DATE.—The amendments and  
11 modifications made or required by this subsection  
12 shall apply to years beginning after December 31,  
13 2005.

14 (b) NOTIFICATION OF RIGHT TO DEFER.—

15 (1) IN GENERAL.—The Secretary of the Treas-  
16 ury shall modify the regulations under section  
17 411(a)(11) of the Internal Revenue Code of 1986  
18 and under section 205 of the Employee Retirement  
19 Income Security Act of 1974 to provide that the de-  
20 scription of a participant’s right, if any, to defer re-  
21 ceipt of a distribution shall also describe the con-  
22 sequences of failing to defer such receipt.

23 (2) EFFECTIVE DATE.—

1 (A) IN GENERAL.—The modifications re-  
 2 quired by paragraph (1) shall apply to years be-  
 3 ginning after December 31, 2005.

4 (B) REASONABLE NOTICE.—A plan shall  
 5 not be treated as failing to meet the require-  
 6 ments of section 411(a)(11) of such Code or  
 7 section 205 of such Act with respect to any de-  
 8 scription of consequences described in para-  
 9 graph (1) made within 90 days after the Sec-  
 10 retary of the Treasury issues the modifications  
 11 required by paragraph (1) if the plan adminis-  
 12 trator makes a reasonable attempt to comply  
 13 with such requirements.

14 **SEC. 1104. REPORTING SIMPLIFICATION.**

15 (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
 16 OWNERS AND THEIR SPOUSES.—

17 (1) IN GENERAL.—The Secretary of the Treas-  
 18 ury and the Secretary of Labor shall modify the re-  
 19 quirements for filing annual returns with respect to  
 20 one-participant retirement plans to ensure that such  
 21 plans with assets of \$250,000 or less as of the close  
 22 of the plan year need not file a return for that year.

23 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
 24 FINED.—For purposes of this subsection, the term  
 25 “one-participant retirement plan” means a retire-

1       ment plan with respect to which the following re-  
2       quirements are met:

3               (A) on the first day of the plan year—

4                   (i) the plan covered only one indi-  
5                   vidual (or the individual and the individ-  
6                   ual's spouse) and the individual owned 100  
7                   percent of the plan sponsor (whether or  
8                   not incorporated), or

9                   (ii) the plan covered only one or more  
10                  partners (or partners and their spouses) in  
11                  the plan sponsor;

12               (B) the plan meets the minimum coverage  
13               requirements of section 410(b) of the Internal  
14               Revenue Code of 1986 without being combined  
15               with any other plan of the business that covers  
16               the employees of the business;

17               (C) the plan does not provide benefits to  
18               anyone except the individual (and the individ-  
19               ual's spouse) or the partners (and their  
20               spouses);

21               (D) the plan does not cover a business that  
22               is a member of an affiliated service group, a  
23               controlled group of corporations, or a group of  
24               businesses under common control; and



1 (E) the plan does not cover a business that  
2 uses the services of leased employees (within  
3 the meaning of section 414(n) of such Code).

4 For purposes of this paragraph, the term “partner”  
5 includes a 2-percent shareholder (as defined in sec-  
6 tion 1372(b) of such Code) of an S corporation.

7 (3) OTHER DEFINITIONS.—Terms used in para-  
8 graph (2) which are also used in section 414 of the  
9 Internal Revenue Code of 1986 shall have the re-  
10 spective meanings given such terms by such section.

11 (4) EFFECTIVE DATE.—The provisions of this  
12 subsection shall apply to plan years beginning on or  
13 after January 1, 2006.

14 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
15 PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the  
16 case of plan years beginning after December 31, 2006, the  
17 Secretary of the Treasury and the Secretary of Labor shall  
18 provide for the filing of a simplified annual return for any  
19 retirement plan which covers less than 25 participants on  
20 the first day of a plan year and which meets the require-  
21 ments described in subparagraphs (B), (D), and (E) of  
22 subsection (a)(2).

1 **SEC. 1105. VOLUNTARY EARLY RETIREMENT INCENTIVE**  
2 **AND EMPLOYMENT RETENTION PLANS MAIN-**  
3 **TAINED BY LOCAL EDUCATIONAL AGENCIES**  
4 **AND OTHER ENTITIES.**

5 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE  
6 PLANS.—

7 (1) TREATMENT AS PLAN PROVIDING SEVER-  
8 ANCE PAY.—Section 457(e)(11) of the Internal Rev-  
9 enue Code of 1986 (relating to certain plans ex-  
10 cluded) is amended by adding at the end the fol-  
11 lowing new subparagraph:

12 “(D) CERTAIN VOLUNTARY EARLY RETIRE-  
13 MENT INCENTIVE PLANS.—

14 “(i) IN GENERAL.—If an applicable  
15 voluntary early retirement incentive plan—

16 “(I) makes payments or supple-  
17 ments as an early retirement benefit,  
18 a retirement-type subsidy, or a benefit  
19 described in the last sentence of sec-  
20 tion 411(a)(9), and

21 “(II) such payments or supple-  
22 ments are made in coordination with  
23 a defined benefit plan which is de-  
24 scribed in section 401(a) and includes  
25 a trust exempt from tax under section  
26 501(a) and which is maintained by an

1 eligible employer described in para-  
 2 graph (1)(A) or by an education asso-  
 3 ciation described in clause (ii)(II),  
 4 such applicable plan shall be treated for  
 5 purposes of subparagraph (A)(i) as a bona  
 6 fide severance pay plan with respect to  
 7 such payments or supplements to the ex-  
 8 tent such payments or supplements could  
 9 otherwise have been provided under such  
 10 defined benefit plan (determined as if sec-  
 11 tion 411 applied to such defined benefit  
 12 plan).

13 “(ii) APPLICABLE VOLUNTARY EARLY  
 14 RETIREMENT INCENTIVE PLAN.—For pur-  
 15 poses of this subparagraph, the term ‘ap-  
 16 plicable voluntary early retirement incen-  
 17 tive plan’ means a voluntary early retire-  
 18 ment incentive plan maintained by—

19 “(I) a local educational agency  
 20 (as defined in section 9101 of the Ele-  
 21 mentary and Secondary Education  
 22 Act of 1965 (20 U.S.C. 7801)), or

23 “(II) an education association  
 24 which principally represents employees  
 25 of 1 or more agencies described in

1 subclause (I) and which is described  
 2 in section 501(c) (5) or (6) and ex-  
 3 empt from tax under section 501(a).”

4 (2) AGE DISCRIMINATION IN EMPLOYMENT  
 5 ACT.—Section 4(l)(1) of the Age Discrimination in  
 6 Employment Act of 1967 (29 U.S.C. 623(l)(1)) is  
 7 amended—

8 (A) by inserting “(A)” after “(1)”,

9 (B) by redesignating subparagraphs (A)  
 10 and (B) as clauses (i) and (ii), respectively,

11 (C) by redesignating clauses (i) and (ii) of  
 12 subparagraph (B) (as in effect before the  
 13 amendments made by subparagraph (B)) as  
 14 subclauses (I) and (II), respectively, and

15 (D) by adding at the end the following:

16 “(B) A voluntary early retirement incentive  
 17 plan that—

18 “(i) is maintained by—

19 “(I) a local educational agency (as de-  
 20 fined in section 9101 of the Elementary  
 21 and Secondary Education Act of 1965 (20  
 22 U.S.C. 7801), or

23 “(II) an education association which  
 24 principally represents employees of 1 or  
 25 more agencies described in subclause (I)

1                   and which is described in section 501(c)  
2                   (5) or (6) of the Internal Revenue Code of  
3                   1986 and exempt from taxation under sec-  
4                   tion 501(a) of such Code, and

5                   “(ii) makes payments or supplements de-  
6                   scribed in subclauses (I) and (II) of subpara-  
7                   graph (A)(ii) in coordination with a defined  
8                   benefit plan (as so defined) maintained by an  
9                   eligible employer described in section  
10                  457(e)(1)(A) of such Code or by an education  
11                  association described in clause (i)(II),

12                 shall be treated solely for purposes of subparagraph  
13                 (A)(ii) as if it were a part of the defined benefit plan  
14                 with respect to such payments or supplements. Pay-  
15                 ments or supplements under such a voluntary early  
16                 retirement incentive plan shall not constitute sever-  
17                 ance pay for purposes of section 4(l)(2) of the Age  
18                 Discrimination in Employment Act (29 U.S.C.  
19                 623(l)(2)).”

20                 (b) EMPLOYMENT RETENTION PLANS.—

21                 (1) IN GENERAL.—Section 457(f)(2) of the In-  
22                 ternal Revenue Code of 1986 (relating to exceptions)  
23                 is amended by striking “and” at the end of subpara-  
24                 graph (D), by striking the period at the end of sub-

paragraph (E) and inserting “, and”, and by adding at the end the following:

“(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.”

(2) DEFINITIONS AND RULES RELATING TO EMPLOYMENT RETENTION PLANS.—Section 457(f) of such Code is amended by adding at the end the following new paragraph:

“(4) EMPLOYMENT RETENTION PLANS.—For purposes of paragraph (2)(F)—

“(A) IN GENERAL.—The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

“(B) OTHER RULES.—

“(i) LIMITATION.—Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in which such portion is paid or otherwise made available to the participant.

1                   “(ii) TREATMENT.—A plan shall not  
 2                   be treated for purposes of this title as pro-  
 3                   viding for the deferral of compensation for  
 4                   any year with respect to the portion of the  
 5                   plan described in subparagraph (A).

6                   “(C) APPLICABLE EMPLOYMENT RETEN-  
 7                   TION PLAN.—The term ‘applicable employment  
 8                   retention plan’ means an employment retention  
 9                   plan maintained by—

10                   “(i) a local educational agency (as de-  
 11                   fined in section 9101 of the Elementary  
 12                   and Secondary Education Act of 1965 (20  
 13                   U.S.C. 7801), or

14                   “(ii) an education association which  
 15                   principally represents employees of 1 or  
 16                   more agencies described in clause (i) and  
 17                   which is described in section 501(c) (5) or  
 18                   (6) and exempt from taxation under sec-  
 19                   tion 501(a).

20                   “(D) EMPLOYMENT RETENTION PLAN.—  
 21                   The term ‘employment retention plan’ means a  
 22                   plan to pay, upon termination of employment,  
 23                   compensation to an employee of a local edu-  
 24                   cational agency or education association de-  
 25                   scribed in subparagraph (C) for purposes of—

1 “(i) retaining the services of the em-  
 2 ployee, or

3 “(ii) rewarding such employee for the  
 4 employee’s service with 1 or more such  
 5 agencies or associations.”

6 (c) COORDINATION WITH ERISA.—Section 3(2)(B)  
 7 of the Employee Retirement Income Security Act of 1974  
 8 (29 U.S.C. 1002(2)(B)) is amended by adding at the end  
 9 the following: “An applicable voluntary early retirement  
 10 incentive plan (as defined in section 457(e)(11)(D)(ii) of  
 11 the Internal Revenue Code of 1986) making payments or  
 12 supplements described in section 457(e)(11)(D)(i) of such  
 13 Code, and an applicable employment retention plan (as de-  
 14 fined in section 457(f)(4)(C) of such Code) making pay-  
 15 ments of benefits described in section 457(f)(4)(A) of such  
 16 Code, shall, for purposes of this title, be treated as a wel-  
 17 fare plan (and not a pension plan) with respect to such  
 18 payments and supplements.”

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by  
 21 this Act shall take effect on the date of the enact-  
 22 ment of this Act.

23 (2) TAX AMENDMENTS.—The amendments  
 24 made by subsections (a)(1) and (b) shall apply to



1 taxable years ending after the date of the enactment  
2 of this Act.

3 (3) ERISA AMENDMENTS.—The amendment  
4 made by subsection (c) shall apply to plan years  
5 ending after the date of the enactment of this Act.

6 (4) CONSTRUCTION.—Nothing in the amend-  
7 ments made by this section shall alter or affect the  
8 construction of the Internal Revenue Code of 1986,  
9 the Employee Retirement Income Security Act of  
10 1974, or the Age Discrimination in Employment Act  
11 of 1967 as applied to any plan, arrangement, or con-  
12 duct to which such amendments do not apply.

13 **SEC. 1106. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**  
14 **TION AS A RESULT OF PENSION ROLLOVERS.**

15 (a) IN GENERAL.—Section 3304(a) of the Internal  
16 Revenue Code of 1986 (relating to requirements for State  
17 unemployment laws) is amended by adding at the end the  
18 following new flush sentence:

19 “Compensation shall not be reduced under paragraph (15)  
20 for any pension, retirement or retired pay, annuity, or  
21 similar payment which is not includible in gross income  
22 of the individual for the taxable year in which paid because  
23 it was part of a rollover distribution.”

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 this section shall apply to weeks beginning on or after the  
 3 date of the enactment of this Act.

4 **SEC. 1107. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**  
 5 **ERNMENTAL SECTION 457 PLANS.**

6 (a) IN GENERAL.—Section 641(f) of the Economic  
 7 Growth and Tax Relief Reconciliation Act of 2001 is  
 8 amended by adding at the end the following new para-  
 9 graph:

10 “(4) TRANSITION RULE FOR CERTAIN GOVERN-  
 11 MENTAL PLANS.—In the case of distributions from  
 12 an eligible deferred compensation plan of an em-  
 13 ployer described in section 457(e)(1)(A) of the Inter-  
 14 nal Revenue Code of 1986 which are made after De-  
 15 cember 31, 2001, and which are part of a series of  
 16 distributions which—

17 “(A) began before January 1, 2002, and

18 “(B) are payable for 10 years or less, the  
 19 Internal Revenue Code of 1986 may be applied  
 20 to such distributions without regard to the  
 21 amendments made by subsection (a)(1)(D).”

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 subsection (a) shall take effect as if included in the provi-  
 24 sions of section 641 of the Economic Growth and Tax Re-  
 25 lief Reconciliation Act of 2001.

1 **SEC. 1108. CLARIFICATION OF TREATMENT OF DEFINED**  
2 **BENEFIT PLANS OF INDIAN TRIBAL GOVERN-**  
3 **MENTS.**

4 (a) DEFINITION OF GOVERNMENTAL PLAN.—

5 (1) AMENDMENT TO INTERNAL REVENUE CODE  
6 OF 1986.—Section 414(d) of the Internal Revenue  
7 Code of 1986 (definition of governmental plan) is  
8 amended by adding at the end the following: “The  
9 term ‘governmental plan’ includes a defined benefit  
10 plan established or maintained for its employees by  
11 an Indian tribal government (as defined in section  
12 7701(a)(40)), a subdivision of an Indian tribal gov-  
13 ernment (determined in accordance with section  
14 7871(d)), an agency or instrumentality (or subdivi-  
15 sion) of an Indian tribal government, or an entity  
16 established under Federal, State, or tribal law which  
17 is wholly owned or controlled by any of the fore-  
18 going.”.

19 (2) AMENDMENT TO EMPLOYEE RETIREMENT  
20 INCOME SECURITY ACT OF 1974.—Section 3(32) of  
21 the Employee Retirement Income Security Act of  
22 1974 (29 U.S.C. 1002(32)) is amended by adding at  
23 the end the following: “The term ‘governmental  
24 plan’ includes a defined benefit plan established or  
25 maintained for its employees by an Indian tribal  
26 government (as defined in section 7701(a)(40) of the

1 Internal Revenue Code of 1986), a subdivision of an  
 2 Indian tribal government (determined in accordance  
 3 with section 7871(d) of such Code), an agency or in-  
 4 strumentality (or subdivision) of an Indian tribal  
 5 government, or an entity established under Federal,  
 6 State, or tribal law that is wholly owned or con-  
 7 trolled by any of the foregoing.”.

8 (b) CLARIFICATION THAT TRIBAL GOVERNMENTS  
 9 ARE SUBJECT TO THE SAME PLAN RULES AND REGULA-  
 10 TIONS APPLIED TO STATE AND OTHER LOCAL GOVERN-  
 11 MENTS AND THEIR POLICE AND FIREFIGHTERS.—

12 (1) AMENDMENTS TO INTERNAL REVENUE  
 13 CODE OF 1986.—

14 (A) POLICE AND FIREFIGHTERS.—Sub-  
 15 paragraph (H) of section 415(b)(2) of such  
 16 Code (defining participant) is amended—

17 (i) in clause (i), by striking “State or  
 18 political subdivision” and inserting “State,  
 19 Indian tribal government (as defined in  
 20 section 7701(a)(40)), or any political sub-  
 21 division”; and

22 (ii) in clause (ii)(I), by striking “State  
 23 or political subdivision” each place it ap-  
 24 pears and inserting “State, Indian tribal

government (as so defined), or any political subdivision thereof”.

(B) STATE AND LOCAL GOVERNMENT PLANS.—

(i) IN GENERAL.—Subparagraph (A) of section 415(b)(10) of such Code (relating to limitation to equal accrued benefit) is amended—

(I) by inserting “, Indian tribal government (as defined in section 7701(a)(40)),” after “State”;

(II) by inserting “any” before “political subdivision”; and

(III) by inserting “any of” before “the foregoing”.

(ii) CONFORMING AMENDMENT.—The heading of paragraph (10) of section 415(b) of such Code is amended by striking “SPECIAL RULE FOR STATE AND” and inserting “SPECIAL RULE FOR STATE, INDIAN TRIBAL, AND”.

(C) GOVERNMENT PICKUP CONTRIBUTIONS.—Paragraph (2) of section 414(h) of such Code (relating to designation by units of government) is amended by adding at the end

the following new sentence: “This paragraph shall also apply to any defined benefit plan maintained by any Indian tribal government (as defined in section 7701(a)(40)) or political subdivision thereof, or an agency or instrumentality of either” .

(2) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 4021(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321(b)) is amended—

(A) in paragraph (12), by striking “or” at the end;

(B) in paragraph (13), by striking “plan.” and inserting “plan; or”; and

(C) by adding at the end the following:

“(14) which is a defined benefit plan established and maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to any year beginning before, on,  
3 or after the date of the enactment of this Act.

4 **SEC. 1109. TREATMENT OF DEFINED BENEFIT PLAN AS**  
5 **GOVERNMENTAL PLAN.**

6 (a) IN GENERAL.—For purposes of the Internal Rev-  
7 enue Code of 1986 and the Employee Retirement Income  
8 Security Act of 1974, an eligible defined benefit plan shall  
9 be treated as a governmental plan (within the meaning  
10 of section 414(d) of such Code and section 3(32) of such  
11 Act).

12 (b) ELIGIBLE DEFINED BENEFIT PLAN.—For pur-  
13 poses of this section, an eligible defined benefit plan is  
14 a defined benefit plan maintained by a nonprofit corpora-  
15 tion which was—

16 (1) incorporated on September 16, 1998, under  
17 a State nonprofit corporation statute; and

18 (2) organized for the express purpose of sup-  
19 porting the missions and goals of a public corpora-  
20 tion which—

21 (A) was created by a State statute effective  
22 on July 1, 1995;

23 (B) is a governmental entity under State  
24 law; and

1 (C) is a member of the nonprofit corpora-  
 2 tion.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to any year beginning before, on,  
 5 or after the date of the enactment of this Act.

## 6 **TITLE XII—UNITED STATES TAX** 7 **COURT MODERNIZATION**

### 8 **SEC. 1200. AMENDMENT OF 1986 CODE.**

9 Except as otherwise expressly provided, whenever in  
 10 this title an amendment or repeal is expressed in terms  
 11 of an amendment to, or repeal of, a section or other provi-  
 12 sion, the reference shall be considered to be made to a  
 13 section or other provision of the Internal Revenue Code  
 14 of 1986.

### 15 **SEC. 1201. ANNUITIES FOR SURVIVORS OF TAX COURT** 16 **JUDGES WHO ARE ASSASSINATED.**

17 (a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-  
 18 TION.—Subsection (h) of section 7448 (relating to annu-  
 19 ities to surviving spouses and dependent children of  
 20 judges) is amended to read as follows:

21 “(h) ENTITLEMENT TO ANNUITY.—

22 “(1) IN GENERAL.—

23 “(A) ANNUITY TO SURVIVING SPOUSE.—If  
 24 a judge described in paragraph (2) is survived  
 25 by a surviving spouse but not by a dependent



1 child, there shall be paid to such surviving  
2 spouse an annuity beginning with the day of the  
3 death of the judge or following the surviving  
4 spouse's attainment of the age of 50 years,  
5 whichever is the later, in an amount computed  
6 as provided in subsection (m).

7 “(B) ANNUITY TO CHILD.—If such a judge  
8 is survived by a surviving spouse and a depend-  
9 ent child or children, there shall be paid to such  
10 surviving spouse an immediate annuity in an  
11 amount computed as provided in subsection  
12 (m), and there shall also be paid to or on behalf  
13 of each such child an immediate annuity equal  
14 to the lesser of—

15 “(i) 10 percent of the average annual  
16 salary of such judge (determined in accord-  
17 ance with subsection (m)), or

18 “(ii) 20 percent of such average an-  
19 nual salary, divided by the number of such  
20 children.

21 “(C) ANNUITY TO SURVIVING DEPENDENT  
22 CHILDREN.—If such a judge leaves no surviving  
23 spouse but leaves a surviving dependent child or  
24 children, there shall be paid to or on behalf of

1 each such child an immediate annuity equal to  
2 the lesser of—

3 “(i) 20 percent of the average annual  
4 salary of such judge (determined in accord-  
5 ance with subsection (m)), or

6 “(ii) 40 percent of such average an-  
7 nual salary, divided by the number of such  
8 children.

9 “(2) COVERED JUDGES.—Paragraph (1) applies  
10 to any judge electing under subsection (b)—

11 “(A) who dies while a judge after having  
12 rendered at least 5 years of civilian service com-  
13 puted as prescribed in subsection (n), for the  
14 last 5 years of which the salary deductions pro-  
15 vided for by subsection (c)(1) or the deposits  
16 required by subsection (d) have actually been  
17 made or the salary deductions required by the  
18 civil service retirement laws have actually been  
19 made, or

20 “(B) who dies by assassination after hav-  
21 ing rendered less than 5 years of civilian service  
22 computed as prescribed in subsection (n) if, for  
23 the period of such service, the salary deductions  
24 provided for by subsection (c)(1) or the deposits

1 required by subsection (d) have actually been  
2 made.

3 “(3) TERMINATION OF ANNUITY.—

4 “(A) IN THE CASE OF A SURVIVING  
5 SPOUSE.—The annuity payable to a surviving  
6 spouse under this subsection shall be terminable  
7 upon such surviving spouse’s death or such sur-  
8 viving spouse’s remarriage before attaining age  
9 55.

10 “(B) IN THE CASE OF A CHILD.—The an-  
11 nuity payable to a child under this subsection  
12 shall be terminable upon (i) the child attaining  
13 the age of 18 years, (ii) the child’s marriage, or  
14 (iii) the child’s death, whichever first occurs, ex-  
15 cept that if such child is incapable of self-sup-  
16 port by reason of mental or physical disability  
17 the child’s annuity shall be terminable only  
18 upon death, marriage, or recovery from such  
19 disability.

20 “(C) IN THE CASE OF A DEPENDENT  
21 CHILD AFTER DEATH OF SURVIVING SPOUSE.—  
22 In case of the death of a surviving spouse of a  
23 judge leaving a dependent child or children of  
24 the judge surviving such spouse, the annuity of

1           such child or children shall be recomputed and  
2           paid as provided in paragraph (1)(C).

3           “(D) RECOMPUTATION.—In any case in  
4           which the annuity of a dependent child is termi-  
5           nated under this subsection, the annuities of  
6           any remaining dependent child or children,  
7           based upon the service of the same judge, shall  
8           be recomputed and paid as though the child  
9           whose annuity was so terminated had not sur-  
10          vived such judge.

11          “(4) SPECIAL RULE FOR ASSASSINATED  
12          JUDGES.—In the case of a survivor or survivors of  
13          a judge described in paragraph (2)(B), there shall be  
14          deducted from the annuities otherwise payable under  
15          this section an amount equal to—

16               “(A) the amount of salary deductions pro-  
17               vided for by subsection (c)(1) that would have  
18               been made if such deductions had been made  
19               for 5 years of civilian service computed as pre-  
20               scribed in subsection (n) before the judge’s  
21               death, reduced by

22               “(B) the amount of such salary deductions  
23               that were actually made before the date of the  
24               judge’s death.”

1 (b) DEFINITION OF ASSASSINATION.—Section  
 2 7448(a) (relating to definitions) is amended by adding at  
 3 the end the following new paragraph:

4 “(8) The terms ‘assassinated’ and ‘assassina-  
 5 tion’ mean the killing of a judge that is motivated  
 6 by the performance by that judge of his or her offi-  
 7 cial duties.”

8 (c) DETERMINATION OF ASSASSINATION.—Sub-  
 9 section (i) of section 7448 is amended—

10 (1) by striking the subsection heading and in-  
 11 serting the following:

12 “(i) DETERMINATIONS BY CHIEF JUDGE.—

13 “(1) DEPENDENCY AND DISABILITY.—”,

14 (2) by moving the text 2 ems to the right, and

15 (3) by adding at the end the following new  
 16 paragraph:

17 “(2) ASSASSINATION.—The chief judge shall  
 18 determine whether the killing of a judge was an as-  
 19 sassination, subject to review only by the Tax Court.  
 20 The head of any Federal agency that investigates  
 21 the killing of a judge shall provide information to  
 22 the chief judge that would assist the chief judge in  
 23 making such a determination.”

24 (d) COMPUTATION OF ANNUITIES.—Subsection (m)  
 25 of section 7448 is amended—

1           (1) by striking the subsection heading and in-  
2       serting the following:

3       “(m) COMPUTATION OF ANNUITIES.—

4           “(1) IN GENERAL.—”,

5           (2) by moving the text 2 ems to the right, and

6           (3) by adding at the end the following new  
7       paragraph:

8           “(2) ASSASSINATED JUDGES.—In the case of a  
9       judge who is assassinated and who has served less  
10      than 3 years, the annuity of the surviving spouse of  
11      such judge shall be based upon the average annual  
12      salary received by such judge for judicial service.”

13      (e) OTHER BENEFITS.—Section 7448 is amended by  
14      adding at the end the following:

15      “(u) OTHER BENEFITS.—In the case of a judge who  
16      is assassinated, an annuity shall be paid under this section  
17      notwithstanding a survivor’s eligibility for or receipt of  
18      benefits under chapter 81 of title 5, United States Code,  
19      except that the annuity for which a surviving spouse is  
20      eligible under this section shall be reduced to the extent  
21      that the total benefits paid under this section and chapter  
22      81 of that title for any year would exceed the current sal-  
23      ary for that year of the office of the judge.”

1 **SEC. 1202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
2 **JUDICIAL SURVIVOR ANNUITIES.**

3 (a) IN GENERAL.—Subsection (s) of section 7448  
4 (relating to annuities to surviving spouses and dependent  
5 children of judges) is amended to read as follows:

6 “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
7 time that an increase is made under section 8340(b) of  
8 title 5, United States Code, in annuities payable under  
9 subchapter III of chapter 83 of that title, each annuity  
10 payable from the survivors annuity fund under this section  
11 shall be increased at the same time by the same percent-  
12 age by which annuities are increased under such section  
13 8340(b).”

14 (b) EFFECTIVE DATE.—The amendment made by  
15 this section shall apply with respect to increases made  
16 under section 8340(b) of title 5, United States Code, in  
17 annuities payable under subchapter III of chapter 83 of  
18 that title, taking effect after the date of the enactment  
19 of this Act.

20 **SEC. 1203. LIFE INSURANCE COVERAGE FOR TAX COURT**  
21 **JUDGES.**

22 (a) IN GENERAL.—Section 7447 (relating to retire-  
23 ment of judges) is amended by adding at the end the fol-  
24 lowing new subsection:

25 “(j) LIFE INSURANCE COVERAGE.—For purposes of  
26 chapter 87 of title 5, United States Code (relating to life

1 insurance), any individual who is serving as a judge of  
2 the Tax Court or who is retired under this section is  
3 deemed to be an employee who is continuing in active em-  
4 ployment.”

5 (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to any individual serving as a judge  
7 of the United States Tax Court or to any retired judge  
8 of the United States Tax Court on the date of the enact-  
9 ment of this Act.

10 **SEC. 1204. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
11 **COURT JUDGES AGE 65 OR OVER.**

12 Section 7472 (relating to expenditures) is amended  
13 by inserting after the first sentence the following new sen-  
14 tence: “Notwithstanding any other provision of law, the  
15 Tax Court is authorized to pay on behalf of its judges,  
16 age 65 or over, any increase in the cost of Federal Em-  
17 ployees’ Group Life Insurance imposed after April 24,  
18 1999, including any expenses generated by such payments,  
19 as authorized by the chief judge in a manner consistent  
20 with such payments authorized by the Judicial Conference  
21 of the United States pursuant to section 604(a)(5) of title  
22 28, United States Code.”



1 **SEC. 1205. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
2 **MENT OF JUDGES' ACCRUED ANNUAL LEAVE.**

3 (a) IN GENERAL.—Section 7443 (relating to mem-  
4 bership of the Tax Court) is amended by adding at the  
5 end the following new subsection:

6 “(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED  
7 ANNUAL LEAVE.—Notwithstanding the provisions of sec-  
8 tions 5551 and 6301 of title 5, United States Code, when  
9 an individual subject to the leave system provided in chap-  
10 ter 63 of that title is appointed by the President to be  
11 a judge of the Tax Court, the individual shall be entitled  
12 to receive, upon appointment to the Tax Court, a lump-  
13 sum payment from the Tax Court of the accumulated and  
14 accrued current annual leave standing to the individual's  
15 credit as certified by the agency from which the individual  
16 resigned.”

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to any judge of the United States  
19 Tax Court who has an outstanding leave balance on the  
20 date of the enactment of this Act and to any individual  
21 appointed by the President to serve as a judge of the  
22 United States Tax Court after such date.

1 **SEC. 1206. PARTICIPATION OF TAX COURT JUDGES IN THE**  
 2 **THRIFT SAVINGS PLAN.**

3 (a) IN GENERAL.—Section 7447 (relating to retire-  
 4 ment of judges), as amended by this Act, is amended by  
 5 adding at the end the following new subsection:

6 “(k) THRIFT SAVINGS PLAN.—

7 “(1) ELECTION TO CONTRIBUTE.—

8 “(A) IN GENERAL.—A judge of the Tax  
 9 Court may elect to contribute to the Thrift Sav-  
 10 ings Fund established by section 8437 of title  
 11 5, United States Code.

12 “(B) PERIOD OF ELECTION.—An election  
 13 may be made under this paragraph only during  
 14 a period provided under section 8432(b) of title  
 15 5, United States Code, for individuals subject to  
 16 chapter 84 of such title.

17 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
 18 Except as otherwise provided in this subsection, the  
 19 provisions of subchapters III and VII of chapter 84  
 20 of title 5, United States Code, shall apply with re-  
 21 spect to a judge who makes an election under para-  
 22 graph (1).

23 “(3) SPECIAL RULES.—

24 “(A) AMOUNT CONTRIBUTED.—The  
 25 amount contributed by a judge to the Thrift  
 26 Savings Fund in any pay period shall not ex-

1       ceed the maximum percentage of such judge's  
2       basic pay for such period as allowable under  
3       section 8440f of title 5, United States Code.  
4       Basic pay does not include any retired pay paid  
5       pursuant to this section.

6               “(B) CONTRIBUTIONS FOR BENEFIT OF  
7       JUDGE.—No contributions may be made for the  
8       benefit of a judge under section 8432(c) of title  
9       5, United States Code.

10              “(C) APPLICABILITY OF SECTION 8433(b)  
11       OF TITLE 5 WHETHER OR NOT JUDGE RE-  
12       TIRES.—Section 8433(b) of title 5, United  
13       States Code, applies with respect to a judge  
14       who makes an election under paragraph (1) and  
15       who either—

16                   “(i) retires under subsection (b), or

17                   “(ii) ceases to serve as a judge of the  
18       Tax Court but does not retire under sub-  
19       section (b).

20       Retirement under subsection (b) is a separation  
21       from service for purposes of subchapters III  
22       and VII of chapter 84 of that title.

23              “(D) APPLICABILITY OF SECTION  
24       8351(b)(5) OF TITLE 5.—The provisions of sec-  
25       tion 8351(b)(5) of title 5, United States Code,

1           shall apply with respect to a judge who makes  
2           an election under paragraph (1).

3           “(E) EXCEPTION.—Notwithstanding sub-  
4           paragraph (C), if any judge retires under this  
5           section, or resigns without having met the age  
6           and service requirements set forth under sub-  
7           section (b)(2), and such judge’s nonforfeitable  
8           account balance is less than an amount that the  
9           Executive Director of the Office of Personnel  
10          Management prescribes by regulation, the Exec-  
11          utive Director shall pay the nonforfeitable ac-  
12          count balance to the participant in a single pay-  
13          ment.”

14          (b) EFFECTIVE DATE.—The amendment made by  
15          this section shall take effect on the date of the enactment  
16          of this Act, except that United States Tax Court judges  
17          may only begin to participate in the Thrift Savings Plan  
18          at the next open season beginning after such date.

19   **SEC. 1207. EXEMPTION OF TEACHING COMPENSATION OF**  
20                   **RETIRED JUDGES FROM LIMITATION ON**  
21                   **OUTSIDE EARNED INCOME.**

22          (a) IN GENERAL.—Section 7447 (relating to retire-  
23          ment of judges), as amended by this Act, is amended by  
24          adding at the end the following new subsection:

1       “(1) TEACHING COMPENSATION OF RETIRED  
 2 JUDGES.—For purposes of the limitation under section  
 3 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.  
 4 App.), any compensation for teaching approved under sec-  
 5 tion 502(a)(5) of such Act shall not be treated as outside  
 6 earned income when received by a judge of the Tax Court  
 7 who has retired under subsection (b) for teaching per-  
 8 formed during any calendar year for which such a judge  
 9 has met the requirements of subsection (c), as certified  
 10 by the chief judge of the Tax Court.”

11       (b) EFFECTIVE DATE.—The amendment made by  
 12 this section shall apply to any individual serving as a re-  
 13 tired judge of the United States Tax Court on or after  
 14 the date of the enactment of this Act.

15 **SEC. 1208. GENERAL PROVISIONS RELATING TO MAG-**  
 16 **ISTRATE JUDGES OF THE TAX COURT.**

17       (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO  
 18 MAGISTRATE JUDGE OF THE TAX COURT.—The heading  
 19 of section 7443A is amended to read as follows:

20 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

21       (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-  
 22 section (a) of section 7443A is amended to read as follows:

23       “(a) APPOINTMENT, TENURE, AND REMOVAL.—

24               “(1) APPOINTMENT.—The chief judge may,  
 25 from time to time, appoint and reappoint magistrate

1 judges of the Tax Court for a term of 8 years. The  
2 magistrate judges of the Tax Court shall proceed  
3 under such rules as may be promulgated by the Tax  
4 Court.

5 “(2) REMOVAL.—Removal of a magistrate  
6 judge of the Tax Court during the term for which  
7 he or she is appointed shall be only for incom-  
8 petency, misconduct, neglect of duty, or physical or  
9 mental disability, but the office of a magistrate  
10 judge of the Tax Court shall be terminated if the  
11 judges of the Tax Court determine that the services  
12 performed by the magistrate judge of the Tax Court  
13 are no longer needed. Removal shall not occur unless  
14 a majority of all the judges of the Tax Court concur  
15 in the order of removal. Before any order of removal  
16 shall be entered, a full specification of the charges  
17 shall be furnished to the magistrate judge of the Tax  
18 Court, and he or she shall be accorded by the judges  
19 of the Tax Court an opportunity to be heard on the  
20 charges.”

21 (c) SALARY.—Section 7443A(d) (relating to salary)  
22 is amended by striking “90” and inserting “92”.

23 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-  
24 SIONS.—Section 7443A is amended by adding at the end  
25 the following new subsection:

1       “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-  
2       SIONS.—

3               “(1) IN GENERAL.—A magistrate judge of the  
4       Tax Court appointed under this section shall be ex-  
5       empt from the provisions of subchapter I of chapter  
6       63 of title 5, United States Code.

7               “(2) TREATMENT OF UNUSED LEAVE.—

8               “(A) AFTER SERVICE AS MAGISTRATE  
9       JUDGE.—If an individual who is exempted  
10      under paragraph (1) from the subchapter re-  
11      ferred to in such paragraph was previously sub-  
12      ject to such subchapter and, without a break in  
13      service, again becomes subject to such sub-  
14      chapter on completion of the individual’s service  
15      as a magistrate judge, the unused annual leave  
16      and sick leave standing to the individual’s cred-  
17      it when such individual was exempted from this  
18      subchapter is deemed to have remained to the  
19      individual’s credit.

20              “(B) COMPUTATION OF ANNUITY.—In  
21      computing an annuity under section 8339 of  
22      title 5, United States Code, the total service of  
23      an individual specified in subparagraph (A) who  
24      retires on an immediate annuity or dies leaving  
25      a survivor or survivors entitled to an annuity

1 includes, without regard to the limitations im-  
 2 posed by subsection (f) of such section 8339,  
 3 the days of unused sick leave standing to the  
 4 individual's credit when such individual was ex-  
 5 empted from subchapter I of chapter 63 of title  
 6 5, United States Code, except that these days  
 7 will not be counted in determining average pay  
 8 or annuity eligibility.

9 “(C) LUMP SUM PAYMENT.—Any accumu-  
 10 lated and current accrued annual leave or vaca-  
 11 tion balances credited to a magistrate judge as  
 12 of the date of the enactment of this subsection  
 13 shall be paid in a lump sum at the time of sepa-  
 14 ration from service pursuant to the provisions  
 15 and restrictions set forth in section 5551 of  
 16 title 5, United States Code, and related provi-  
 17 sions referred to in such section.”

18 (e) CONFORMING AMENDMENTS.—

19 (1) The heading of subsection (b) of section  
 20 7443A is amended by striking “SPECIAL TRIAL  
 21 JUDGES” and inserting “Magistrate Judges of the  
 22 Tax Court”.

23 (2) Section 7443A(b) is amended by striking  
 24 “special trial judges of the court” and inserting  
 25 “magistrate judges of the Tax Court”.



1           (3) Subsections (c) and (d) of section 7443A  
 2           are amended by striking “special trial judge” and  
 3           inserting “magistrate judge of the Tax Court” each  
 4           place it appears.

5           (4) Section 7443A(e) is amended by striking  
 6           “special trial judges” and inserting “magistrate  
 7           judges of the Tax Court”.

8           (5) Section 7456(a) is amended by striking  
 9           “special trial judge” each place it appears and in-  
 10          serting “magistrate judge”.

11          (6) Subsection (c) of section 7471 is amend-  
 12          ed—

13                (A) by striking the subsection heading and  
 14                inserting “MAGISTRATE JUDGES OF THE TAX  
 15                COURT.—”, and

16                (B) by striking “special trial judges” and  
 17                inserting “magistrate judges”.

18 **SEC. 1209. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
 19 **PENDENT CHILDREN OF MAGISTRATE**  
 20 **JUDGES OF THE TAX COURT.**

21          (a) DEFINITIONS.—Section 7448(a) (relating to defi-  
 22          nitions), as amended by this Act, is amended by redesign-  
 23          ating paragraphs (5), (6), (7), and (8) as paragraphs (7),  
 24          (8), (9), and (10), respectively, and by inserting after  
 25          paragraph (4) the following new paragraphs:

1           “(5) The term ‘magistrate judge’ means a judi-  
 2           cial officer appointed pursuant to section 7443A, in-  
 3           cluding any individual receiving an annuity under  
 4           section 7443B, or chapters 83 or 84, as the case  
 5           may be, of title 5, United States Code, whether or  
 6           not performing judicial duties under section 7443C.

7           “(6) The term ‘magistrate judge’s salary’  
 8           means the salary of a magistrate judge received  
 9           under section 7443A(d), any amount received as an  
 10          annuity under section 7443B, or chapters 83 or 84,  
 11          as the case may be, of title 5, United States Code,  
 12          and compensation received under section 7443C.”

13          (b) ELECTION.—Subsection (b) of section 7448 (re-  
 14          lating to annuities to surviving spouses and dependent  
 15          children of judges) is amended—

16               (1) by striking the subsection heading and in-  
 17               serting the following:

18               “(b) ELECTION.—

19                       “(1) JUDGES.—”,

20                       (2) by moving the text 2 ems to the right, and

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

23               “(2) MAGISTRATE JUDGES.—Any magistrate  
 24          judge may by written election filed with the chief  
 25          judge bring himself or herself within the purview of

1       this section. Such election shall be filed not later  
2       than the later of 6 months after—

3               “(A) 6 months after the date of the enact-  
4               ment of this paragraph,

5               “(B) the date the judge takes office, or

6               “(C) the date the judge marries.”

7       (c) CONFORMING AMENDMENTS.—

8               (1) The heading of section 7448 is amended by  
9       inserting “**AND MAGISTRATE JUDGES**” after  
10      “**JUDGES**”.

11              (2) The item relating to section 7448 in the  
12      table of sections for part I of subchapter C of chap-  
13      ter 76 is amended by inserting “and magistrate  
14      judges” after “judges”.

15              (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
16      (m), (n), and (u) of section 7448, as amended by  
17      this Act, are each amended—

18               (A) by inserting “or magistrate judge”  
19               after “judge” each place it appears other than  
20               in the phrase “chief judge”, and

21               (B) by inserting “or magistrate judge’s”  
22               after “judge’s” each place it appears.

23              (4) Section 7448(c) is amended—

1 (A) in paragraph (1), by striking “Tax  
 2 Court judges” and inserting “Tax Court judi-  
 3 cial officers”,

4 (B) in paragraph (2)—

5 (i) in subparagraph (A), by inserting  
 6 “and section 7443A(d)” after “(a)(4)”,  
 7 and

8 (ii) in subparagraph (B), by striking  
 9 “subsection (a)(4)” and inserting “sub-  
 10 sections (a)(4) and (a)(6)”.

11 (5) Section 7448(g) is amended by inserting  
 12 “or section 7443B” after “section 7447” each place  
 13 it appears, and by inserting “or an annuity” after  
 14 “retired pay”.

15 (6) Section 7448(j)(1) is amended—

16 (A) in subparagraph (A), by striking  
 17 “service or retired” and inserting “service, re-  
 18 tired”, and by inserting “, or receiving any an-  
 19 nuity under section 7443B or chapters 83 or 84  
 20 of title 5, United States Code,” after “section  
 21 7447”, and

22 (B) in the last sentence, by striking “sub-  
 23 sections (a) (6) and (7)” and inserting “para-  
 24 graphs (8) and (9) of subsection (a)”.

1           (7) Section 7448(m)(1), as amended by this  
2    Act, is amended—

3                   (A) by inserting “or any annuity under  
4           section 7443B or chapters 83 or 84 of title 5,  
5           United States Code” after “7447(d)”, and

6                   (B) by inserting “or 7443B(m)(1)(B) after  
7           “7447(f)(4)”.

8           (8) Section 7448(n) is amended by inserting  
9           “his years of service pursuant to any appointment  
10          under section 7443A,” after “of the Tax Court,”.

11          (9) Section 3121(b)(5)(E) is amended by in-  
12          serting “or magistrate judge” before “of the United  
13          States Tax Court”.

14          (10) Section 210(a)(5)(E) of the Social Secu-  
15          rity Act is amended by inserting “or magistrate  
16          judge” before “of the United States Tax Court”.

17   **SEC. 1210. RETIREMENT AND ANNUITY PROGRAM.**

18          (a) RETIREMENT AND ANNUITY PROGRAM.—Part I  
19   of subchapter C of chapter 76 is amended by inserting  
20   after section 7443A the following new section:

21   **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
22                               **THE TAX COURT.**

23          “(a) RETIREMENT BASED ON YEARS OF SERVICE.—  
24   A magistrate judge of the Tax Court to whom this section  
25   applies and who retires from office after attaining the age

1 of 65 years and serving at least 14 years, whether continu-  
 2 ously or otherwise, as such magistrate judge shall, subject  
 3 to subsection (f), be entitled to receive, during the remain-  
 4 der of the magistrate judge's lifetime, an annuity equal  
 5 to the salary being received at the time the magistrate  
 6 judge leaves office.

7       “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
 8 MENT.—A magistrate judge of the Tax Court to whom  
 9 this section applies who is not reappointed following the  
 10 expiration of the term of office of such magistrate judge  
 11 and who retires upon the completion of the term shall,  
 12 subject to subsection (f), be entitled to receive, upon at-  
 13 taining the age of 65 years and during the remainder of  
 14 such magistrate judge's lifetime, an annuity equal to that  
 15 portion of the salary being received at the time the mag-  
 16 istrate judge leaves office which the aggregate number of  
 17 years of service, not to exceed 14, bears to 14, if—

18               “(1) such magistrate judge has served at least  
 19       1 full term as a magistrate judge, and

20               “(2) not earlier than 9 months before the date  
 21       on which the term of office of such magistrate judge  
 22       expires, and not later than 6 months before such  
 23       date, such magistrate judge notified the chief judge  
 24       of the Tax Court in writing that such magistrate

1 judge was willing to accept reappointment to the po-  
2 sition in which such magistrate judge was serving.

3 “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate  
4 judge of the Tax Court to whom this section applies and  
5 who retires after serving at least 8 years, whether continu-  
6 ously or otherwise, as such a magistrate judge shall, sub-  
7 ject to subsection (f), be entitled to receive, upon attaining  
8 the age of 65 years and during the remainder of the mag-  
9 istrate judge’s lifetime, an annuity equal to that portion  
10 of the salary being received at the time the magistrate  
11 judge leaves office which the aggregate number of years  
12 of service, not to exceed 14, bears to 14. Such annuity  
13 shall be reduced by  $\frac{1}{6}$  of 1 percent for each full month  
14 such magistrate judge was under the age of 65 at the time  
15 the magistrate judge left office, except that such reduction  
16 shall not exceed 20 percent.

17 “(d) RETIREMENT FOR DISABILITY.—A magistrate  
18 judge of the Tax Court to whom this section applies, who  
19 has served at least 5 years, whether continuously or other-  
20 wise, as such a magistrate judge and who retires or is re-  
21 moved from office upon the sole ground of mental or phys-  
22 ical disability shall, subject to subsection (f), be entitled  
23 to receive, during the remainder of the magistrate judge’s  
24 lifetime, an annuity equal to 40 percent of the salary being  
25 received at the time of retirement or removal or, in the

1 case of a magistrate judge who has served for at least 10  
2 years, an amount equal to that proportion of the salary  
3 being received at the time of retirement or removal which  
4 the aggregate number of years of service, not to exceed  
5 14, bears to 14.

6 “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate  
7 judge of the Tax Court who is entitled to an annuity under  
8 this section is also entitled to a cost-of-living adjustment  
9 in such annuity, calculated and payable in the same man-  
10 ner as adjustments under section 8340(b) of title 5,  
11 United States Code, except that any such annuity, as in-  
12 creased under this subsection, may not exceed the salary  
13 then payable for the position from which the magistrate  
14 judge retired or was removed.

15 “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-  
16 ITIES.—

17 “(1) IN GENERAL.—A magistrate judge of the  
18 Tax Court shall be entitled to an annuity under this  
19 section if the magistrate judge elects an annuity  
20 under this section by notifying the chief judge of the  
21 Tax Court not later than the later of—

22 “(A) 5 years after the magistrate judge of  
23 the Tax Court begins judicial service, or

24 “(B) 5 years after the date of the enact-  
25 ment of this subsection.



1 Such notice shall be given in accordance with proce-  
2 dures prescribed by the Tax Court.

3 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—  
4 A magistrate judge who elects to receive an annuity  
5 under this section shall not be entitled to receive—

6 “(A) any annuity to which such magistrate  
7 judge would otherwise have been entitled under  
8 subchapter III of chapter 83, or under chapter  
9 84 (except for subchapters III and VII), of title  
10 5, United States Code, for service performed as  
11 a magistrate or otherwise,

12 “(B) an annuity or salary in senior status  
13 or retirement under section 371 or 372 of title  
14 28, United States Code,

15 “(C) retired pay under section 7447, or

16 “(D) retired pay under section 7296 of  
17 title 38, United States Code.

18 “(3) COORDINATION WITH TITLE 5.—A mag-  
19 istrate judge of the Tax Court who elects to receive  
20 an annuity under this section—

21 “(A) shall not be subject to deductions and  
22 contributions otherwise required by section  
23 8334(a) of title 5, United States Code,

1           “(B) shall be excluded from the operation  
 2           of chapter 84 (other than subchapters III and  
 3           VII) of such title 5, and

4           “(C) is entitled to a lump-sum credit under  
 5           section 8342(a) or 8424 of such title 5, as the  
 6           case may be.

7           “(g) CALCULATION OF SERVICE.—For purposes of  
 8           calculating an annuity under this section—

9           “(1) service as a magistrate judge of the Tax  
 10          Court to whom this section applies may be credited,  
 11          and

12          “(2) each month of service shall be credited as  
 13           $\frac{1}{12}$  of a year, and the fractional part of any month  
 14          shall not be credited.

15          “(h) COVERED POSITIONS AND SERVICE.—This sec-  
 16          tion applies to any magistrate judge of the Tax Court or  
 17          special trial judge of the Tax Court appointed under this  
 18          subchapter, but only with respect to service as such a mag-  
 19          istrate judge or special trial judge after a date not earlier  
 20          than  $9\frac{1}{2}$  years before the date of the enactment of this  
 21          subsection.

22          “(i) PAYMENTS PURSUANT TO COURT ORDER.—

23          “(1) IN GENERAL.—Payments under this sec-  
 24          tion which would otherwise be made to a magistrate  
 25          judge of the Tax Court based upon his or her service

1 shall be paid (in whole or in part) by the chief judge  
2 of the Tax Court to another person if and to the ex-  
3 tent expressly provided for in the terms of any court  
4 decree of divorce, annulment, or legal separation, or  
5 the terms of any court order or court-approved prop-  
6 erty settlement agreement incident to any court de-  
7 cree of divorce, annulment, or legal separation. Any  
8 payment under this paragraph to a person bars re-  
9 covery by any other person.

10 “(2) REQUIREMENTS FOR PAYMENT.—Para-  
11 graph (1) shall apply only to payments made by the  
12 chief judge of the Tax Court after the date of re-  
13 ceipt by the chief judge of written notice of such de-  
14 cree, order, or agreement, and such additional infor-  
15 mation as the chief judge may prescribe.

16 “(3) COURT DEFINED.—For purposes of this  
17 subsection, the term ‘court’ means any court of any  
18 State, the District of Columbia, the Commonwealth  
19 of Puerto Rico, Guam, the Northern Mariana Is-  
20 lands, or the Virgin Islands, and any Indian tribal  
21 court or courts of Indian offense.

22 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
23 ITS.—

24 “(1) DEDUCTIONS.—Beginning with the next  
25 pay period after the chief judge of the Tax Court re-

1 ceives a notice under subsection (f) that a mag-  
2 istrate judge of the Tax Court has elected an annu-  
3 ity under this section, the chief judge shall deduct  
4 and withhold 1 percent of the salary of such mag-  
5 istrate judge. Amounts shall be so deducted and  
6 withheld in a manner determined by the chief judge.  
7 Amounts deducted and withheld under this sub-  
8 section shall be deposited in the Treasury of the  
9 United States to the credit of the Tax Court Judi-  
10 cial Officers' Retirement Fund. Deductions under  
11 this subsection from the salary of a magistrate judge  
12 shall terminate upon the retirement of the mag-  
13 istrate judge or upon completion of 14 years of serv-  
14 ice for which contributions under this section have  
15 been made, whether continuously or otherwise, as  
16 calculated under subsection (g), whichever occurs  
17 first.

18 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF  
19 CLAIMS.—Each magistrate judge of the Tax Court  
20 who makes an election under subsection (f) shall be  
21 deemed to consent and agree to the deductions from  
22 salary which are made under paragraph (1). Pay-  
23 ment of such salary less such deductions (and any  
24 deductions made under section 7448) is a full and  
25 complete discharge and acquittance of all claims and

1 demands for all services rendered by such magistrate  
2 judge during the period covered by such payment,  
3 except the right to those benefits to which the mag-  
4 istrate judge is entitled under this section (and sec-  
5 tion 7448).

6 “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-  
7 istrate judge of the Tax Court who makes an election  
8 under subsection (f) may deposit, for service performed  
9 before such election for which contributions may be made  
10 under this section, an amount equal to 1 percent of the  
11 salary received for that service. Credit for any period cov-  
12 ered by that service may not be allowed for purposes of  
13 an annuity under this section until a deposit under this  
14 subsection has been made for that period.

15 “(l) INDIVIDUAL RETIREMENT RECORDS.—The  
16 amounts deducted and withheld under subsection (j), and  
17 the amounts deposited under subsection (k), shall be cred-  
18 ited to individual accounts in the name of each magistrate  
19 judge of the Tax Court from whom such amounts are re-  
20 ceived, for credit to the Tax Court Judicial Officers’ Re-  
21 tirement Fund.

22 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

23 “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
24 PERFORM JUDICIAL DUTIES.—Subject to paragraph  
25 (3), any magistrate judge of the Tax Court who re-

1       tires under this section and who fails to perform ju-  
2       dicial duties required of such individual by section  
3       7443C shall forfeit all rights to an annuity under  
4       this section for a 1-year period which begins on the  
5       1st day on which such individual fails to perform  
6       such duties.

7           “(2) PERMANENT FORFEITURE OF RETIRED  
8       PAY WHERE CERTAIN NON-GOVERNMENT SERVICES  
9       PERFORMED.—Subject to paragraph (3), any mag-  
10      istrate judge of the Tax Court who retires under this  
11      section and who thereafter performs (or supervises  
12      or directs the performance of) legal or accounting  
13      services in the field of Federal taxation for the indi-  
14      vidual’s client, the individual’s employer, or any of  
15      such employer’s clients, shall forfeit all rights to an  
16      annuity under this section for all periods beginning  
17      on or after the first day on which the individual per-  
18      forms (or supervises or directs the performance of)  
19      such services. The preceding sentence shall not apply  
20      to any civil office or employment under the Govern-  
21      ment of the United States.

22           “(3) FORFEITURES NOT TO APPLY WHERE IN-  
23      DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-  
24      ITY.—

1           “(A) IN GENERAL.—If a magistrate judge  
2 of the Tax Court makes an election under this  
3 paragraph—

4           “(i) paragraphs (1) and (2) (and sec-  
5 tion 7443C) shall not apply to such mag-  
6 istrate judge beginning on the date such  
7 election takes effect, and

8           “(ii) the annuity payable under this  
9 section to such magistrate judge, for peri-  
10 ods beginning on or after the date such  
11 election takes effect, shall be equal to the  
12 annuity to which such magistrate judge is  
13 entitled on the day before such effective  
14 date.

15           “(B) ELECTION REQUIREMENTS.—An elec-  
16 tion under subparagraph (A)—

17           “(i) may be made by a magistrate  
18 judge of the Tax Court eligible for retire-  
19 ment under this section, and

20           “(ii) shall be filed with the chief judge  
21 of the Tax Court.

22           Such an election, once it takes effect, shall be  
23 irrevocable.

24           “(C) EFFECTIVE DATE OF ELECTION.—  
25 Any election under subparagraph (A) shall take

1 effect on the first day of the first month fol-  
2 lowing the month in which the election is made.

3 “(4) ACCEPTING OTHER EMPLOYMENT.—Any  
4 magistrate judge of the Tax Court who retires under  
5 this section and thereafter accepts compensation for  
6 civil office or employment under the United States  
7 Government (other than for the performance of  
8 functions as a magistrate judge of the Tax Court  
9 under section 7443C) shall forfeit all rights to an  
10 annuity under this section for the period for which  
11 such compensation is received. For purposes of this  
12 paragraph, the term ‘compensation’ includes retired  
13 pay or salary received in retired status.

14 “(n) LUMP-SUM PAYMENTS.—

15 “(1) ELIGIBILITY.—

16 “(A) IN GENERAL.—Subject to paragraph  
17 (2), an individual who serves as a magistrate  
18 judge of the Tax Court and—

19 “(i) who leaves office and is not re-  
20 appointed as a magistrate judge of the Tax  
21 Court for at least 31 consecutive days,

22 “(ii) who files an application with the  
23 chief judge of the Tax Court for payment  
24 of a lump-sum credit,



1           “(iii) is not serving as a magistrate  
2           judge of the Tax Court at the time of fil-  
3           ing of the application, and

4           “(iv) will not become eligible to re-  
5           ceive an annuity under this section within  
6           31 days after filing the application,  
7           is entitled to be paid the lump-sum credit. Pay-  
8           ment of the lump-sum credit voids all rights to  
9           an annuity under this section based on the serv-  
10          ice on which the lump-sum credit is based, until  
11          that individual resumes office as a magistrate  
12          judge of the Tax Court.

13          “(B) PAYMENT TO SURVIVORS.—Lump-  
14          sum benefits authorized by subparagraphs (C),  
15          (D), and (E) of this paragraph shall be paid to  
16          the person or persons surviving the magistrate  
17          judge of the Tax Court and alive on the date  
18          title to the payment arises, in the order of prec-  
19          edence set forth in subsection (o) of section 376  
20          of title 28, United States Code, and in accord-  
21          ance with the last 2 sentences of paragraph (1)  
22          of that subsection. For purposes of the pre-  
23          ceding sentence, the term ‘judicial official’ as  
24          used in subsection (o) of such section 376 shall  
25          be deemed to mean ‘magistrate judge of the

1 Tax Court’ and the terms ‘Administrative Of-  
2 fice of the United States Courts’ and ‘Director  
3 of the Administrative Office of the United  
4 States Courts’ shall be deemed to mean ‘chief  
5 judge of the Tax Court’.

6 “(C) PAYMENT UPON DEATH OF JUDGE  
7 BEFORE RECEIPT OF ANNUITY.—If a mag-  
8 istrate judge of the Tax Court dies before re-  
9 ceiving an annuity under this section, the lump-  
10 sum credit shall be paid.

11 “(D) PAYMENT OF ANNUITY REMAIN-  
12 DER.—If all annuity rights under this section  
13 based on the service of a deceased magistrate  
14 judge of the Tax Court terminate before the  
15 total annuity paid equals the lump-sum credit,  
16 the difference shall be paid.

17 “(E) PAYMENT UPON DEATH OF JUDGE  
18 DURING RECEIPT OF ANNUITY.—If a magistrate  
19 judge of the Tax Court who is receiving an an-  
20 nuity under this section dies, any accrued annu-  
21 ity benefits remaining unpaid shall be paid.

22 “(F) PAYMENT UPON TERMINATION.—Any  
23 accrued annuity benefits remaining unpaid on  
24 the termination, except by death, of the annuity

1 of a magistrate judge of the Tax Court shall be  
2 paid to that individual.

3 “(G) PAYMENT UPON ACCEPTING OTHER  
4 EMPLOYMENT.—Subject to paragraph (2), a  
5 magistrate judge of the Tax Court who forfeits  
6 rights to an annuity under subsection (m)(4)  
7 before the total annuity paid equals the lump-  
8 sum credit shall be entitled to be paid the dif-  
9 ference if the magistrate judge of the Tax  
10 Court files an application with the chief judge  
11 of the Tax Court for payment of that dif-  
12 ference. A payment under this subparagraph  
13 voids all rights to an annuity on which the pay-  
14 ment is based.

15 “(2) SPOUSES AND FORMER SPOUSES.—

16 “(A) IN GENERAL.—Payment of the lump-  
17 sum credit under paragraph (1)(A) or a pay-  
18 ment under paragraph (1)(G)—

19 “(i) may be made only if any current  
20 spouse and any former spouse of the mag-  
21 istrate judge of the Tax Court are notified  
22 of the magistrate judge’s application, and

23 “(ii) shall be subject to the terms of  
24 a court decree of divorce, annulment, or  
25 legal separation, or any court or court ap-

proved property settlement agreement incident to such decree, if—

“(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

“(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge’s spouse or former spouse to any portion of an annuity under subsection (i).

“(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

“(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe proce-

dures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

“(3) DEFINITION.—For purposes of this subsection, the term ‘lump-sum credit’ means the unrefunded amount consisting of—

“(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

“(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

“(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Tax Court Judicial Officers’ Retirement Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under subsection (o); but does not include interest—

“(i) if the service covered thereby aggregates 1 year or less, or

“(ii) for the fractional part of a month in the total service.

1       “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT  
2 FUND.—

3               “(1) ESTABLISHMENT.—There is established in  
4 the Treasury a fund which shall be known as the  
5 ‘Tax Court Judicial Officers’ Retirement Fund’.  
6 Amounts in the Fund are authorized to be appro-  
7 priated for the payment of annuities, refunds, and  
8 other payments under this section.

9               “(2) INVESTMENT OF FUND.—The Secretary  
10 shall invest, in interest bearing securities of the  
11 United States, such currently available portions of  
12 the Tax Court Judicial Officers’ Retirement Fund as  
13 are not immediately required for payments from the  
14 Fund. The income derived from these investments  
15 constitutes a part of the Fund.

16               “(3) UNFUNDED LIABILITY.—

17                       “(A) IN GENERAL.—There are authorized  
18 to be appropriated to the Tax Court Judicial  
19 Officers’ Retirement Fund amounts required to  
20 reduce to zero the unfunded liability of the  
21 Fund.

22                       “(B) UNFUNDED LIABILITY.—For pur-  
23 poses of subparagraph (A), the term ‘unfunded  
24 liability’ means the estimated excess, deter-  
25 mined on an annual basis in accordance with

1 the provisions of section 9503 of title 31,  
2 United States Code, of the present value of all  
3 benefits payable from the Tax Court Judicial  
4 Officers' Retirement Fund over the sum of—

5 “(i) the present value of deductions to  
6 be withheld under this section from the fu-  
7 ture basic pay of magistrate judges of the  
8 Tax Court, plus

9 “(ii) the balance in the Fund as of the  
10 date the unfunded liability is determined.

11 “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

12 “(1) ELECTION TO CONTRIBUTE.—

13 “(A) IN GENERAL.—A magistrate judge of  
14 the Tax Court who elects to receive an annuity  
15 under this section or under section 611 of the  
16 Pension Security and Transparency Act of  
17 2005 may elect to contribute an amount of such  
18 individual's basic pay to the Thrift Savings  
19 Fund established by section 8437 of title 5,  
20 United States Code.

21 “(B) PERIOD OF ELECTION.—An election  
22 may be made under this paragraph only during  
23 a period provided under section 8432(b) of title  
24 5, United States Code, for individuals subject to  
25 chapter 84 of such title.

1           “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

2       Except as otherwise provided in this subsection, the  
3       provisions of subchapters III and VII of chapter 84  
4       of title 5, United States Code, shall apply with re-  
5       spect to a magistrate judge who makes an election  
6       under paragraph (1).

7           “(3) SPECIAL RULES.—

8               “(A)       AMOUNT       CONTRIBUTED.—The  
9       amount contributed by a magistrate judge to  
10      the Thrift Savings Fund in any pay period shall  
11      not exceed the maximum percentage of such  
12      judge’s basic pay for such pay period as allow-  
13      able under section 8440f of title 5, United  
14      States Code.

15           “(B)   CONTRIBUTIONS FOR BENEFIT OF  
16      JUDGE.—No contributions may be made for the  
17      benefit of a magistrate judge under section  
18      8432(c) of title 5, United States Code.

19           “(C)   APPLICABILITY OF SECTION 8433(b)  
20      OF TITLE 5.—Section 8433(b) of title 5, United  
21      States Code, applies with respect to a mag-  
22      istrate judge who makes an election under para-  
23      graph (1) and—

24                   “(i) who retires entitled to an imme-  
25                   diate annuity under this section (including



1 a disability annuity under subsection (d) of  
2 this section) or section 611 of the Pension  
3 Security and Transparency Act of 2005,

4 “(ii) who retires before attaining age  
5 65 but is entitled, upon attaining age 65,  
6 to an annuity under this section or section  
7 611 of the Pension Security and Trans-  
8 parency Act of 2005, or

9 “(iii) who retires before becoming en-  
10 titled to an immediate annuity, or an an-  
11 nuity upon attaining age 65, under this  
12 section or section 611 of the Pension Secu-  
13 rity and Transparency Act of 2005.

14 “(D) SEPARATION FROM SERVICE.—With  
15 respect to a magistrate judge to whom this sub-  
16 section applies, retirement under this section or  
17 section 611 of the Pension Security and Trans-  
18 parency Act of 2005 is a separation from serv-  
19 ice for purposes of subchapters III and VII of  
20 chapter 84 of title 5, United States Code.

21 “(4) DEFINITIONS.—For purposes of this sub-  
22 section, the terms ‘retirement’ and ‘retire’ include  
23 removal from office under section 7443A(a)(2) on  
24 the sole ground of mental or physical disability.

1           “(5) OFFSET.—In the case of a magistrate  
2 judge who receives a distribution from the Thrift  
3 Savings Fund and who later receives an annuity  
4 under this section, that annuity shall be offset by an  
5 amount equal to the amount which represents the  
6 Government’s contribution to that person’s Thrift  
7 Savings Account, without regard to earnings attrib-  
8 utable to that amount. Where such an offset would  
9 exceed 50 percent of the annuity to be received in  
10 the first year, the offset may be divided equally over  
11 the first 2 years in which that person receives the  
12 annuity.

13           “(6) EXCEPTION.—Notwithstanding clauses (i)  
14 and (ii) of paragraph (3)(C), if any magistrate judge  
15 retires under circumstances making such magistrate  
16 judge eligible to make an election under subsection  
17 (b) of section 8433 of title 5, United States Code,  
18 and such magistrate judge’s nonforfeitable account  
19 balance is less than an amount that the Executive  
20 Director of the Office of Personnel Management pre-  
21 scribes by regulation, the Executive Director shall  
22 pay the nonforfeitable account balance to the partici-  
23 pant in a single payment.”

24           (b) CONFORMING AMENDMENT.—The table of sec-  
25 tions for part I of subchapter C of chapter 76 is amended

1 by inserting after the item relating to section 7443A the  
2 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax Court.”.

3 **SEC. 1211. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
4 **COURT.**

5 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND  
6 SECTION 7443B OF THE INTERNAL REVENUE CODE OF  
7 1986.—A magistrate judge of the United States Tax  
8 Court in active service on the date of the enactment of  
9 this Act shall, subject to subsection (b), be entitled, in lieu  
10 of the annuity otherwise provided under the amendments  
11 made by this title, to—

12 (1) an annuity under subchapter III of chapter  
13 83, or under chapter 84 (except for subchapters III  
14 and VII), of title 5, United States Code, as the case  
15 may be, for creditable service before the date on  
16 which service would begin to be credited for pur-  
17 poses of paragraph (2), and

18 (2) an annuity calculated under subsection (b)  
19 or (c) and subsection (g) of section 7443B of the In-  
20 ternal Revenue Code of 1986, as added by this Act,  
21 for any service as a magistrate judge of the United  
22 States Tax Court or special trial judge of the United  
23 States Tax Court but only with respect to service as  
24 such a magistrate judge or special trial judge after  
25 a date not earlier than 9½ years prior to the date

1 of the enactment of this Act (as specified in the elec-  
2 tion pursuant to subsection (b)) for which deduc-  
3 tions and deposits are made under subsections (j)  
4 and (k) of such section 7443B, as applicable, with-  
5 out regard to the minimum number of years of serv-  
6 ice as such a magistrate judge of the United States  
7 Tax Court, except that—

8 (A) in the case of a magistrate judge who  
9 retired with less than 8 years of service, the an-  
10 nuity under subsection (c) of such section  
11 7443B shall be equal to that proportion of the  
12 salary being received at the time the magistrate  
13 judge leaves office which the years of service  
14 bears to 14, subject to a reduction in accord-  
15 ance with subsection (c) of such section 7443B  
16 if the magistrate judge is under age 65 at the  
17 time he or she leaves office, and

18 (B) the aggregate amount of the annuity  
19 initially payable on retirement under this sub-  
20 section may not exceed the rate of pay for the  
21 magistrate judge which is in effect on the day  
22 before the retirement becomes effective.

23 (b) FILING OF NOTICE OF ELECTION.—A magistrate  
24 judge of the United States Tax Court shall be entitled to  
25 an annuity under this section only if the magistrate judge

1 files a notice of that election with the chief judge of the  
2 United States Tax Court specifying the date on which  
3 service would begin to be credited under section 7443B  
4 of the Internal Revenue Code of 1986, as added by this  
5 Act, in lieu of chapter 83 or chapter 84 of title 5, United  
6 States Code. Such notice shall be filed in accordance with  
7 such procedures as the chief judge of the United States  
8 Tax Court shall prescribe.

9 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-  
10 istrate judge of the United States Tax Court who makes  
11 an election under subsection (b) shall be entitled to a  
12 lump-sum credit under section 8342 or 8424 of title 5,  
13 United States Code, as the case may be, for any service  
14 which is covered under section 7443B of the Internal Rev-  
15 enue Code of 1986, as added by this Act, pursuant to that  
16 election, and with respect to which any contributions were  
17 made by the magistrate judge under the applicable provi-  
18 sions of title 5, United States Code.

19 (d) RECALL.—With respect to any magistrate judge  
20 of the United States Tax Court receiving an annuity under  
21 this section who is recalled to serve under section 7443C  
22 of the Internal Revenue Code of 1986, as added by this  
23 Act—

24 (1) the amount of compensation which such re-  
25 called magistrate judge receives under such section

(2) such recalled magistrate judge of the United States Tax Court may serve as a reemployed annuitant to the extent otherwise permitted under title 5, United States Code.

7 Section 7443B(m)(4) of the Internal Revenue Code of  
8 1986, as added by this Act, shall not apply with respect  
9 to service as a reemployed annuitant described in para-  
10 graph (2).

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

“(a) RECALLING OF RETIRED MAGISTRATE  
JUDGES.—Any individual who has retired pursuant to sec-  
tion 7443B or the applicable provisions of title 5, United  
States Code, upon reaching the age and service require-  
ments established therein, may at or after retirement be  
called upon by the chief judge of the Tax Court to perform  
such judicial duties with the Tax Court as may be re-  
quested of such individual for any period or periods speci-

1 fied by the chief judge; except that in the case of any such  
2 individual—

3 “(1) the aggregate of such periods in any 1 cal-  
4 endar year shall not (without such individual’s con-  
5 sent) exceed 90 calendar days, and

6 “(2) such individual shall be relieved of per-  
7 forming such duties during any period in which ill-  
8 ness or disability precludes the performance of such  
9 duties.

10 Any act, or failure to act, by an individual performing ju-  
11 dicial duties pursuant to this subsection shall have the  
12 same force and effect as if it were the act (or failure to  
13 act) of a magistrate judge of the Tax Court.

14 “(b) COMPENSATION.—For the year in which a pe-  
15 riod of recall occurs, the magistrate judge shall receive,  
16 in addition to the annuity provided under the provisions  
17 of section 7443B or under the applicable provisions of title  
18 5, United States Code, an amount equal to the difference  
19 between that annuity and the current salary of the office  
20 to which the magistrate judge is recalled. The annuity of  
21 the magistrate judge who completes that period of service,  
22 who is not recalled in a subsequent year, and who retired  
23 under section 7443B, shall be equal to the salary in effect  
24 at the end of the year in which the period of recall oc-  
25 curred for the office from which such individual retired.

1       “(c) RULEMAKING AUTHORITY.—The provisions of  
 2 this section may be implemented under such rules as may  
 3 be promulgated by the Tax Court.”

4       (b) CONFORMING AMENDMENT.—The table of sec-  
 5 tions for part I of subchapter C of chapter 76, as amended  
 6 by this Act, is amended by inserting after the item relating  
 7 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

8   **SEC. 1213. EFFECTIVE DATE.**

9       Except as otherwise provided, the amendments made  
 10 by this subtitle shall take effect on the date of the enact-  
 11 ment of this Act.

12   **TITLE XIII—OTHER PROVISIONS**  
 13       **Subtitle A—Administrative**  
 14       **Provision**

15   **SEC. 1301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

16       (a) IN GENERAL.—If this section applies to any plan  
 17 or contract amendment—

18           (1) such plan or contract shall be treated as  
 19 being operated in accordance with the terms of the  
 20 plan during the period described in subsection

21       (b)(2)(A), and

22           (2) except as provided by the Secretary of the  
 23 Treasury, such plan shall not fail to meet the re-  
 24 quirements of section 411(d)(6) of the Internal Rev-  
 25 enue Code of 1986 and section 204(g) of the Em-



1        ployee Retirement Income Security Act of 1974 by  
2        reason of such amendment.

3        (b) AMENDMENTS TO WHICH SECTION APPLIES.—

4            (1) IN GENERAL.—This section shall apply to  
5        any amendment to any plan or annuity contract  
6        which is made—

7            (A) pursuant to any amendment made by  
8        this Act or the Economic Growth and Tax Re-  
9        lief Reconciliation Act of 2001, or pursuant to  
10       any regulation issued by the Secretary of the  
11       Treasury or the Secretary of Labor under such  
12       Acts, and

13          (B) on or before the last day of the first  
14       plan year beginning on or after January 1,  
15       2007, or such later date as the Secretary of the  
16       Treasury may prescribe.

17       In the case of a governmental plan (as defined in  
18       section 414(d) of the Internal Revenue Code of  
19       1986), subparagraph (B) shall be applied by sub-  
20       stituting the date which is 2 years after the date  
21       otherwise applied under subparagraph (B).

22          (2) CONDITIONS.—This section shall not apply  
23       to any amendment unless—

24            (A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

**SEC. 1302. AUTHORITY TO THE SECRETARY OF LABOR, SECRETARY OF THE TREASURY, AND THE PENSION BENEFIT GUARANTY CORPORATION TO POSTPONE CERTAIN DEADLINES.**

The Secretary of Labor, the Secretary of the Treasury, and the Executive Director of the Pension Benefit Guaranty Corporation shall exercise their authority under section 518 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1148) and section 7508A of the Internal Revenue Code of 1986 to postpone certain dead-

1 lines by reason of the Presidentially declared disaster  
 2 areas in Louisiana, Mississippi, Alabama, Texas, or else-  
 3 where, due to the effect of Hurricane Katrina or Rita. The  
 4 Secretaries and the Executive Director of the Corporation  
 5 shall issue guidance as soon as is practicable to plan spon-  
 6 sors and participants regarding extension of deadlines and  
 7 rules applicable to these extraordinary circumstances.  
 8 Nothing in this section shall be construed to relieve any  
 9 plan sponsor from any requirement to pay benefits or  
 10 make contributions under the plan of the sponsor.

## 11 **Subtitle B—Governmental Pension** 12 **Plan Equalization**

### 13 **SEC. 1311. DEFINITION OF GOVERNMENTAL PLAN.**

14 (a) AMENDMENT TO INTERNAL REVENUE CODE OF  
 15 1986.—Section 414(d) of the Internal Revenue Code of  
 16 1986 (definition of governmental plan) is amended by add-  
 17 ing at the end the following: “The term ‘governmental  
 18 plan’ includes a plan established or maintained for its em-  
 19 ployees by an Indian tribal government (as defined in sec-  
 20 tion 7701(a)(40)), a subdivision of an Indian tribal gov-  
 21 ernment (determined in accordance with section 7871(d)),  
 22 an agency instrumentality (or subdivision) of an Indian  
 23 tribal government, or an entity established under Federal,  
 24 State, or tribal law which is wholly owned or controlled  
 25 by any of the foregoing.”

1 (b) AMENDMENT TO EMPLOYEE RETIREMENT IN-  
 2 COME SECURITY ACT OF 1974.—Section 3(32) of the Em-  
 3 ployee Retirement Income Security Act of 1974 (29  
 4 U.S.C. 1002(32)) is amended by adding at the end the  
 5 following: “The term ‘governmental plan’ includes a plan  
 6 established or maintained for its employees by an Indian  
 7 tribal government (as defined in section 7701(a)(40)), a  
 8 subdivision of an Indian tribal government (determined in  
 9 accordance with section 7871(d)), an agency instrumen-  
 10 tality (or subdivision) of an Indian tribal government, or  
 11 an entity established under Federal, State, or tribal law  
 12 that is wholly owned or controlled by any of the fore-  
 13 going.”

14 **SEC. 1312. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
 15 **CURRENT MORATORIUM ON APPLICATION OF**  
 16 **CERTAIN NONDISCRIMINATION RULES APPLI-**  
 17 **CABLE TO STATE AND LOCAL PLANS.**

18 (a) IN GENERAL.—

19 (1) Subparagraph (G) of section 401(a)(5) and  
 20 subparagraph (G) of section 401(a)(26) of the Inter-  
 21 nal Revenue Code of 1986 are each amended by  
 22 striking “section 414(d))” and all that follows and  
 23 inserting “section 414(d)).”.

24 (2) Subparagraph (G) of section 401(k)(3) of  
 25 such Code and paragraph (2) of section 1505(d) of

1 the Taxpayer Relief Act of 1997 (Public Law 105–  
 2 34; 111 Stat. 1063) are each amended by striking  
 3 “maintained by a State or local government or polit-  
 4 ical subdivision thereof (or agency or instrumentality  
 5 thereof)”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) The heading of subparagraph (G) of section  
 8 401(a)(5) of the Internal Revenue Code of 1986 is  
 9 amended by striking “STATE AND LOCAL GOVERN-  
 10 MENTAL” and inserting “GOVERNMENTAL”.

11 (2) The heading of subparagraph (G) of section  
 12 401(a)(26) of such Code is amended by striking  
 13 “EXCEPTION FOR STATE AND LOCAL” and inserting  
 14 “EXCEPTION FOR”.

15 (3) Section 401(k)(3)(G) of such Code is  
 16 amended by inserting “GOVERNMENTAL PLAN.—”  
 17 after “(G)”.

18 **SEC. 1313. CLARIFICATION THAT TRIBAL GOVERNMENTS**  
 19 **ARE SUBJECT TO THE SAME DEFINED BEN-**  
 20 **EFIT PLAN RULES AND REGULATIONS AP-**  
 21 **PLIED TO STATE AND OTHER LOCAL GOV-**  
 22 **ERNMENTS, THEIR POLICE AND FIRE-**  
 23 **FIGHTERS.**

24 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF  
 25 1986.—

(1) POLICE AND FIREFIGHTERS.—Subparagraph (H) section 415(b)(2) of the Internal Revenue Code of 1986 (defining participant) is amended—

(A) in clause (i), by striking “State or political subdivision” and inserting “State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision”; and

(B) in clause (ii)(I), by striking “State or political subdivision” each place it appears and inserting “State, Indian tribal government (as so defined), or any political subdivision”.

(2) STATE AND LOCAL GOVERNMENT PLANS.—

(A) IN GENERAL.—Subparagraph (A) of section 415(b)(10) of such Code (relating to limitation to equal accrued benefit) is amended—

(i) by inserting “, Indian tribal government (as defined in section 7701(a)(40)),” after “State”;

(ii) by inserting “any” before “political subdivision”; and

(iii) by inserting “any of” before “the foregoing”.

(B) CONFORMING AMENDMENT.—The heading of paragraph (1) of section 415(b) of

1           such Code is amended by striking “SPECIAL  
2           RULE FOR STATE AND” and inserting “SPECIAL  
3           RULE FOR STATE, INDIAN TRIBAL, AND”.

4           (3) GOVERNMENT PICK UP CONTRIBUTIONS.—  
5           Paragraph (2) of section 414(h) of such Code (relat-  
6           ing to designation by units of government) is amend-  
7           ed by striking “State or political subdivision” and  
8           inserting “State, Indian tribal government (as de-  
9           fined in section 7701(a)(40)), or any political sub-  
10          division”.

11          (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-  
12          COME SECURITY ACT OF 1974.—Section 4021(b) of the  
13          Employee Retirement Income Security Act of 1974 (29  
14          U.S.C. 1321(b)) is amended—

15               (1) in paragraph (12), by striking “or” at the  
16          end;

17               (2) in paragraph (13), by striking “plan.” and  
18          inserting “plan; or”; and

19               (3) by adding at the end the following:

20               “(14) established and maintained for its em-  
21          ployees by an Indian tribal government (as defined  
22          in section 7701(a)(40) of the Internal Revenue Code  
23          of 1986), a subdivision of an Indian tribal govern-  
24          ment (determined in accordance with section  
25          7871(d) of such Code), an agency or instrumentality

1 of an Indian tribal government or subdivision there-  
 2 of, or an entity established under Federal, State, or  
 3 tribal law that is wholly owned or controlled by any  
 4 of the foregoing.”.

5 **SEC. 1314. EFFECTIVE DATE.**

6 The amendments made by this subtitle shall apply to  
 7 any year beginning before, on, or after the date of the  
 8 enactment of this Act.

9 **Subtitle C—Miscellaneous**  
 10 **Provisions**

11 **SEC. 1321. TRANSFER OF EXCESS FUNDS FROM BLACK**  
 12 **LUNG DISABILITY TRUSTS TO UNITED MINE**  
 13 **WORKERS OF AMERICA COMBINED BENEFIT**  
 14 **FUND.**

15 (a) IN GENERAL.—So much of section 501(c)(21)(C)  
 16 of the Internal Revenue Code of 1986 (relating to black  
 17 lung disability trusts) as precedes the last sentence is  
 18 amended to read as follows:

19 “(C) Payments described in subparagraph  
 20 (A)(i)(IV) may be made from such trust during  
 21 a taxable year only to the extent that the aggre-  
 22 gate amount of such payments during such tax-  
 23 able year does not exceed the excess (if any), as  
 24 of the close of the preceding taxable year, of—



1 “(i) the fair market value of the as-  
2 sets of the trust, over

3 “(ii) 110 percent of the present value  
4 of the liability described in subparagraph  
5 (A)(i)(I) of such person.”

6 (b) TRANSFER.—Section 9705 of such Code (relating  
7 to transfer) is amended by adding at the end the following  
8 new subsection:

9 “(c) TRANSFER FROM BLACK LUNG DISABILITY  
10 TRUSTS.—

11 “(1) IN GENERAL.—The Secretary shall trans-  
12 fer each fiscal year to the Fund from the general  
13 fund of the Treasury an amount which the Secretary  
14 estimates to be the additional amounts received in  
15 the Treasury for that fiscal year by reason of the  
16 amendment made by section 1101(a) of the Pension  
17 Security and Transparency Act of 2005. The Sec-  
18 retary shall adjust the amount transferred for any  
19 year to the extent necessary to correct errors in any  
20 estimate for any prior year.

21 “(2) USE OF FUNDS.—Any amount transferred  
22 to the Combined Fund under paragraph (1) shall be  
23 used to proportionately reduce the unassigned bene-  
24 ficiary premium under section 9704(a)(3) of each

1 assigned operator for any plan year beginning after  
2 December 31, 2002.”

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2002.

6 **SEC. 1322. TREATMENT OF DEATH BENEFITS FROM COR-**  
7 **PORATE-OWNED LIFE INSURANCE.**

8 (a) IN GENERAL.—Section 101 of the Internal Rev-  
9 enue Code of 1986 (relating to certain death benefits) is  
10 amended by adding at the end the following new sub-  
11 section:

12 “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED  
13 LIFE INSURANCE CONTRACTS.—

14 “(1) GENERAL RULE.—In the case of an em-  
15 ployer-owned life insurance contract, the amount ex-  
16 cluded from gross income of an applicable policy-  
17 holder by reason of paragraph (1) of subsection (a)  
18 shall not exceed an amount equal to the sum of the  
19 premiums and other amounts paid by the policy-  
20 holder for the contract.

21 “(2) EXCEPTIONS.—In the case of an employer-  
22 owned life insurance contract with respect to which  
23 the notice and consent requirements of paragraph  
24 (4) are met, paragraph (1) shall not apply to any of  
25 the following:

1           “(A) EXCEPTIONS BASED ON INSURED’S  
 2 STATUS.—Any amount received by reason of  
 3 the death of an insured who, with respect to an  
 4 applicable policyholder—

5           “(i) was an employee at any time dur-  
 6 ing the 12-month period before the in-  
 7 sured’s death, or

8           “(ii) is, at the time the contract is  
 9 issued—

10           “(I) a director,

11           “(II) a highly compensated em-  
 12 ployee within the meaning of section  
 13 414(q) (without regard to paragraph  
 14 (1)(B)(ii) thereof), or

15           “(III) a highly compensated indi-  
 16 vidual within the meaning of section  
 17 105(h)(5), except that ‘35 percent’  
 18 shall be substituted for ‘25 percent’ in  
 19 subparagraph (C) thereof.

20           “(B) EXCEPTION FOR AMOUNTS PAID TO  
 21 INSURED’S HEIRS.—Any amount received by  
 22 reason of the death of an insured to the ex-  
 23 tent—

24           “(i) the amount is paid to a member  
 25 of the family (within the meaning of sec-

tion 267(c)(4)) of the insured, any individual who is the designated beneficiary of the insured under the contract (other than the applicable policyholder), a trust established for the benefit of any such member of the family or designated beneficiary, or the estate of the insured, or

“(ii) the amount is used to purchase an equity (or capital or profits) interest in the applicable policyholder from any person described in clause (i).

“(3) EMPLOYER-OWNED LIFE INSURANCE CONTRACT.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘employer-owned life insurance contract’ means a life insurance contract which—

“(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

“(ii) covers the life of an insured who is an employee with respect to the trade or

1 business of the applicable policyholder on  
 2 the date the contract is issued.

3 For purposes of the preceding sentence, if cov-  
 4 erage for each insured under a master contract  
 5 is treated as a separate contract for purposes of  
 6 sections 817(h), 7702, and 7702A, coverage for  
 7 each such insured shall be treated as a separate  
 8 contract.

9 “(B) APPLICABLE POLICYHOLDER.—For  
 10 purposes of this subsection—

11 “(i) IN GENERAL.—The term ‘applica-  
 12 ble policyholder’ means, with respect to  
 13 any employer-owned life insurance con-  
 14 tract, the person described in subpara-  
 15 graph (A)(i) which owns the contract.

16 “(ii) RELATED PERSONS.—The term  
 17 ‘applicable policyholder’ includes any per-  
 18 son which—

19 “(I) bears a relationship to the  
 20 person described in clause (i) which is  
 21 specified in section 267(b) or  
 22 707(b)(1), or

23 “(II) is engaged in trades or  
 24 businesses with such person which are  
 25 under common control (within the

1 meaning of subsection (a) or (b) of  
2 section 52).

3 “(4) NOTICE AND CONSENT REQUIREMENTS.—

4 The notice and consent requirements of this para-  
5 graph are met if, before the issuance of the contract,  
6 the employee—

7 “(A) is notified in writing that the applica-  
8 ble policyholder intends to insure the employee’s  
9 life and the maximum face amount for which  
10 the employee could be insured at the time the  
11 contract was issued,

12 “(B) provides written consent to being in-  
13 sured under the contract and that such cov-  
14 erage may continue after the insured terminates  
15 employment, and

16 “(C) is informed in writing that an appli-  
17 cable policyholder will be a beneficiary of any  
18 proceeds payable upon the death of the em-  
19 ployee.

20 “(5) DEFINITIONS.—For purposes of this sub-  
21 section—

22 “(A) EMPLOYEE.—The term ‘employee’ in-  
23 cludes an officer, director, and highly com-  
24 pensated employee (within the meaning of sec-  
25 tion 414(q)).

1           “(B) INSURED.—The term ‘insured’  
 2           means, with respect to an employer-owned life  
 3           insurance contract, an individual covered by the  
 4           contract who is a United States citizen or resi-  
 5           dent. In the case of a contract covering the  
 6           joint lives of 2 individuals, references to an in-  
 7           sured include both of the individuals.”.

8           (b) REPORTING REQUIREMENTS.—Subpart A of part  
 9           III of subchapter A of chapter 61 of the Internal Revenue  
 10          Code of 1986 (relating to information concerning persons  
 11          subject to special provisions) is amended by inserting after  
 12          section 6039H the following new section:

13       **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**  
 14                       **EMPLOYER-OWNED LIFE INSURANCE CON-**  
 15                       **TRACTS.**

16          “(a) IN GENERAL.—Every applicable policyholder  
 17          owning 1 or more employer-owned life insurance contracts  
 18          issued after the date of the enactment of this section shall  
 19          file a return (at such time and in such manner as the  
 20          Secretary shall by regulations prescribe) showing for each  
 21          year such contracts are owned—

22               “(1) the number of employees of the applicable  
 23          policyholder at the end of the year,

24               “(2) the number of such employees insured  
 25          under such contracts at the end of the year,

1           “(3) the total amount of insurance in force at  
2           the end of the year under such contracts,

3           “(4) the name, address, and taxpayer identifica-  
4           tion number of the applicable policyholder and the  
5           type of business in which the policyholder is en-  
6           gaged, and

7           “(5) that the applicable policyholder has a valid  
8           consent for each insured employee (or, if all such  
9           consents are not obtained, the number of insured  
10          employees for whom such consent was not obtained).

11          “(b) RECORDKEEPING REQUIREMENT.—Each appli-  
12          cable policyholder owning 1 or more employer-owned life  
13          insurance contracts during any year shall keep such  
14          records as may be necessary for purposes of determining  
15          whether the requirements of this section and section  
16          101(j) are met.

17          “(c) DEFINITIONS.—Any term used in this section  
18          which is used in section 101(j) shall have the same mean-  
19          ing given such term by section 101(j).”.

20          (c) CONFORMING AMENDMENTS.—

21                 (1) Paragraph (1) of section 101(a) of the In-  
22                 ternal Revenue Code of 1986 is amended by striking  
23                 “and subsection (f)” and inserting “subsection (f),  
24                 and subsection (j)”.



1           (2) The table of sections for subpart A of part  
2           III of subchapter A of chapter 61 of such Code is  
3           amended by inserting after the item relating to sec-  
4           tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-owned life insurance contracts.”.

5           (d) EFFECTIVE DATE.—The amendments made by  
6           this section shall apply to life insurance contracts issued  
7           after the date of the enactment of this Act, except for a  
8           contract issued after such date pursuant to an exchange  
9           described in section 1035 of the Internal Revenue Code  
10          of 1986 for a contract issued on or prior to that date.  
11          For purposes of the preceding sentence, any material in-  
12          crease in the death benefit or other material change shall  
13          cause the contract to be treated as a new contract except  
14          that, in the case of a master contract (within the meaning  
15          of section 264(f)(4)(E) of such Code), the addition of cov-  
16          ered lives shall be treated as a new contract only with re-  
17          spect to such additional covered lives.

Calendar No. 231

109TH CONGRESS  
1ST Session  
**S. 1783**

**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.

SEPTEMBER 28, 2005

Read twice and ordered to be placed on the calendar