

## PENSION PROTECTION ACT OF 2005

DECEMBER 6, 2005.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means,  
submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

[To accompany H.R. 2830]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2830) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

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

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

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

Sec. 1. Short title and table of contents.

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

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

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

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

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

Subtitle C—Other provisions

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

TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

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

- Sec. 201. Funding rules for multiemployer defined benefit plans.  
 Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.  
 Sec. 203. Measures to forestall insolvency of multiemployer plans.  
 Sec. 204. Withdrawal liability reforms.  
 Sec. 205. Removal of restrictions with respect to procedures applicable to disputes involving withdrawal liability.

Subtitle B—Amendments to Internal Revenue Code of 1986

- Sec. 211. Funding rules for multiemployer defined benefit plans.  
 Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status.  
 Sec. 213. Measures to forestall insolvency of multiemployer plans.

TITLE III—OTHER PROVISIONS

- Sec. 301. Interest rate for 2006 funding requirements.  
 Sec. 302. Interest rate assumption for determination of lump sum distributions.  
 Sec. 303. Interest rate assumption for applying benefit limitations to lump sum distributions.  
 Sec. 304. Distributions during working retirement.  
 Sec. 305. Other amendments relating to prohibited transactions.  
 Sec. 306. Correction period for certain transactions involving securities and commodities.  
 Sec. 307. Government Accountability Office pension funding report.

TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.

TITLE V—DISCLOSURE

- Sec. 501. Defined benefit plan funding notices.  
 Sec. 502. Additional disclosure requirements.  
 Sec. 503. Section 4010 filings with the PBGC.

TITLE VI—INVESTMENT ADVICE

- Sec. 601. Amendments to Employee Retirement Income Security Act of 1974 providing prohibited transaction exemption for provision of investment advice.  
 Sec. 602. Amendments to Internal Revenue Code of 1986 providing prohibited transaction exemption for provision of investment advice.

TITLE VII—BENEFIT ACCRUAL STANDARDS

- Sec. 701. Improvements in benefit accrual standards.

TITLE VIII—DEDUCTION LIMITATIONS

- Sec. 801. Increase in deduction limits.  
 Sec. 802. Updating deduction rules for combination of plans.

TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED CONTRIBUTION PLANS

- Sec. 901. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.  
 Sec. 902. Saver's credit.  
 Sec. 903. Increasing participation through automatic contribution arrangements.  
 Sec. 904. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.  
 Sec. 905. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.  
 Sec. 906. Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to individual retirement plans.  
 Sec. 907. Direct payment of tax refunds to individual retirement plans.  
 Sec. 908. IRA eligibility for the disabled.  
 Sec. 909. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.

TITLE X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

- Sec. 1001. Treatment of annuity and life insurance contracts with a long-term care insurance feature.  
 Sec. 1002. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.  
 Sec. 1003. Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.

## **TITLE I—REFORM OF FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PEN- SION PLANS**

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

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

[See section 101 of the bill as reported by the Committee on Education and the Workforce.]

**SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

[See section 102 of the bill as reported by the Committee on Education and the Workforce.]

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

[See section 103 of the bill as reported by the Committee on Education and the Workforce.]

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

[See section 104 of the bill as reported by the Committee on Education and the Workforce.]

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

**SEC. 111. MINIMUM FUNDING STANDARDS.**

(a) **NEW MINIMUM FUNDING STANDARDS.**—Section 412 of the Internal Revenue Code of 1986 (relating to minimum funding standards) is amended to read as follows:

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

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

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

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

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

**“(B) in the case of a money purchase plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and**

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

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

**“(1) IN GENERAL.—**Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j)) shall be paid by the employer responsible for making contributions to or under the plan.

**“(2) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—**In the case of a defined benefit plan which is not a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

**“(c) VARIANCE FROM MINIMUM FUNDING STANDARDS.—**

**“(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—**

**“(A) IN GENERAL.—**If—

**“(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan is) unable to satisfy the minimum funding standard for a plan year**

without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

“(ii) application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

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

“(i) in the case of a defined benefit plan which is not a multiemployer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e), and

“(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

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

“(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

“(A) the employer is operating at an economic loss,

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

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

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

“(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section and part III of this subchapter, the term ‘waived funding deficiency’ means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

“(4) SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.—

“(A) SECURITY MAY BE REQUIRED.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is not a multiemployer plan to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

“(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor’s controlled group (within the meaning of section 4001(a)(14) of such Act).

“(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary 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 section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

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

“(C) EXCEPTION FOR CERTAIN WAIVERS.—

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

“(I) the aggregate unpaid minimum required contribution (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, and

“(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),

is less than \$1,000,000.

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

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

“(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2½ MONTHS AFTER CLOSE OF YEAR.—In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

“(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a defined benefit plan which is not a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

“(i) with respect to such employer, and

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

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

“(6) ADVANCE NOTICE.—

“(A) IN GENERAL.—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

“(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

“(7) RESTRICTION ON PLAN AMENDMENTS.—

“(A) IN GENERAL.—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

“(B) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

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

“(ii) only repeals an amendment described in subsection (d)(2), or

“(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1.

“(d) MISCELLANEOUS RULES.—

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

“(2) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

“(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

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

“(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances, shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

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

“(e) PLANS TO WHICH SECTION APPLIES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), this section applies to a plan if, for any plan year beginning after December 31, 2006—

“(A) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

“(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

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

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

“(B) any insurance contract plan described in paragraph (3),

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

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

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

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

No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

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

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

“(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

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

“(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

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

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

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same

characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.”

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

**SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

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

**“PART III—MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS**

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

“(a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term ‘minimum required contribution’ means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—

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

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

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

“(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

“(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or

“(3) in any other case, the target normal cost of the plan for the plan year.

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

“(c) SHORTFALL AMORTIZATION CHARGE.—

“(1) IN GENERAL.—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

“(2) SHORTFALL AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

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

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

“(B) the sum of—

“(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

“(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

“(4) FUNDING SHORTFALL.—

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

- “(i) the funding target of the plan for the plan year, over
- “(ii) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

“(B) TRANSITION RULE.—

“(i) IN GENERAL.—For purposes of paragraph (3), in the case of a non-deficit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting for the amount described in subparagraph (A)(i) the applicable percentage of the funding target of the plan for the plan year determined under the following table:

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

“(ii) NON-DEFICIT REDUCTION PLAN.—For purposes of clause (i), the term ‘non-deficit reduction plan’ means any plan—

- “(I) to which section 412 (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2006, and
- “(II) to which subsection (l) of such section (as so in effect) did not apply for such plan year.

“(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

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

“(1) FUNDING TARGET.—Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

“(2) FUNDING TARGET ATTAINMENT PERCENTAGE.—The ‘funding target attainment percentage’ of a plan for a plan year is the ratio (expressed as a percentage) which—

- “(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to
- “(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

“(e) WAIVER AMORTIZATION CHARGE.—

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

“(2) WAIVER AMORTIZATION INSTALLMENT.—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortiza-



tion for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

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

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

“(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

“(f) REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—

“(1) ELECTION TO MAINTAIN BALANCES.—

“(A) PRE-FUNDING BALANCE.—The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a pre-funding balance.

“(B) FUNDING STANDARD CARRYOVER BALANCE.—

“(i) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

“(ii) PLANS MAINTAINING FUNDING STANDARD ACCOUNT IN 2006.—A plan is described in this clause if the plan—

“(I) was in effect for a plan year beginning in 2006, and

“(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

“(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

“(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

“(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

“(C) may be reduced at any time, pursuant to an election under paragraph (5).

“(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

“(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

“(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

“(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

“(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), 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.

“(4) EFFECT OF BALANCES ON AMOUNTS TREATED AS VALUE OF PLAN ASSETS.—In the case of any plan maintaining a pre-funding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

“(A) APPLICABILITY OF SHORTFALL AMORTIZATION BASE.—For purposes of subsection (c)(3), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance in reducing the minimum required contribution is in effect for the plan year.

“(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.—For purposes of subsections (a), (c)(4)(A)(ii), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.

“(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.

“(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.—

“(A) IN GENERAL.—The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

“(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.

“(6) PRE-FUNDING BALANCE.—

“(A) IN GENERAL.—A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

“(B) INCREASES.—As of the valuation date for each plan year beginning after 2007, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

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

“(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).

“(C) DECREASES.—As of the valuation date for each plan year after 2007, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—

“(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

“(ii) any reduction in such balance elected under paragraph (5).

“(7) FUNDING STANDARD CARRYOVER BALANCE.—

“(A) IN GENERAL.—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

“(B) BEGINNING BALANCE.—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

“(C) DECREASES.—As of the valuation date for each plan year after 2007, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

“(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

“(ii) any reduction in such balance elected under paragraph (5).

“(8) ADJUSTMENTS TO BALANCES.—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (be-

fore applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

“(9) ELECTIONS.—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

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

“(1) TIMING OF DETERMINATIONS.—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

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

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

“(B) EXCEPTION FOR SMALL PLANS.—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer’s controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

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

“(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

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

“(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.—For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—

“(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 3 most recent plan years (including the current plan year), and

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

“(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.—For purposes of this section—

“(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.—For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2007 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.

“(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.—For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the current plan year for the period beginning when such payment was made and ending on the valuation date of the plan.

“(5) ACCOUNTING FOR PLAN LIABILITIES.—For purposes of this section—

“(A) LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including

any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

“(B) ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

“(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

“(2) INTEREST RATES.—

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

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

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

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

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

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

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

“(ii) SECOND SEGMENT RATE.—The term ‘second segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

“(iii) THIRD SEGMENT RATE.—The term ‘third segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

“(D) CORPORATE BOND YIELD CURVE.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘corporate bond yield curve’ means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

“(ii) 3-YEAR WEIGHTED AVERAGE.—The term ‘3-year weighted average’ means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

“(E) APPLICABLE MONTH.—For purposes of this paragraph, the term ‘applicable month’ means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the

plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

“(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(A)(iv)(I)) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan’s projection of future interest rates.

“(G) TRANSITION RULE.—

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

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

“(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

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

“(iii) NEW PLANS INELIGIBLE.—Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

“(3) MORTALITY TABLE.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), the mortality table used in determining any present value or making any computation under this section shall be the RP-2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B).

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

“(C) SUBSTITUTE MORTALITY TABLE.—

“(i) IN GENERAL.—Upon request by the plan sponsor and approval by the Secretary for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

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

“(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

“(II) such table is significantly different from the table described in subparagraph (A).

“(iii) DEADLINE FOR DISPOSITION OF APPLICATION.—Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (ii).

“(D) TRANSITION RULE.—Under regulations of the Secretary, 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 412(l)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year. The preceding sentence shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

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

“(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, 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 plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

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

“(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

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

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

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

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

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

“(B) SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).

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

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

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

“(2) TARGET NORMAL COST OF AT-RISK PLANS.—In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—

“(A) the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus

“(B) the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).

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

“(4) TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET 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 this paragraph, the ‘transition percentage’ for a plan year is the product derived by multiplying—
  - “(i) 20 percent, by
  - “(ii) the number of plan years during the period described in subparagraph (A).
- “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.—
  - “(1) IN GENERAL.—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.
  - “(2) INTEREST.—Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.
  - “(3) ACCELERATED QUARTERLY CONTRIBUTION SCHEDULE FOR UNDERFUNDED PLANS.—
    - “(A) INTEREST PENALTY FOR FAILURE TO MEET ACCELERATED QUARTERLY PAYMENT SCHEDULE.—In any case in which the plan has a funding shortfall for the preceding plan year, if the required installment is not paid in full, then the minimum required contribution for the plan year (as increased under paragraph (2)) shall be further increased by an amount equal to the interest on the amount of the underpayment for the period of the underpayment, using an interest rate equal to the excess of—
      - “(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), over
      - “(ii) the effective rate of interest for the plan for the plan year.
    - “(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—
      - “(i) AMOUNT.—The amount of the underpayment shall be the excess of—
        - “(I) the required installment, over
        - “(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.
      - “(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.
      - “(iii) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.
    - “(C) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this paragraph—
      - “(i) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.
      - “(ii) TIME FOR PAYMENT OF INSTALLMENTS.—The due dates for required installments are set forth in the following table:

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

- “(D) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this paragraph—
  - “(i) IN GENERAL.—The amount of any required installment shall be 25 percent of the required annual payment.
  - “(ii) REQUIRED ANNUAL PAYMENT.—For purposes of clause (i), the term ‘required annual payment’ means the lesser of—
    - “(I) 90 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the plan year under this section, or

“(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the preceding plan year.

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

“(E) FISCAL YEARS AND SHORT YEARS.—

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

“(ii) SHORT PLAN YEAR.—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

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

“(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether 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 (f)(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 (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

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

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

“(I) the plan’s funding target attainment percentage for the plan year, and

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



“(v) LIQUID ASSETS.—The term ‘liquid assets’ means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

“(vi) QUARTER.—The term ‘quarter’ means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

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

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

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

“(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

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

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

“(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

“(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

“(4) NOTICE OF FAILURE; LIEN.—

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

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

“(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

“(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

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

“(A) CONTRIBUTION PAYMENT.—The term ‘contribution payment’ means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

“(B) DUE DATE; REQUIRED INSTALLMENT.—The terms ‘due date’ and ‘required installment’ have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430.

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2006.

**SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.**

(a) PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

(1) IN GENERAL.—Part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (relating to deferred compensation, etc.) is amended—

(A) by striking the heading and inserting the following:

**“PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS**

“Subpart A. Minimum funding standards for pension plans.

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

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

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

(B) by adding at the end the following new subpart:

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

“Sec. 436. Prohibition of shutdown benefits and other unpredictable contingent event benefits under single-employer plans.

**“SEC. 436. PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.**

“(a) IN GENERAL.—No pension plan which is defined benefit plan (other than a multiemployer plan) may provide benefits to which participants are entitled solely by reason of the occurrence of—

“(1) a plant shutdown, or

“(2) any other unpredictable contingent event.

“(b) UNPREDICTABLE CONTINGENT EVENT.—For purposes of this subsection, the term ‘unpredictable contingent event’ means an event other than—

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

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

(2) CLERICAL AMENDMENT.—The table of parts for suchchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

“PART III RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS”.

(b) OTHER LIMITS ON BENEFITS AND BENEFIT ACCRUALS.—

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

**“SEC. 437. FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

“(a) LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.—

“(1) IN GENERAL.—No amendment to a defined benefit plan (other than a multiemployer plan) which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

“(A) less than 80 percent, or

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

For purposes of this subparagraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation shall be treated as effected by plan amendment.

“(2) EXEMPTION.—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

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

“(B) in the case of paragraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

“(b) FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.—

“(1) IN GENERAL.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any payment described in section 401(a)(32)(B).

“(2) EXCEPTION.—Paragraph (1) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

“(c) LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for a plan year is less than 60 percent, all future benefit accruals under the plan shall cease as of such date.

“(d) NEW PLANS.—Subsections (a) and (c) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

“(e) PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUNDING STATUS.—

“(1) PRESUMPTION OF CONTINUED UNDERFUNDING.—In any case in which a benefit limitation under subsection (a), (b), or (c) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

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

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

“(A) a benefit limitation under subsection (a), (b), or (c) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

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

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

“(f) RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.—In any case in which a prohibition under subsection (b) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under subsection (c) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such

benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of subsection (e).

“(g) FUNDING TARGET ATTAINMENT PERCENTAGE.—

“(1) IN GENERAL.—For purposes of this section, the term ‘funding target attainment percentage’ means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

“(A) the value of plan assets for the plan year (as determined under section 430(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 430(f)), bears to

“(B) the funding target of the plan for the plan year (as determined under section 430(d)(1), but without regard to section 430(i)(1)).

“(2) APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this paragraph and without regard to the reduction under paragraph (1)(A) for the pre-funding balance and the funding standard carryover balance), paragraph (1) shall be applied without regard to such reduction.”.

(2) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by adding at the end the following new item:

“Sec. 437. Funding-based limits on benefits and benefit accruals under single-employer plans.”.

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

(d) EFFECTIVE DATE.—

(1) SHUTDOWN BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (a) shall apply with respect to plant shutdowns, or other unpredictable contingent events, occurring after December 31, 2006.

(2) OTHER BENEFITS.—Except as provided in paragraph (3), the amendments made by subsection (b) shall apply with respect to plan years beginning after December 31, 2006.

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

(A) the later of—

(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard 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 subparagraph) apply, or

(B) January 1, 2009.

For purposes of clause (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 subsection shall not be treated as a termination of such collective bargaining agreement.

(e) SPECIAL RULE FOR 2007.—For purposes of applying subsection (e) of section 437 of such Code (as added by this section) to current plan years (within the meaning of such subsection) beginning in 2007, the modified funded current liability percentage of the plan for the preceding year shall be substituted for the funding target attainment percentage of the plan for the preceding year. For purposes of the preceding sentence, the term “modified funded current liability percentage” means the funded current liability percentage (as defined in section 412(1)(8) of such Code), reduced as described in subparagraph (E) thereof in the case of a plan with a funded current liability percentage (as so defined and before such reduction) which is less than 100 percent.

#### SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS RELATED TO QUALIFICATION REQUIREMENTS.—

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

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

- (2) Section 401(a)(32) of such Code is amended—
- (A) in subparagraph (A), by striking “412(m)(5)” each place it appears and inserting “430(j)(4)”, and
- (B) in subparagraph (C), by striking “section 412(m) by reason of paragraph (5)(A) thereof” and inserting “section 430(j)(3) by reason of section 430(j)(4)(A)”.
- (3) Section 401(a)(33) of such Code is amended—
- (A) in subparagraph (B)(i), by striking “funded current liability percentage (as defined in section 412(l)(8))” and inserting “funding target attainment percentage (as defined in section 430(d)(2))”,
- (B) in subparagraph (B)(iii), by striking “subsection 412(c)(8)” and inserting “section 412(d)(2)”, and
- (C) in subparagraph (D), by striking “section 412(c)(11) (without regard to subparagraph (B) thereof)” and inserting “section 412(b) (without regard to paragraph (2) thereof)”.
- (b) VESTING RULES.—Section 411 of such Code is amended—
- (1) by striking “section 412(c)(8)” in subsection (a)(3)(C) and inserting “section 412(d)(2)”,
- (2) in subsection (b)(1)(F)—
- (A) by striking “paragraphs (2) and (3) of section 412(i)” in clause (ii) and inserting “subparagraphs (B) and (C) of section 412(e)(3)”, and
- (B) by striking “paragraphs (4), (5), and (6) of section 412(i)” and inserting “subparagraphs (D), (E), and (F) of section 412(e)(3)”, and
- (3) by striking “section 412(c)(8)” in subsection (d)(6)(A) and inserting “section 412(d)(2)”.
- (c) MERGERS AND CONSOLIDATIONS OF PLANS.—Subclause (I) of section 414(l)(2)(B)(i) of such Code is amended to read as follows:
- “(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the target liability amount and target normal cost determined under section 430 in the case of any other plan), over”.
- (d) TRANSFER OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.—
- (1) Section 420(e)(2) of such Code is amended to read as follows:
- “(2) EXCESS PENSION ASSETS.—The term ‘excess pension assets’ means the excess (if any) of—
- “(A) the lesser of—
- “(i) the fair market value of the plan’s assets (reduced by the pre-funding balance and the funding standard carryover balance, as determined under section 430(f)), or
- “(ii) the value of plan assets as determined under section 430(g)(3) (reduced by the pre-funding balance and the funding standard carryover balance, as determined under section 430(f)), over
- “(B) 125 percent of the sum of the target liability amount and the target normal cost determined under section 430 for such plan year.”.
- (2) Section 420(e)(4) of such Code is amended to read as follows:
- “(4) COORDINATION WITH SECTION 430.—In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.”.
- (e) EXCISE TAXES.—
- (1) IN GENERAL.—Subsections (a) and (b) of section 4971 of such Code are amended to read as follows:
- “(a) INITIAL TAX.—If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—
- “(1) in the case of a defined benefit plan which is not a multiemployer plan, 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and
- “(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.
- “(b) ADDITIONAL TAX.—If—
- “(1) a tax is imposed under subsection (a)(1) on any unpaid required minimum contribution and such amount remains unpaid as of the close of the taxable period, or
- “(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.”.

(2) Section 4971(c) of such Code is amended—

(A) by striking “the last two sentences of section 412(a)” in paragraph (1) and inserting “section 431”, and

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

“(4) UNPAID MINIMUM REQUIRED CONTRIBUTION.—

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

“(B) ORDERING RULE.—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years in the order in which such contributions became due and then to the minimum required contribution under section 430 for the plan year.”.

(3) Section 4971(e)(1) of such Code is amended by striking “section 412(b)(3)(A)” and inserting “section 412(a)(2)”.

(4) Section 4971(f)(1) of such Code is amended—

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

(B) by striking “section 412(m)” and inserting “section 430(j)(3)”.

(5) Section 4972(c)(7) of such Code is amended by striking “except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)” and inserting “except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))”.

(f) REPORTING REQUIREMENTS.—Section 6059(b) of such Code is amended—

(1) by striking “the accumulated funding deficiency (as defined in section 412(a))” in paragraph (2) and inserting “the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431”, and

(2) by striking paragraph (3)(B) and inserting:

“(B) the requirements for reasonable actuarial assumptions under section 430(h)(1) or 431(c)(3), whichever are applicable, have been complied with.”.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2006.

## Subtitle C—Other Provisions

### SEC. 121. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

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

(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

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

(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after December 31, 2006.

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

(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974, the plan shall be treated as not having a funding shortfall for any plan year.

(2) For purposes of—

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

(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act, the mortality table shall be the mortality table used by the plan.

(3) Notwithstanding section 430(f)(4)(B) of such Code and section 303(f)(4)(B) of such Act, for purposes of section 430(c)(4)(A)(ii) of such Code and section 303(c)(4)(A)(ii) of such Act, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance if, pursuant to a binding written agreement with the Pension Benefit Guaranty Corporation en-

tered into before January 1, 2007, the funding standard carryover balance is not available to reduce the minimum required contribution for the plan year.

(4) Section 430(c)(4)(B) of such Code and section 303(c)(4)(B) of such Act (relating to phase-in of funding target for determination of funding shortfall) shall each be applied by substituting “2012” for “2011” therein and by substituting for the table therein the following:

<b>In the case of a plan year beginning in calendar year:</b>	<b>The applicable percentage is:</b>
2007 .....	90 percent
2008 .....	92 percent
2009 .....	94 percent
2010 .....	96 percent
2011 .....	98 percent.

(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act, such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.

(d) SPECIAL RULE FOR 2006.—

(1) IN GENERAL.—Section 769(c)(3) of the Retirement Protection Act of 1994, as added by section 201 of the Pension Funding Equity Act of 2004, is amended by striking “and 2005” and inserting “, 2005, and 2006”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to plan years beginning after December 31, 2005.

(e) CONFORMING AMENDMENT.—

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

(2) The amendment made by paragraph (1) shall take effect on December 31, 2006, and shall apply to plan years beginning after such date.

**SEC. 122. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS WHEN EMPLOYER DEFINED BENEFIT PLAN IN AT-RISK STATUS.**

(a) IN GENERAL.—Subsection (b) of section 409A of the Internal Revenue Code of 1986 (providing rules relating to funding) is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

“(3) EMPLOYER’S DEFINED BENEFIT PLAN IN AT-RISK STATUS.—If—

“(A) during any period in which a defined benefit plan to which section 412 applies is in an at-risk status (as defined in section 430(i)(3)), assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or

“(B) a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,

such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Subparagraph (A) shall not apply with respect to any assets which are so set aside before the defined benefit plan is in at-risk status.”.

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers or reservations of assets after December 31, 2005.

(d) SPECIAL RULE FOR 2006.—For purposes of determining if a plan is in at-risk status (within the meaning of section 409A of such Code, as added by this section) for any plan year beginning in 2006, such section shall be applied by substituting the plan’s modified funded current liability percentage for the plan’s funding target

attainment percentage. For purposes of the preceding sentence, the term “modified funded current liability percentage” means the funded current liability percentage (as defined in section 412(l)(8) of such Code), reduced as described in subparagraph (E) thereof.

## **TITLE II—FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS**

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

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

[See section 201 of the bill as reported by the Committee on Education and the Workforce.]

**SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

[See section 202 of the bill as reported by the Committee on Education and the Workforce.]

**SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.**

[See section 203 of the bill as reported by the Committee on Education and the Workforce.]

**SEC. 204. WITHDRAWAL LIABILITY REFORMS.**

[See section 204 of the bill as reported by the Committee on Education and the Workforce.]

**SEC. 205. REMOVAL OF RESTRICTIONS WITH RESPECT TO PROCEDURES APPLICABLE TO DISPUTES INVOLVING WITHDRAWAL LIABILITY.**

[See section 205 of the bill as reported by the Committee on Education and the Workforce.]

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

**SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS.**

(a) IN GENERAL.—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 (added by section 112 of this Act) is amended by adding at the end the following new section:

**“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

“(a) IN GENERAL.—For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

“(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which section 412 applies to the plan) over the total credits to such account for such years, and

“(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 418B.

**“(b) FUNDING STANDARD ACCOUNT.—**

“(1) ACCOUNT REQUIRED.—Each multiemployer plan to which section 412 applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

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

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

“(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 40 plan years,

“(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first



day of the first plan year to which section 412 applies, over a period of 15 plan years,

“(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

“(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

“(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

“(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

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

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

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

“(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

“(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

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

“(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

“(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

“(4) SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

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

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

“(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

“(6) INTEREST.—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

“(7) CERTAIN AMORTIZATION CHARGES AND CREDITS.—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

“(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose,

“(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose,

“(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises, and

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

“(i) was adopted before such date, and

“(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

“(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this section—

“(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer’s withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan’s funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

“(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

“(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

“(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

“(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of the Employee Retirement Income Security Act of 1974 or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

“(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer’s withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

“(E) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

“(F) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repay-

ment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

“(G) SHORT-TERM BENEFITS.—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for ‘15’.

“(c) ADDITIONAL RULES.—

“(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

“(2) VALUATION OF ASSETS.—

“(A) IN GENERAL.—For purposes of this section, the value of the plan’s assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

“(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

“(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

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

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

“(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

“(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

“(B) a change in the definition of the term ‘wages’ under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

“(5) FULL FUNDING.—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

“(A) the funding standard account shall be credited with the amount of such excess, and

“(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

“(6) FULL-FUNDING LIMITATION.—

“(A) IN GENERAL.—For purposes of paragraph (5), the term ‘full-funding limitation’ means the excess (if any) of—

“(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

“(ii) the lesser of—

“(I) the fair market value of the plan’s assets, or

“(II) the value of such assets determined under paragraph (2).

“(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 liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

“(II) the value of the plan’s assets determined under paragraph (2).

“(ii) ASSETS.—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

“(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 rate of interest determined under subparagraph (E).

“(iv) MORTALITY TABLES.—

“(I) COMMISSIONERS’ STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners’ standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

“(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

“(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

“(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary 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. The 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 individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

“(vi) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

“(E) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan’s current liability for purposes of this paragraph—

“(i) IN GENERAL.—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

“(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

“(I) IN GENERAL.—Except as provided in subclause (II), the term ‘permissible range’ means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

“(II) SECRETARIAL AUTHORITY.—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

“(iii) ASSUMPTIONS.—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

“(I) determined without taking into account the experience of the plan and reasonable expectations, but

“(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

“(7) ANNUAL VALUATION.—

“(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan’s liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

“(B) VALUATION DATE.—

“(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

“(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan’s current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

“(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

“(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan’s current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

“(8) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

“(9) INTEREST RULE FOR WAIVERS AND EXTENSIONS.—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

“(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

“(B) the rate of interest used under the plan for determining costs.

“(d) EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.—In the case of a multiemployer plan—

“(1) EXTENSION.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan shall be extended by the Secretary for a period of time (not in excess of 5 years) if the Secretary determines that—

“(A) absent the extension, the plan would have an accumulated funding deficiency in any of the next 10 plan years,

“(B) the plan sponsor has adopted a plan to improve the plan’s funding status, and

“(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures

“(2) **ADDITIONAL EXTENSION.**—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multi-employer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary for a period of time (not in excess of 5 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if the Secretary determines that the failure to permit such extension would—

“(A) result in—

“(i) a substantial risk to the voluntary continuation of the plan, or

“(ii) a substantial curtailment of pension benefit levels or employee compensation, and

“(B) be adverse to the interests of plan participants in the aggregate.

“(3) **ADVANCE NOTICE.**—

“(A) **IN GENERAL.**—The Secretary shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

“(B) **CONSIDERATION OF RELEVANT INFORMATION.**—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).”.

(b) **CONFORMING AMENDMENTS.**—

(1) Section 418(b)(2) of such Code is amended—

(A) by striking “section 412(b)(2)” in subparagraph (A) and inserting “section 431(b)(2)”, and

(B) by striking “section 412(b)(3)(B)” in subparagraph (B) and inserting “section 431(b)(3)(B)”.

(2) Section 418B of such Code is amended—

(A) by striking “section 412(b)(2)(A) or (B)” in subsection (d)(1)(B) and inserting “section 431(b)(2)(A) or (B)”,

(B) by striking “section 412(c)(8)” in subsection (e) and inserting “section 412(d)(2)”, and

(C) by striking “section 412(c)(3)” in subsection (g) and inserting “section 431(c)(3)”.

(3) Section 418D(a)(2) of such Code is amended—

(A) by striking “section 412(c)(8)” and inserting “section 412(d)(2)”, and

(B) by striking “section 412(c)(10)” and inserting “section 431(c)(8)”.

(c) **CLERICAL AMENDMENT.**—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding after the item relating to section 430 the following new item:

“Sec. 431. Minimum funding standards for multiemployer plans.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to plan years beginning after December 31, 2006.

**SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS.**

(a) **IN GENERAL.**—Subpart A of part III of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 431 the following new section:

**“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

“(a) **ANNUAL CERTIFICATION BY PLAN ACTUARY.**—

“(1) **IN GENERAL.**—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

“(2) **ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.**—

“(A) **IN GENERAL.**—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based

on the actuarial statement prepared for the preceding plan year under section 103(d) of the Employee Retirement Income Security Act of 1974.

“(B) DETERMINATIONS OF FUTURE CONTRIBUTIONS.—Any such actuarial projection of plan assets shall assume—

“(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

“(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make continued application of such terms unreasonable.

“(3) PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the plan actuary makes a contrary certification.

“(4) NOTICE.—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

“(b) FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.—

“(1) IN GENERAL.—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

“(2) ENDANGERED STATUS.—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (a)—

“(A) the plan’s funded percentage for such plan year is less than 80 percent, or

“(B) the plan has an accumulated funding deficiency for such plan year under section 431 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

“(3) FUNDING IMPROVEMENT PLAN.—

“(A) BENCHMARKS.—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

“(i) INCREASE IN FUNDED PERCENTAGE.—An increase in the plan’s funded percentage such that—

“(I) the difference between 100 percent and the plan’s funded percentage for the last year of the funding improvement period, is not more than

“(II)  $\frac{2}{3}$  of the difference between 100 percent and the plan’s funded percentage for the first year of the funding improvement period.

“(ii) AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.—No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

“(B) FUNDING IMPROVEMENT PERIOD.—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

“(i) the second anniversary of the date of the adoption of the funding improvement plan, or

“(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

“(C) SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.—

“(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and subparagraph (B) shall be applied by substituting ‘the 15-year period’ for ‘the 10-year period’.

“(ii) In the case of a plan in which the funded percentage of a plan for the plan year is more than 70 percent but less than 80 percent, and—

“(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

“(II) the plan year is prior to the day described in subparagraph (B)(ii),

subparagraph (A)(i)(II) shall be applied by substituting ‘ $\frac{4}{5}$ ’ for ‘ $\frac{2}{3}$ ’ and subparagraph (B) shall be applied by substituting ‘the 15-year period’ for ‘the 10-year period’.

“(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting ‘the 15-year period’ for ‘the 10-year period’.

“(D) REPORTING.—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

“(4) DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.—

“(A) ACTIONS BY PLAN SPONSOR PENDING APPROVAL.—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

“(i) an increase in the plan’s funded percentage, and

“(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan’s benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

“(B) RECOMMENDATIONS BY PLAN SPONSOR.—

“(i) IN GENERAL.—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

“(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

“(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

“(ii) REQUESTS BY BARGAINING PARTIES.—Upon the request of any bargaining party who—

“(I) employs at least 5 percent of the active participants, or

“(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants, the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.



“(iii) OTHER INFORMATION.—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

“(5) MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

“(A) a reduction in the level of contributions for participants who are not in pay status,

“(B) a suspension of contributions with respect to any period of service, or

“(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

“(6) BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

“(A) RESTRICTIONS ON LUMP SUM AND SIMILAR DISTRIBUTIONS.—In any case in which the present value of a participant’s accrued benefit under the plan exceeds \$5,000, such benefit may not be distributed as an immediate distribution or in any other accelerated form.

“(B) PROHIBITION ON BENEFIT INCREASES.—

“(i) IN GENERAL.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

“(ii) EXCEPTION.—Clause (i) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A.

“(7) DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

“(8) RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

“(A) so as to be inconsistent with the funding improvement plan, or

“(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the the benchmarks described in paragraph (3)(A).

“(c) FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

“(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

“(2) CRITICAL STATUS.—A multiemployer plan is in critical status for a plan year if—

“(A) the plan is in endangered status for the preceding plan year and the requirements of subsection (b)(1) were not met with respect to the plan for such preceding plan year, or

“(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

“(3) CRITICALITY DESCRIPTION.—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

“(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

“(i) the funded percentage of the plan is less than 65 percent, and

“(ii) the sum of—

“(I) the market value of plan assets, plus

“(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the

plan is maintained for the current plan year continue in effect for succeeding plan years,  
 is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

“(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

“(i) the market value of plan assets, plus

“(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

“(C) A plan is described in this subparagraph if—

“(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

“(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

“(D) A plan is described in this subparagraph if—

“(i)(I) the plan’s normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

“(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

“(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

“(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

“(E) A plan is described in this subparagraph if—

“(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

“(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 431(d).

“(4) REHABILITATION PLAN.—

“(A) IN GENERAL.—A rehabilitation plan shall consist of—

“(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

“(ii) reasonable measures to forestall possible insolvency (within the meaning of section 418E) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

“(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

“(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

“(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan’s entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

“(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement Income Security Act of 1974 and in the summary annual report described in section 104(b)(3).

“(5) DEVELOPMENT OF REHABILITATION PLAN.—

“(A) PROPOSALS BY PLAN SPONSOR.—

“(i) IN GENERAL.—Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.

“(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.

“(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor’s proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.

“(B) REQUESTS FOR ADDITIONAL SCHEDULES.—Upon the request of any bargaining party who—

“(i) employs at least 5 percent of the active participants, or

“(ii) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants, the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

“(C) SUBSEQUENT AMENDMENTS.—Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.

“(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in proportion to the extent to which increases in contributions under such schedule apply to such bargaining party.

“(E) LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below the lower of—

“(i) a monthly benefit 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 plan year in which the plan enters critical status, or

“(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

“(6) MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term ‘rehabilitation plan’ for ‘funding improvement plan’.

“(7) RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

“(A) so as to be inconsistent with the rehabilitation plan, or

“(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

“(8) IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

“(9) DEEMED WITHDRAWAL.—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement Income Security Act of 1974 or a partial withdrawal by the employer under section 4205 of such Act.

“(d) DEFINITIONS.—For purposes of this section—

“(1) BARGAINING PARTY.—The term ‘bargaining party’ means, in connection with a multiemployer plan—

“(A) an employer who has an obligation to contribute under the plan, and

“(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

“(2) FUNDED PERCENTAGE.—The term ‘funded percentage’ means the percentage expressed as a ratio of which—

“(A) the numerator of which is the value of the plan’s assets, as determined under section 431(c)(2), and

“(B) the denominator of which is the accrued liability of the plan.

“(3) ACCUMULATED FUNDING DEFICIENCY.—The term ‘accumulated funding deficiency’ has the meaning provided such term in section 431(a).

“(4) ACTIVE PARTICIPANT.—The term ‘active participant’ means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

“(5) INACTIVE PARTICIPANT.—The term ‘inactive participant’ means, in connection with a multiemployer plan, a participant who—

“(A) is not in covered service under the plan, and

“(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

“(6) PAY STATUS.—A person is in ‘pay status’ under a multiemployer plan if—

“(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

“(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

“(7) OBLIGATION TO CONTRIBUTE.—The term ‘obligation to contribute’ has the meaning provided such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

“(8) ENTRY INTO CRITICAL STATUS.—A plan shall be treated as entering into critical status as of the date that such plan is certified to be in critical status under subsection (a)(1), is presumed to be in critical status under subsection (a)(3), or enters into critical status under subsection (b)(7).”.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter D of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 432. Additional funding rules for multiemployer plans in endangered status or critical status.”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after December 31, 2005.

(d) SPECIAL RULE FOR 2006.—In the case of any plan year beginning in 2006, any reference in section 432 of the Internal Revenue Code of 1986 (as added by this section) to section 431 of such Code (as added by this Act) shall be treated as a reference to the corresponding provision of such Code as in effect for plan years beginning in such year.

#### SEC. 213. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS.

(a) ADVANCE DETERMINATION OF IMPENDING INSOLVENCY OVER 5 YEARS.—Section 418E(d)(1) of the Internal Revenue Code of 1986 is amended—

(1) by striking “3 plan years” the second place it appears and inserting “5 plan years”, and

(2) by adding at the end the following new sentence: “If the plan sponsor makes such a determination that the plan will be insolvent in any of the next

5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to determinations made in plan years beginning after December 31, 2005.

### TITLE III—OTHER PROVISIONS

#### SEC. 301. INTEREST RATE FOR 2006 FUNDING REQUIREMENTS.

(a) IN GENERAL.—Subclause (II) of section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

- (1) by striking “January 1, 2006” and inserting “January 1, 2007”, and
- (2) by striking “AND 2005” in the heading and inserting “, 2005, AND 2006”.

(b) CURRENT LIABILITY.—Subclause (IV) of section 412(l)(7)(C)(i) of such Code is amended—

- (1) by striking “or 2005” and inserting “, 2005, or 2006”, and
- (2) by striking “AND 2005” in the heading and inserting “, 2005, AND 2006”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

#### SEC. 302. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP SUM DISTRIBUTIONS.

(a) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—[See section 301(a) of the bill as reported by the Committee on Education and the Workforce.]

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—Section 417(e)(3)(A) of the Internal Revenue Code of 1986 is amended by striking clause (ii) and inserting the following:

“(ii) For purposes of clause (i), the term ‘applicable mortality table’ means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3).

“(iii) For purposes of clause (i), the term ‘applicable interest rate’ means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

“(iv) For purposes of clause (iii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) if—

“(I) section 430(h)(2)(D)(i) were applied by substituting ‘the yields’ for ‘a 3-year weighted average of yields’,

“(II) section 430(h)(2)(G)(i)(II) were applied by substituting ‘section 417(e)(3)(A)(ii)(II)’ for ‘section 412(b)(5)(B)(ii)(II)’, and

“(III) the applicable percentage under section 430(h)(2)(G) were determined in accordance with the following table:

“In the case of plan years beginning in:	The applicable percentage is:
2007 .....	20 percent
2008 .....	40 percent
2009 .....	60 percent
2010 .....	80 percent.”.

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to plan years beginning after December 31, 2006.

#### SEC. 303. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP SUM DISTRIBUTIONS.

(a) IN GENERAL.—Clause (ii) of section 415(b)(2)(E) of the Internal Revenue Code of 1986 is amended to read as follows:

“(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greater of—

“(I) 5.5 percent,

“(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

“(III) the rate specified under the plan.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions made in years beginning after December 31, 2005.

**SEC. 304. DISTRIBUTIONS DURING WORKING RETIREMENT.**

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—[See section 303(a) of the bill as reported by the Committee on Education and the Workforce.]

(b) AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 is amended by inserting after paragraph (34) the following new paragraph:

“(35) DISTRIBUTIONS DURING WORKING RETIREMENT.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because a distribution is made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in plan years beginning after December 31, 2005.

**SEC. 305. OTHER AMENDMENTS RELATING TO PROHIBITED TRANSACTIONS.**

[See section 304 of the bill as reported by the Committee on Education and the Workforce.]

**SEC. 306. CORRECTION PERIOD FOR CERTAIN TRANSACTIONS INVOLVING SECURITIES AND COMMODITIES.**

[See section 305 of the bill as reported by the Committee on Education and the Workforce.]

**SEC. 307. GOVERNMENT ACCOUNTABILITY OFFICE PENSION FUNDING REPORT.**

[See section 306 of the bill as reported by the Committee on Education and the Workforce.]

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

**SEC. 401. INCREASES IN PBGC PREMIUMS.**

(a) FLAT-RATE PREMIUMS.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended—

(1) by striking clause (i) of subparagraph (A) and inserting the following:

“(i) in the case of a single-employer plan, an amount equal to—

“(I) for plan years beginning after December 31, 1990, and before January 1, 2006, \$19, or

“(II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (F),

plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;”;

(2) by adding at the end the following new subparagraph:

“(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of \$30 or the adjusted amount determined under clause (ii).

“(ii) For plan years beginning after 2006, the adjusted amount determined under this clause is the product derived by multiplying \$30 by the ratio of—

“(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to

“(II) the national average wage index (as so defined) for 2004,

with such product, if not a multiple of \$1, being rounded to the next higher multiple of \$1 where such product is a multiple of \$0.50 but not of \$1, and to the nearest multiple of \$1 in any other case.

“(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title for any plan year beginning after 2005 and before 2010—

“(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

“If the plan year begins in:	The amount is:
2006 .....	\$21.20
2007 .....	\$23.40
2008 .....	\$25.60
2009 .....	\$27.80; or

“(II) if the plan’s funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

“If the plan year begins in:	The amount is:
2006 .....	\$22.67
2007 .....	\$26.33
2008 or 2009 .....	the amount provided under clause (i).

“(iv) For purposes of this subparagraph, the term ‘funding target attainment percentage’ has the meaning provided such term in section 303(d)(2).”.

(b) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—Subsection (a) of section 4006 of such Act (29 U.S.C. 1306) is amended by adding at the end the following:

“(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—

“(A) IN GENERAL.—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to \$1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

“(B) SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—If the plan is terminated under 4041(c)(2)(B)(ii) or under section 4042 and, as of the termination date, a person who is (as of such date) a contributing sponsor of the plan or a member of such sponsor’s controlled group has filed or has had filed against such person a petition seeking reorganization in a case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge of such person in such case.

“(C) APPLICABLE 12-MONTH PERIOD.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—The term ‘applicable 12-month period’ means—

“(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

“(II) each of the first two 12-month periods immediately following the period described in subclause (I).

“(ii) PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.—In any case in which the requirements of subparagraph (B) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged in the case described in such clause in connection with such person.

“(D) COORDINATION WITH SECTION 4007.—

“(i) Notwithstanding section 4007—

“(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

“(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

“(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.”.

(c) RISK-BASED PREMIUMS.—

(1) EXTENSION THROUGH 2006.—Section 4006(a)(3)(E)(iii)(V) of such Act is amended by striking “January 1, 2006” and inserting “January 1, 2007”.

(2) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—Section 4006(a)(3)(E) of such Act is amended by striking clauses (iii) and (iv) and inserting the following:

“(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term ‘unfunded vested benefits’ means, for a plan year, the amount which would be the plan’s funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and only vested benefits were taken into account.

“(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were applied by substituting ‘the yields’ for ‘the 3-year weighted average of yields’, as applicable under rules similar to the rules under section 303(h)(2)(B).”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsection (a) and (c)(1) shall apply to plan years beginning after December 31, 2005.

(2) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—The amendment made by subsection (b) shall apply with respect to cases commenced under title 11, United States Code, or under any similar law of a State or political subdivision of a State after October 26, 2005.

(3) CONFORMING AMENDMENTS RELATED TO FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—The amendments made by subsection (c)(2) shall take effect on December 31, 2006, and shall apply to plan years beginning after such date.

## TITLE V—DISCLOSURE

### SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICES.

[See section 501 of the bill as reported by the Committee on Education and the Workforce.]

### SEC. 502. ADDITIONAL DISCLOSURE REQUIREMENTS.

[See section 502 of the bill as reported by the Committee on Education and the Workforce.]

### SEC. 503. SECTION 4010 FILINGS WITH THE PBGC.

(a) CHANGE IN CRITERIA FOR PERSONS REQUIRED TO PROVIDE INFORMATION TO PBGC.—Section 4010(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310(b)) is amended by striking paragraph (1), by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting before paragraph (3) (as so redesignated) the following new paragraphs:

“(1) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 60 percent;

“(2)(A) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 75 percent, and

“(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining.”.

(b) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Section 4010 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1310) is amended by adding at the end the following new subsection:

“(d) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

“(1) IN GENERAL.—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

“(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

“(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and



“(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

“(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

“(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

“(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) VALUE OF PLAN ASSETS.—The term ‘value of plan assets’ means the value of plan assets, as determined under section 303(g)(3).

“(B) FUNDING TARGET.—The term ‘funding target’ has the meaning provided under section 303(d)(1).

“(C) FUNDING TARGET ATTAINMENT PERCENTAGE.—The term ‘funding target attainment percentage’ has the meaning provided in section 303(d)(2).

“(D) AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.—The term ‘aggregate funding targets attainment percentage’ with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

“(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

“(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.

“(E) AT-RISK STATUS.—The term ‘at-risk status’ has the meaning provided in section 303(i)(3).

“(3) COMPLIANCE.—

“(A) IN GENERAL.—Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.

“(B) LIMITATIONS.—In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

“(4) NOTICE TO CONGRESS.—Concurrent with the provision of any notice under paragraph (1), such person shall provide such notice to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, which shall be treated as materials provided in executive session.”

(c) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning after December 31, 2006.

## TITLE VI—INVESTMENT ADVICE

### SEC. 601. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.

[See section 601 of the bill as reported by the Committee on Education and the Workforce.]

### SEC. 602. AMENDMENTS TO INTERNAL REVENUE CODE OF 1986 PROVIDING PROHIBITED TRANSACTION EXEMPTION FOR PROVISION OF INVESTMENT ADVICE.

(a) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(1) in paragraph (15), by striking “or” at the end;

(2) in paragraph (16), by striking the period at the end and inserting “; or”;

and

(3) by adding at the end the following new paragraph:

“(17) any transaction described in subsection (f)(8)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

“(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

“(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

“(C) the requirements of subsection (f)(8)(B) are met in connection with the provision of the advice.”.

(b) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

“(8) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

“(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(17), in connection with the provision of investment advice by a fiduciary adviser, are the following:

“(i) the provision of the advice to the plan, participant, or beneficiary;

“(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

“(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

“(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(17)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

“(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

“(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

“(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

“(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

“(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

“(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

“(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

“(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

“(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

“(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

“(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm’s length transaction would be.

“(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

“(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

“(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

“(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

“(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

“(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(17) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

“(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

“(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

“(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

“(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(17)—

“(i) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

“(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

“(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

“(III) an insurance company qualified to do business under the laws of a State,

“(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

“(V) an affiliate of a person described in any of subclauses (I) through (IV), or

“(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

“(ii) AFFILIATE.—The term ‘affiliate’ of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3))).

“(iii) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to advice referred to in section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2006.

## TITLE VII—BENEFIT ACCRUAL STANDARDS

### SEC. 701. IMPROVEMENTS IN BENEFIT ACCRUAL STANDARDS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—[See section 701(a) of the bill as reported by the Committee on Education and the Workforce.]

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) RULES RELATING TO REDUCTION IN ACCRUED BENEFITS BECAUSE OF ATTAINMENT OF ANY AGE.—Subparagraph (H) of section 411(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new clauses:

“(vi) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

“(I) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of clause (i) if a participant’s entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

“(II) SIMILARLY SITUATED.—For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

“(III) DISREGARD OF SUBSIDIZED EARLY RETIREMENT BENEFITS.—In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee’s opening balance or other transition benefits) shall be disregarded.

“(vii) INTEREST ON HYPOTHETICAL ACCOUNTS.—A plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of clause (i) solely because interest accruing on such balance is taken into account.

“(viii) CERTAIN OFFSETS PERMITTED.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the

plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, the Railroad Retirement Act of 1974, another plan described in section 401(a) maintained by the same employer, or under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

“(ix) PERMITTED DISPARITIES IN PLAN CONTRIBUTIONS OR BENEFITS.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) are met.

“(x) PRE-RETIREMENT INDEXING PERMITTED.—

“(I) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for pre-retirement indexing of accrued benefits under the plan.

“(II) PRE-RETIREMENT INDEXING.—For purposes of this clause, the term ‘pre-retirement indexing’ means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized index or methodology so as to protect the economic value of the benefit against inflation prior to distribution.”

(2) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—Subsection (a) of section 411 of such Code is amended by adding at the end the following new paragraph:

“(13) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—

“(A) IN GENERAL.—A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2) and section 417(e) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant’s account balance to normal retirement age is not greater than a market rate of return.

“(B) REGULATIONS.—The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subparagraph (A) and for permissible methods of crediting interest to the account (including variable interest rates) resulting in effective rates of return meeting the requirements of subparagraph (A).”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to periods beginning on or after June 29, 2005.

## TITLE VIII—DEDUCTION LIMITATIONS

### SEC. 801. INCREASE IN DEDUCTION LIMITS.

(a) INCREASE IN DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—Section 404 of the Internal Revenue Code of 1986 (relating to deduction for contributions of an employer to an employees’ trust or annuity plan and compensation under a deferred payment plan) is amended—

(1) in subsection (a)(1)(A), by inserting “in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan” after “section 501(a),”, and

(2) by inserting at the end the following new subsection:

“(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—For purposes of subsection (a)(1)(A)—

“(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.

“(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

“(A) the greater of—

“(i) the sum of—

“(I) 150 percent of the funding target applicable to the plan for such plan year, determined under section 430, plus

“(II) the target normal cost applicable to the plan for such plan year, determined under section 430(b), or

“(ii) in the case of a plan that is not in an at-risk status (as determined under 430(i)), the sum of—

“(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), plus

“(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), over

“(B) the value of the plan assets (determined under section 430(g)).

“(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

“(4) DEFINITIONS.—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.”

(b) INCREASE IN DEDUCTION LIMIT FOR MULTIEMPLOYER PLANS.—Section 404(a)(1)(D) of such Code is amended to read as follows:

“(D) MINIMUM DEDUCTION FOR MULTIEMPLOYER PLANS.—In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

“(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

“(ii) the value of the plan’s assets determined under section 431(c)(2).”

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The last sentence of section 404(a)(1)(A) of such Code is amended by striking “section 412” each place it appears and inserting “section 431”.

(2) Section 404(a)(1)(B) of such Code is amended—

(A) by striking “In the case of a plan” and inserting “In the case of a multiemployer plan”,

(B) by striking “section 412(c)(7)” each place it appears and inserting “section 431(c)(6)”,

(C) by striking “section 412(c)(7)(B)” and inserting “section 431(c)(6)(D)”,

(D) by striking “section 412(c)(7)(A)” and inserting “section 431(c)(6)(A)”, and

(E) by striking “section 412” and inserting “section 431”.

(3) Section 404(a)(1) of such Code is amended by striking subparagraph (F).

(4) Section 404(a)(7) of such Code is amended—

(A) in subparagraph (A)(ii), by striking “for the plan year” and all that follows and inserting “which are multiemployer plans for the plan year which ends with or within such taxable year (or for any prior plan year) and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year.”,

(B) by striking “section 412(1)” in the last sentence of subparagraph (A) and inserting “paragraph (1)(D)(ii)”, and

(C) by striking subparagraph (D) and inserting:

“(D) INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.”

(5) Section 404A(g)(3)(A) of such Code is amended by striking “paragraphs (3) and (7) of section 412(c)” and inserting “sections 430(h)(1) and 431(c)(3) and (6)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2006.

**SEC. 802. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.**

(a) IN GENERAL.—Subparagraph (C) of section 404(a)(7) of the Internal Revenue Code of 1986 (relating to limitation on deductions where combination of defined con-

tribution plan and defined benefit plan) is amended by adding after clause (ii) the following new clause:

“(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.”.

(b) CONFORMING AMENDMENTS.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

“(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions for taxable years beginning after December 31, 2006.

## **TITLE IX—ENHANCED RETIREMENTS SAVINGS AND DEFINED CONTRIBUTION PLANS**

### **SEC. 901. PENSIONS AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS OF ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 MADE PERMANENT.**

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the provisions of, and amendments made by, subtitles (A) through (F) of title VI of such Act (relating to pension and individual retirement arrangement provisions).

### **SEC. 902. SAVER'S CREDIT.**

(a) PERMANENCY.—Section 25B of the Internal Revenue Code of 1986 (relating to elective deferrals and IRA contributions by certain individuals) is amended by striking subsection (h).

(b) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—

(1) Section 25B of such Code, as amended by subsection (a), is further amended by adding at the end the following new subsection:

“(h) VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.—

“(1) IN GENERAL.—So much of any overpayment under section 6401(b) as does not exceed the amount allowed as a tax credit under subsection (a) shall, at the election of the taxpayer, be paid on behalf of the individual taxpayer to an applicable retirement plan designated by the individual, except that in the case of a joint return, each spouse shall be entitled to designate an applicable retirement plan with respect to payments attributable to such spouse.

“(2) APPLICABLE RETIREMENT PLAN.—For purposes of this subsection, the term ‘applicable retirement plan’ means any eligible retirement plan (as defined in section 402(c)(8)(B)) that elects to accept deposits under this subsection.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 2006.

### **SEC. 903. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.**

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

“(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

“(A) IN GENERAL.—A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

“(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term ‘qualified automatic contribution arrangement’ means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (F).

“(C) AUTOMATIC DEFERRAL.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elec-

tive contributions in an amount equal to a qualified percentage of compensation.

“(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

“(I) to not have such contributions made, or

“(II) to make elective contributions at a level specified in such affirmative election.

“(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term ‘qualified percentage’ means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

“(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

“(II) 4 percent during the first plan year following the plan year described in subclause (I),

“(III) 5 percent during the second plan year following the plan year described in subclause (I), and

“(IV) 6 percent during any subsequent plan year.

“(iv) AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.—Clause (i) shall be applied without taking into account any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause).

“(D) PARTICIPATION.—

“(i) IN GENERAL.—An arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of the employees eligible to participate in the arrangement other than—

“(I) highly compensated employees, and

“(II) at the election of the plan administrator, employees described in subparagraph (C)(iv).

“(ii) FIRST PLAN YEAR.—An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year with respect to which such arrangement is a qualified automatic contribution arrangement (determined without regard to this subparagraph).

“(E) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

“(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 6 percent of compensation, or

“(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee’s compensation.

“(ii) APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

“(iii) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

“(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from such employer contributions, and

“(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.



“(iv) APPLICATION OF CERTAIN OTHER RULES.—The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

“(F) NOTICE REQUIREMENTS.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee’s rights and obligations under the arrangement which—

“(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

“(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

“(ii) TIMING AND CONTENT REQUIREMENTS.—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

“(I) the notice explains the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf (or to elect to have such contributions made at a different percentage),

“(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

“(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.”.

(b) MATCHING CONTRIBUTIONS.—Section 401(m) of such Code (relating to non-discrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

“(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

“(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

“(B) meets the requirements of paragraph (11)(B).”.

(c) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(1) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting “or 401(k)(13)” after “section 401(k)(12)”.

(2) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting “or 401(m)(12)” after “section 401(m)(11)”.

(d) CORRECTIVE DISTRIBUTIONS.—

(1) IN GENERAL.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

“(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

“(1) IN GENERAL.—No tax shall be imposed under section 72(t) on a distribution from an applicable employer plan to the employee with respect to whom such contribution relates if such distribution does not exceed the erroneous automatic contribution amount and is made not later than the 1st April 15 following the close of the taxable year in which such contribution was made.

“(2) ERRONEOUS AUTOMATIC CONTRIBUTION AMOUNT.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘erroneous automatic contribution amount’ means the lesser of—

“(i) the amount of automatic contributions made during the applicable period which the employee elects in a notice to the plan administrator to treat as an erroneous automatic contribution amount for purposes of this subsection, or

“(ii) \$500.

“(B) AUTOMATIC CONTRIBUTION.—The term ‘automatic contribution’ means contributions which, under the terms of the plan—

“(i) the employee can elect to be made as contributions under the plan on behalf of the employee, or to the employee directly in cash, and

“(ii) which are made on behalf of the employee under the plan pursuant to a plan provision treating the employee as having elected to have the employer make such contributions on behalf of the employee until

the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions as a specified level.

“(3) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term ‘applicable employer plan’ means—

“(A) an employees’ trust described in section 401(a) which is exempt from tax under section 501(a), and

“(B) a plan under which amounts are contributed by an individual’s employer for an annuity contract described in section 403(b).

“(4) APPLICABLE PERIOD.—For purposes of this subsection, the term ‘applicable period’ means, with respect to any employee, the three month period that begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to such employee.”.

(2) VESTING CONFORMING AMENDMENTS.—

(A) Section 411(a)(3)(G) of such Code is amended by inserting “an erroneous automatic contribution under section 414(w),” after “402(g)(2)(A),”.

(B) The heading of section 411(a)(3)(G) of such Code is amended by inserting “OR ERRONEOUS AUTOMATIC CONTRIBUTION” before the period.

(C) Section 401(k)(8)(E) of such Code is amended by inserting “an erroneous automatic contribution under section 414(w),” after “402(g)(2)(A),”.

(D) The heading of section 401(k)(8)(E) of such Code is amended by inserting “OR ERRONEOUS AUTOMATIC CONTRIBUTION” before the period.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

**SEC. 904. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.**

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

“(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

“(i) IN GENERAL.—Any qualified reservist distribution.

“(ii) AMOUNT DISTRIBUTED MAY BE REPAID.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

“(iii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term ‘qualified reservist distribution’ means any distribution to an individual if—

“(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

“(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

“(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

“(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2-years after the date of the enactment of this subparagraph.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of such Code is amended by striking “or” at the end of subclause (III), by striking “and” at the end of subclause (IV) and inserting “or”, and by inserting after subclause (IV) the following new subclause:

“(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and”.

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting “(unless such amount is a distribution to which section 72(t)(2)(G) applies)” after “distributee”.

(3) Section 403(b)(11) of such Code is amended by striking “or” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, or”, and by inserting after subparagraph (B) the following new subparagraph:

“(C) for distributions to which section 72(t)(2)(G) applies.”.

(c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

(1) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

(2) WAIVER OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

**SEC. 905. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.**

(a) IN GENERAL.—Section 72(t)(2) of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions), as amended by section 904, is amended by adding at the end the following new subsection:

“(H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

“(i) IN GENERAL.—Distributions to an individual who is a qualified public safety employee from a governmental plan within the meaning of section 414(d) to the extent such distributions are attributable to a DROP benefit.

“(ii) DEFINITIONS.—For purposes of this subparagraph—

“(I) DROP BENEFIT.—The term ‘DROP benefit’ means a feature of a governmental plan which is a defined benefit plan and under which an employee elects to receive credits to an account (including a notional account) in the plan which are not in excess of the plan benefits (payable in the form of an annuity) that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee’s accrued pension benefit based on years of service after the effective date of the DROP election.

“(II) QUALIFIED PUBLIC SAFETY EMPLOYEE.—The term ‘qualified public safety employee’ means any employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision and if the employee was eligible to retire on or before the date of such election and receive immediate retirement benefits.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

**SEC. 906. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING LIMITATION AND DEDUCTIBILITY OF CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) SPECIAL RULE FOR COMPENSATION EARNED BY MEMBERS OF THE ARMED FORCES FOR SERVICE IN A COMBAT ZONE.—For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual’s gross income shall be determined without regard to section 112.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

**SEC. 907. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary’s delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.

**SEC. 908. IRA ELIGIBILITY FOR THE DISABLED.**

(a) **IN GENERAL.**—Subsection (f) of section 219 of the Internal Revenue Code of 1986 (relating to other definitions and special rules), as amended by this Act, is further amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) **SPECIAL RULE FOR CERTAIN DISABLED INDIVIDUALS.**—In the case of an individual—

“(A) who is disabled (within the meaning of section 72(m)(7)), and

“(B) who has not attained the applicable age (as defined in section 401(a)(9)(H)) before the close of the taxable year, subparagraph (B) of subsection (b)(1) shall not apply.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

**SEC. 909. ALLOW ROLLOVERS BY NONSPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.**

(a) **IN GENERAL.**—

(1) **QUALIFIED PLANS.**—Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph:

“(11) **DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NON-SPOUSE BENEFICIARY.**—

“(A) **IN GENERAL.**—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

“(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

“(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

“(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

“(B) **CERTAIN TRUSTS TREATED AS BENEFICIARIES.**—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.”.

(2) **SECTION 403(a) PLANS.**—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting “and (11)” after “(7)”.

(3) **SECTION 403(b) PLANS.**—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking “and (9)” and inserting “, (9), and (11)”.

(4) **SECTION 457 PLANS.**—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking “and (9)” and inserting “, (9), and (11)”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to distributions after December 31, 2005.

## **TITLE X—PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY**

**SEC. 1001. TREATMENT OF ANNUITY AND LIFE INSURANCE CONTRACTS WITH A LONG-TERM CARE INSURANCE FEATURE.**

(a) **EXCLUSION FROM GROSS INCOME.**—Subsection (e) of section 72 of the Internal Revenue Code of 1986 (relating to amounts not received as annuities) is amended by redesignating paragraph (11) as paragraph (12) and by inserting after paragraph (10) the following new paragraph:

“(11) **SPECIAL RULES FOR CERTAIN COMBINATION CONTRACTS PROVIDING LONG-TERM CARE INSURANCE.**—Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

“(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

“(B) such charge shall not be includible in gross income.”.

(b) TAX-FREE EXCHANGES AMONG CERTAIN INSURANCE POLICIES.—

(1) ANNUITY CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (2) of section 1035(b) of such Code is amended by adding at the end the following new sentence: “For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.”.

(2) LIFE INSURANCE CONTRACTS CAN INCLUDE QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—Paragraph (3) of section 1035(b) of such Code is amended by adding at the end the following new sentence: “For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.”.

(3) EXPANSION OF TAX-FREE EXCHANGES OF LIFE INSURANCE, ENDOWMENT, AND ANNUITY CONTRACTS FOR LONG-TERM CARE CONTRACTS.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended—

(A) in paragraph (1) by striking “contract;” and inserting “contract or for a qualified long-term care insurance contract;”,

(B) in paragraph (2) by striking “contract;” and inserting “contract, or (C) for a qualified long-term care insurance contract;”, and

(C) in paragraph (3) by striking “contract.” and inserting “contract or for a qualified long-term care insurance contract.”.

(4) TAX-FREE EXCHANGES OF QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—Subsection (a) of section 1035 of such Code (relating to certain exchanges of insurance policies) is amended by striking “or” at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting “; or”, and by inserting after paragraph (3) the following new paragraph:

“(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.”.

(c) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Subsection (e) of section 7702B of such Code (relating to treatment of qualified long-term care insurance) is amended to read as follows:

“(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

“(1) COVERAGE TREATED AS CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract, this title shall apply as if the portion of the contract providing such coverage is a separate contract.

“(2) DENIAL OF DEDUCTION UNDER SECTION 213.—No deduction shall be allowed under section 213(a) for any payment made for coverage under a qualified long-term care insurance contract if such payment is made as a charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract.

“(3) APPLICATION OF SECTION 7702.—Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to the life insurance contract, as of any date—

“(A) by the sum of any charges (but not premium payments) against the life insurance contract’s cash surrender value (within the meaning of section 7702(f)(2)(A)) for coverage under the qualified long-term care insurance contract made to that date under the life insurance contract, less

“(B) any such charges the imposition of which reduces the premiums paid for the life insurance contract (within the meaning of section 7702(f)(1)).

“(4) PORTION DEFINED.—For purposes of this subsection, the term ‘portion’ means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.

“(5) ANNUITY CONTRACTS TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of this subsection, none of the following shall be treated as an annuity contract:

“(A) A trust described in section 401(a) which is exempt from tax under section 501(a).

“(B) A contract—

“(i) purchased by a trust described in subparagraph (A),

“(ii) purchased as part of a plan described in section 403(a),

“(iii) described in section 403(b),  
 “(iv) provided for employees of a life insurance company under a plan described in section 818(a)(3), or  
 “(v) from an individual retirement account or an individual retirement annuity.

“(C) A contract purchased by an employer for the benefit of the employee (or the employee’s spouse).

Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this paragraph, be treated as paid under a separate contract to which subparagraph (B)(i) applies.”.

(d) INFORMATION REPORTING.—

(1) Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by adding at the end the following new section:

**“SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS UNDER COMBINED ARRANGEMENTS.**

“(a) REQUIREMENT OF REPORTING.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(e)(11) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—

“(1) the amount of the aggregate of such charges against each such contract for the calendar year,

“(2) the amount of the reduction in the investment in each such contract by reason of such charges, and

“(3) the name, address, and TIN of the individual who is the holder of each such contract.

“(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—

“(1) the name, address, and phone number of the information contact of the person making the payments, and

“(2) the information required to be shown on the return with respect to such individual.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.”.

(2) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of such chapter 61 of such Code is amended by adding at the end the following new item:

“Sec. 6050U. Charges or payments for qualified long-term care insurance contracts under combined arrangements.”.

(e) TREATMENT OF POLICY ACQUISITION EXPENSES.—Subsection (e) of section 848 of such Code (relating to classification of contracts) is amended by adding at the end the following new paragraph:

“(6) TREATMENT OF CERTAIN QUALIFIED LONG-TERM CARE INSURANCE CONTRACT ARRANGEMENTS.—An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).”.

(f) TREATMENT AS QUALIFIED ADDITIONAL BENEFIT.—Subparagraph (A) of section 7702(f)(5) of such Code (relating to qualified additional benefits) is amended by striking “or” at the end of clause (iv), by redesignating clause (v) as clause (vi), and by inserting after clause (iv) the following new clause:

“(v) qualified long-term care insurance contract which is a part of or a rider on the contract, or”.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to exchanges occurring after December 31, 2006.

**SEC. 1002. DISPOSITION OF UNUSED HEALTH BENEFITS IN CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.**

(a) IN GENERAL.—Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

“(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

“(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than \$500 of unused health benefits may be—

“(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

“(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

“(2) HEALTH FLEXIBLE SPENDING ARRANGEMENT.—For purposes of this subsection, the term ‘health flexible spending arrangement’ means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1)), without regard to subparagraphs (C) and (D) thereof.

“(3) UNUSED HEALTH BENEFITS.—For purposes of this subsection, with respect to an employee, the term ‘unused health benefits’ means the excess of—

“(A) the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over

“(B) the actual amount of reimbursement for such year under such arrangement.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

**SEC. 1003. DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS.**

(a) IN GENERAL.—Section 402 of the Internal Revenue Code of 1986 (relating to taxability of beneficiary of employees’ trust) is amended by adding at the end the following new subsection:

“(1) DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—

“(1) IN GENERAL.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.

“(2) LIMITATION.—The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed \$5,000.

“(3) DISTRIBUTIONS MUST OTHERWISE BE INCLUDIBLE.—

“(A) IN GENERAL.—An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

“(B) APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

“(4) DEFINITIONS.—For purposes of this subsection—

“(A) ELIGIBLE RETIREMENT PLAN.—For purposes of paragraph (1), the term ‘eligible retirement plan’ means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

“(B) ELIGIBLE RETIRED PUBLIC SAFETY OFFICER.—The term ‘eligible retired public safety officer’ means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

“(C) PUBLIC SAFETY OFFICER.—The term ‘public safety officer’ shall have the same meaning given such term by section 1204(8)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(8)(A)).

“(D) QUALIFIED HEALTH INSURANCE PREMIUMS.—The term ‘qualified health insurance premiums’ means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

“(5) SPECIAL RULES.—For purposes of this subsection—

“(A) DIRECT PAYMENT TO INSURER REQUIRED.—Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

“(B) RELATED PLANS TREATED AS 1.—All eligible retirement plans of an employer shall be treated as a single plan.

“(6) ELECTION DESCRIBED.—

“(A) IN GENERAL.—For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

“(B) SPECIAL RULE.—A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

“(7) COORDINATION WITH MEDICAL EXPENSE DEDUCTION.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

“(8) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(a) of such Code (relating to taxability of beneficiary under a qualified annuity plan) is amended by inserting after paragraph (1) the following new paragraph:

“(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.”.

(2) Section 403(b) of such Code (relating to taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school) is amended by inserting after paragraph (1) the following new paragraph:

“(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.”.

(3) Section 457(a) of such Code (relating to year of inclusion in gross income) is amended by adding at the end the following new paragraph:

“(3) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions in taxable years beginning after December 31, 2005.

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## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

#### PURPOSE

The bill, H.R. 2830, as amended, includes provisions for: (1) reform of funding rules for single-employer defined benefit pension plans (Title I); (2) funding rules for multiemployer defined benefit plans (Title II); (3) other provisions relating to pensions (Title III); (4) improvements in PBGC guarantee provisions (Title IV); (5) disclosure of pension plan information (Title V); (6) investment advice (Title VI); (7) benefit accrual standards (Title VII); (8) deduction limitations (Title VIII); (9) enhanced retirement savings and defined contribution plans (Title IX) ; and (10) provisions to enhance health care affordability (Title X).

#### SUMMARY

##### *I. Reform of funding rules for single-employer plans*

*Funding rules for single-employer plans.*—For plan years beginning in 2006, the bill applies the law as in effect for 2005, including the use of an interest rate based on long-term corporate bond rates to measure pension liabilities. For plan years beginning after 2006, the bill replaces the present-law two-tiered funding rules for single-employer plans with a single set of rules. Under the new rules, employers must generally contribute: (1) the amount needed to amortize unfunded liabilities attributable to previously earned benefits (the plan’s “funding shortfall”) over seven years, plus (2) the amount needed to fund benefits earned in the current year (the plan’s “normal cost”). For this purpose, liabilities are measured using a modified interest rate yield curve based on a three-year weighted average of corporate bond rates. The modified yield consists of three “segment” rates based on the time when benefits are expected to be paid from the plan (within five years, between six and 20 years, and after 20 years). The bill also specifies a general mortality table to be used in valuing liabilities and permits the use of a plan-specific mortality table in certain cases. Special assump-

tions must be used in measuring liabilities of “at-risk” plans (i.e., plans that are less than 60-percent funded). Several phase-in rules apply in measuring liabilities and determining a plan’s funding shortfall. The bill also modifies the rules relating to the use of credit balances, so that credit balances are adjusted to reflect gains and losses on plan assets, credit balances can be used to reduce required contributions only if a plan is at least 80-percent funded, and, subject to certain exceptions, the value of plan assets is reduced by any credit balances in determining required contributions and a plan’s funded status.

*Benefit limitations under single-employer plans.*—Under the bill, a single-employer defined benefit pension plan may not provide benefits payable solely as a result of a plant shutdown or other unpredictable contingent event. In addition, benefit increases generally are not permitted if a plan is less than 80-percent funded unless the liability attributable to such increases is currently funded, lump-sums and other accelerated forms of distribution may not be made if a plan is less than 80-percent funded, and benefit accruals must be frozen if a plan is less than 60-percent funded. These provisions are generally effective after December 31, 2006, with a delayed effective date for plans maintained pursuant to collective bargaining agreements.

*Modification of transition rule to pension funding requirements.*—The bill extends to 2006 special rules for determining required contributions and variable rate premiums in the case of a single-employer plan sponsored by a company engaged primarily in interurban or interstate passenger bus service and meeting certain other requirements and modifies the special rules for years after 2006 when the new single-employer funding rules become effective.

*Treatment of nonqualified deferred compensation plan when employer defined benefit plan is in at-risk status.*—Effective after December 31, 2005, if a defined benefit pension plan is in at-risk status (i.e., the plan is less than 60-percent funded), certain arrangements involving nonqualified deferred compensation are treated as property transferred in connection with the performance of services, resulting in current income inclusion and, in some cases, interest and a 20-percent additional tax. This treatment applies if assets are set aside (directly or indirectly) in a trust or other arrangement as determined by the Secretary of the Treasury, or transferred to such a trust or other arrangement, for purposes of paying nonqualified deferred compensation when the defined benefit pension plan is in at-risk status. The rule does not apply in the case of assets that are set aside before the defined benefit pension plan is in at-risk statute. The treatment also applies if a nonqualified deferred compensation plan provides that assets will be restricted to the provision of benefits under the plan in connection with the at-risk status (or other similar financial measure determined by the Secretary of Treasury) of any defined benefit pension plan of the employer or assets are so restricted.

## II. Funding rules for multiemployer defined benefit plans

*General funding rules for multiemployer plans.*—Under the bill, for plan years beginning after December 31, 2006, in the case of multiemployer plans, the amortization periods attributable to past service liabilities and gains or losses from changes in actuarial as-

sumptions are 15 years, rather than 30 years. The bill also modifies the rules relating to extensions of amortization periods and the interest rate applicable in the case of a funding waiver or amortization extension.

*Additional funding rules for multiemployer plans in endangered or critical status.*—The bill provides (1) criteria for identifying underfunded multiemployer plans that pose the risk of a funding deficiency or insolvency, and (2) procedures for developing a plan to improve funding status, effective for plan years beginning after December 31, 2005.

*Measures to forestall insolvency of multiemployer plans.*—The bill increases the likelihood of anticipating future insolvencies by requiring multiemployer plans in reorganization status to make projections of possible insolvency over a longer period, effective for plan years beginning after December 31, 2005.

### III. Other provisions

*Interest rate for 2006 funding requirements.*—In the case of single-employer plans, the bill applies an interest rate based on long-term corporate bonds for purposes of determining current liability for plan years beginning in 2006.

*Interest rate assumption for determination of lump-sum distributions.*—Under the bill, the minimum present value of certain forms of benefit, such as lump sums, is determined using three segment rates, based on a yield curve of interest rates on investment-grade corporate bonds, and a specified mortality table. The changes to the statutory assumptions are phased in over five years beginning in 2007.

*Interest rate assumption for applying benefit limitations to lump-sum distributions.*—Under the bill, effective for distributions in years beginning after December 31, 2005, the interest rate used in applying the limits on benefits to certain forms of distributions, such as lump sums, is not less than the greatest of (1) 5.5 percent, (2) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided using the statutory rate in determining minimum present value, and (3) the rate specified under the plan.

*Distributions during working retirement.*—Effective for distributions in plan years beginning after December 31, 2005, a pension plan does not fail to be a qualified retirement plan solely because in-service distributions are made to participants who have attained age 62.

### IV. Improvements in PBGC guarantee provisions

Beginning in 2006, the bill phases in (depending on a plan's funded status) an increase in PBGC single-employer flat-rate premiums to \$30 per participant per year as adjusted after 2006 to reflect increases in average wages as defined under the Social Security Act. The bill applies a new premium of \$1,250 per participant for three years after termination of a single-employer plan in a distress termination (other than in liquidation proceedings) or an involuntary termination. In the case of termination due to a reorganization in bankruptcy, the liability for the premium does not arise (and the three-year period does not begin) until the employer is discharged from the bankruptcy proceeding. The bill applies an inter-

est rate based on long-term corporate bonds in determining variable rate premiums for 2006 and conforms the rules for variable rate premiums to the new funding rules for years after 2006, including repeal of the full funding limit exception to variable rate premiums.

#### *V. Disclosure*

Effective for plan years beginning after December 31, 2006, the bill changes the standard for required reporting of financial information to the PBGC under section 4010 of ERISA, so that reporting is required if plans are less than 60-percent funded. In addition, if section 4010 reporting is required, notice and information about funded status must be provided to participants, beneficiaries, and Congressional committees with jurisdiction over pension plan funding.

#### *VI. Investment advice*

The bill provides prohibited transaction exemptions for the provision of investment advice to a plan and plan participants with respect to the investment of plan assets, as well as fees for such advice and investments made pursuant to such advice, provided certain requirements are met, including disclosure of specific information.

#### *VII. Benefit accrual standards*

The bill makes various changes in the application of the rules prohibiting age discrimination as applied to defined benefit pension plans, including hybrid plans. The bill allows hybrid plans to determine minimum lump sums as the balance of participants' hypothetical accounts, provided that the rate of interest provided for under the plan is not greater than a market rate of interest. The provision is effective for periods beginning on or after June 29, 2005.

#### *VIII. Deduction limits*

*Increase in deduction limits.*—Effective in 2006, the bill allows employers to make deductible contributions (1) to single-employer plans in an amount based on 150 percent of the plan's funding target and (2) to multiemployer plans in an amount based on 140 percent of the plan's current liability.

*Updating rules for combination of plans.*—Effective 2006, in applying the combined limit on deductible contributions to defined benefit and defined contribution plans, only contributions to defined contribution plans exceeding six percent of compensation are taken into account.

#### *IX. Enhanced retirement savings and defined contribution plans*

*Pension and individual retirement arrangement provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.*—Under the bill, the EGTRRA sunset for years beginning after December 31, 2010, does not apply to the pension and IRA provisions of EGTRRA. Thus, these provisions are made permanent.

*Saver's credit made permanent.*—The bill makes the saver's credit permanent and provides for the direct deposit of the credit to an IRA or plan that accepts such amounts.

*Increasing participation through automatic enrollment contribution arrangements.*—The bill provides nondiscrimination safe harbors for elective deferrals and matching contributions made under a qualified automatic contribution arrangement, which is an arrangement that provides that participants are treated as having elected to make elective deferrals at certain scheduled rates (unless they elect otherwise). The provision is effective for plan years beginning after December 31, 2005.

*Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.*—The bill provides an exception to the 10-percent early withdrawal tax for distributions from an IRA or attributable to elective deferrals in the case of a reservist called to active duty on or after September 11, 2001, and before September 12, 2007, for at least 180 days or an indefinite period. Such amounts may be recontributed to an IRA within two years of the end of active duty. The statute of limitations for claiming a refund with respect to such a distribution is extended to one year after the date of enactment of the provision.

*Waiver of 10-percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.*—Effective for distributions after the date of enactment, the 10-percent early withdrawal tax does not apply to certain benefits under a deferred retirement option plan ("DROP") feature of a governmental defined benefit pension plan to qualified public safety employees.

*Combat zone compensation taken into account for purposes of determining limitation and deductibility of contributions to individual retirement plans.*—Effective for years beginning after December 31, 2005, compensation as defined for IRA purposes includes combat pay that is excludible from gross income.

*Direct payment of tax refunds to retirement plans.*—The Secretary of the Treasury is directed to develop forms under which all or a portion of taxpayer refunds for taxable years beginning after December 31, 2006, can be deposited directly into IRAs.

*IRA eligibility for the disabled.*—Effective for years beginning after December 31, 2005, the bill allows IRA contributions to be made by disabled individuals who have no compensation.

*Rollovers by nonspouse beneficiaries.*—The bill allows a nonspouse beneficiary who inherits an interest in an employer-sponsored retirement plan to roll the interest over to an IRA, effective for distributions after December 31, 2005. The bill does not change the application of the minimum distribution rules for nonspouse beneficiaries.

#### *X. Provisions to enhance health care affordability*

*Treatment of annuity and life insurance contracts with a long-term care insurance feature.*—The bill provides rules for long-term care insurance coverage provided by a rider on or as part of an annuity contract and modifies the rules for long-term care insurance coverage provided by a rider on or as part of a life insurance contract. The provision is generally effective after December 31, 2006.

*Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.*—Effective for years beginning after De-

ember 31, 2005, the bill allows up to \$500 in unused health benefits under a health flexible spending account to be carried over to the next year or, in the case of an employee eligible for contributions to a health savings account (“HSA”), contributed to an HSA.

*Distributions from governmental retirement plans for health and long-term care insurance for public safety officers.*—Effective for years beginning after December 31, 2005, the bill provides an exclusion of up to \$5,000 for amounts distributed from an employer-sponsored governmental retirement plan in order to pay accident or health or long-term care insurance premiums for retired public safety officers.

#### B. BACKGROUND AND NEED FOR LEGISLATION

The private pension system plays a critical role in the retirement income security of American workers. Currently, outdated funding rules have threatened the financial security of many pension plans and have allowed some employers to dramatically underfund their promised obligations to their employees. Among other changes, the bill makes modifications to the pension funding rules which will help companies solidify their pension promises and give their employees the financial security for which they have worked.

The bill also contains provisions that will increase the tax-favored savings opportunities for Americans. For example, the bill makes permanent the retirement savings provisions that were part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

The bill also takes steps to make health care, including long-term care, more affordable.

#### C. LEGISLATIVE HISTORY

##### *Background*

H.R. 2830 was introduced on June 9, 2005, and was referred to the Committee on Education and the Workforce and in addition to the Committee on Ways and Means, for a period to be determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

The Committee on Education and the Workforce marked up the bill on June 29, 2005, and order the bill, as amended, favorably reported. See H.R. Rpt. 109–232, Part I, for the bill as reported by the Committee on Education and the Workforce.

##### *Committee action*

The Committee on Ways and Means marked up the bill on November 9, 2005, and ordered the bill, as amended, favorably reported.

##### *Committee hearings*

Matters addressed by the bill have been the subject of Committee review in the current as well as preceding Congresses.

The following full Committee and Subcommittee hearings related to matters in the bill have been held during the 109th Congress.

- Hearing on funding rules for multiemployer defined benefit plans in H.R. 2830, the “Pension Protection Act of 2005” (June 28, 2005, Subcommittee on Select Revenue Measures)

- Hearing on retirement policy challenges and opportunities of our aging society (May 19, 2005, Full Committee)
- Hearing on long-term care (April 19, 2005, Subcommittee on Health)
- Hearing on the President's proposal for single-employer pension funding reform (March 8, 2005, Subcommittee on Select Revenue Measures)

The following full Committee and Subcommittee hearings related to matters in the bill were held during the 108th Congress:

- Joint hearing on examining pension security and defined benefit plans, the Bush Administration's proposal to replace the 30-year Treasury rate (July 15, 2003; Subcommittee on Select Revenue Measures).
- Challenges facing pension plan funding (April 30, 2003; Subcommittee on Select Revenue Measures).
- Hearing on the President's fiscal year 2004 budget (February 5, 2003, Full Committee).
- Hearing on the President's fiscal year 2004 budget (February 4, 2003, Full committee).

*Previous consideration of legislation*

A number of provisions in the bill as reported have previously passed the House, including the provisions relating to investment advice, treating combat pay as compensation for purposes of the IRA rules, providing for qualified reservist distributions, and allowing the rollover of unused amounts in a flexible spending arrangement.

## II. EXPLANATION OF THE BILL

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

#### A. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

(Secs. 111, 112, 114 and 301 of the bill and sec. 412 and new sec. 430 of the Code)

#### PRESENT LAW

#### IN GENERAL

Single-employer defined benefit pension plans are subject to minimum funding requirements under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code (the "Code").<sup>1</sup> The amount of contributions required for a plan year under the minimum funding rules is generally the amount needed to fund benefits earned during that year plus that year's portion of other liabilities that are amortized over a period of years,

<sup>1</sup> Code sec. 412; ERISA secs. 301–308. The minimum funding rules also apply to multiemployer plans, but the rules for multiemployer plans differ in various respects from the rules applicable to single-employer plans. The rules for multiemployer plans are discussed in Part II of this document. The minimum funding rules do not apply to governmental plans or to church plans, except church plans with respect to which an election has been made to have various ERISA and Code requirements, including the funding requirements, apply to the plan. In addition, special rules apply to certain plans funded exclusively by the purchase of individual insurance contracts (referred to as "insurance contract" plans).



such as benefits resulting from a grant of past service credit. The amount of required annual contributions is determined under one of a number of acceptable actuarial cost methods. Additional contributions are required under the deficit reduction contribution rules in the case of certain underfunded plans. No contribution is required under the minimum funding rules in excess of the full funding limit (described below).

*General minimum funding rules*

*Funding standard account*

As an administrative aid in the application of the funding requirements, a defined benefit pension plan is required to maintain a special account called a “funding standard account” to which specified charges and credits are made for each plan year, including a charge for normal cost and credits for contributions to the plan. Other charges or credits may apply as a result of decreases or increases in past service liability as a result of plan amendments, experience gains or losses, gains or losses resulting from a change in actuarial assumptions, or a waiver of minimum required contributions.

In determining plan funding under an actuarial cost method, a plan’s actuary generally makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. If the plan’s actual unfunded liabilities are less than those anticipated by the actuary on the basis of these assumptions, then the excess is an experience gain. If the actual unfunded liabilities are greater than those anticipated, then the difference is an experience loss. Experience gains and losses for a year are generally amortized as credits or charges to the funding standard account over five years.

If the actuarial assumptions used for funding a plan are revised and, under the new assumptions, the accrued liability of a plan is less than the accrued liability computed under the previous assumptions, the decrease is a gain from changes in actuarial assumptions. If the new assumptions result in an increase in the accrued liability, the plan has a loss from changes in actuarial assumptions. The accrued liability of a plan is the actuarial present value of projected pension benefits under the plan that will not be funded by future contributions to meet normal cost or future employee contributions. The gain or loss for a year from changes in actuarial assumptions is amortized as credits or charges to the funding standard account over ten years.

If minimum required contributions are waived (as discussed below), the waived amount (referred to as a “waived funding deficiency”) is credited to the funding standard account. The waived funding deficiency is then amortized over a period of five years, beginning with the year following the year in which the waiver is granted. Each year, the funding standard account is charged with the amortization amount for that year unless the plan becomes fully funded.

If, as of the close of a plan year, the funding standard account reflects credits at least equal to charges, the plan is generally treated as meeting the minimum funding standard for the year. If,

as of the close of the plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an “accumulated funding deficiency.” Thus, as a general rule, the minimum contribution for a plan year is determined as the amount by which the charges to the funding standard account would exceed credits to the account if no contribution were made to the plan. For example, if the balance of charges to the funding standard account of a plan for a year would be \$200,000 without any contributions, then a minimum contribution equal to that amount would be required to meet the minimum funding standard for the year to prevent an accumulated funding deficiency.

#### *Credit balances*

If credits to the funding standard account exceed charges, a “credit balance” results. A credit balance results, for example, if contributions in excess of minimum required contributions are made. Similarly, a credit balance may result from large net experience gains. The amount of the credit balance, increased with interest at the rate used under the plan to determine costs, can be used to reduce future required contributions.

#### *Funding methods and general concepts*

A defined benefit pension plan is required to use an acceptable actuarial cost method to determine the elements included in its funding standard account for a year. Generally, an actuarial cost method breaks up the cost of benefits under the plan into annual charges consisting of two elements for each plan year. These elements are referred to as: (1) normal cost; and (2) supplemental cost.

The plan’s normal cost for a plan year generally represents the cost of future benefits allocated to the year by the funding method used by the plan for current employees and, under some funding methods, for separated employees. Specifically, it is the amount actuarially determined that would be required as a contribution by the employer for the plan year in order to maintain the plan if the plan had been in effect from the beginning of service of the included employees and if the costs for prior years had been paid, and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled. The normal cost will be funded by future contributions to the plan: (1) in level dollar amounts; (2) as a uniform percentage of payroll; (3) as a uniform amount per unit of service (e.g., \$1 per hour); or (4) on the basis of the actuarial present values of benefits considered accruing in particular plan years.

The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. The most common supplemental cost is that attributable to past service liability, which represents the cost of future benefits under the plan: (1) on the date the plan is first effective; or (2) on the date a plan amendment increasing plan benefits is first effective. Other supplemental costs may be attributable to net experience losses, changes in actuarial assumptions, and amounts necessary to make up funding deficiencies for which a waiver was obtained. Supplemental costs must be amortized (i.e., recognized for funding purposes) over a specified number of years,

depending on the source. For example, the cost attributable to a past service liability is generally amortized over 30 years.

Normal costs and supplemental costs under a plan are computed on the basis of an actuarial valuation of the assets and liabilities of a plan. An actuarial valuation is generally required annually and is made as of a date within the plan year or within one month before the beginning of the plan year. However, a valuation date within the preceding plan year may be used if, as of that date, the value of the plan's assets is at least 100 percent of the plan's current liability (i.e., the present value of benefit liabilities under the plan, as described below).

For funding purposes, the actuarial value of plan assets may be used, rather than fair market value. The actuarial value of plan assets is the value determined under a reasonable actuarial valuation method that takes into account fair market value and is permitted under Treasury regulations. Any actuarial valuation method used must result in a value of plan assets that is not less than 80 percent of the fair market value of the assets and not more than 120 percent of the fair market value. In addition, if the valuation method uses average value of the plan assets, values may be used for a stated period not to exceed the five most recent plan years, including the current year.

In applying the funding rules, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, each of which is reasonable (taking into account the experience of the plan and reasonable expectations), or which, in the aggregate, result in a total plan contribution equivalent to a contribution that would be obtained if each assumption and method were reasonable. In addition, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.<sup>2</sup>

#### *Additional contributions for underfunded plans*

##### *In general*

Under special funding rules (referred to as the "deficit reduction contribution" rules),<sup>3</sup> an additional charge to a plan's funding standard account is generally required for a plan year if the plan's funded current liability percentage for the plan year is less than 90 percent.<sup>4</sup> A plan's "funded current liability percentage" is generally the actuarial value of plan assets as a percentage of the plan's current liability.<sup>5</sup> In general, a plan's current liability means

<sup>2</sup>Under present law, certain changes in actuarial assumptions that decrease the liabilities of an underfunded single-employer plan must be approved by the Secretary of the Treasury.

<sup>3</sup>The deficit reduction contribution rules apply to single-employer plans, other than single-employer plans with no more than 100 participants on any day in the preceding plan year. Single-employer plans with more than 100 but not more than 150 participants are generally subject to lower contribution requirements under these rules.

<sup>4</sup>Under an alternative test, a plan is not subject to the deficit reduction contribution rules for a plan year if (1) the plan's funded current liability percentage for the plan year is at least 80 percent, and (2) the plan's funded current liability percentage was at least 90 percent for each of the two immediately preceding plan years or each of the second and third immediately preceding plan years.

<sup>5</sup>In determining a plan's funded current liability percentage for a plan year, the value of the plan's assets is generally reduced by the amount of any credit balance under the plan's funding standard account. However, this reduction does not apply in determining the plan's funded current liability percentage for purposes of whether an additional charge is required under the deficit reduction contribution rules.

all liabilities to employees and their beneficiaries under the plan, determined on a present-value basis.

The amount of the additional charge required under the deficit reduction contribution rules is the sum of two amounts: (1) the excess, if any, of (a) the deficit reduction contribution (as described below), over (b) the contribution required under the normal funding rules; and (2) the amount (if any) required with respect to unpredictable contingent event benefits. The amount of the additional charge cannot exceed the amount needed to increase the plan's funded current liability percentage to 100 percent (taking into account any expected increase in current liability due to benefits accruing during the plan year).

The deficit reduction contribution is the sum of (1) the "unfunded old liability amount," (2) the "unfunded new liability amount," and (3) the expected increase in current liability due to benefits accruing during the plan year.<sup>6</sup> The "unfunded old liability amount" is the amount needed to amortize certain unfunded liabilities under 1987 and 1994 transition rules. The "unfunded new liability amount" is the applicable percentage of the plan's unfunded new liability. Unfunded new liability generally means the unfunded current liability of the plan (i.e., the amount by which the plan's current liability exceeds the actuarial value of plan assets), but determined without regard to certain liabilities (such as the plan's unfunded old liability and unpredictable contingent event benefits). The applicable percentage is generally 30 percent, but decreases by .40 of one percentage point for each percentage point by which the plan's funded current liability percentage exceeds 60 percent. For example, if a plan's funded current liability percentage is 85 percent (i.e., it exceeds 60 percent by 25 percentage points), the applicable percentage is 20 percent (30 percent minus 10 percentage points (25 multiplied by .4)).<sup>7</sup>

A plan may provide for unpredictable contingent event benefits, which are benefits that depend on contingencies that are not reliably and reasonably predictable, such as facility shutdowns or reductions in workforce. The value of any unpredictable contingent event benefit is not considered in determining additional contributions until the event has occurred. The event on which an unpredictable contingent event benefit is contingent is generally not considered to have occurred until all events on which the benefit is contingent have occurred.

#### *Required interest rate and mortality table*

Specific interest rate and mortality assumptions must be used in determining a plan's current liability for purposes of the special funding rule. For plans years beginning before January 1, 2004, the interest rate used to determine a plan's current liability must be within a permissible range of the weighted average<sup>8</sup> of the interest rates on 30-year Treasury securities for the four-year period ending on the last day before the plan year begins. The permissible range

<sup>6</sup>If the Secretary of the Treasury prescribes a new mortality table to be used in determining current liability, as described below, the deficit reduction contribution may include an additional amount.

<sup>7</sup>In making these computations, the value of the plan's assets is reduced by the amount of any credit balance under the plan's funding standard account.

<sup>8</sup>The weighting used for this purpose is 40 percent, 30 percent, 20 percent and 10 percent, starting with the most recent year in the four-year period. Notice 88-73, 1988-2 C.B. 383.

is generally from 90 percent to 105 percent (120 percent for plan years beginning in 2002 or 2003).<sup>9</sup> The interest rate used under the plan generally must be consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.<sup>10</sup>

Under the Pension Funding Equity Act of 2004 (“PFEA 2004”),<sup>11</sup> a special interest rate applies in determining current liability for plan years beginning in 2004 or 2005.<sup>12</sup> For these years, the interest rate used must be within a permissible range of the weighted average of the rates of interest on amounts invested conservatively in long-term investment-grade corporate bonds during the four-year period ending on the last day before the plan year begins. The permissible range for these years is from 90 percent to 100 percent. The interest rate is to be determined by the Secretary of the Treasury on the basis of two or more indices that are selected periodically by the Secretary and are in the top three quality levels available.

The Secretary of the Treasury is required to prescribe mortality tables and to periodically review (at least every five years) and update such tables to reflect the actuarial experience of pension plans and projected trends in such experience.<sup>13</sup> The Secretary of the Treasury has required the use of the 1983 Group Annuity Mortality Table.<sup>14</sup>

#### *Other rules*

##### *Full funding limitation*

No contributions are required under the minimum funding rules in excess of the full funding limitation. The full funding limitation is the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the lesser of (a) the market value of plan assets or (b) the actuarial value of plan assets.<sup>15</sup> However, the full funding limitation may not be less than the excess, if any, of 90 percent of the plan’s current liability (including the current liability normal cost) over the actuarial value of plan assets. In gen-

<sup>9</sup> If the Secretary of the Treasury determines that the lowest permissible interest rate in this range is unreasonably high, the Secretary may prescribe a lower rate, but not less than 80 percent of the weighted average of the 30-year Treasury rate.

<sup>10</sup> Code sec. 412(b)(5)(B)(iii)(II); ERISA sec. 302(b)(5)(B)(iii)(II). Under Notice 90-11, 1990-1 C.B. 319, the interest rates in the permissible range are deemed to be consistent with the assumptions reflecting the purchase rates that would be used by insurance companies to satisfy the liabilities under the plan.

<sup>11</sup> Pub. L. No. 108-218 (2004).

<sup>12</sup> In addition, under PFEA 2004, if certain requirements are met, reduced contributions under the deficit reduction contribution rules apply for plan years beginning after December 27, 2003, and before December 28, 2005, in the case of plans maintained by commercial passenger airlines, employers primarily engaged in the production or manufacture of a steel mill product or in the processing of iron ore pellets, or a certain labor organization.

<sup>13</sup> Code sec. 412(l)(7)(C)(ii); ERISA sec. 302(d)(7)(C)(ii).

<sup>14</sup> Rev. Rul. 95-28, 1995-1 C.B. 74. The IRS and the Treasury Department have announced that they are undertaking a review of the applicable mortality table and have requested comments on related issues, such as how mortality trends should be reflected. Notice 2003-62, 2003-38 I.R.B. 576; Announcement 2000-7, 2000-1 C.B. 586.

<sup>15</sup> For plan years beginning before 2004, the full funding limitation was generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) a percentage (170 percent for 2003) of the plan’s current liability (including the current liability normal cost), over (2) the lesser of (a) the market value of plan assets or (b) the actuarial value of plan assets, but in no case less than the excess, if any, of 90 percent of the plan’s current liability over the actuarial value of plan assets. Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), the full funding limitation based on 170 percent of current liability is repealed for plan years beginning in 2004 and thereafter. The provisions of EGTRRA generally do not apply for years beginning after December 31, 2010.

eral, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability under the full funding limitation may be based on projected future benefits, including future salary increases.

#### TIMING OF PLAN CONTRIBUTIONS

In general, plan contributions required to satisfy the funding rules must be made within 8½ months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year.

In the case of a plan with a funded current liability percentage of less than 100 percent for the preceding plan year, estimated contributions for the current plan year must be made in quarterly installments during the current plan year.<sup>16</sup> The amount of each required installment is 25 percent of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year.<sup>17</sup>

##### *Funding waivers*

Within limits, the Secretary of the Treasury is permitted to waive all or a portion of the contributions required under the minimum funding standard for a plan year (a “waived funding deficiency”).<sup>18</sup> A waiver may be granted if the employer (or employers) responsible for the contribution could not make the required contribution without temporary substantial business hardship and if requiring the contribution would be adverse to the interests of plan participants in the aggregate. Generally, no more than three waivers may be granted within any period of 15 consecutive plan years.

The IRS is authorized to require security to be granted as a condition of granting a waiver of the minimum funding standard if the sum of the plan’s accumulated funding deficiency and the balance of any outstanding waived funding deficiencies exceeds \$1 million.

##### *Failure to make required contributions*

An employer is generally subject to an excise tax if it fails to make minimum required contributions and fails to obtain a waiver from the IRS.<sup>19</sup> The excise tax is 10 percent of the amount of the funding deficiency. In addition, a tax of 100 percent may be imposed if the funding deficiency is not corrected within a certain period.

If the total of the contributions the employer fails to make (plus interest) exceeds \$1 million and the plan’s funded current liability percentage is less than 100 percent, a lien arises in favor of the plan with respect to all property of the employer and the members of the employer’s controlled group. The amount of the lien is the total amount of the missed contributions (plus interest).

<sup>16</sup> Code sec. 412(m); ERISA sec. 302(e).

<sup>17</sup> If quarterly contributions are required with respect to a plan, the amount of a quarterly installment must also be sufficient to cover any shortfall in the plan’s liquid assets (a “liquidity shortfall”).

<sup>18</sup> Code sec. 412(d); ERISA sec. 303. Under similar rules, the amortization period applicable to an unfunded past service liability or loss may also be extended.

<sup>19</sup> Code sec. 4971. An excise tax applies also if a quarterly installment is less than the amount required to cover the plan’s liquidity shortfall.

## REASONS FOR CHANGE

The Committee believes that the defined benefit pension system must be strengthened in order to ensure a protected and reliable retirement system. Employees need greater pension security in order to prepare for retirement. Employers must have the ability to accurately measure and predict pension plan liabilities and their funding obligations in order to properly determine their capital allocations and expenditures for business planning purposes.

The Committee believes that the current defined benefit pension system does not contain appropriate funding rules to ensure that pension plans are properly funded. The Committee believes that comprehensive funding rule changes are needed in order to address the systematic pension underfunding crisis that continues to threaten the financial security of millions of participants. In addition, the present-law single-employer defined benefit plan funding rules, including the existence of a dual set of rules, are overly complex.

It is the view of the Committee that present-law pension funding rules permit underfunded plans to make up funding shortfalls over too long a period of time, putting workers at risk of having their plans terminate without adequate funding. The Committee believes that present-law funding rules should be modified to ensure that employers are required to make sufficient and consistent contributions to ensure that plans ultimately meet a 100 percent funding target.

The Committee believes that liabilities should be measured more precisely than required under present law. The Committee believes that the comprehensive pension reforms must include permanent interest rate reforms that generally reflect the timing of when liabilities are to be paid out. The Committee believes that the general matching of discount rates of differing maturities to pension obligations is the most accurate and practical way to measure the cost of meeting pension obligations and that a yield curve concept should be used. The Committee understands that use of a yield curve to measure other types of financial liabilities, such as car loans, mortgages, and certificates of deposit, is a common and prudent business practice.

The Committee believes that accuracy in measuring pension liabilities and providing plan sponsors the ability to predict and budget for pension contributions are both important considerations. The Committee believes that the present-law rules do not appropriately balance these concerns, and that slightly reducing the smoothing periods under present law would improve accuracy while maintaining predictability. Thus, the Committee bill incorporates smoothing techniques in applying the modified yield curve and in determining asset values. However, the bill also generally reduces by one year the period over which smoothing is permitted.

The Committee also believes that the mortality table required to be used under present law in calculating plan liabilities is outdated and may cause certain plans to appear to be better funded with fewer liabilities. Thus, the Committee believes that it is appropriate to update the mortality table required to be used and to allow the use of plan-specific mortality tables upon approval of Secretary of the Treasury.

The present-law rules relating to credit balances have been identified as contributing to plan underfunding. Under present law, a credit balance is increased each year based on an assumed rate of interest, even if plan assets have failed to earn that rate of return or suffered losses. In addition, credit balances can be used to offset required contributions, even in the case of a seriously underfunded plan, thus slowing plan funding. Indeed, as benefits continue to accrue, using credit balances to offset required contributions causes funded status to deteriorate further. The PBGC has noted that in some large plan terminations, the use of credit balances allowed a “funding holiday” for several years before plan termination, at which time the plans were significantly underfunded. Because credit balances were perceived as having such a harmful effect on funding, the Administration proposal would have eliminated the credit balances accumulated under present law, as well as prohibited new balances from accumulating. The bill does not adopt the strict approach of the Administration proposal. Rather, the bill both preserves the ability to use present-law balances, as well as permits new balances to accumulate. However, use of new balances is more limited to counteract some of the harmful effects associated with credit balances under present law.

The Committee is also concerned about seriously underfunded plans as such plans present a risk to employees, as well as to the PBGC insurance program and to other PBGC premium payors. If the PBGC does not remain solvent, there may be increased pressures for guaranteed benefits to be paid from general revenues, thus imposing additional burdens on American taxpayers generally. The Committee believes that it is appropriate to require underfunded plans to use certain additional assumptions and loading factors in determining their funding obligations.

#### EXPLANATION OF PROVISION

##### *Interest rate required for plan years beginning in 2006*

For plan years beginning after December 31, 2005, and before January 1, 2007, the provision applies the present-law funding rules, with an extension of the interest rate applicable in determining current liability for plan years beginning in 2004 and 2005. Thus, in determining current liability for funding purposes for plan years beginning in 2006, the interest rate used must be within the permissible range (90 to 100 percent) of the weighted average of the rates of interest on amounts invested conservatively in long-term investment-grade corporate bonds during the four-year period ending on the last day before the plan year begins.

##### *Funding rules for plan years beginning after 2006—in general*

For plan years beginning after December 31, 2006, in the case of single-employer defined benefit plans, the provision repeals the present-law funding rules (including the requirement that a funding standard account be maintained) and provides a new set of rules for determining minimum required contributions.<sup>20</sup> Under the

<sup>20</sup>The provision does not change the funding rules applicable to insurance contract plans. Proposed changes to the funding rules for multiemployer plans are discussed in Part II below. Governmental plans and church plans continue to be exempt from the funding rules to the extent provided under present law.



provision, the minimum required contribution to a single-employer defined benefit pension plan for a plan year generally depends on a comparison of the value of the plan's assets with the plan's funding target and target normal cost. As described in more detail below, under the provision, credit balances generated under present law are carried over (into the "funding standard carryover balance") and generally may be used in certain circumstances to reduce otherwise required minimum contributions. In addition, as described more fully below, contributions in excess of the minimum contributions required under the provision generally are credited to a prefunding balance that may be used in certain circumstances to reduce otherwise required minimum contributions. To facilitate the use of such balances to reduce minimum required contributions, while avoiding use of such balances for more than one purpose, in some circumstances the value of plan assets is reduced by the prefunding balance and/or the funding standard carryover balance.

The minimum required contribution for a plan year, based on the value of plan assets (reduced by any prefunding balance and funding standard carryover balance) compared to the funding target, is shown in the following table:

If:	The minimum required contribution is:
the value of plan assets (reduced by any prefunding balance and funding standard carryover balance) is less than the funding target.	the sum of: (1) target normal cost; (2) any shortfall amortization charge; and (3) any waiver amortization charge.
the value of plan assets (reduced by any prefunding balance and funding standard carryover balance) exceeds the funding target.	the target normal cost, reduced by the excess of (1) the value of plan assets (reduced by any prefunding balance and funding standard carryover balance), over (2) the funding target.
the value of plan assets (reduced by any prefunding balance and funding standard carryover balance) equals the funding target.	the target normal cost.

Under the provision, a plan's funding target is the present value of all liabilities under the plan attributable to benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is the present value of benefits expected to accrue or be earned during the plan year. A shortfall amortization charge is the amount required to amortize a funding shortfall. In general, a plan has a funding shortfall for a plan year if the plan's funding target for the year exceeds the value of the plan's assets (reduced by any prefunding balance and funding standard carryover balance). A waiver amortization charge is the amount required to amortize a waiver funding deficiency.

The provision specifies the interest rates and mortality table that must be used in determining a plan's target normal cost and funding target, as well as certain other actuarial assumptions, including special assumptions if the value of a plan's assets (reduced by any prefunding and funding standard carryover balances) for the preceding year was less than 60 percent of the plan's funding target (an "at-risk" plan).

#### *Target normal cost*

Under the provision, the minimum required contribution for a plan year generally includes the plan's target normal cost for the plan year. A plan's target normal cost is the present value of all benefits expected to accrue or be earned under the plan during the

plan year (the “current” year). For this purpose, an increase in any benefit attributable to services performed in a preceding year by reason of a compensation increase during the current year is treated as having accrued during the current year.

If the value of a plan’s assets (reduced by any funding standard carryover balance and prefunding balance) exceeds the plan’s funding target for a plan year, for purposes of determining the minimum required contribution for the plan year, normal cost is reduced by the excess.

#### *Funding target and shortfall amortization charges*

##### *In general*

If the value of a plan’s assets (reduced by any prefunding balance if the employer elects to use the prefunding balance to reduce required contributions for the year) is less than the plan’s funding target for a plan year, the minimum required contribution is increased by a shortfall amortization charge. As discussed more fully below, the shortfall amortization charge is the aggregate of the annual installments for the plan year with respect to any shortfall amortization bases for the plan year and the six preceding plan years.

##### *Funding target*

A plan’s funding target for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year. For this purpose, liabilities are taken into account to the extent attributable to benefits (including any early retirement or similar benefits) accrued or earned as of the beginning of the plan year. Benefits accruing in the plan year are not taken into account, irrespective of whether the valuation date for the plan year is later than the first day of the plan year.<sup>21</sup>

##### *Shortfall amortization charge*

The shortfall amortization charge for a plan year is the aggregate of the shortfall amortization installments for the plan year with respect to any shortfall amortization bases for that plan year and the six preceding plan years. The shortfall amortization installments with respect to a shortfall amortization base for a plan year are annual installments determined as the amount needed to amortize the shortfall amortization base in level annual installments over the seven-year period beginning with the plan year. The shortfall amortization installments for a plan year are determined using the appropriate segment interest rates for the plan year (discussed below).

A shortfall amortization base is determined for a plan year based on the plan’s funding shortfall for the plan year, that is, the amount by which the plan’s funding target for the year exceeds the value of the plan’s assets (reduced by any funding standard carryover balance and prefunding balance). The shortfall amortization base is the excess of (1) the funding shortfall, over (2) the present value of (a) the aggregate shortfall amortization installments for the plan year and the five succeeding plan years that have been

<sup>21</sup> Benefits accruing during the plan year are taken into account in determining normal cost for the plan year.

determined with respect to any shortfall amortization bases for each of the six preceding plan years and (b) the aggregate waiver amortization installments (discussed below) for the plan year and the four succeeding plan years that have been determined with respect to any waived funding deficiency for each of the five preceding plan years. Under a special rule, a shortfall amortization base does not have to be established for a year if the value of a plan's assets (reduced by any prefunding balance, but only if the employer elects to use the prefunding balance to reduce required contributions for the year) is at least equal to the plan's funding target for a plan year.

A transition rule applies with respect to certain plans in determining a shortfall amortization base for a plan year beginning after 2006 and before 2011. The transition rule applies to a plan that is subject to the present-law funding rules for the 2006 plan year, but is not subject to the present-law deficit reduction contribution rules for that year (either because of the plan's funded status or because the plan covers no more than 100 participants). Under the transition rule, for purposes of determining a shortfall amortization base for a plan year, the plan's funding shortfall is calculated by reference to the applicable percentage of the plan's funding target as shown in the following table:

Calendar year in which plan year begins:	Applicable percentage of funding target:
2007 .....	92
2008 .....	94
2009 .....	96
2010 .....	98

#### *Early deemed amortization of funding shortfalls for preceding years*

If a plan's funding shortfall for a plan year is zero (i.e., the value of the plan's assets, reduced by any funding standard carryover balance and prefunding balance, is at least equal to the plan's funding target for the year), any shortfall amortization bases for preceding plan years are eliminated. In that case, for purposes of determining any shortfall amortization charges for that year and succeeding years, the shortfall amortization base for preceding years is zero.

#### *Waiver amortization charges*

The provision retains the present-law rules under which the Secretary of the Treasury may waive all or a portion of the contributions required under the minimum funding standard for a plan year (referred to as a "waived funding deficiency").<sup>22</sup> If a plan has a waived funding deficiency for a plan year or any of the four preceding plan years, the minimum required contribution for the plan year is increased by the waiver amortization charge for the plan year.

The waiver amortization charge for a plan year is the aggregate of the waiver amortization installments for the plan year with re-

<sup>22</sup> In the case of single-employee plans, the provision repeals the present-law rules under which the amortization period applicable to an unfunded past service liability or loss may be extended.

spect to any waiver amortization bases for the five preceding plan years. The waiver amortization installments with respect to a waiver amortization base for a plan year are annual installments determined as the amount needed to amortize the waiver amortization base in level annual installments over the five-year period beginning with the following plan year. The waiver amortization installments for a plan year are determined using the appropriate segment interest rates for the plan year (discussed below). The waiver amortization base for a plan year is the amount of the waived funding deficiency (if any) for the plan year.

If a plan's funding shortfall for a plan year is zero (i.e., the value of the plan's assets, reduced by any funding standard carryover balance and prefunding balance, is at least equal to the plan's funding target for the year), any waiver amortization bases for preceding plan years are eliminated. In that case, for purposes of determining any waiver amortization charges for that year and succeeding years, the waiver amortization base for preceding years is zero.

*Actuarial assumptions used in determining a plan's target normal cost and funding target*

*Interest rates*

The provision specifies the interest rates that must be used in determining a plan's target normal cost and funding target. Under the provision, present value is determined using three interest rates ("segment" rates), each of which applies to benefit payments expected to be made from the plan during a certain period. The first segment rate applies to payments expected to be made during the five-year period beginning on the first day of the plan year; the second segment rate applies to payments expected to be made during the 15-year period following the initial five-year period; and the third segment rate applies to payments expected to be made after the end of the 15-year period. Each segment rate is a single interest rate determined monthly by the Secretary of the Treasury on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period.

The corporate bond yield curve used for this purpose is to be prescribed on a monthly basis by the Secretary of the Treasury, reflecting a three-year weighted average of yields on investment grade corporate bonds with varying maturities. The three-year weighted average is an average determined using a methodology under which the most recent year is weighted 50 percent, the preceding year is weighted 35 percent, and the second preceding year is weighted 15 percent.

The Secretary of the Treasury is directed to publish each month the corporate bond yield curve and each of the segment rates for the month. In addition, such Secretary is directed to publish a description of the methodology used to determine the yield curve and segment rates, which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and segment rates for future months, based on a plan's projection of future interest rates.

Under the provision, the present value of liabilities under a plan is determined using the segment rates for the “applicable month” for the plan year. The applicable month is the month that includes the plan’s valuation date for the plan year, or, at the election of the plan sponsor, any of the four months preceding the month that includes the valuation date. An election of a preceding month applies to the plan year for which it is made and all succeeding plan years unless revoked with the consent of the Secretary of the Treasury.

The provision provides a transition rule for plan years beginning in 2007 and 2008.<sup>23</sup> Under this rule, for plan years beginning in 2007, the first, second, or third segment rate with respect to any month is the sum of: (1) the product of the segment rate otherwise determined for the month, multiplied by  $33\frac{1}{3}$  percent; and (2) the product of the applicable long-term corporate bond rate,<sup>24</sup> multiplied by  $66\frac{2}{3}$  percent. For plan years beginning in 2008, the first, second, or third segment rate with respect to any month is the sum of: (1) the product of the segment rate otherwise determined for the month, multiplied by  $66\frac{2}{3}$  percent; and (2) the product of applicable long-term corporate bond rate multiplied by  $33\frac{1}{3}$  percent.

Under the provision, certain amounts are determined using the plan’s “effective interest rate” for a plan year. The effective interest rate with respect to a plan for a plan year is the single rate of interest which, if used to determine the present value of the liabilities taken into account in determining the plan’s funding target for the year, would result in an amount equal to the plan’s funding target (as determined using the first, second, and third segment rates).

#### *Mortality table*

The provision specifies the mortality table that must be used in determining present value or making any other computations. In general, the mortality table used must be the RP-2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the provision. Under Treasury regulations, any difference in present value resulting from the different assumptions under the required mortality table and the table used in determining current liability for plan years beginning in 2006 is to be phased in ratably over the first five plan years beginning in or after 2007, so as to be fully effective for the fifth plan year.<sup>25</sup>

The Secretary of the Treasury is directed to make revisions at least every 10 years in any tables in effect under the provision to reflect the actual experience of pension plans and projected trends in such experience.

The provision also provides for the use of a different mortality table with respect to a plan, as requested by the plan sponsor and approved by the Secretary of Treasury. In order for the table to be used, the Secretary must determine that the table (1) reflects the

<sup>23</sup>The transition rule does not apply to a plan if its first plan year begins after December 31, 2006.

<sup>24</sup>The applicable long-term corporate bond rate is a rate that is from 90 to 100 percent of the weighted average of the rates of interest on amounts invested conservatively in long-term investment-grade corporate bonds during the four-year period ending on the last day before the plan year begins as determined by the Secretary under the method in effect for 2006.

<sup>25</sup>The transition rule does not apply to a plan if its first plan year begins after December 31, 2006.

actual experience of the pension plan and projected trends in such experience and (2) is significantly different from the table otherwise required to be used. Such a table may generally be used for up to 10 years. However, the table shall no longer apply if the plan's actuary determines that the table no longer meets the applicable criteria. A mortality table submitted to the Secretary for approval under the provision is treated as in effect for the succeeding plan year unless the Secretary, within the 180-day period beginning on the date of the submission, disapproves of the table and provides the reasons that the table fails to meet the applicable criteria.

*Other assumptions*

Under the provision, in determining any present value or making any computation, the probability that future benefits will be paid in optional forms of benefit provided under the plan must be taken into account (including the probability of lump-sum distributions determined on the basis of the plan's experience and other related assumptions). In addition, there must be taken into account any difference in the present value of future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefit, that are different from those specified under the provision.

The provision generally does not require other specified assumptions to be used in determining the plan's target normal cost and funding target except in the case of at-risk plans (discussed below). However, similar to present law, the determination of present value or other computation must be made on the basis of actuarial assumptions and methods, each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.<sup>26</sup>

*Special assumptions for at-risk plans*

The provision applies special rules in determining the funding target and normal cost of a plan in at-risk status. A plan is in at-risk status for a plan year if the plan's funding target attainment percentage for the preceding year was less than 60 percent. A plan's funding target attainment percentage for a plan year is the ratio, expressed as a percentage, that the value of the plan's assets (reduced by any funding standard carryover balance and prefunding balance) bears to the plan's funding target for the year. For this purpose, the plan's funding target is determined using the actuarial assumptions for plans that are not at-risk.

The funding target of a plan in at-risk status for a plan year is generally the sum of: (1) the present value of all liabilities to participants and beneficiaries under the plan for the plan year, determined using (in addition to the normally required assumptions) an assumption that all participants will elect benefits at the times and in the forms that will result in the highest present value of liabilities, plus (2) a loading factor. The loading factor is the sum of (1) \$700 times the number of participants in the plan, plus (2) four

<sup>26</sup> The provision retains the present-law rule under which certain changes in actuarial assumptions that decrease the liabilities of an underfunded single-employer plan must be approved by the Secretary of the Treasury.

percent of the funding target determined without regard to the loading factor.<sup>27</sup>

The target normal cost of a plan in at-risk status for a plan year is generally the sum of: (1) the present value of benefits expected to accrue or be earned under the plan during the plan year, determined using (in addition to the normally required assumptions) an assumption that all participants will elect benefits at the times and in the forms that will result in the highest present value, plus (2) a loading factor. The loading factor is four percent of the target normal cost determined without regard to the loading factor.<sup>28</sup>

If a plan has been in at-risk status for fewer than five consecutive plan years, the amount of a plan's funding target for a plan year is the sum of: (1) the amount of the funding target determined without regard to the at-risk rules, plus (2) the transition percentage for the plan year of the excess of the amount of the funding target determined under the at-risk rules over the amount determined without regard to the at-risk rules. Similarly, if a plan has been in at-risk status for fewer than five consecutive plan years, the amount of a plan's target normal cost for a plan year is the sum of: (1) the amount of the target normal cost determined without regard to the at-risk rules, plus (2) the transition percentage for the plan year of the excess of the amount of the target normal cost determined under the at-risk rules over the amount determined without regard to the at-risk rules. The transition percentage is the product of 20 percent times the number of consecutive plan years for which the plan has been in at-risk status.

*Funding standard carryover balance or prefunding balance*

*In general*

The bill preserves credit balances that have accumulated under present law (referred to as "funding standard carryover balances"). In addition, for plan years beginning after 2005, new credit balances (referred to as "prefunding balances") result if an employer makes contributions greater than those required under the new funding rules. In general, under the bill, employers may choose whether to count funding standard carryover balances and prefunding balances in determining the value of plan assets or to use the balances to reduce required contributions, but not both. In this regard, the bill provides more favorable rules with respect to the use of funding standard carryover balances.

Under the bill, if the value of a plan's assets (reduced by any prefunding balance) is at least 80 percent of the plan's funding target (determined without regard to the at-risk rules) for the preceding plan year, the plan sponsor may elect to credit all or a portion of the funding standard carryover balance or prefunding balance against the minimum required contribution for the current plan year (determined after any funding waiver), thus reducing the amount that must be contributed for the current year.

The value of plan assets is generally reduced by any prefunding balance or funding standard carryover balance for purposes of de-

<sup>27</sup>This loading factor is intended to reflect the cost of purchasing group annuity contracts in the case of termination of the plan.

<sup>28</sup> Target normal cost for a plan in at-risk status does not include a loading factor of \$700 per plan participant.

termining minimum required contributions. However, the plan sponsor may elect to reduce the prefunding balance or funding standard carryover balance, so that the value of plan assets is not required to be reduced by that amount in determining the minimum required contribution for the plan year. Any reduction of the prefunding balance or funding standard carryover balance applies before determining the balance that is available for crediting against minimum required contributions for the plan year.

*Funding standard carryover balance*

In the case of a single-employer plan that is in effect for a plan year beginning in 2006 and, as of the end of the 2006 plan year, has a positive balance in the funding standard account maintained under the funding rules as in effect for 2006, the plan sponsor may elect to maintain a funding standard carryover balance. The funding standard carryover balance consists of a beginning balance in the amount of the positive balance in the funding standard account as of the end of the 2006 plan year, has a positive balance in the funding standard account maintained under the funding rules as in effect for 2006, the plan sponsor may elect to maintain a funding standard carryover balance. The funding standard carryover balance consists of a beginning balance in the amount of the positive balance in the funding standard account as of the end of the 2006 plan year, decreased (as described below) and adjusted to reflect the rate of net gain or loss on plan assets.

For subsequent years (i.e., as of the valuation date for each plan year beginning after 2007), the funding standard carryover balance of a plan is decreased (but not below zero) by the sum of: (1) any amount credited to reduce the minimum required contribution for the preceding plan year, plus (2) any amount elected by the plan sponsor as a reduction in the funding standard carryover balance (thus reducing the amount by which the value of plan assets must be reduced in determining minimum required contributions).

*Prefunding balance*

The plan sponsor may elect to maintain a prefunding balance, which consists of a beginning balance of zero, increased and decreased (as described below) and adjusted to reflect the rate of net gain or loss on plan assets.

For subsequent years (i.e., as of the valuation date for each plan year beginning after 2007 (the "current" plan year)), the prefunding balance of a plan is increased by the amount elected by the plan sponsor, not to exceed: (1) the excess (if any) of the aggregate total employer contributions for the preceding plan year, over (2) the minimum required contribution for the preceding plan year. For this purpose, the minimum required contribution for the preceding plan year is increased by interest, at the plan's effective rate for the preceding plan year, on any portion of the required contribution remaining unpaid as of the valuation date for the current plan year, for the period beginning with the first day of the preceding plan year and ending on the date that the unpaid portion of the contribution is made.

As of the valuation date for each plan year beginning after 2007, the prefunding balance of a plan is decreased (but not below zero) by the sum of: (1) any amount credited to reduce the minimum re-



quired contribution for the preceding plan year, plus (2) any amount elected by the plan sponsor as a reduction in the prefunding balance (thus reducing the amount by which the value of plan assets must be reduced in determining minimum required contributions). As discussed above, if the prefunding balance is used to reduce a minimum required contribution, the value of plan assets must be reduced by the prefunding balance in determining whether a shortfall amortization base must be established for the plan year (i.e., whether the value of plan assets for a plan year is less than the plan's funding target for the plan year). Thus, the prefunding balance may not be included in the value of plan assets in order to avoid a shortfall amortization base for a plan year and also used to reduce the minimum required contribution for the same year.

#### *Other rules*

In determining the prefunding balance or funding standard carryover balance as of the valuation date for a plan year (before applying any increase or decrease as described above), the plan sponsor must adjust the balance in accordance with regulations prescribed by the Secretary of the Treasury, to reflect the rate of net gain or loss on plan assets. The rate of net gain or loss is determined on the basis of the fair market value of the plan assets and the gain or loss experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with regulations, all contributions, distributions, and other plan payments made during the period.

To the extent that a plan has a funding standard carryover balance of more than zero for a plan year, none of the plan's prefunding balance may be credited to reduce a minimum required contribution, nor may an election be made to reduce the prefunding balance for purposes of determining the value of plan assets. Thus, the funding standard carryover balance must be used for these purposes before the prefunding balance may be used.

Any election relating to the prefunding balance and funding standard carryover balance is to be made in such form and manner as the Secretary of the Treasury prescribes.

#### *Other rules and definitions*

##### *Valuation date*

Under the provision, all determinations made with respect to minimum required contributions for a plan year (such as the value of plan assets and liabilities) must be made as of the plan's valuation date for the plan year. In general, the valuation date for a plan year must be the first day of the plan year. However, any day in the plan year may be designated as the plan's valuation date if, on each day during the preceding plan year, the plan had 500 or fewer participants.<sup>29</sup> For this purpose, all defined benefit pension plans (other than multiemployer plans) maintained by the same

<sup>29</sup>In the case of a plan's first plan year, the ability to use a valuation date other than the first day of the plan year is determined by taking into account the number of participants the plan is reasonably expected to have on each day during that first plan year.

employer (or a predecessor employer), or by any member of such employer's controlled group, are treated as a single plan, but only participants with respect to such employer or controlled group member are taken into account.

*Value of plan assets*

The provision allows the value of plan assets to be determined on the basis of any reasonable actuarial valuation method as under present law, with certain modifications. Any actuarial valuation method used may not result in a determination of the value of plan assets that at any time is less than 90 percent or more than 110 percent of the fair market value of the assets at that time. In addition, a valuation method may not provide for averaging of fair market values over more than the three most recent plan years (including the current year).

If a required contribution for a preceding plan year is made after the valuation date for the current year, the contribution is taken into account in determining the value of plan assets for the current plan year. For plan years beginning after 2007, the contribution is taken into account in the amount of its present value as of the valuation date for the current plan year, determined using the plan's effective rate of interest for the preceding plan year. In addition, any required contribution for the current plan year is not taken into account in determining the value of plan assets. If a required contribution for the current plan year is made before the valuation date, the value of plan assets is reduced for interest on the contribution for the period from the time of contribution to the valuation date, determined using the plan's effective rate of interest for the current plan year.

*Timing rules for contributions*

As under present law, the due date for the payment of a minimum required contribution for a plan year is 8½ months after the end of the plan year. Any payment made on a date other than the valuation date for the plan year must be adjusted for interest at the plan's effective rate of interest for the plan year for the period between the valuation date and the payment date. Similar to present-law rules, quarterly contributions must be made during a plan year if the plan had a funding shortfall for the preceding plan year (that is, if the value of the plan's assets, reduced by the funding standard carryover balance and prefunding balance, was less than the plan's funding target for the preceding plan year).<sup>30</sup>

*Excise tax on failure to make minimum required contributions*

The provision retains the present-law rules under which an employer is generally subject to an excise tax if it fails to make minimum required contributions and fails to obtain a waiver from the IRS.<sup>31</sup> The excise tax is 10 percent of the aggregate unpaid minimum required contributions for all plan years remaining unpaid

<sup>30</sup>The provision also retains the present-law rules under which the amount of any quarterly installment must be sufficient to cover any liquidity shortfall.

<sup>31</sup>The provision retains the present-law rules under which a lien in favor of the plan with respect to property of the employer (and members of the employer's controlled group) arises in certain circumstances in which the employer fails to make required contributions.

as of the end of any plan year. In addition, a tax of 100 percent may be imposed if any unpaid minimum required contributions remain unpaid after a certain period.

*Conforming changes*

The provision makes various technical and conforming changes to reflect the new funding requirements.

EFFECTIVE DATE

The extension of the present-law interest rate is effective for plan years beginning after December 31, 2005, and before January 1, 2007. The modifications to the single-employer plan funding rules are generally effective for plan years beginning after December 31, 2006.

B. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS

1. Prohibition on shutdown benefits and other unpredictable contingent event benefits (sec. 113(a) of the bill and new sec. 436 of the Code)

PRESENT LAW

A plan may provide for unpredictable contingent event benefits, which are benefits that depend on contingencies other than age, service, compensation, death or disability or that are not reliably and reasonably predictable as determined by the Secretary. Some of these benefits are commonly referred to as “plant shutdown” benefits. Under present law, unpredictable contingent event benefits generally are not taken into account for funding purposes until the event has occurred.

Defined benefit pension plans are not permitted to provide “lay-off” benefits (i.e., severance benefits).<sup>32</sup> However, defined benefit pension plans may provide subsidized early retirement benefits, including early retirement window benefits.<sup>33</sup>

An amendment of a qualified retirement plan may not decrease the accrued benefit of a plan participant.<sup>34</sup> This restriction is sometimes referred to as the “anticutback” rule and applies to benefits that have already accrued. In general, an amendment may reduce the amount of future benefit accruals, provided that, in the case of a significant reduction in the rate of future benefit accrual, certain notice requirements are met.

For purposes of the anticutback rule, an amendment is also treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Treasury regulations, eliminating an optional form of benefit.

REASONS FOR CHANGE

The Committee believes that plant shutdown benefits and other unpredictable contingent event benefits should not be provided

<sup>32</sup>Treas. Reg. sec. 1.401-1(b)(1)(i).

<sup>33</sup>See, e.g., Treas. Reg. secs. 1.401(a)(4)-3(f)(4) and 1.411(a)-7(c).

<sup>34</sup>Code sec. 411(d)(6); ERISA sec. 204(g).

through qualified plans. Such benefits are more in the nature of severance benefits rather than retirement benefits because these benefits are inherently unpredictable and, therefore, difficult to prefund. Such benefits also represent a springing liability for the plan. For example, a plan provision could be in effect for many years that provides for payment of benefits upon an unpredictable contingent event. Because of the unpredictable nature of such a benefit, it is not funded in advance. However, if the event occurs, plan liabilities may be significantly increased as a result. Actual experience of the PBGC indicates that the occurrence of an event triggering such benefits can dramatically increase the level of underfunding in a plan and increase the likelihood of a plan terminating with insufficient assets. The Committee bill does not prohibit the payment of plant shutdown or other benefits, but rather seeks to enhance the security of pension benefits by ensuring that pension plan assets will not be diverted for nonretirement purposes.

#### EXPLANATION OF PROVISION

Under the provision, a single-employer defined benefit pension plan may not provide benefits to which participants are entitled solely by reason of the occurrence of: (1) a plant shutdown; or (2) any other unpredictable contingent event. For this purpose, the term unpredictable contingent event means an event other than: (1) attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability; or (2) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury). The provision does not prohibit an employer from providing plant shutdown benefits, but rather prohibits them from being funded with pension plan assets.

Under the provision, a plan does not fail to meet the requirements of the anti-cutback rule solely by reason of the adoption of a plan amendment necessary to meet the requirements of the provision.

#### EFFECTIVE DATE

The provision generally applies with respect to plant shutdowns, or other unpredictable contingent events, occurring after December 31, 2006.

In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of enactment of the provision, the provision does not apply to plan years beginning before the earlier of: (1) the later of (a) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment), or (b) the first day of the first plan year to which the provision would otherwise apply; or (2) January 1, 2009. For this purpose, any plan amendment made pursuant to a collective bargaining agreement relating to the plan that amends the plan solely to conform to any requirement under the provision is not to be treated as a termination of the collective bargaining agreement.

2. Funding-based limits on benefits and benefit accruals (sec. 113(b) of the bill and new sec. 437 of the Code)

PRESENT LAW

*In general*

Under present law, various restrictions may apply to benefit increases and distributions from a defined benefit pension plan, depending on the funding status of the plan.

*Limitation on certain benefit increases while funding waivers in effect*

Within limits, the IRS is permitted to waive all or a portion of the contributions required under the minimum funding standard for a plan year.<sup>35</sup> A waiver may be granted if the employer responsible for the contribution could not make the required contribution without temporary substantial business hardship for the employer (and members of the employer's controlled group) and if requiring the contribution would be adverse to the interests of plan participants in the aggregate.

If a funding waiver is in effect for a plan, subject to certain exceptions, no plan amendment may be adopted that increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits vest under the plan.<sup>36</sup>

*Security for certain plan amendments*

In the case of a single-employer defined benefit pension plan, if a plan amendment increasing current liability is adopted and the plan's funded current liability percentage is less than 60 percent (taking into account the effect of the amendment, but disregarding any unamortized unfunded old liability), the employer and members of the employer's controlled group must provide security in favor of the plan.<sup>37</sup> The amount of security required is the excess of: (1) the lesser of (a) the amount by which the plan's assets are less than 60 percent of current liability, taking into account the benefit increase, or (b) the amount of the benefit increase and prior benefit increases after December 22, 1987, over (2) \$10 million. The amendment is not effective until the security is provided.

The security must be in the form of a bond, cash, certain U.S. government obligations, or such other form as is satisfactory to the Secretary of the Treasury and the parties involved. The security is released after the funded liability of the plan reaches 60 percent.

*Prohibition on benefit increases during bankruptcy*

Subject to certain exceptions, if an employer maintaining a single-employer defined benefit pension plan is involved in bankruptcy proceedings, no plan amendment may be adopted that increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits vest under the plan.<sup>38</sup>

<sup>35</sup> Code sec. 412(d); ERISA sec. 303.

<sup>36</sup> Code sec. 412(f); ERISA sec. 304(b)(1).

<sup>37</sup> Code sec. 401(a)(29); ERISA sec. 307.

<sup>38</sup> Code sec. 401(a)(33); ERISA sec. 204(i).

*Restrictions on benefit payments due to liquidity shortfalls*

In the case of a single-employer plan with a funded current liability percentage of less than 100 percent for the preceding plan year, estimated contributions for the current plan year must be made in quarterly installments during the current plan year. If quarterly contributions are required with respect to a plan, the amount of a quarterly installment must also be sufficient to cover any shortfall in the plan's liquid assets (a "liquidity shortfall"). In general, a plan has a liquidity shortfall for a quarter if the plan's liquid assets (such as cash and marketable securities) are less than a certain amount (generally determined by reference to disbursements from the plan in the preceding 12 months).

If a quarterly installment is less than the amount required to cover the plan's liquidity shortfall, limits apply to the benefits that can be paid from a plan during the period of underpayment. During that period, the plan may not make any prohibited payment, defined as: (1) any payment in excess of the monthly amount paid under a single life annuity (plus any social security supplement provided under the plan) in the case of a participant or beneficiary whose annuity starting date occurs during the period; (2) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits (e.g., an annuity contract); or (3) any other payment specified by the Secretary of the Treasury by regulations.<sup>39</sup>

*Prohibition on reductions in accrued benefits*

An amendment of a qualified retirement plan may not decrease the accrued benefit of a plan participant.<sup>40</sup> This restriction is sometimes referred to as the "anticutback" rule and applies to benefits that have already accrued. In general, an amendment may reduce the amount of future benefit accruals, provided that, in the case of a significant reduction in the rate of future benefit accrual, certain notice requirements are met.

For purposes of the anticutback rule, an amendment is also treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Treasury regulations, eliminating an optional form of benefit.

## REASONS FOR CHANGE

Under present law, sponsors of underfunded pension plans can continue to provide for additional accruals and, in some cases, may make benefit increases, pushing the cost of paying for such benefits off into the future. The Committee believes that plan sponsors should not be able to continue to increase benefits when a plan is underfunded. Companies should be more responsible with respect to pension benefits and should not continue to promise increased benefits when current promises are unfulfilled. The practice perpetuates systematic underfunding and is a moral hazard which threatens the retirement security of the participants and beneficiaries as well as the future of the defined benefit pension system. Lump

<sup>39</sup> Code sec. 401(a)(32); ERISA sec. 206(e).

<sup>40</sup> Code sec. 411(d)(6); ERISA sec. 204(g).

sums and other accelerated distributions from a severely underfunded plan allow certain participants to receive the full value of their benefits while depleting plan assets for those who remain in the plan. The Committee believes that appropriate restrictions should apply to underfunded plans to protect workers in the plan and to reduce the risk that underfunding will increase.

#### EXPLANATION OF PROVISION

##### *In general*

Under the provision, in the case of an underfunded single-employer defined benefit pension plan, limitations may apply with respect to: (1) plan amendments increasing benefit liabilities; (2) certain forms of distribution; and (3) benefit accruals.

##### *Limitations on plans less than 80-percent funded*

###### *Limitations on plan amendments increasing benefit liabilities*

Certain plan amendments may not take effect during a plan year if the plan's funding target attainment percentage for the plan year: (1) is less than 80 percent; or (2) would be less than 80 percent taking into account the amendment.<sup>41</sup> In such a case, no amendment may take effect if it has the effect of increasing the liabilities of the plan by reason of any increase in benefits, the establishment of new benefits, any change in the rate of benefit accrual, or any change in the rate at which benefits vest under the plan. For this purpose, any increase in benefits by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation is treated as effected by a plan amendment.

The limitation ceases to apply with respect to any plan year, effective as of the first day of the plan year (or, if later, the effective date of the amendment), if the plan sponsor makes a contribution (in addition to any minimum required contribution for the plan year), equal to: (1) if the plan's funding target attainment percentage is less than 80 percent, the amount of the increase in the plan's funding target for the plan year attributable to the amendment; or (2) if the plan's funding target attainment percentage would be less than 80 percent taking into account the amendment, the amount sufficient to result in a funding target attainment percentage of 80 percent. In addition, the limitation does not apply to a plan for the first five years the plan (or a predecessor plan) is in effect.

###### *Limitation on certain forms of distribution*

A plan must provide that, if the plan's funding target attainment percentage is less than 80 percent for a plan year, the plan will not make any prohibited payments after the valuation date for the plan year. For this purpose, prohibited payment is defined as under the present-law rule restricting distributions during a period of a liquidity shortfall: (1) any payment in excess of the monthly amount paid under a single life annuity (plus any social security supplement provided under the plan) in the case of a participant or beneficiary whose annuity starting date occurs during the period; (2)

<sup>41</sup> Under the provision, the present-law rules limiting benefit increases while an employer is in bankruptcy continue to apply.

any payment for the purchase of an irrevocable commitment from an insurer to pay benefits (e.g., an annuity contract); or (3) any other payment specified by the Secretary of the Treasury by regulations. However, the restriction on distributions does not apply to a plan for any plan year if the terms of the plan (as in effect for the period beginning on June 29, 2005, and ending with the plan year) provide for no benefit accruals with respect to any participant during the period.

*Additional limitation on benefit accruals for plans less than 60-percent funded*

A plan must provide that, if the plan's funding target attainment percentage is less than 60 percent for a plan year, all future benefit accruals under the plan must cease as of the valuation date for the plan year. However, this limitation does not apply to a plan for the first five years the plan (or a predecessor plan) is in effect.

*Funding target attainment percentage*

The term "funding target attainment percentage" means the ratio, expressed as a percentage, that the value of the plan's assets (reduced by the plan's funding standard carryover balance and prefunding balance) bears to the plan's funding target for the year (i.e., the present value of liabilities under the plan).<sup>42</sup> For this purpose, the plan's funding target is determined using the actuarial assumptions for plans that are not at-risk. However, under a special rule, if a plan's funding target attainment percentage is at least 100 percent, determined by not reducing the value of the plan's assets by the plan's funding standard carryover balance and prefunding balance, such reductions do not apply for this purpose.

*Determining funding levels*

Under the provision, certain presumptions apply in determining whether limitations apply with respect to a plan, subject to certification of the plan's funding target attainment percentage by the plan's enrolled actuary. If a plan was subject to a limitation for the preceding year, the plan's funding target attainment percentage for the current year is presumed to be the same as the preceding year until the plan actuary certifies the plan's actual funding target attainment percentage for the current year. If (1) a plan was not subject to a limitation for the preceding year, but its funding target attainment percentage for the preceding year was not more than 10 percentage points greater than the threshold for a limitation, and (2) as of the first day of the fourth month of the current plan year, the plan actuary has not certified the plan's actual funding target attainment percentage for the current year, the plan's funding target attainment percentage is presumed to be reduced by 10 percentage points as of that day and that day is deemed to be the plan's valuation date for purposes of applying the benefit limitation. As a result, the limitation applies as of that date until the actuary certifies the plan's actual funding target attainment percentage. In any other case, if the plan actuary has not certified the plan's actual funding target attainment percentage by the first day

<sup>42</sup> Funding target attainment percentage is defined for this purpose as under the provision relating to minimum funding rules for single-employer plans.



of the tenth month of the current plan year, for purposes of the limitations, the plan's funding target attainment percentage is conclusively presumed to be less than 60 percent as of that day and that day is deemed to be the valuation date for the current plan year.

A special rule applies in applying the presumption rules in 2007. Under the special rule, the plan's "modified current liability percentage" for 2006 is substituted for the plan's funding target attainment percentage for the preceding plan year. Modified funding current liability percentage is the plan's funded current liability percentage for 2006, determined by reducing the value of the plan's assets by any credit balance if the plan's funded current liability percentage (before such a reduction) is less than 100 percent.

*Anticutback relief*

Under the provision, a plan does not fail to meet the requirements of the anti-cutback rule solely by reason of the adoption of a plan amendment necessary to meet the requirements of the provision.

*Restoration of benefits*

If a limitation on distributions or accruals applies with respect to a plan year (other than because of a presumption as to the plan's funding target attainment percentage) and the limitation ceases to apply for a subsequent year, the plan may provide for the resumption of such distributions or accruals only by means of the adoption of a plan amendment after the valuation date for the subsequent plan year.

EFFECTIVE DATE

The provision generally applies with respect to plan years beginning after December 31, 2006.

In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of enactment of the provision, the provision does not apply to plan years beginning before the earlier of: (1) the later of (a) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment), or (b) the first day of the first plan year to which the provision would otherwise apply; or (2) January 1, 2009. For this purpose, any plan amendment made pursuant to a collective bargaining agreement relating to the plan that amends the plan solely to conform to any requirement under the provision is not to be treated as a termination of the collective bargaining agreement.

C. MODIFICATION OF TRANSITION RULE TO PENSION FUNDING  
REQUIREMENTS FOR INTERSTATE BUS COMPANY

(Sec. 121 of the bill)

PRESENT LAW

Defined benefit pension plans are required to meet certain minimum funding rules. In some cases, additional contributions are re-

quired if a single-employer defined benefit pension plan is underfunded. Additional contributions generally are not required in the case of a plan with a funded current liability percentage of at least 90 percent. A plan's funded current liability percentage is the value of plan assets as a percentage of current liability. In general, a plan's current liability means all liabilities to employees and their beneficiaries under the plan. In the case of a plan with a funded current liability percentage of less than 100 percent for the preceding plan year, estimated contributions for the current plan year must be made in quarterly installments during the current plan year.

The PBGC insures benefits under most single-employer defined benefit pension plans in the event the plan is terminated with insufficient assets to pay for plan benefits. The PBGC is funded in part by a flat-rate premium per plan participant, and a variable rate premium based on the amount of unfunded vested benefits under the plan. A specified interest rate and a specified mortality table apply in determining unfunded vested benefits for this purpose.

A special rule modifies the minimum funding requirements in the case of certain plans. The special rule applies in the case of plans that (1) were not required to pay a variable rate PBGC premium for the plan year beginning in 1996, (2) do not, in plan years beginning after 1995 and before 2009, merge with another plan (other than a plan sponsored by an employer that was a member of the controlled group of the employer in 1996), and (3) are sponsored by a company that is engaged primarily in interurban or interstate passenger bus service.

The special rule generally treats a plan to which it applies as having a funded current liability percentage of at least 90 percent for plan years beginning after 1996 and before 2004 if for such plan year the funded current liability percentage is at least 85 percent. If the funded current liability of the plan is less than 85 percent for any plan year beginning after 1996 and before 2004, the relief from the minimum funding requirements generally applies only if certain specified contributions are made.

For plan years beginning in 2004 and 2005, the funded current liability percentage of the plan is treated as at least 90 percent for purposes of determining the amount of required contributions (100 percent for purposes of determining whether quarterly contributions are required). As a result, for these years, additional contributions and quarterly contributions are not required with respect to the plan. In addition, for these years, the mortality table used under the plan is used in determining the amount of unfunded vested benefits under the plan for purposes of calculating PBGC variable rate premiums.

For plan years beginning after 2005 and before 2010, the funded current liability percentage generally will be deemed to be at least 90 percent if the actual funded current liability percentage is at least at certain specified levels. The relief from the minimum funding requirements generally applies for a plan year beginning in 2006, 2007, or 2008 only if contributions to the plan for the plan year equal at least the expected increase in current liability due to benefits accruing during the plan year.

## REASONS FOR CHANGE

The present-law funding rules for plans maintained by certain interstate bus companies were enacted because the Congress determined that the generally applicable funding rules required greater contributions for such plans than were warranted given the special characteristics of such plans. In particular, these plans are closed to new participants and have demonstrated mortality significantly greater than that predicted under mortality tables that the plans would otherwise be required to use for minimum funding purposes. The Committee believes that it is appropriate to extend to 2006 the special rule that applies to such plans for 2004 and 2005 and, for years after 2006, to modify the special rule to reflect the changes made in the minimum funding rules.

## EXPLANATION OF PROVISION

The provision revises the special rule for a plan that is sponsored by a company engaged primarily in interurban or interstate passenger bus service and that meets the other requirements for the special rule under present law. The provision extends the application of the special rule for plan years beginning in 2004 and 2005 to plan years beginning in 2006. The provision also provides several special rules relating to determining minimum required contributions and unfunded vested benefits for plan years beginning after 2006 when the new funding rules for single-employer plans apply.

Under the provision, for the plan year beginning in 2006, a plan's funded current liability percentage of a plan is treated as at least 90 percent for purposes of determining the amount of required contributions (100 percent for purposes of determining whether quarterly contributions are required). As a result, for the 2006 plan year, additional contributions and quarterly contributions are not required with respect to the plan. In addition, the mortality table used under the plan is used in determining the amount of unfunded vested benefits under the plan for purposes of calculating PBGC variable rate premiums.

Under the provision, for plan years beginning after 2006, the mortality table used under the plan is used in determining: (1) any present value or making any computation under the minimum funding rules applicable to the plan; and (2) the amount of unfunded vested benefits under the plan for purposes of calculating PBGC variable rate premiums. Under a special phase-in, for purposes of determining the plan's funding shortfall for plan years beginning after 2006 and before 2012, the applicable percentage of the plan's funding shortfall is the following: 90 percent for 2007, 92 percent for 2008, 94 percent for 2009, 96 percent for 2010, and 98 percent for 2011.<sup>43</sup> In addition, in determining minimum required contributions for plan years beginning after 2006, the value of plan assets is reduced only by the plan's prefunding balance (i.e., not by the plan's funding standard carryover balance) if, pursuant to a written agreement with the PBGC entered into before January 1,

<sup>43</sup>The term "funding shortfall" is defined under the provision relating to minimum funding rules for single-employer plans and means: (1) the excess (if any) of the plan's funding target for the plan year (i.e., the present value of liabilities under the plan), over (2) the value of the plan's assets, reduced by any prefunding and funding standard carryover balances.

2007, the funding standard carryover balance is not available to reduce the minimum required contribution for the plan year. Moreover, for purposes of the quarterly contributions requirement, the plan is treated as not having a funding shortfall for any plan year. As a result, quarterly contributions are not required with respect to the plan.

#### EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2005.

#### D. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLAN WHEN EMPLOYER'S DEFINED BENEFIT PLAN IS IN AT-RISK STATUS

(Sec. 122 of the bill and sec. 409A of the Code)

#### PRESENT LAW

Amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are satisfied.<sup>44</sup> For example, distributions from a nonqualified deferred compensation plan may be allowed only upon certain times and events. Rules also apply for the timing of elections. If the requirements are not satisfied, in addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to a 20-percent additional tax.

In the case of assets set aside in a trust (or other arrangement) for purposes of paying nonqualified deferred compensation, such assets are treated as property transferred in connection with the performance of services under Code section 83 at the time set aside if such assets (or trust or other arrangement) are located outside of the United States or at the time transferred if such assets (or trust or other arrangement) are subsequently transferred outside of the United States. A transfer of property in connection with the performance of services under Code section 83 also occurs with respect to compensation deferred under a nonqualified deferred compensation plan if the plan provides that upon a change in the employer's financial health, assets will be restricted to the payment of nonqualified deferred compensation.

#### REASONS FOR CHANGE

The Committee believes that it is inappropriate for companies with qualified defined benefit pension plans to set aside assets for nonqualified deferred compensation plans covering executives while the qualified plan is not adequately funded. If the qualified pension plan that benefits rank-and-file workers is underfunded, employer resources should be used to improve the funding status of the

<sup>44</sup> Code sec. 409A.

qualified pension plan before setting assets aside to provide for nonqualified deferred compensation arrangements of executives.

While rank-and-file employees have little control over a company's decision to fund its pension plans, executives often have control in determining how nonqualified deferred compensation plans will be operated. In addition, executives who are covered by a nonqualified deferred compensation plan may also be instrumental in deciding how much to contribute to the defined benefit pension plan, thus determining the funded status of the pension plan.

The Committee believes that nonqualified deferred compensation plans covering executives should not be funded unless the employer's qualified pension plan is adequately funded.

#### EXPLANATION OF PROVISION

Under the provision, if during any period in which a defined benefit pension plan of an employer is in at-risk status,<sup>45</sup> assets are set aside (directly or indirectly) in a trust (or other arrangement as determined by the Secretary of the Treasury), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation, such transferred assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under Code section 83. The rule does not apply in the case of assets that are set aside before the defined benefit pension plan is in at-risk status.

If a nonqualified deferred compensation plan of an employer provides that assets will be restricted to the provision of benefits under the plan in connection with the at-risk status (or other similar financial measure determined by the Secretary of Treasury) of any defined benefit pension plan of the employer, or assets are so restricted, such assets are treated as property transferred in connection with the performance of services (whether or not such assets are available to satisfy the claims of general creditors) under Code section 83.

Any subsequent increases in the value of, or any earnings with respect to, transferred or restricted assets are treated as additional transfers of property. Interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the amounts been includible in income for the taxable year in which first deferred or, if later, the first taxable year not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to an additional 20-percent tax.

For years before 2007, the provision applies if the modified funded current liability percentage of the defined benefit pension plan for the preceding plan year is less than 60 percent. The modified funded current liability percentage is the funded current liability percentage reduced by any credit balance.

<sup>45</sup> At-risk status is defined as under the provision relating to funding rules for single-employer defined benefit pension plans and applies if a plan's funding target attainment percentage for the preceding year was less than 60 percent.

## EFFECTIVE DATE

The provision is effective for transfers or other reservations of assets after December 31, 2005.

## TITLE II: FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

## A. FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS

(Sec. 211 of the bill and new sec. 431 of the Code)

## PRESENT LAW

*Multiemployer plans*

A multiemployer plan is a plan to which more than one unrelated employer contributes, which is established pursuant to one or more collective bargaining agreements, and which meets such other requirements as specified by the Secretary of Labor. Multiemployer plans are governed by a board of trustees consisting of an equal number of employer and employee representatives. In general, the level of contributions to a multiemployer plan is specified in the applicable collective bargaining agreements, and the level of plan benefits is established by the plan trustees.

Defined benefit multiemployer plans are subject to the same general minimum funding rules as single-employer plans, except that different rules apply in some cases. For example, different amortization periods apply for some costs in the case of multiemployer plans. In addition, the deficit reduction contribution rules do not apply to multiemployer plans.

*Funding standard account*

As an administrative aid in the application of the funding requirements, a defined benefit pension plan is required to maintain a special account called a “funding standard account” to which specified charges and credits are made for each plan year, including a charge for normal cost and credits for contributions to the plan. Other credits or charges or credits may apply as a result of decreases or increases in past service liability as a result of plan amendments or experience gains or losses, gains or losses resulting from a change in actuarial assumptions, or a waiver of minimum required contributions.

If, as of the close of the plan year, charges to the funding standard account exceed credits to the account, then the excess is referred to as an “accumulated funding deficiency.” For example, if the balance of charges to the funding standard account of a plan for a year would be \$200,000 without any contributions, then a minimum contribution equal to that amount would be required to meet the minimum funding standard for the year to prevent an accumulated funding deficiency. If credits to the funding standard account exceed charges, a “credit balance” results. The amount of the credit balance, increased with interest, can be used to reduce future required contributions.

*Funding methods and general concepts**In general*

A defined benefit pension plan is required to use an acceptable actuarial cost method to determine the elements included in its funding standard account for a year. Generally, an actuarial cost method breaks up the cost of benefits under the plan into annual charges consisting of two elements for each plan year. These elements are referred to as: (1) normal cost; and (2) supplemental cost.

*Normal cost*

The plan's normal cost for a plan year generally represents the cost of future benefits allocated to the year by the funding method used by the plan for current employees and, under some funding methods, for separated employees. Specifically, it is the amount actuarially determined that would be required as a contribution by the employer for the plan year in order to maintain the plan if the plan had been in effect from the beginning of service of the included employees and if the costs for prior years had been paid, and all assumptions as to interest, mortality, time of payment, etc., had been fulfilled.

*Supplemental cost*

The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, future employee contributions, or plan assets. The most common supplemental cost is that attributable to past service liability, which represents the cost of future benefits under the plan: (1) on the date the plan is first effective; or (2) on the date a plan amendment increasing plan benefits is first effective. Other supplemental costs may be attributable to net experience losses, changes in actuarial assumptions, and amounts necessary to make up funding deficiencies for which a waiver was obtained. Supplemental costs must be amortized (i.e., recognized for funding purposes) over a specified number of years, depending on the source.

*Valuation of assets*

For funding purposes, the actuarial value of plan assets may be used, rather than fair market value. The actuarial value of plan assets is the value determined under a reasonable actuarial valuation method that takes into account fair market value and is permitted under Treasury regulations. Any actuarial valuation method used must result in a value of plan assets that is not less than 80 percent of the fair market value of the assets and not more than 120 percent of the fair market value. In addition, if the valuation method uses average value of the plan assets, values may be used for a stated period not to exceed the five most recent plan years, including the current year.

*Reasonableness of assumptions*

In applying the funding rules, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, each of which is reasonable (taking into account the experience of the plan and reasonable expecta-

tions), or which, in the aggregate, result in a total plan contribution equivalent to a contribution that would be obtained if each assumption and method were reasonable. In addition, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.

*Charges and credits to the funding standard account*

*In general*

Under the minimum funding standard, the portion of the cost of a plan that is required to be paid for a particular year depends upon the nature of the cost. For example, the normal cost for a year is generally required to be funded currently. Other costs are spread (or amortized) over a period of years. In the case of a multi-employer plan, past service liability is amortized over 40 or 30 years depending on how the liability arose, experience gains and losses are amortized over 15 years, gains and losses from changes in actuarial assumptions are amortized over 30 years, and waived funding deficiencies are amortized over 15 years.

*Normal cost*

Each plan year, a plan's funding standard account is charged with the normal cost assigned to that year under the particular acceptable actuarial cost method adopted by the plan. The charge for normal cost will require an offsetting credit in the funding standard account. Usually, an employer contribution is required to create the credit. For example, if the normal cost for a plan year is \$150,000, the funding standard account would be charged with that amount for the year. Assuming that there are no other credits in the account to offset the charge for normal cost, an employer contribution of \$150,000 will be required for the year to avoid an accumulated funding deficiency.

*Past service liability*

There are three separate charges to the funding standard account one or more of which may apply to a multiemployer plan as the result of past service liabilities. In the case of a plan in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA is amortized over 40 years. In the case of a plan which was not in existence on January 1, 1974, past service liability under the plan on the first day on which the plan was first subject to ERISA is amortized over 30 years. Past service liability due to plan amendments is amortized over 30 years.

*Experience gains and losses*

In determining plan funding under an actuarial cost method, a plan's actuary generally makes certain assumptions regarding the future experience of a plan. These assumptions typically involve rates of interest, mortality, disability, salary increases, and other factors affecting the value of assets and liabilities. The actuarial assumptions are required to be reasonable, as discussed below. If the plan's actual unfunded liabilities are less than those anticipated by the actuary on the basis of these assumptions, then the excess is an experience gain. If the actual unfunded liabilities are



greater than those anticipated, then the difference is an experience loss. In the case of a multiemployer plan, experience gains and losses for a year are generally amortized over a 15-year period, resulting in credits or charges to the funding standard account.

*Gains and losses from changes in assumptions*

If the actuarial assumptions used for funding a plan are revised and, under the new assumptions, the accrued liability of a plan is less than the accrued liability computed under the previous assumptions, the decrease is a gain from changes in actuarial assumptions. If the new assumptions result in an increase in the accrued liability, the plan has a loss from changes in actuarial assumptions. The accrued liability of a plan is the actuarial present value of projected pension benefits under the plan that will not be funded by future contributions to meet normal cost or future employee contributions. In the case of a multiemployer plan, the gain or loss for a year from changes in actuarial assumptions is amortized over a period of 30 years, resulting in credits or charges to the funding standard account.

*Funding waivers and amortization of waived funding deficiencies*

Within limits, the Secretary of the Treasury is permitted to waive all or a portion of the contributions required under the minimum funding standard for the year (a "waived funding deficiency"). In the case of a multiemployer plan, a waiver may be granted if 10 percent or more of the number of employers contributing to the plan could not make the required contribution without temporary substantial business hardship and if requiring the contribution would be adverse to the interests of plan participants in the aggregate. The minimum funding requirements may not be waived with respect to a multiemployer plan for more than five out of any 15 consecutive years.

If a funding deficiency is waived, the waived amount is credited to the funding standard account. In the case of a multiemployer plan, the waived amount is then amortized over a period of 15 years, beginning with the year following the year in which the waiver is granted. Each year, the funding standard account is charged with the amortization amount for that year unless the plan becomes fully funded. In the case of a multiemployer plan, the interest rate used for purposes of determining the amortization on the waived amount is the rate determined under section 6621(b) of the Internal Revenue Code (relating to the Federal short-term rate).

*Extension of amortization periods*

Amortization periods may be extended for up to 10 years by the Secretary of the Treasury if the Secretary finds that the extension would carry out the purposes of ERISA and would provide adequate protection for participants under the plan and if such Secretary determines that the failure to permit such an extension would (1) result in a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or employee compensation, and (2) be adverse to the interests of plan participants in the aggregate. The interest rate with respect to ex-

tensions of amortization periods is the same as that used with respect to waived funding deficiencies.

*Alternative funding standard account*

As an alternative to applying the rules described above, a plan which uses the entry age normal cost method may satisfy an alternative minimum funding standard. Under the alternative, the minimum required contribution for the year is generally based on the amount necessary to bring the plan's assets up to the present value of accrued benefits, determine using the actuarial assumptions that apply when a plan terminates. The alternative standard has been rarely used.

REASONS FOR CHANGE

The Committee believes that in order for multiemployer plans to continue to provide valuable pension benefits to union workers, the multiemployer pension system must be self-sustaining for the long term. The Committee believes that certain modifications to the multiemployer plan funding rules are appropriate in order to help ensure the long-term solvency of the multiemployer plan pension system. The Committee believes that it is appropriate to streamline all amortization periods to a maximum of 15 years. The Committee also believes that the rules governing amortization extensions for multiemployer plans should be modified.

EXPLANATION OF PROVISION

The provision modifies the amortization periods applicable to multiemployer plans so that the amortization period for most charges is 15 years. Under the provision, in the case of a plan which was not in existence on January 1, 1974, past service liability under the plan on the first day on which the plan is first subject to ERISA is amortized over 15 years (rather than 30); past service liability due to plan amendments is amortized over 15 years (rather than 30); and experience gains and losses resulting from a change in actuarial assumptions are amortized over 15 years (rather than 30). As under present law, experience gains and losses and waived funding deficiencies are amortized over 15 years. The new amortization periods do not apply to amounts being amortized under present-law amortization periods, that is, no recalculation of amortization schedules already in effect is required under the provision. The provision eliminates the alternative funding standard account.

The provision provides that in applying the funding rules, all costs, liabilities, interest rates, and other factors are required to be determined on the basis of actuarial assumptions and methods, each of which is reasonable (taking into account the experience of the plan and reasonable expectations). In addition, as under present law, the assumptions are required to offer the actuary's best estimate of anticipated experience under the plan.

The provision provides that, upon application to the Secretary of the Treasury, the Secretary is to grant an extension of the amortization period with respect to any unfunded past service liability, investment loss, or experience loss if the Secretary determines that (1) absent the extension, the plan would have an accumulated funding deficiency in any of the next ten plan years, (2) the plan

sponsor has adopted a plan to improve the plan's funding status, and (3) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures. The extension may not exceed five years.

The Secretary of the Treasury may also grant an additional extension of such amortization periods for an additional five years. The standards for determining whether such an extension may be granted are the same as under present law.

As under present law, these extensions do not apply unless the applicant demonstrates to the satisfaction of the Treasury Secretary that notice of the application has been provided to each affected party (as defined in ERISA section 4001(a)(21)).

The provision modifies the interest rate applicable to waived funding deficiencies and extensions of amortization periods so that it is the greater of (1) 150 percent of the Federal mid-term rate, or (2) the rate of interest used under the plan in determining costs.

#### EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2006.

#### B. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STATUS

(Sec. 212 of the bill and new sec. 432 of the Code)

#### PRESENT LAW

Multiemployer defined benefit plans are subject to minimum funding rules similar to those applicable to single-employer plans.<sup>46</sup> Certain modifications to the single-employer plan funding rules apply to multiemployer plans that experience financial difficulties, referred to as "reorganization status." A plan is in reorganization status for a year if the contribution needed to balance the charges and credits to its funding standard account exceeds its "vested benefits charge."<sup>47</sup> The plan's vested benefits charge is generally the amount needed to amortize, in equal annual installments, unfunded vested benefits under the plan over: (1) 10 years in the case of obligations attributable to participants in pay status; and (2) 25 years in the case of obligations attributable to other participants. A plan in reorganization status is eligible for a special funding credit. In addition, a cap on year-to-year contribution increases and other relief is available to employers that continue to contribute to the plan.

Subject to certain requirements, a multiemployer plan in reorganization status may also be amended to reduce or eliminate accrued benefits in excess of the amount of benefits guaranteed by the PBGC.<sup>48</sup> In order for accrued benefits to be reduced, at least six months before the beginning of the plan year in which the amendment is adopted, notice must be given that the plan is in reorganization status and that, if contributions to the plan are not

<sup>46</sup> See section II.A. for a discussion of the minimum funding rules for multiemployer defined benefit plans.

<sup>47</sup> ERISA sec. 4241.

<sup>48</sup> ERISA sec. 4244A.

increased, accrued benefits will be reduced or an excise tax will be imposed on employers obligated to contribute to the plan. The notice must be provided to plan participants and beneficiaries, any employer who has an obligation to contribute to the plan, and any employee organization representing employees in the plan.

In the case of multiemployer plans, the PBGC insures plan insolvency, rather than plan termination. A plan is insolvent when its available resources are not sufficient to pay the plan benefits for the plan year in question, or when the sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources will not be sufficient to pay benefits that come due in the next plan year.<sup>49</sup> An insolvent plan is required to reduce benefits to the level that can be covered by the plan's assets. However, benefits cannot be reduced below the level guaranteed by the PBGC.<sup>50</sup> If a multiemployer plan is insolvent, the PBGC guarantee is provided in the form of loans to the plan trustees. If the plan recovers from insolvency status, loans from the PBGC can be repaid. Plans in reorganization status are required to compare assets and liabilities to determine if the plan will become insolvent in the future.

#### REASONS FOR CHANGE

The Committee believes that the multiemployer pension plan funding and benefit structures need to be reformed, including the addition of quantifiable measures of improvement and adjustments to the benefit structures for severely underfunded plans in order to maintain the health of the plans that are in existence. The Committee recognizes that adjustments to contribution and benefit levels of multiemployer pension plans may be difficult to achieve because contribution and benefit levels are set through the collective bargaining process. Thus, the multiemployer pension plan system would benefit if benchmarks were put in place to identify endangered plans so that steps to improve the funded status of such plans can be taken before such plans become severely underfunded. Similarly, severely underfunded plans should be identified and required to take steps to improve their funded status. The Committee believes that a structure should be established for identifying troubled multiemployer pension plans by providing appropriate triggers for determining when plans are underfunded as well as quantifiable benchmarks for measuring a plan's funding improvement.

#### EXPLANATION OF PROVISION

##### *In general*

The provision provides additional funding rules for multiemployer defined benefit plans that are in endangered or critical status. The present-law reorganization and insolvency rules continue to apply.

Within 90 days after the first day of the plan year, the plan actuary must certify to the Secretary of the Treasury whether or not the plan is in endangered or critical status for the plan year. If the

<sup>49</sup> ERISA sec. 4245.

<sup>50</sup> The limit of benefits that the PBGC guarantees under a multiemployer plan is the sum of 100 percent of the first \$11 of monthly benefits and 75 percent of the next \$33 of monthly benefits for each year of service. ERISA sec. 4022A(c).

certification is not made within this period, the plan is presumed to be in critical status until the plan actuary makes a contrary certification. In making the determination whether a plan is in endangered or critical status, the plan actuary must make projections for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of plan assets and the present value of liabilities under the plan for the current year as of the beginning of the year, based on the actuarial statement for the preceding plan year. Any actuarial projection of plan assets must assume (1) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for the succeeding plan years, or (2) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines that there have been no significant demographic changes that would make continued application of such terms unreasonable.

If a plan is certified to be in endangered status or enters into critical status, notice must be provided within 30 days after the date of certification or entry to the participants and beneficiaries, the bargaining parties, the PBGC, the Secretary of the Treasury and the Secretary of Labor.

#### *Endangered status*

A multiemployer plan is in endangered status if the plan's funded percentage for the plan year is less than 80 percent, or the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years (taking into account amortization extensions). A plan's funded percentage is the percentage of plan assets over accrued liability of the plan.

Within 240 days after a plan is certified as endangered (if no funding improvement plan is in effect for the plan year), the plan sponsor must amend the multiemployer plan to include a funding improvement plan approved by the bargaining parties. The funding improvement plan must provide that during the funding improvement period, the plan will have a certain required increase in the funded percentage and no accumulated funding deficiency for any plan year during the funding improvement period, taking into account amortization extensions (the "benchmarks").

The provision requires that the plan's funded percentage increase such that the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement plan is not more than two-thirds of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement plan. Thus, the difference between 100 percent and the plan's funded percentage must be reduced by at least one-third during the funding improvement period. The funding improvement period is the 10-year period beginning on the earlier of (1) the second anniversary of the date of adoption of the funding improvement plan, or (2) the first day of the first plan year following the year (after certification of endangered status) in which the collective bargaining agreements covering at least 75 percent of active participants have expired.

In the case in which the funded percentage of a plan is 70 percent or less, the provision requires that the plan's funded percentage increase such that the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement plan is not more than four-fifths of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement plan. Thus, the difference between 100 percent and the plan's funded percentage must be reduced by at least one-fifth during the funding improvement period. In addition, a 15-year funding improvement period is used. If the plan year is prior to the first day of the first plan year following the plan year in which occurs the first date (after the day of the certification) as of which collective bargaining agreements covering at least 75 percent of active participants in the multiemployer plan have expired, the same requirements apply in the case of a plan in which the funded percentage is more than 70 percent, but less than 80 percent, if the plan actuary certifies within 30 days after certification of endangered status that the plan is not able to attain the funding percentage increase otherwise required by the provision (i.e., the difference between 100 percent and the plan's funded percentage must be reduced by at least one-third during the funding improvement period) over the funding improvement period. For subsequent years for such plans, if the plan actuary certifies that the plan is not able to attain the increase generally required under the provision, a 15-year funding improvement period is used.

Within 90 days after a plan is certified as endangered, the plan sponsor must provide to the bargaining parties alternative provisions for revised benefit structures, contribution structures, or both, which if adopted as amendments to the plan may be reasonably expected to meet the benchmark requirements for the funding improvement plan. The provisions must include (1) at least one provision for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law) and (2) at least one provision for increases in contributions necessary to achieve the benchmarks assuming no amendments reducing future benefit accruals under the plan. Upon request of any bargaining party who employs at least five percent of the active participants, or represents as an employee organization at least five percent of the active participants, the plan sponsor must provide information on other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks. The plan sponsor may provide additional information as it deems appropriate.

Pending approval of the funding improvement plan, the plan sponsor must take all reasonable actions (consistent with the terms of the plan and present law) necessary to ensure an increase in the plan's funded percentage and a postponement of an accumulated funding deficiency for at least one additional plan year. These actions include applications for extensions of amortization periods, use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions.

In addition, pending approval of a funding improvement plan, the plan may not be amended to provide (1) a reduction in the level of contributions for participants who are not in pay status; (2) a suspension of contributions with respect to any period of service; or (3) any new or indirect exclusion of younger or newly hired employees from plan participation. Pending approval of a funding improvement plan, restrictions apply on lump sum and other similar distributions. If the present value of participant's accrued benefit exceeds \$5,000, the benefit may not be distributed as an immediate distribution or in any other accelerated form. In addition, except in the case of amendments required as a condition of qualification under the Internal Revenue Code, no amendment may be adopted which increases liabilities of the plan by reason of any increase in benefits, any change in accrual of benefits, or any change in the rate at which benefits become nonforfeitable.

If no plan is adopted by the end of the 240-day period after a plan is certified as endangered, the plan enters into critical status as of the first day of the succeeding plan year. Notice must be provided to participants and beneficiaries, the bargaining parties, the PBGC, the Secretary of Treasury and the Secretary of Labor within 30 days after the plan enters critical status.

A summary of any funding improvement plan and any modifications, together with annual updates regarding the funding ratio of the plan, must be included in the plan's annual report and summary annual report.

Upon adoption of a funding improvement plan, the plan may not be amended to be inconsistent with the funding improvement plan, or to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the benchmarks.

#### *Critical status*

There are several ways that a multiemployer plan can be in critical status for a plan year. A multiemployer plan is in critical status for a plan year if:

1. As of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent and the sum of (A) the market value of plan assets, plus (B) the present value of reasonably anticipated employer and employee contributions for the current plan year and each of the six succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the plan year and each of the six succeeding plan years (plus administrative expenses),

2. As of the beginning of the current plan year, the sum of (A) the market value of plan assets, plus (B) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the four succeeding plan years (assuming that the terms of the collective bargaining agreements continue in effect) is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the

current plan year and each of the four succeeding plan years (plus administrative expenses),

3. As of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent and the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the four succeeding plan years (not taking into account amortization period extensions),

4. (A) The plan's normal cost for the current plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last day of the preceding year, exceeds the present value (as of the beginning of the plan year) of the reasonably anticipated employer and employee contributions for the current plan year, (B) the present value (as of the beginning of the plan year) of nonforfeitable benefits of inactive participants is greater than the present value (as of the beginning of the current plan year) of nonforfeitable benefits of active participants, and (C) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the four succeeding plan years (not taking into account amortization period extensions), or

5. (A) The funded percentage of the plan is greater than 65 percent for the current plan year and (B) the plan is projected to have an accumulated funding deficiency during any of the succeeding three plan years (not taking into account amortization period extensions).

As previously discussed, a plan is in critical status if the plan is in endangered status for the preceding plan year and the requirements applicable to endangered plans were not met with respect to the plan. A plan is also in critical status if the annual certification as to whether a plan is in endangered or critical status is not made.

If a plan is in critical status for a plan year (and no rehabilitation plan is currently in effect for the plan year), the plan must be amended within 240 days after the plan enters critical status to include a rehabilitation plan. A plan is treated as entering into critical status as of the date that the plan is certified to be in critical status, is presumed to be in critical status because no certification is made, or enters into critical status because the requirements of endangered status are not satisfied.

A rehabilitation plan must consist of (1) amendments to the plan providing for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures, or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease to be in critical status during the rehabilitation period, or (2) reasonable measures to forestall possible insolvency if the plan sponsor determines that upon exhaustion of all reasonable measures, the plan would not cease to be in critical status during the rehabilitation period.

The rehabilitation period is the 10-year period beginning on the earlier of (1) the second anniversary of the date of adoption of the rehabilitation plan or (2) the first day of the first plan year following the year (after entry into critical status) in which the collective bargaining agreements covering at least 75 percent of active participants have expired.



Within 90 days after the date of entry into critical status the plan sponsor must propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would carry out a rehabilitation plan. One schedule must show the reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan. If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, one schedule must show the increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law. Upon request of any bargaining party who employs at least five percent of the active participants, or represents as an employee organization for purposes of collective bargaining at least five percent of the participants, the plan sponsor must include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.

Any schedule including reductions in future benefit accruals forming part of a rehabilitation plan is applicable with respect to any group of active participants who are employed by any bargaining party in proportion to the extent to which increases in contributions under the schedule apply to such bargaining party. Any proposed schedule cannot reduce the rate of future accruals below the lower of (1) a monthly benefit equal to one 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 plan year in which the plan enters critical status, or (2) the accrual rate under the plan. The equivalent standard accrual rate is determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors they determine to be relevant.

Pending approval of a rehabilitation plan, the plan may not be amended to provide (1) a reduction in the level of contributions for participants who are not in pay status; (2) a suspension of contributions with respect to any period of service; or (3) any new or indirect exclusion of younger or newly hired employees from plan participation. Pending approval of a funding improvement plan, restrictions apply on lump sum and other similar distributions. If the present value of participant's accrued benefit exceeds \$5,000, the benefit may not be distributed as an immediate distribution or in any other accelerated form. In addition, pending approval of a rehabilitation plan, except in the case of amendments required as a condition of qualification under the Internal Revenue Code, no amendment may be adopted which increases liabilities of the plan by reason of any increase in benefits, any change in accrual of benefits, or any change in the rate at which benefits become nonforfeitable.

Upon adoption of a rehabilitation plan, the plan may not be amended to be inconsistent with the rehabilitation plan or to increase future benefit accruals, unless the plan actuary certifies in

advance, that after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

Upon the adoption of a schedule of increases in contributions or reduction in future benefit accruals as part of a rehabilitation plan, the plan sponsor may, no more than once in any three-year period, amend the plan to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions. A summary of the rehabilitation plan and any modifications, together with annual updates regarding the funding ratio of the plan, must be included in the annual report and summary annual report for the plan year.

The failure of an employer to make contributions in compliance with the rehabilitation schedule may, at the discretion of the plan sponsor, be treated as a complete or partial withdrawal from the plan.

If the rehabilitation plan is not adopted within the 240-day period after entry into critical status, the plan must be amended to implement the schedule proposed by the plan sponsor that shows the reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contributions to the plan.

#### EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2005.

#### C. MEASURES TO FORESTALL INSOLVENCY OF MULTIEMPLOYER PLANS

(Sec. 302 of the bill and sec. 418E of the Code)

#### PRESENT LAW

In the case of multiemployer plans, the PBGC insures plan insolvency, rather than plan termination. A plan is insolvent when its available resources are not sufficient to pay the plan benefits for the plan year in question, or when the sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources will not be sufficient to pay benefits that come due in the next plan year.

In order to anticipate future insolvencies, at the end of the first plan year in which a plan is in reorganization and at least every three plan years thereafter, the plan sponsor must compare the value of plan assets for the plan year with the total amount of benefit payments made under the plan for the plan year.<sup>51</sup> Unless the plan sponsor determines that the value of plan assets exceeds three times the total amount of benefit payments, the plan sponsor must determine whether the plan will be insolvent for any of the next three plan years.

#### REASONS FOR CHANGE

The Committee believes that future insolvencies can be better anticipated if plan sponsors of plans in reorganization status are

<sup>51</sup> Code sec. 418E(d)(1); ERISA sec. 4245(d)(1).

required to make future projections of insolvency for a longer time period.

#### EXPLANATION OF PROVISION

The provision modifies the requirements for anticipating future insolvencies of plans in reorganization status. Under the provision, unless the plan sponsor determines that the value of plan assets exceeds three times the total amount of benefit payments, the plan sponsor must determine whether the plan will be insolvent for any of the next five plan years, rather than three plan years as under present law. If the plan sponsor makes a determination that the plan will be insolvent for any of the next five plan years, the plan sponsor must make the comparison of plan assets and benefit payments under the plan at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next five plan years.

#### EFFECTIVE DATE

The provision is effective with respect to determinations made in plan years beginning after December 31, 2005.

### TITLE III: OTHER PROVISIONS

#### A. INTEREST RATE ASSUMPTION FOR DETERMINATION OF LUMP-SUM DISTRIBUTIONS

(Sec. 302(b) of the bill and sec. 417 of the Code)

#### PRESENT LAW

Accrued benefits under a defined benefit pension plan generally must be paid in the form of an annuity for the life of the participant unless the participant consents to a distribution in another form. Defined benefit pension plans generally provide that a participant may choose among other forms of benefit offered under the plan, such as a lump-sum distribution. These optional forms of benefit generally must be actuarially equivalent to the life annuity benefit payable to the participant.

A defined benefit pension plan must specify the actuarial assumptions that will be used in determining optional forms of benefit under the plan in a manner that precludes employer discretion in the assumptions to be used. For example, a plan may specify that a variable interest rate will be used in determining actuarial equivalent forms of benefit, but may not give the employer discretion to choose the interest rate.

Statutory assumptions must be used in determining the minimum value of certain optional forms of benefit, such as a lump sum.<sup>52</sup> That is, the lump sum payable under the plan may not be less than the amount of the lump sum that is actuarially equivalent to the life annuity payable to the participant, determined using the statutory assumptions. The statutory assumptions consist of an applicable mortality table (as published by the IRS) and an applicable interest rate.

<sup>52</sup> Code sec. 417(e)(3); ERISA sec. 205(g)(3).

The applicable interest rate is the annual interest rate on 30-year Treasury securities, determined as of the time that is permitted under regulations. The regulations provide various options for determining the interest rate to be used under the plan, such as the period for which the interest rate will remain constant (“stability period”) and the use of averaging.

#### REASONS FOR CHANGE

The Committee believes that the rate used to determine the amount of lump-sum distributions should be consistent with the rate used to measure plan liabilities for funding purposes. This is consistent with the rules under prior law (before the adoption of temporary interest rate provisions for funding purposes) which used a rate based on 30-year Treasury securities both for calculating lump sums and funding purposes. A consistent rate will enable plans to better fund for liabilities associated with lump-sum distributions. In addition, using an artificially low interest rate in calculating lump sums will result in inflated lump sums which are not the actuarial equivalent of a lifetime annuity. This makes lump sums more attractive than an annuity, thereby encouraging more employees to take lump-sum distributions. This may reduce retirement income security by discouraging annuitization. This also leads to a drain on pension plan assets, which can undermine the retirement income security of other plan participants. Use of an accurate interest rate will result in proper measurement of lump sums and will better enable employers to fund for such benefits. The Committee also believes that the accuracy of measuring lump-sum benefits will be improved by the use of a more current mortality table.

The Committee recognizes that an immediate change in the interest rate used to calculate lump-sum benefits will in some cases reduce the amount of these benefits, which may cause participants to terminate employment in order to avoid any possible reduction. The Committee believes that a deferred effective date followed by a phase-in period of the yield-curve rates will mitigate any potential effect on participants and will provide participants with time to evaluate the impact of the change in interest rates on their benefits.

#### EXPLANATION OF PROVISION

The provision changes the mortality table and interest rate used to calculate the minimum value of lump sums payable from a defined benefit pension plan.

The mortality table that must be used for calculating lump sums is based on the mortality table required for minimum funding purposes (i.e., the RP-2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of enactment of the bill and revised from time to time) modified as appropriate by the Secretary of the Treasury. It is intended that the Secretary will prescribe gender-neutral tables for use in determining minimum lump sums.

The provision provides that minimum lump-sum values are to be calculated using the adjusted first, second, and third segment rates as applied under the funding rules, with certain modifications, for the month before the date of distribution or such other time as the

Secretary of the Treasury may prescribe by regulation. The adjusted first, second, and third segment rates are derived from a corporate bond yield curve prescribed by the Secretary of the Treasury for such month which reflects the yields on investment grade corporate bonds with varying maturities (rather than a three-year weighted average, as under the minimum funding rules). Thus, the interest rate that applies depends upon how many years in the future a participant's annuity payment will be made. Typically, a higher interest rate applies for payments made further out in the future.

A transition rule applies for distributions in 2007 through 2010. For distributions in 2007 through 2010, lump-sum values are determined as the weighted average of two values: (1) the value of the lump sum determined under the methodology under present law (the "old" methodology); and (2) the value of the lump sum determined using the methodology applicable for 2007 and thereafter (the "new" methodology). For distributions in 2007, the weighting factor is 80 percent for the lump-sum value determined under the old methodology and 20 percent for the lump-sum determined under the new methodology. For distributions in 2008, the weighting factor is 60 percent for the lump-sum value determined under the old methodology and 40 percent for the lump-sum determined under the new methodology. For distributions in 2009, the weighting factor is 40 percent for the lump-sum value determined under the old methodology and 60 percent for the lump-sum determined under the new methodology. For distributions in 2010, the weighting factor is 20 percent for the lump-sum value determined under the old methodology and 80 percent for the lump-sum determined under the new methodology.

The provision also provides that a plan amendment requiring the use of the prescribed table and interest rate will not result in a violation of the rule that accrued benefits may not be decreased by plan amendment.

#### EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2006.

#### B. INTEREST RATE ASSUMPTION FOR APPLYING BENEFIT LIMITATIONS TO LUMP-SUM DISTRIBUTIONS

(Sec. 303 of the bill and sec. 415 of the Code)

#### PRESENT LAW

Annual benefits payable under a defined benefit pension plan generally may not exceed the lesser of (1) 100 percent of average compensation, or (2) \$170,000 (for 2005).<sup>53</sup> The dollar limit generally applies to a benefit payable in the form of a straight life annuity. If the benefit is not in the form of a straight life annuity (e.g., a lump sum), the benefit generally is adjusted to an equivalent straight life annuity. For purposes of adjusting a benefit in a form that is subject to the minimum value rules, such as a lump-sum benefit, the interest rate used generally must be not less than

<sup>53</sup> Code sec. 415(b).

the greater of: (1) the rate applicable in determining minimum lump sums, i.e., the interest rate on 30-year Treasury securities; or (2) the interest rate specified in the plan. In the case of plan years beginning in 2004 or 2005, the interest rate used must be not less than the greater of: (1) 5.5 percent; or (2) the interest rate specified in the plan.

#### REASONS FOR CHANGE

As noted above, the Committee believes that lump-sum distributions should generally be determined using interest rates based on a corporate bond yield curve. However, the Committee recognizes that some plans use a fixed rate of interest in determining lump-sum benefits rather than the variable rate that is required under the minimum present value rules (provided that the resulting lump sum cannot be less than the minimum present value) and that use of a fixed rate rather than a variable rate can make the value of benefits more predictable for employees and also make employers' required contributions more predictable. The Committee believes that it should be permissible to use a fixed rate in applying the benefit limits to lump sums, provided that the resulting benefit is not significantly greater than the benefit that would result using interest rates based on a corporate bond yield curve.

#### EXPLANATION OF PROVISION

Under the provision, for purposes of adjusting a benefit in a form that is subject to the minimum value rules, such as a lump-sum benefit, the interest rate used generally must be not less than the greater of: (1) 5.5 percent; (2) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the rate applicable in determining minimum lump sums were used; or (3) the interest rate specified in the plan.

#### EFFECTIVE DATE

The provision is effective for distributions made in years beginning after December 31, 2005.

#### C. DISTRIBUTIONS DURING WORKING RETIREMENT

(Sec. 304(b) of the bill and new sec. 401(a)(35) of the Code)

#### PRESENT LAW

For purposes of the qualification requirements applicable to pension plans, stock bonus plans, and profit-sharing plans, a pension plan is a plan established and maintained primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually life, after retirement.<sup>54</sup> A pension plan (i.e., a defined benefit plan or money purchase pension plan) may not provide for distributions before the attainment of normal retirement age (commonly age 65) to participants who have not separated from employment.<sup>55</sup>

Under proposed regulations, in the case of a phased retirement program, a pension plan is permitted to pay a portion of a partici-

<sup>54</sup>Treas. Reg. sec. 1.401-1(b)(1)(i).

<sup>55</sup>See, e.g., Rev. Rul. 74-254.

pant's benefits before attainment of normal retirement age.<sup>56</sup> A phased retirement program is a program under which employees who are at least age 59½ and are eligible for retirement may reduce (by at least 20 percent) the number of hours they customarily work and receive a pro rata portion of their retirement benefits, based on the reduction in their work schedule.

#### REASONS FOR CHANGE

The Committee recognizes that allowing in-service distributions from a pension plan can lead to the premature depletion of retirement savings. The Committee also understands that retirement income security can be enhanced if employees who are eligible for early retirement continue working. The Committee is concerned that the present-law rule prohibiting in-service distributions from a pension plan before normal retirement age may cause employees who would otherwise continue working to retire in order to start receiving benefits. The Committee believes that greater flexibility should be provided so that pension plans may begin paying benefits to employees who have reached age 62 and are continuing to work for the employer.

#### EXPLANATION OF PROVISION

Under the provision, a pension plan does not fail to be a qualified retirement plan merely because it provides for distributions to a participant who has attained age 62 and has not separated from employment at the time of the distribution.

#### EFFECTIVE DATE

The provision is effective for distributions in plan years beginning after December 31, 2005.

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

(Sec. 401 of the bill and sec. 4006 of ERISA)

#### PRESENT LAW

##### *The PBGC*

The minimum funding requirements permit an employer to fund defined benefit plan benefits over a period of time. Thus, it is possible that a plan may be terminated at a time when plan assets are not sufficient to provide all benefits accrued by employees under the plan. In order to protect plan participants from losing retirement benefits in such circumstances, the Pension Benefit Guaranty Corporation ("PBGC"), a corporation within the Department of Labor, was created in 1974 under ERISA to provide an insurance program for benefits under most defined benefit plans maintained by private employers.

##### *Termination of single-employer defined benefit plans*

An employer may voluntarily terminate a single-employer plan only in a standard termination or a distress termination. The

<sup>56</sup> Prop. Treas. Reg. secs. 1.401(a)-1(b)(1)(iv) and 1.401(a)-3.

PBGC may also involuntarily terminate a plan (that is, the termination is not voluntary on the part of the employer).

A standard termination is permitted only if plan assets are sufficient to cover benefit liabilities. If assets in a defined benefit plan are not sufficient to cover benefit liabilities, the employer may not terminate the plan unless the employer (and members of the employer's controlled group) meets one of four criteria of financial distress.<sup>57</sup>

The PBGC may institute proceedings to terminate a plan if it determines that the plan in question has not met the minimum funding standards, will be unable to pay benefits when due, has a substantial owner who has received a distribution greater than \$10,000 (other than by reason of death) while the plan has unfunded nonforfeitable benefits, or may reasonably be expected to increase PBGC's long-run loss unreasonably. The PBGC must institute proceedings to terminate a plan if the plan is unable to pay benefits that are currently due.

#### *Guaranteed benefits*

When an underfunded plan terminates, the amount of benefits that the PBGC will pay depends on legal limits, asset allocation, and recovery on the PBGC's employer liability claim. The PBGC guarantee applies to "basic benefits." Basic benefits generally are benefits accrued before a plan terminates, including (1) benefits at normal retirement age; (2) most early retirement benefits; (3) disability benefits for disabilities that occurred before the plan was terminated; and (4) certain benefits for survivors of plan participants. Generally only that part of the retirement benefit that is payable in monthly installments (rather than, for example, lump-sum benefits payable to encourage early retirement) is guaranteed.<sup>58</sup>

Retirement benefits that begin before normal retirement age are guaranteed, provided they meet the other conditions of guarantee (such as that before the date the plan terminates, the participant had satisfied the conditions of the plan necessary to establish the right to receive the benefit other than application for the benefit). Contingent benefits (for example, subsidized early retirement benefits) are guaranteed only if the triggering event occurs before plan termination.

For plans terminating in 2005, the maximum guaranteed benefit for an individual retiring at age 65 is \$3,698.86 per month or \$44,386.32 per year.<sup>59</sup> The dollar limit is indexed annually for

<sup>57</sup>The four criteria for a distress termination are: (1) the contributing sponsor, and every member of the controlled group of which the sponsor is a member, is being liquidated in bankruptcy or any similar Federal law or other similar State insolvency proceedings; (2) the contributing sponsor and every member of the sponsor's controlled group is being reorganized in bankruptcy or similar State proceeding; (3) the PBGC determines that termination is necessary to allow the employer to pay its debts when due; or (4) the PBGC determines that termination is necessary to avoid unreasonably burdensome pension costs caused solely by a decline in the employer's work force.

<sup>58</sup>ERISA sec. 4022(b) and (c).

<sup>59</sup>The PBGC generally pays the greater of the guaranteed benefit amount and the amount that was covered by plan assets when it terminated. Thus, depending on the amount of assets in the terminating plan, participants may receive more than the amount guaranteed by PBGC.

Special rules limit the guaranteed benefits of individuals who are substantial owners covered by a plan whose benefits have not been increased by reason of any plan amendment. A substantial owner generally is an individual who: (1) owns the entire interest in an unincorporated trade or business; (2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in the partnership;



wage inflation. The guaranteed amount is reduced for benefits starting before age 65.

In the case of a plan or a plan amendment that has been in effect for less than five years before a plan termination, the amount guaranteed is phased in by 20 percent a year.<sup>60</sup>

### *PBGC premiums*

#### *In general*

The PBGC is funded by assets in terminated plans, amounts recovered from employers who terminate underfunded plans, premiums paid with respect to covered plans, and investment earnings. All covered single-employer plans are required to pay a flat per-participant premium and underfunded plans are subject to an additional variable rate premium based on the level of underfunding. The amount of both the flat rate premium and the variable rate premium are set by statute; the premiums are not indexed for inflation.

#### *Flat rate premiums*

The annual flat rate per participant premium is \$19 per participant.

#### *Variable rate premiums*

The variable rate premium is equal to \$9 per \$1,000 of unfunded vested benefits. "Unfunded vested benefits" is the amount which would be the unfunded current liability (as defined under the minimum funding rules) if only vested benefits were taken into account and if benefits were valued at the variable premium interest rate. No variable rate premium is imposed for a year if contributions to the plan for the prior year were at least equal to the full funding limit for that year.

In determining the amount of unfunded vested benefits, the interest rate used is generally 85 percent of the interest rate on 30 year Treasury securities for the month preceding the month in which the plan year begins (100 percent of the interest rate on 30 year Treasury securities for plan years beginning in 2002 and 2003). Under the Pension Funding Equity Act of 2004, in determining the amount of unfunded vested benefits for plan years beginning after December 31, 2003, and before January 1, 2006, the interest rate used is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long term investment-grade corporate bonds for the month preceding the month in which the plan year begins.

### REASONS FOR CHANGE

Modifications to the PBGC premium structure, in conjunction with the provisions of the bill relating to defined benefit pension plan funding, will provide for increased retirement income security. The current flat-rate premium has not been modified since 1991 and has not kept pace with increases in wages, which are typically

(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of the corporation or all the stock of the corporation; or (4) at any time within the preceding 60 months was a substantial owner under the plan. ERISA sec. 4022(b)(5).

<sup>60</sup>The phase in does not apply if the benefit is less than \$20 per month.

reflected in pension benefits. Thus, the Committee bill increases the PBGC flat-rate premium to reflect past increases in wages and provides for automatic increases in the future to reflect wage increases.

Changes to the variable rate premium are also appropriate to better reflect the risk that underfunded plans present to the pension insurance system. Under present law, employers of some underfunded plans may avoid paying the variable rate premium if the plan is at the full funding limitation, even though the plan poses a greater risk than better funded plans. This possibility is eliminated under the bill. In addition, the Committee bill modifies the base for the premium to conform to the funding targets under the funding provisions of the bill.

The Committee has noted that there is increasing use of bankruptcy reorganizations as a means of eliminating an employer's liability for pension benefits and shifting that liability to the PBGC pension insurance system. The Committee believes employers that terminate their plans on an underfunded basis (other than in bankruptcy liquidation proceedings) should continue to bear some financial responsibility for pension benefits following reorganization. Thus, the Committee bill requires additional premiums specifically related to such plan terminations. The Committee also believes that further action in this area is needed and that the bankruptcy laws should be reformed to prevent employers from shedding pension liabilities and shifting them to others.

EXPLANATION OF PROVISION

*Flat rate premiums*

Beginning in 2006, the provision phases in an increase of the flat rate premium to \$30 as adjusted for years after 2006 based on increases in average wages as defined under the Social Security Act.<sup>61</sup> The rate of the phase-in depends on the funded status of the plan. In general, the flat rate premium for a single-employer plan is determined under the following table:

If the plan year begins in:	The flat rate premium is:
2006 .....	\$21.20
2007 .....	\$23.40
2008 .....	\$25.60
2009 .....	\$27.80
2010 and thereafter .....	\$30, as adjusted starting in 2007 for increases in average wages

A faster phase-in schedule applies to plans with funding below a certain level. If the funding target percentage of a plan for the preceding plan year was less than 80 percent, then the flat rate premium is determined under the following table:

If the plan year begins in:	The flat rate premium is:
2006 .....	\$22.67
2007 .....	\$26.33

<sup>61</sup> In general, if the premium amount as indexed is not a multiple of \$1, the amount is rounded to the nearest \$1; if the amount is a multiple of \$.50, the amount is rounded to the next highest dollar amount.

If the plan year begins in:	The flat rate premium is:
2008 and thereafter .....	\$30, as adjusted starting in 2007 for increases in average wages

Under the provision, the same flat rate premium will apply to all plans, regardless of funding status, in 2010 and thereafter.

#### *Variable rate premium*

For 2006, the provision extends the present-law rule under which, in determining the amount of unfunded vested benefits for variable rate premium purposes, the interest rate used is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long term investment-grade corporate bonds for the month preceding the month in which the plan year begins.

Beginning in 2007, the determination of unfunded vested benefits for purposes of the variable rate premium is modified to conform to the funding rules of the provision. Thus, under the provision, unfunded vested benefits are equal to the amount which would be the plan's funding shortfall for the year<sup>62</sup> if plan assets were valued at fair market value and only vested benefits were taken into account.<sup>63</sup> In valuing unfunded vested benefits the interest rate is the first, second, and third segment rates which would be determined under the funding rules of the provision, if the segment rates were based on the yields of corporate bond rates, rather than a three-year average of such rates. Under the bill, deductible contributions are no longer limited by the full funding limit; thus, the rule providing that no variable rate premium is required if contributions for the prior plan year were at least equal to the full funding limit no longer applies under the provision.

#### *Premium for certain terminating plans*

The provision imposes a per-participant premium of \$1,250 for each applicable 12-month period following certain plan terminations (called the "termination premium"). The termination premium applies if the plan is terminated by the PBGC or in a distress termination by reason of (1) reorganization in bankruptcy (or similar State proceeding), (2) the inability of the employer to pay its debts when due, or (3) a determination that termination is necessary to avoid unreasonably burdensome pension costs caused solely by a decline in the employer's work force.

The applicable 12-month period is generally the 12-month period beginning with the month after the date in which the termination occurs and the next two 12-month periods. In the case of a termination due to reorganization, the liability for the termination premium does not arise until the employer is discharged from the reorganization proceeding (and the first 12-month period does not start until such discharge).

<sup>62</sup>The assumptions used are the same as under the minimum funding rules. Thus, for a plan in at-risk status, the at-risk assumptions are used.

<sup>63</sup>For this purpose, the fair market value of plan assets is not reduced by the plan's prefunding balance and funding standard carryover balance.

## EFFECTIVE DATE

The provision relating to flat-rate premiums is effective for plan years beginning after December 31, 2005. The extension of the present-law interest rate for purposes of calculating the variable rate premium is effective for plan years beginning in 2006. The modifications to the variable rate premiums to conform to the new funding rules of the provision are effective for plan years beginning after December 31, 2006. The provision relating to termination premiums is effective for reorganization proceedings begun after October 26, 2005.

## TITLE V: DISCLOSURE—SECTION 4010 FILINGS WITH THE PBGC

(Sec. 503 of the bill and sec. 4010 of ERISA)

## PRESENT LAW

Present law provides that, in certain circumstances, the contributing sponsor of a single-employer plan covered by the PBGC (and members of the contributing sponsor's controlled group) must provide certain information to the PBGC. This information (referred to as "section 4010 information") includes financial information with respect to the contributing sponsor (and controlled group members) and actuarial information with respect to single-employer plans maintained by the sponsor (and controlled group members).<sup>64</sup> This reporting is required if: (1) the aggregate unfunded vested benefits (determined using the interest rate used in determining variable-rate premiums) as of the end of the preceding plan year under all plans maintained by members of the controlled group exceed \$50 million (disregarding plans with no unfunded vested benefits); (2) the conditions for imposition of a lien (i.e., required contributions totaling more than \$1 million have not been made) have occurred with respect to an underfunded plan maintained by a member of the controlled group; or (3) minimum funding waivers in excess of \$1 million have been granted with respect to a plan maintained by any member of the controlled group and any portion of the waived amount is still outstanding. Information provided to the PBGC in accordance with these requirements is not available to the public.

The PBGC may assess a penalty for a failure to provide the required information in the amount of up to \$1,000 a day for each day the failure continues.<sup>65</sup>

## REASONS FOR CHANGE

Workers and other plan participants need more accurate and timely information regarding their pension plans. Thus, the Committee believes that section 4010 reporting should be required by reason of the funding percentage of plans, rather than the amount of unfunded benefits. In addition, additional information about underfunded plans, particularly those in at-risk status, should be provided to participants and beneficiaries, as well as to the Congressional committees with jurisdiction over pension plans.

<sup>64</sup> ERISA sec. 4010.

<sup>65</sup> ERISA sec. 4071.

## EXPLANATION OF PROVISION

The provision revises the circumstances in which reporting of section 4010 information is required. Specifically, instead of requiring reporting if the aggregate unfunded vested benefits as of the end of the preceding plan year under all plans maintained by members of the controlled group exceed \$50 million, the provision requires reporting if: (1) the aggregate funding targets attainment percentage with respect to a controlled group for the preceding plan year is less than 60 percent; or (2) the aggregate funding targets attainment percentage with respect to a controlled group for the preceding plan year is less than 75 percent and the plan sponsor is in an industry with respect to which the PBGC determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining. The aggregate funding targets attainment percentage with respect to a controlled group for a plan year is the percentage, determined by taking into account all plans maintained by the members of the controlled group as of the end of the plan year, which: (1) the aggregate total of the values of plan assets, as of the end of the plan year, is of (2) the aggregate total of the funding targets of the plans, as of the end of the plan year, taking into account only vested benefits.

Under the provision, any person submitting to the PBGC section 4010 information with respect to a plan must provide notice thereof within 90 days to participants and beneficiaries under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). The notice must set forth: (1) the number of single-employer plans insured by the PBGC that are in at-risk status and maintained by contributing sponsors of the plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year is less than 60 percent; (2) the value of the assets of each plan for the plan year, the funding target for the plan year, and the funding target attainment percentage of each plan for the plan year and (3) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group, the aggregate total values of the assets of the plans as of the end of the plan year, the aggregate total of the funding targets of the plans (taking into account only vested benefits), and the aggregate funding targets attainment percentage (as defined above) with respect to the contributing sponsor for the preceding plan year.

For purposes of the notice requirement, a plan is in “at-risk status” for a plan year if the plan’s funding target attainment percentage for the preceding year was less than 60 percent. A plan’s “funding target attainment percentage” means the ratio, expressed as a percentage, that the value of the plan’s assets (reduced by any funding standard carryover balance and prefunding balance) bears to the plan’s funding target for the year (determined without regard to the special assumptions that apply to at-risk plans). A plan’s funding target for a plan year is the present value of the liabilities to participants and beneficiaries under the plan.

Any notice required to be provided under the provision may be provided in written, electronic, or other appropriate form to the extent such form is reasonably available to the persons to whom the

information is required to be provided. A person is not entitled to receive more than one notice during any 12-month period. The person required to provide the notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing the notice, subject to a maximum amount that may be prescribed by the PBGC.

Concurrent with the provision of notice as required under the provision, notice must also be provided to the House Committees on Education and the Workforce and Ways and Means and the Senate Committees on Health, Education, Labor, and Pensions and Finance, which shall be treated as materials provided in executive session.

The present-law authority of the PBGC to impose a penalty for failure to provide section 4010 information applies to a failure to provide the notice required under the provision.

#### EFFECTIVE DATE

The provision is effective for plan years beginning after 2006.

#### TITLE VI: PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE

(Sec. 602 of the bill and sec. 4975 of the Code)

#### PRESENT LAW

ERISA and the Code prohibit certain transactions between an employer-sponsored retirement plan and a disqualified person.<sup>66</sup> Disqualified persons include a fiduciary of the plan, a person providing services to the plan, and an employer with employees covered by the plan. For this purpose, a fiduciary includes any person who (1) exercises any authority or control respecting management or disposition of the plan's assets, (2) renders investment advice for a fee or other compensation with respect to any plan moneys or property, or has the authority or responsibility to do so, or (3) has any discretionary authority or responsibility in the administration of the plan.

Prohibited transactions include (1) the sale, exchange or leasing of property, (2) the lending of money or other extension of credit, (3) the furnishing of goods, services or facilities, (4) the transfer to, or use by or for the benefit of, the income or assets of the plan, (5) in the case of a fiduciary, any act that deals with the plan's income or assets for the fiduciary's own interest or account, and (6) the receipt by a fiduciary of any consideration for the fiduciary's own personal account from any party dealing with the plan in connection with a transaction involving the income or assets of the plan. However, certain transactions are exempt from prohibited transaction treatment, for example, certain loans to plan participants.

Under ERISA, the Secretary of Labor may assess a civil penalty against a person who engages in a prohibited transaction, other than a transaction with a plan covered by the prohibited trans-

<sup>66</sup> Code sec. 4975; ERISA sec. 406. Under ERISA, the prohibited transaction rules apply to employer-sponsored retirement plans and welfare benefit plans. Under the Code, the prohibited transaction rules apply to qualified retirement plans and qualified retirement annuities, as well as individual retirement accounts and annuities, Archer MSAs, health savings accounts, and Coverdell education savings accounts. The prohibited transaction rules under ERISA and the Code generally do not apply to governmental plans or church plans.

action rules of the Code. The penalty may not exceed five percent of the amount involved in the transaction for each year or part of a year that the prohibited transaction continues. If the prohibited transaction is not corrected within 90 days after notice from the Secretary of Labor, the penalty may be up to 100 percent of the amount involved in the transaction. Under the Code, if a prohibited transaction occurs, the disqualified person who participates in the transaction is subject to a two-tier excise tax. The first level tax is 15 percent of the amount involved in the transaction. The second level tax is imposed if the prohibited transaction is not corrected within a certain period and is 100 percent of the amount involved.

#### REASONS FOR CHANGE

The Committee believes that retirement savings can be enhanced by the provision of investment advice both to plan fiduciaries who are responsible for the investment of plan assets, or for choosing the investment options offered under a plan, and to individuals who are responsible for directing the investment of their accounts. The Committee wishes to facilitate the provision of investment advice by providing exemptions from the prohibited transaction rules (subject to certain safeguards) for the provision of investment advice, fees received for such advice, and investments made pursuant to such advice.

#### EXPLANATION OF PROVISION

The provision adds a new category of prohibited transaction exemptions in connection with the provision of investment advice with respect to plan assets for a fee if: (1) the investment of plan assets is subject to the direction of plan participants or beneficiaries; (2) the advice is provided to the plan or a participant or beneficiary by a fiduciary adviser in connection with a sale, acquisition or holding of a security or other property (an "investment transaction") for purposes of investment of plan assets; and (3) certain other requirements are met. Under the provision, the following are exempt from prohibited transaction treatment: (1) the provision of investment advice to the plan, participant or beneficiary; (2) an investment transaction (including any lending of money or other extension of credit associated with the investment transaction) pursuant to the advice; and (3) the direct or indirect receipt of fees or other compensation by a fiduciary adviser or an affiliate thereof (or any employee, agent or registered representative of the fiduciary adviser or an affiliate) in connection with the provision of the advice or an investment transaction pursuant to the advice.

Under the provision, certain requirements must be met in order for the exemption to apply. When initially providing advice about a security or other property, the fiduciary adviser must provide to the recipient of the advice, on a reasonably contemporaneous basis, written notification of specified information (discussed below) as well as any disclosure required in connection with the investment transaction under any applicable securities laws. In addition, the investment transaction must occur solely at the direction of the recipient of the advice; the compensation received by the adviser and its affiliates in connection with the investment transaction must be reasonable; and the terms of the investment transaction must be at least as favorable as an arm's length transaction would be.

The written notification required to be provided by the fiduciary adviser must include information about the following: (1) all fees or compensation to be received by the adviser or any affiliate (including from a third party) in connection with the advice or the investment transaction; (2) any material affiliation or contractual relationship of the adviser or its affiliates in the security or other property involved in the investment transaction; (3) any limitation to be placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to an investment transaction; (4) the types of services provided by the adviser in connection with the provision of investment advice; (5) the adviser's status as a fiduciary of the plan in connection with the provision of the advice; and (6) the ability of the recipient of the advice separately to arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property. In addition, in connection with the initial advice or subsequent advice, the required information must be maintained in currently accurate form and must be provided to a recipient of investment advice (without charge) at least annually and also when requested by the recipient of the advice or when there is a material change in the information. In the event of a material change in the information, currently accurate information must be provided to the recipient at a time reasonably contemporaneous to the change.

The written notification can be provided electronically. Any notification (or currently accurate information) must be written in a clear and conspicuous manner, calculated to be understood by the average plan participant, and be sufficiently accurate and comprehensive so as to reasonably apprise participants and beneficiaries of the required information. The Secretary of Labor is directed to issue a model form for the disclosure of fees and other compensation as required by the provision.

The fiduciary adviser must maintain for at least six years any records necessary for determining whether the requirements for the prohibited transaction exemption were met. A prohibited transaction will not be considered to have occurred solely because records were lost or destroyed before the end of six years due to circumstances beyond the adviser's control.

For purposes of the provision, "fiduciary adviser" is defined as a person who is a fiduciary of the plan by reason of the provision of investment advice to the plan, a participant or beneficiary and who is also: (1) registered as an investment adviser under the Investment Advisers Act of 1940 or under State laws; (2) a bank, a similar financial institution supervised by the United States or a State, or a savings association (as defined under the Federal Deposit Insurance Act), but only if the advice is provided through a trust department that is subject to periodic examination and review by Federal or State banking authorities; (3) an insurance company qualified to do business under State law; (4) registered as a broker or dealer under the Securities Exchange Act of 1934; (5) an affiliate of any of the preceding; or (6) an employee, agent or registered representative of any of the preceding who satisfies the requirements of applicable insurance, banking and securities laws relating to the provision of advice. "Affiliate" means an affiliated person as defined under section 2(a)(3) of the Investment Company Act of 1940. "Reg-



istered representative” means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 or a person described in section 202(a)(17) of the Investment Advisers Act of 1940.

Subject to certain requirements, the employer or other person who is a plan fiduciary, other than a fiduciary adviser, is not treated as failing to meet the prohibited transaction requirements (or the fiduciary requirements of ERISA), solely by reason of the provision of investment advice as permitted under the provision or of contracting for or otherwise arranging for the provision of the advice. This rule applies if: (1) the advice is provided under an arrangement between the employer or plan fiduciary and the fiduciary adviser for the provision of investment advice by the fiduciary adviser as permitted under the provision; (2) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of the provision; and (3) the terms of the arrangement include a written acknowledgement by the fiduciary adviser that the fiduciary adviser is a plan fiduciary with respect to the provision of the advice. The fiduciary responsibility requirements of ERISA must also be met in connection with the provision of investment advice.

The provision does not exempt the employer or a plan fiduciary from fiduciary responsibility under ERISA for the prudent selection and periodic review of a fiduciary adviser with whom the employer or plan fiduciary has arranged for the provision of investment advice. The employer or plan fiduciary does not have the duty to monitor the specific investment advice given by a fiduciary adviser.

The provision also provides that nothing in the fiduciary responsibility provisions of ERISA is to be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice.

#### EFFECTIVE DATE

The provision is effective with respect to investment advice provided on or after January 1, 2006.

#### TITLE VII: BENEFIT ACCRUAL STANDARDS

(Sec. 701(b) of the bill and secs. 411 and 417 of the Code)

#### PRESENT LAW

##### *Prohibition on age discrimination*

###### *In general*

A prohibition on age discrimination applies to benefit accruals under a defined benefit pension plan.<sup>67</sup> Specifically, an employee’s benefit accrual may not cease, and the rate of an employee’s benefit accrual may not be reduced, because of the attainment of any age. However, this prohibition is not violated solely because the plan imposes (without regard to age) a limit on the amount of benefits that the plan provides or a limit on the number of years of service or years of participation that are taken into account for purposes of determining benefit accrual under the plan. Moreover, for purposes of this requirement, the subsidized portion of any early re-

<sup>67</sup> Code sec. 411(b)(1)(H); ERISA sec. 204(b)(1)(H).

tirement benefit may be disregarded in determining benefit accruals.

In December 2002, the IRS issued proposed regulations that dealt with the application of the age discrimination rules.<sup>68</sup> The proposed regulations included rules for applying the age discrimination rules with respect to accrued benefits, optional forms of benefit, ancillary benefits, and other rights and features provided under a plan. Under the proposed regulations, for purposes of applying the prohibition on age discrimination to defined benefit pension plans, an employee's rate of benefit accrual for a year is generally the increase in the employee's accrued normal retirement benefit (i.e., the benefit payable at normal retirement age) for the plan year. In the preamble to the proposed regulations, the IRS requested comments on other approaches to determining the rate of benefit accrual, such as allowing accrual rates to be averaged over multiple years (for example, to accommodate plans that provide a higher rate of accrual in earlier years) or, in the case of a plan that applies an offset, determining accrual rates before application of the offset. As discussed below, in June 2004, the IRS announced the withdrawal of the proposed regulations.

#### *Cash balance and other hybrid plans*

Certain types of defined benefit pension plans, such as cash balance plans and pension equity plans, are referred to as "hybrid" plans because they combine features of a defined benefit pension plan and a defined contribution plan.

Under a cash balance plan, benefits are determined by reference to a hypothetical account balance. An employee's hypothetical account balance is determined by reference to hypothetical annual allocations to the account ("pay credits") (e.g., a certain percentage of the employee's compensation for the year) and hypothetical earnings on the account ("interest credits"). Cash balance plans are generally designed so that, when a participant receives a pay credit for a year of service, the participant also receives the right to future interest on the pay credit, regardless of whether the participant continues employment (referred to as "front-loaded" interest credits). That is, the participant's hypothetical account continues to be credited with interest after the participant stops working for the employer. As a result, if an employee terminates employment and defers distribution to a later date, interest credits will continue to be credited to that employee's hypothetical account.

Another type of hybrid plan is a pension equity plan (sometimes referred to as a "PEP"). Under a pension equity plan, benefits are generally described as a percentage of final average pay, with the percentage determined on the basis of points received for each year of service, which are often weighted for older or longer service employees. Pension equity plans commonly provide interest credits for the period between a participant's termination of employment and commencement of benefits.

Because of the front-loaded nature of accruals under cash balance plans, there is a longer time for interest credits to accrue on a pay credit to the account of a younger employee. Thus, a pay credit received at a younger age may provide a larger annuity ben-

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<sup>68</sup> 67 Fed. Reg. 76123.

enefit at normal retirement age than the same pay credit received at an older age. A similar effect may occur with respect to other types of hybrid plan designs, including pension equity plans.

Prior to the decision in the case of *Cooper v. IBM Personal Pension Plan*,<sup>69</sup> described below, discussions regarding hybrid plans typically did not question the ability of the basic hybrid plan design to satisfy the age discrimination rules. IRS consideration of cash balance plans began in the early 1990s.<sup>70</sup> At that time, the focus was on the question of whether such plans satisfied the non-discrimination requirements under section 401(a)(4), which requires that benefits or contributions not discriminate in favor of highly compensated employees. Treasury regulations issued in 1991 under section 401(a)(4) provided a safe harbor for cash balance plans that provide frontloaded interest credits and meet certain other requirements. In connection with the issuance of these regulations, Treasury spoke to the cash balance age discrimination issue. The preamble to the final regulations stated “[t]he fact that interest adjustments through normal retirement age are accrued in the year of the related hypothetical allocation will not cause a cash balance plan to fail to satisfy the requirements of section 411(b)(1)(H), relating to age-based reductions in the rate at which benefits accrue under a plan.”<sup>71</sup> Many interpreted this language as Treasury’s position that cash balance plan designs do not violate the prohibitions on age discrimination. The IRS has not to date asserted that hybrid plan formulas result in per se violations of age discrimination requirements. The December 2002 proposed regulations, noted above, provided that an employee’s rate of benefit accrual for a year is generally the increase in the employee’s accrued normal retirement benefit (i.e., the benefit payable at normal retirement age) for the plan year. However, the proposed regulations provided a special rule under which an employee’s rate of benefit accrual under a cash balance plan meeting certain requirements (an “eligible” cash balance plan) was based on the rate of pay credit provided under the plan. Thus, under the proposed regulations, an eligible cash balance plan would not violate the prohibition on age discrimination solely because pay credits for younger employees earn interest credits for a longer period.

Section 205 of the Consolidated Appropriations Act, 2004 (the “2004 Appropriations Act”), enacted January 24, 2004, provides that none of the funds made available in the 2004 Appropriations Act may be used by the Secretary of the Treasury, or his designee, to issue any rule or regulation implementing the 2002 proposed Treasury age discrimination regulations or any regulation reaching similar results.<sup>72</sup> The 2004 Appropriations Act also required the Secretary of the Treasury within 180 days of enactment to present to Congress a legislative proposal for providing transition relief for older and longer-service participants affected by conversions of their employers’ traditional pension plans to cash balance plans. The Treasury Department complied with this requirement by including in the President’s budget for fiscal year 2005 a proposal re-

<sup>69</sup> 274 F. Supp. 2d 1010 (S.D. Ill. 2003).

<sup>70</sup> Statement of Stuart L. Brown, Chief Counsel Internal Revenue Service, before the Senate Committee on Health, Education, Labor, and Pensions (Sept. 21, 1999).

<sup>71</sup> 56 Fed. Reg. 47528 (Sept. 19, 1991).

<sup>72</sup> Pub. L. No. 108-199 (2004).

lating to cash balance and other hybrid plans that specifically addresses conversions to such plans, the application of the age discrimination rules to such plans, and the determination of minimum lump sums under such plans.<sup>73</sup> In June 2004, the IRS announced the withdrawal of the proposed age discrimination regulations, including the special rules for eligible cash balance plans.<sup>74</sup> According to the Announcement, “[t]his will provide Congress an opportunity to \* \* \* address cash balance and other hybrid plan issues through legislation.”

The application of the age discrimination rules to hybrid plans has been the subject of litigation. This issue was first addressed in *Eaton v. Onan Corporation*.<sup>75</sup> In that case, the court considered how the rate of an employee’s benefit accrual is determined for purposes of the age discrimination rules and concluded that the statute does not require the rate of benefit accrual to be measured solely by the value of a participant’s annuity payable at normal retirement age. The court found that, in the case of a cash balance plan, the rate of benefit accrual should be defined as the change in the employee’s cash balance account from one year to the next. The court held that a cash balance plan does not violate the prohibition on reducing the rate of benefit accrual because of age. This analysis has also been applied in two other cases, *Tootle v. ARINC Inc.*,<sup>76</sup> and *Register v. PNC Financial Services Group, Inc.*,<sup>77</sup> in which the courts found the *Eaton v. Onan Corporation* decision persuasive, rather than the *Cooper v. IBM Personal Pension Plan* decision.<sup>78</sup>

Only in *Cooper v. IBM Personal Pension Plan* has a court required the age discrimination requirements to be applied to a cash balance plan on the basis of the benefit payable in the form of an annuity commencing at normal retirement age, which was age 65 under the plan.<sup>79</sup> For this purpose, the court required interest credits to be projected and valued as an age 65 annuity. The court noted that, in terms of an age 65 annuity, interest credits will always be more valuable for a younger employee than for an older employee. Thus, the court concluded that an employee’s rate of benefit accrual declines as the employee gets older, in violation of the age discrimination rules. Although *Eaton v. Onan Corporation* had been decided in 2000, the court did not discuss the analysis in that case.

#### *Calculating minimum lump-sum distributions under hybrid plans*

Defined benefit pension plans, including cash balance plans and other hybrid plans, are required to provide benefits in the form of a life annuity commencing at a participant’s normal retirement age. If the plan permits benefits to be paid in certain other forms,

<sup>73</sup> A similar proposal was also contained in the President’s budget proposal for fiscal year 2006.

<sup>74</sup> IRS Announcement 2004-57, 2004-27 I.R.B. 15.

<sup>75</sup> 117 F. Supp. 2d 812 (S.D. Ind. 2000).

<sup>76</sup> 222 F.R.D. 88 (D. Md. 2004).

<sup>77</sup> No. 04-CV-6097, 2005 WL 3120268 (E.D. Pa. Nov. 21, 2005).

<sup>78</sup> In *Campbell v. BankBoston*, 327 F.3d 1 (1st Cir. 2003), the plaintiff argued for the first time only on appeal that the cash balance plan at issue violated the age discrimination rules. The court therefore held that the issue had been waived and did not resolve the issue. However, the court briefly described the various arguments involved and the disagreement as to how rate of benefit accrual should be determined.

<sup>79</sup> The court also considered an age discrimination issue with respect to previous years during which the plan was designed as a pension equity plan and, for that purpose, also applied the age discrimination requirements on the basis of the annuity payable at age 65.

such as a lump sum, minimum present value rules apply, under which the alternative form of benefit cannot be less than the present value of the life annuity payable at normal retirement age, determined using certain statutorily prescribed interest and mortality assumptions.<sup>80</sup>

Most cash balance plans are designed to permit a lump-sum distribution of a participant's hypothetical account balance upon termination of employment. This raises an issue as to whether a distribution of a participant's hypothetical account balance satisfies the minimum present value rules. In 1996, the IRS issued proposed guidance (Notice 96-8) on the application of the minimum present value rules to lump-sum distributions under cash balance plans and requested public comments in anticipation of proposed regulations incorporating the proposed guidance.<sup>81</sup>

Under the proposed guidance, a lump-sum distribution from a cash balance plan cannot be less than the present value of the benefit payable at normal retirement age, determined using the statutory interest and mortality assumptions. For this purpose, a participant's normal retirement benefit under a cash balance plan is generally determined by projecting the participant's hypothetical account balance to normal retirement age by crediting to the account future interest credits at the plan rate, the right to which has already accrued, and converting the projected account balance to an actuarially equivalent life annuity payable at normal retirement age, using the interest and mortality assumptions specified in the plan. The proposed guidance also included rules under which cash balance plans can provide lump-sum distributions in the amount of participants' hypothetical account balances if the rate at which interest credits are provided under the plan is not greater (or is assumed not to be greater) than the statutory interest rate.

Under the approach in the proposed guidance, a difference in the rate of interest credits provided under the plan, which is used to project the account balance forward to normal retirement age, and the statutory rate used to determine the lump-sum value (i.e., present value) of the accrued benefit can cause a discrepancy between the value of the minimum lump-sum and the employee's hypothetical account balance. This effect is sometimes referred to as "whipsaw." In particular, if the plan's interest crediting rate is higher than the statutory interest rate, then the resulting lump-sum amount will generally be greater than the hypothetical account balance.

Several courts, but not all, have applied an approach similar to the approach in the proposed guidance in cases involving the determination of lump sums under cash balance plans.<sup>82</sup> Regulations ad-

<sup>80</sup> Code sec. 417(e); ERISA sec. 205(g)(3). For years before 1995, these provisions required the use of an interest rate based on interest rates determined by the PBGC. For years after 1994, these provisions require the use of an interest rate based on interest rates on 30-year Treasury securities and a mortality table specified by the IRS.

<sup>81</sup> Notice 96-8, 1996-1996-1 C.B. 359. The Notice provides that regulations will be effective prospectively and, for plan years before regulations are effective, allows lump-sum distributions from cash balance plans that provide front-loaded interest credits to be based on a reasonable, good-faith interpretation of the minimum present value rules, taking into account preexisting guidance. The Notice further provides that plans that comply with the guidance in the Notice are deemed to be applying a reasonable, good-faith interpretation.

<sup>82</sup> *Berger v. Xerox Corp. Retirement Income Guarantee Plan*, 338 F.3d 755 (7th Cir. 2003); *Esden v. Bank of Boston*, 229 F.3d 154 (2d Cir. 2000), cert. dismissed, 531 U.S. 1061 (2001); *Lyons v. Georgia Pacific Salaried Employees Retirement Plan*, 221 F.3d 1235 (11th Cir. 2000)

addressing the application of the minimum present value rules to cash balance plans have not been issued.<sup>83</sup>

#### REASONS FOR CHANGE

The Committee understands that approximately 9 million American workers are currently covered under cash balance or other types of hybrid pension plans. The Committee believes that such plans play a valuable role in the future of the defined benefit pension plan system and providing retirement income security for employees. The Committee recognizes that because these plans combine the features of different types of plans, there may be questions as to how the defined benefit pension plan rules should be applied.<sup>84</sup>

The Committee is aware that some conversions of traditional defined benefit plans to hybrid plans raised some concern. The Committee also notes, however, that the IRS did not challenge the basic hybrid plan design and that, until the decision in *Cooper v. IBM Personal Pension Plan*, the legality of the basic hybrid plan design was not called into question. The court in that case found that the plan discriminated on the basis of age because the hypothetical accounts of younger workers accrue interest over a longer period of time, resulting in higher account balances. In effect, the court's decision found that plans that reflect the time value of money are age discriminatory. This result could potentially call into question other types of plan designs under more traditional defined benefit plans. The Committee does not believe that a plan design is age discriminatory merely because the benefits reflect the time value of money. The Committee is aware that some employers have already responded to the uncertainty raised by this decision by freezing their hybrid plans whether or not their plan was converted from a traditional plan. Thus, the situation being faced by many employees is not whether they will have a traditional defined benefit plan or a hybrid plan, but whether they will be covered by any pension plan.

With respect to the whipsaw issue, the Committee does not view the position taken by the IRS in Notice 96-8 to be a correct interpretation of present law. The Committee notes that this position has never been finalized in regulations and understands that the Treasury has been reviewing this position. The President's proposal would take an approach similar to that in the Committee bill. The Committee also notes that the approach taken in Notice 96-8 could

(*Lyons II*"), cert. denied, 532 U.S. 967 (2001); and *West v. Ak Steel Corp. Retirement Accumulation Plan*, 318 F. Supp.2d 579 (S.D. Ohio 2004). In *Lyons II*, the court reversed a lower court holding in *Lyons v. Georgia Pacific Salaried Employees Retirement Plan*, 66 F. Supp.2d 1328 (N.D. Ga. 1999) (*Lyons I*), relating to the application of the minimum present value rules in effect before 1995. The *Lyons II* court limited its analysis to the minimum present value rules in effect as of 1993 when Mr. Lyons received his lump-sum distribution; however, the court indicated that a different result could apply under the law in effect after 1994. On remand, in *Lyons v. Georgia Pacific Salaried Employees Retirement Plan*, 196 F. Supp.2d 1260 (N.D. Ga. 2002) (*Lyons III*"), the lower court determined that payment of the hypothetical account balance did not violate the minimum present value rules in effect for years after 1994.

<sup>83</sup>As mentioned above, the President's budgets for fiscal years 2005 and 2006 include a proposal, relating to cash balance plans that specifically addresses the determination of minimum lump sums under such plans. The President's proposal would eliminate the whipsaw effect and allow the plan to pay the hypothetical account balance, if certain requirements are satisfied.

<sup>84</sup>The undesirable effects of the lack of clarity in the law on both employers and employees was noted by the staff of the Joint Committee on Taxation in its *Report of Investigation of Enron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, and Policy Recommendations* (JCS-3-03), February 2003, at Vol. I, 19, 38, 487 conducted at the request of the Senate Committee on Finance. The staff of the Joint Committee on Taxation recommended that clear rules for hybrid plans should be provided.

harm plan participants. In response to the Notice, some employers have reduced the level of interest credits under their cash balance plans. In addition, the approach in the Notice provides a larger benefit for a participant who takes a distribution before normal retirement age. Thus, it penalizes employees who wait for their benefits until retirement, which is a perverse result for a retirement plan.

The Committee believes that the uncertainty that exists with respect to certain aspects of hybrid plans (as well as other defined benefit pension plan designs) should be resolved by clarifying that the law accommodates the nature and design of these plans. Thus, the Committee bill adopts age discrimination standards that may be applied to all defined benefit plans, including hybrid plans, and also resolves other issues, such as the calculation of lump-sum benefits.

In adopting these rules, the Committee is aware that our private pension system is a voluntary system that must accommodate various concerns, including those of employers and employees. In order to maintain a viable private pension system, the Committee believes that employers should have the ability to make plan design changes on a prospective basis without undue restriction or mandates with respect to future benefit levels.

The Committee bill applies on a prospective basis because certain issues addressed by the bill are the subject of on-going litigation. However, the Committee views the provision as a clarification; the action of the Committee in clarifying the law should not cast any negative inference on the legality of hybrid plans.

#### EXPLANATION OF PROVISION

##### *Age discrimination rules*

Under the provision, a plan is not treated as violating the prohibition on age discrimination if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual. For this purpose, an individual is similarly situated to a participant if the individual and the participant are (and always have been) identical in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age. In addition, in determining a participant's entire accrued benefit for this purpose, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) is disregarded. In some cases the value of an early retirement subsidy may be difficult to determine; it is therefore intended that a reasonable approximation of such value may be used for this purpose. The provision is intended to apply to hybrid plans, including pension equity plans.

In addition, under the provision, plans do not violate the prohibition on age discrimination solely because of the following plan designs or features:

1. A plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as

the balance of a hypothetical account maintained for the participant is not treated as violating the prohibition on age discrimination solely because interest accruing on the account balance is taken into account.

2. A plan is not treated as violating the prohibition on age discrimination solely because, under the plan, benefits attributable to employer contributions may be offset by: (1) Social Security or Railroad Retirement benefits; (2) benefits under another qualified retirement plan of the same employer; or (3) benefits under a retirement program for officers or employees of the Federal Government or a State or local government. For this purpose, allowable offsets based on such benefits may consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions). This provision is intended to codify the holding in *Lunn v. Montgomery Ward & Company, Inc.*, 166 F.3d 880 (7th Cir. 1999).

3. A plan is not treated as violating the prohibition on age discrimination solely because the plan provides for disparity in contributions or benefits with respect to which the permitted disparity requirements are met.

4. A plan is not treated as violating the prohibition on age discrimination solely because the plan provides for pre-retirement indexing of accrued benefits under the plan. For this purpose, the term “pre-retirement indexing” means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized index or methodology so as to protect the economic value of the benefit against inflation before distribution. It is intended that indexing is permitted both before and after benefit distributions begin and can protect the economic value of the benefit in whole or in part. The provision is not limited to the use of indices based on inflation (such as the consumer price index); however, it is the intent of the Committee to prohibit any pre-retirement indexing which results in a cumulative negative adjustment in a participant’s benefit.

In providing rules for the application of the age discrimination requirements with respect to optional forms of benefit, ancillary benefits, and other rights and features provided under a plan, it is intended that the Secretary of Treasury has the authority to provide rules under which certain types of benefits, or other rights or features, do not violate the prohibition on age discrimination.

#### *Calculating minimum lump-sum distributions under hybrid plans*

The provision provides a special rule for determining minimum lump-sum benefits under a defined benefit pension plan under which the accrued benefit payable upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant. Under the provision, such a plan is not treated as violating the minimum present value rules solely because of the amount actually made available for distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the



amount of the participant's account balance to normal retirement age is not greater than a market rate of return. The Secretary of the Treasury is given regulatory authority relating to: (1) the calculation of a market rate of return for this purpose; and (2) permissible methods of crediting interest to the account (including variable interest rates) resulting in effective rates of return not greater than a market rate of return.

#### EFFECTIVE DATE

The provision is effective for periods beginning on or after June 29, 2005. The Committee does not intend that the provision be interpreted as creating a negative inference regarding the legality of hybrid plans under present law.

### TITLE VIII: DEDUCTION LIMITATIONS

#### A. INCREASE IN DEDUCTION LIMITS

(Sec. 801 of the bill and sec. 404 of the Code)

Employer contributions to qualified retirement plans are deductible subject to certain limits.<sup>85</sup>

In the case of a defined benefit pension plan (including both single-employer and multiemployer plans), the employer generally may deduct the greater of: (1) the amount necessary to satisfy the minimum funding requirement of the plan for the year; or (2) the amount of the plan's normal cost for the year plus the amount necessary to amortize certain unfunded liabilities over 10 years, but limited to the full funding limitation for the year.<sup>86</sup> The maximum amount otherwise deductible generally is not less than the plan's unfunded current liability.<sup>87</sup> In the case of a single-employer plan covered by the PBGC insurance program that terminates during the year, the maximum deductible amount is generally not less than the amount needed to make the plan assets sufficient to fund benefit liabilities as defined for purposes of plan termination under the PBGC insurance program.

In the case of a defined contribution plan, the employer generally may deduct contributions in an amount up to 25 percent of compensation paid or accrued during the employer's taxable year.<sup>88</sup>

Subject to certain exceptions, an employer that makes non-deductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for the year.

<sup>85</sup> Code sec. 404.

<sup>86</sup> The full funding limitation is the excess, if any, of (1) the accrued liability of the plan (including normal cost), over (2) the lesser of (a) the market value of plan assets or (b) the actuarial value of plan assets. However, the full funding limit is not less than the excess, if any, of 90 percent of the plan's current liability (including the current liability normal cost) over the actuarial value of plan assets.

<sup>87</sup> In the case of a plan with 100 or fewer participants, unfunded current liability for this purpose does not include the liability attributable to benefit increases for highly compensated employees resulting from a plan amendment that is made or becomes effective, whichever is later, within the last two years.

<sup>88</sup> An overall deduction limit, described below, applies in the event an employer maintains a defined benefit plan and a defined contribution plan covering at least one of the same employees.

## REASONS FOR CHANGE

The Committee believes that employers should have greater flexibility to make additional contributions, particularly in good economic times when extra resources are available to fund a plan. Such additional contributions enable employers to improve the funded status of their plans and reduce the chance that the employer will be required to make larger contributions during an economic downturn or that the plan will terminate with significant underfunding.

In the case of multiemployer defined benefit pension plans, the present-law deduction limits may also create the potential that contributions required under collective bargaining agreements are not deductible by the employers obligated to make the contributions. In that case, employers' contribution obligations may be waived, or plan benefits (and thus plan liabilities) may be increased in order to assure that contributions are deductible. However, such measures may cause the plan's funded status to deteriorate, especially in a period of economic downturn. In the case of multiemployer plans, the deduction limit for contributions should be increased to reduce the possibility that contributions required under collective bargaining agreements are not deductible.

## EXPLANATION OF PROVISION

The provision modifies the maximum deductible amount in the case of both single-employer defined benefit pension plans and multiemployer defined benefit pension plans.

In the case of a single-employer defined benefit pension plan, the maximum deductible amount is equal to the greater of:

1. the excess (if any) of the sum of 150 percent of the plan's funding target plus the plan's normal cost for the plan year over the value of plan assets (determined as under the minimum funding rules), and
2. the excess (if any) of the sum of the plan's at-risk normal cost and at-risk funding target for the plan year over the value of the plan assets (determined as under the minimum funding rules). For this purpose, the at-risk funding target and at-risk normal cost are used regardless of whether the plan is in fact in at-risk status.

In determining the maximum deductible amount, the value of plan assets is not reduced by any pre-funding balance or funding standard account carryover balance.

The provision retains the present-law rule, that, in the case of a single-employer plan covered by the PBGC that terminates during the year, the maximum deductible amount is generally not less than the amount needed to make the plan assets sufficient to fund benefit liabilities as defined for purposes of the PBGC termination insurance program.

In the case of a multiemployer defined benefit plan, the maximum amount deductible is not less than 140 percent of current liability over the value of plan assets.

## EFFECTIVE DATE

The provision is effective for contributions for taxable years beginning after December 31, 2006.

B. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS  
(Sec. 802 of the bill and secs. 404(a)(7) and 4972 of the Code)

PRESENT LAW

Employer contributions to qualified retirement plans are deductible subject to certain limits.<sup>89</sup> In general, the deduction limit depends on the kind of plan.<sup>90</sup>

If an employer sponsors one or more defined benefit pension plans and one or more defined contribution plans that cover at least one of the same employees, an overall deduction limit applies to the total contributions to all plans for a plan year. The overall deduction limit generally is the greater of (1) 25 percent of compensation, or (2) the amount necessary to meet the minimum funding requirements of the defined benefit plan for the year, but not less than the amount of the plan's unfunded current liability.

Under EGTRRA, elective deferrals are not subject to the limits on deductions and are not taken into account in applying the limits to other employer contributions. The combined deduction limit of 25 percent of compensation for defined benefit and defined contribution plans does not apply if the only amounts contributed to the defined contribution plan are elective deferrals.<sup>91</sup>

Subject to certain exceptions, an employer that makes nondeductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for the year. Certain contributions to a defined contribution plan that are nondeductible solely because of the overall deduction limit are disregarded in determining the amount of nondeductible contributions for purposes of the excise tax. Contributions that are disregarded are the greater of (1) the amount of contributions not in excess of six percent of the compensation of the employees covered by the defined contribution plan, or (2) the amount of matching contributions.

REASONS FOR CHANGE

The Committee understands that the overall limit on deductible contributions has the effect of reducing, or even eliminating, employers' ability to make deductible contributions to their defined contribution plans in years in which substantial contributions must be made to their defined benefit pension plans. As a result, employees may receive little or no contributions to their defined contribution plan accounts in such years. The Committee believes that the overall deduction limit should allow for defined contribution plan contributions up to certain levels without regard to contributions made to defined benefit pension plans.

EXPLANATION OF PROVISION

Under the provision, the overall limit on employer deductions for contributions to combinations of defined benefit and defined contribution plans applies to contributions to one or more defined contribution plans only to the extent that such contributions exceed

<sup>89</sup> Code sec. 404.

<sup>90</sup> See the discussion under A., above, for a description of the deduction rules for defined benefit and defined contribution plans.

<sup>91</sup> Under the general EGTRRA sunset, this rule expires for plan years beginning after 2010.

six percent of compensation otherwise paid or accrued during the taxable year to the beneficiaries under the plans. As under present law, for purposes of determining the excise tax on nondeductible contributions, matching contributions to a defined contribution plan that are nondeductible solely because of the overall deduction limit are disregarded.

#### EFFECTIVE DATE

The provision is effective for contributions for taxable years beginning after December 31, 2006.

### TITLE IX: ENHANCED RETIREMENT SAVINGS AND DEFINED CONTRIBUTION PLANS

#### A. PERMANENCY OF EGTRRA PENSION AND IRA PROVISIONS

(Sec. 901 of the bill)

#### PRESENT LAW

##### *In general*

The Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) made a number of changes to the Federal tax laws, including a variety of provisions relating to pensions and individual retirement arrangements (“IRAs”). However, in order to comply with reconciliation procedures under the Congressional Budget Act of 1974 (e.g., section 313 of the Budget Act, under which a point of order may be lodged in the Senate), EGTRRA included a “sunset” provision, pursuant to which the provisions of EGTRRA expire at the end of 2010. Specifically, EGTRRA’s provisions do not apply for taxable, plan, or limitation years beginning after December 31, 2010, or to estates of decedents dying after, or gifts or generation-skipping transfers made after, December 31, 2010. EGTRRA provides that, as of the effective date of the sunset, both the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (“ERISA”) will be applied as though EGTRRA had never been enacted.

Certain provisions contained in EGTRRA expire before the general sunset date of 2010.<sup>92</sup>

##### *List of affected provisions*

Following is a list of the provisions affected by the general EGTRRA sunset.

##### *Individual retirement arrangements (“IRAs”)*

- Increases in the IRA contribution limits, including the ability to make catch-up contributions (secs. 219, 408, and 408A of the Code and sec. 601 of EGTRRA); and
- Rules relating to deemed IRAs under employer plans (sec. 408(q) of the Code and sec. 602 of EGTRRA).

<sup>92</sup>The saver’s credit (sec. 25B) expires at the end of 2006. Another provision of the bill makes the saver’s credit permanent.

*Expanding coverage*

- Increases in the limits on contributions, benefits, and compensation under qualified retirement plans, tax-sheltered annuities, and eligible deferred compensation plans (secs. 401(a)(17), 402(g), 408(p), 414(v), 415, and 457 of the Code and sec. 611 of EGTRRA);
- Application of prohibited transaction rules to plan loans of S corporation owners, partners, and sole proprietors (sec. 4975 of the Code and sec. 612 of EGTRRA);
- Modification of the top-heavy rules (sec. 416 of the Code and sec. 613 of EGTRRA);
- Elective deferrals not taken into account for purposes of deduction limits (sec. 404 of the Code and sec. 614 of EGTRRA);
- Repeal of coordination requirements for deferred compensation plans of state and local governments and tax-exempt organizations (sec. 457 of the Code and sec. 615 of EGTRRA);
- Modifications to deduction limits (sec. 404 of the Code and sec. 616 of EGTRRA);
- Option to treat elective deferrals as after-tax Roth contributions (sec. 402A of the Code and sec. 617 of EGTRRA);
- Credit for pension plan start-up costs (sec. 45E of the Code and sec. 619 of EGTRRA); and
- Certain nonresident aliens excluded in applying minimum coverage requirements (secs. 410(b)(3) and 861(a)(3) of the Code).

*Enhancing fairness*

- Catch-up contributions for individuals age 50 and older (sec. 414 of the Code and sec. 631 of EGTRRA);
- Equitable treatment for contributions of employees to defined contribution plans (secs. 403(b), 415, and 457 of the Code and sec. 632 of EGTRRA);
- Faster vesting of employer matching contributions (sec. 411 of the Code and sec. 633 of EGTRRA);
- Modifications to minimum distribution rules (sec. 401(a)(9) of the Code and sec. 634 of EGTRRA);
- Clarification of tax treatment of division of section 457 plan benefits upon divorce (secs. 414(p) and 457 of the Code and sec. 635 of EGTRRA);
- Provisions relating to hardship withdrawals (secs. 401(k) and 402 of the Code and sec. 636 of EGTRRA); and
- Waiver of tax on nondeductible contributions for domestic and similar workers (sec. 4972(c)(6) of the Code and sec. 637 of EGTRRA).

*Increasing portability*

- Rollovers of retirement plan and IRA distributions (secs. 401, 402, 403(b), 408, 457, and 3405 of the Code and secs. 641–644 of EGTRRA);
- Treatment of forms of distribution (sec. 411(d)(6) of the Code and sec. 645 of EGTRRA);
- Rationalization of restrictions on distributions (secs. 401(k), 403(b), and 457 of the Code and sec. 646 of EGTRRA):

- Purchase of service credit under governmental pension plans (secs. 403(b) and 457 of the Code and sec. 647 of EGTRRA);
- Employers may disregard rollovers for purposes of cash-out rules (sec. 411(a)(11) of the Code and sec. 648 of EGTRRA); and
- Minimum distribution and inclusion requirements for section 457 plans (sec. 457 of the Code and sec. 649 of EGTRRA).

*Strengthening pension security and enforcement*

- Phase in repeal of 160 percent of current liability funding limit; maximum deduction rules (secs. 404(a)(1), 412(c)(7), and 4972(c) of the Code and secs. 651–652 of EGTRRA);
- Excise tax relief for sound pension funding (sec. 4972 of the Code and sec. 653 of EGTRRA);
- Modifications to section 415 limits for multiemployer plans (sec. 415 of the Code and sec. 654 of EGTRRA);
- Investment of employee contributions in 401(k) plans (sec. 655 of EGTRRA);
- Prohibited allocations of stock in an S corporation ESOP (secs. 409 and 4979A of the Code and sec. 656 of EGTRRA);
- Automatic rollovers of certain mandatory distributions (secs. 401(a)(31) and 402(f)(1) of the Code and sec. 657 of EGTRRA);
- Clarification of treatment of contributions to a multiemployer plan (sec. 446 of the Code and sec. 658 of EGTRRA); and
- Treatment of plan amendments reducing future benefit accruals (sec. 4980F of the Code and sec. 659 of EGTRRA).

*Reducing regulatory burdens*

- Modification of timing of plan valuations (sec. 412 of the Code and sec. 661 of EGTRRA);
- ESOP dividends may be reinvested without loss of dividend deduction (sec. 404 of the Code and sec. 662 of EGTRRA);
- Repeal transition rule relating to certain highly compensated employees (sec. 663 of EGTRRA);
- Treatment of employees of tax-exempt entities for purposes of nondiscrimination rules (secs. 410, 401(k), and 401(m) of the Code and sec. 664 of EGTRRA);
- Treatment of employer-provided retirement advice (sec. 132 of the Code and sec. 665 of EGTRRA); and
- Repeal of the multiple use test (sec. 401(m) of the Code and sec. 666 of EGTRRA).

REASONS FOR CHANGE

The Committee believes that the retirement savings incentives under EGTRRA play a vital role in encouraging retirement savings and expanding access to employer-sponsored retirement plans. Uncertainty as to the continued availability of these incentives may discourage some individuals and employers from making full use of them. The Committee wishes to remove this uncertainty and encourage improvement in retirement savings rates by making the EGTRRA provisions permanent.

## EXPLANATION OF PROVISION

The provision repeals the sunset provision of EGTRRA as applied to the provisions relating to pensions and IRAs.

## EFFECTIVE DATE

The provision is effective on the date of enactment.

## B. SAVER'S CREDIT MADE PERMANENT

(Sec. 902 of the bill and sec. 25B of the Code)

## PRESENT LAW

Present law provides a temporary nonrefundable tax credit for eligible taxpayers for qualified retirement savings contributions. The maximum annual contribution eligible for the credit is \$2,000. The credit rate depends on the adjusted gross income ("AGI") of the taxpayer. Joint returns with AGI of \$50,000 or less, head of household returns of \$37,500 or less, and single returns of \$25,000 or less are eligible for the credit. The AGI limits applicable to single taxpayers apply to married taxpayers filing separate returns. The credit is in addition to any deduction or exclusion that would otherwise apply with respect to the contribution. The credit offsets minimum tax liability as well as regular tax liability. The credit is available to individuals who are 18 or older, other than individuals who are full-time students or claimed as a dependent on another taxpayer's return.

The credit is available with respect to: (1) elective deferrals to a qualified cash or deferred arrangement (a "section 401(k) plan"), a tax-sheltered annuity (a "section 403(b) annuity), an eligible deferred compensation arrangement of a State or local government (a "section 457 plan"), a SIMPLE, or a simplified employee pension ("SEP"); (2) contributions to a traditional or Roth IRA; and (3) voluntary after-tax employee contributions to a tax-sheltered annuity or qualified retirement plan.

The amount of any contribution eligible for the credit is reduced by distributions received by the taxpayer (or by the taxpayer's spouse if the taxpayer filed a joint return with the spouse) from any plan or IRA to which eligible contributions can be made during the taxable year for which the credit is claimed, the two taxable years prior to the year the credit is claimed, and during the period after the end of the taxable year for which the credit is claimed and prior to the due date for filing the taxpayer's return for the year. Distributions that are rolled over to another retirement plan do not affect the credit.

The credit rates based on AGI are provided in Table 1, below.

Table 1. CREDIT RATES FOR SAVER'S CREDIT

Joint filers	Heads of households	All other filers	Credit rate (percent)
\$0-\$30,000 .....	\$0-\$22,500 .....	\$0-\$15,000 .....	50
\$30,001-\$32,500 .....	\$22,501-\$24,375 .....	\$15,001-\$16,250 .....	20
\$32,501-\$50,000 .....	\$24,376-\$37,500 .....	\$16,251-\$25,000 .....	10
Over \$50,000 .....	Over \$37,500 .....	Over \$25,000 .....	0

The credit does not apply to taxable years beginning after December 31, 2006.

#### REASONS FOR CHANGE

Many low- and middle-income individuals have inadequate savings for retirement. The Committee believes that the saver's credit may provide an incentive for low- and middle-income individuals to save for retirement. The Committee believes that the credit should be made permanent to provide a consistent savings incentive. The Committee also believes that allowing direct deposit of the saver's credit may make it easier for some individuals to save.

#### EXPLANATION OF PROVISION

The provision makes the saver's credit permanent.

The provision also provides that an individual may direct that the amount of his or her saver's credit be directly deposited by the Federal government into an IRA, qualified retirement plan, section 403(b) annuity, or governmental section 457 plan designated by the individual (if the plan or other arrangement agrees to accept such direct deposits). The provision does not change the rules relating to the tax treatment of contributions to such plans or other arrangements.

#### EFFECTIVE DATE

The provision is effective on the date of enactment.

#### C. INCREASING PARTICIPATION THROUGH AUTOMATIC ENROLLMENT ARRANGEMENTS

(Sec. 903 of the bill and secs. 401(k), 401(m), 414(w), and 416 of the Code)

#### PRESENT LAW

##### *Qualified cash or deferred arrangements—in general*

Under present law, most defined contribution plans may include a qualified cash or deferred arrangement (commonly referred to as a "section 401(k)" or "401(k)" plan),<sup>93</sup> under which employees may elect to receive cash or to have contributions made to the plan by the employer on behalf of the employee in lieu of receiving cash. Contributions made to the plan at the election of the employee are referred to as "elective deferrals" or "elective contributions."<sup>94</sup> A 401(k) plan may be designed so that the employee will receive cash unless an affirmative election to make contributions is made. Alternatively, a plan may provide that elective contributions are made at a specified rate unless the employee elects otherwise (i.e., elects not to make contributions or to make contributions at a different rate). Arrangements that operate in this manner are sometimes referred to as "automatic enrollment" or "negative election" plans. In

<sup>93</sup> Legally, a section 401(k) plan is not a separate type of plan, but is a profit-sharing, stock bonus, or pre-ERISA money purchase plan that contains a qualified cash or deferred arrangement. The terms "section 401(k) plan" and "401(k) plan" are used here for convenience.

<sup>94</sup> The maximum annual amount of elective deferrals that can be made by an individual is subject to a limit (\$14,000 for 2005). An individual who has attained age 50 before the end of the taxable year may also make catch-up contributions to a section 401(k) plan, subject to a limit (\$4,000 for 2005).



either case, the employee must have an effective opportunity to elect to receive cash in lieu of contributions.<sup>95</sup>

#### *Nondiscrimination rules*

A special nondiscrimination test applies to elective deferrals under a section 401(k) plan, called the actual deferral percentage test or the “ADP” test. The ADP test compares the actual deferral percentages (“ADPs”) of the highly compensated employee group and the nonhighly compensated employee group. The ADP for each group generally is the average of the deferral percentages separately calculated for the employees in the group who are eligible to make elective deferrals for all or a portion of the relevant plan year. Each eligible employee’s deferral percentage generally is the employee’s elective deferrals for the year divided by the employee’s compensation for the year.

The plan generally satisfies the ADP test if the ADP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent of the ADP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ADP of the nonhighly compensated employee group for the prior plan year and not more than two percentage points greater than the ADP of the nonhighly compensated employee group for the prior plan year.

Under a safe harbor, a section 401(k) plan is deemed to satisfy the special nondiscrimination test if the plan satisfies one of two contribution requirements and satisfies a notice requirement (a “safe harbor section 401(k) plan”). A plan satisfies the contribution requirement under the safe harbor rule if the employer either (1) satisfies a matching contribution requirement or (2) makes a non-elective contribution to a defined contribution plan of at least three percent of an employee’s compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement. A plan generally satisfies the matching contribution requirement if, under the arrangement: (1) the employer makes a matching contribution on behalf of each nonhighly compensated employee that is equal to (a) 100 percent of the employee’s elective deferrals up to three percent of compensation and (b) 50 percent of the employee’s elective deferrals from three to five percent of compensation;<sup>96</sup> and (2) the rate of match with respect to any elective deferrals for highly compensated employees is not greater than the rate of match for nonhighly compensated employees.

Employer matching contributions are also subject to a special nondiscrimination test, the “ACP test,” which compares the average actual contribution percentages (“ACPs”) of matching contributions for the highly compensated employee group and the nonhighly compensated employee group. The plan generally satisfies the ACP test if the ACP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent

<sup>95</sup>Treasury regulations provide that whether an employee has an effective opportunity to receive cash is based on all the relevant facts and circumstances, including the adequacy of notice of the availability of the election, the period of time during which an election may be made, and any other conditions on elections. Treas. Reg. sec. 1.401(k)-1(e)(2).

<sup>96</sup>In lieu of matching contributions at rates equal to the safe harbor rates, a plan may provide for an alternative match if (1) the rate of the matching contributions does not increase as an employee’s rate of elective deferrals increases and (2) the amount of matching contributions at such rate of elective deferrals is at least equal to the aggregate amount of contributions which would be made if rate of the matching contributions equaled the safe harbor rates.

of the ACP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ACP of the nonhighly compensated employee group for the prior plan year and not more than two percentage points greater than the ACP of the nonhighly compensated employee group for the prior plan year.

A safe harbor section 401(k) plan that provides for matching contributions is deemed to satisfy the ACP test if, in addition to meeting the safe harbor contribution and notice requirements under section 401(k), (1) matching contributions are not provided with respect to elective deferrals in excess of six percent of compensation, (2) the rate of matching contribution does not increase as the rate of an employee's elective deferrals increases, and (3) the rate of matching contribution with respect to any rate of elective deferral of a highly compensated employee is no greater than the rate of matching contribution with respect to the same rate of deferral of a nonhighly compensated employee.

#### *Top-heavy rules*

Special rules apply in the case of a top-heavy plan. In general, a defined contribution plan is a top-heavy plan if the accounts of key employees account for more than 60 percent of the aggregate value of accounts under the plan. If a plan is a top-heavy plan, then certain minimum vesting standards and minimum contribution requirements apply.

A plan that consists solely of contributions that satisfy the safe harbor plan rules for elective and matching contributions is not considered a top-heavy plan.

#### *Tax-sheltered annuities*

Tax-sheltered annuities ("section 403(b) annuities") may provide for contributions on a salary reduction basis, similar to section 401(k) plans. Matching contributions under a section 403(b) annuity are subject to the same nondiscrimination rules under section 401(m) as matching contributions under a section 401(k) plan (sec. 403(b)(12)). Thus, for example, the safe harbor method of satisfying the section 401(m) rules for matching contributions under a 401(k) plan applies to section 403(b) annuities.

#### REASONS FOR CHANGE

Various studies indicate that an automatic enrollment feature can improve retirement savings rates, particularly for low- and middle-income participants. The Committee believes that providing nondiscrimination safe harbors for elective deferrals and matching contributions under plans that include an automatic enrollment feature, as well as allowing erroneous contributions to be distributed, will encourage employers to adopt such a feature.

#### EXPLANATION OF PROVISION

##### *In general*

Under the provision, a 401(k) plan that contains an automatic enrollment feature that satisfies certain requirements (a "qualified automatic enrollment feature") is treated as meeting the ADP test with respect to elective deferrals and the ACP test with respect to matching contributions. In addition, a plan consisting solely of con-

tributions made pursuant to a qualified automatic enrollment feature is not subject to the top-heavy rules.

A qualified automatic enrollment feature must meet certain requirements with respect to: (1) automatic deferral; (2) participation; (3) matching or nonelective contributions; and (4) notice to employees.

#### *Automatic deferral*

A qualified automatic enrollment feature must provide that, unless an employee elects otherwise, the employee is treated as making an election to make elective deferrals equal to a stated percentage of compensation not in excess of 10 percent and at least equal to: three percent of compensation for the first year the deemed election applies to the participant; four percent during the second year; five percent during the third year; and six percent during the fourth year and thereafter. The stated percentage must be applied uniformly to all eligible employees. Eligible employees mean all employees eligible to participate in the 401(k) plan, other than employees eligible to participate in the 401(k) plan immediately before the date on which the 401(k) plan (or a predecessor 401(k) plan) becomes a qualified automatic enrollment arrangement. Thus, for example, if an employer has a pre-existing 401(k) plan for which all employees are eligible, the automatic enrollment feature would be required to cover newly hired employees. The automatic enrollment feature may also cover existing employees.

#### *Participation requirement*

An automatic enrollment feature satisfies the participation requirement for a year if, for the plan year or the immediately preceding plan year, elective deferrals are made on behalf of at least 70 percent of the employees eligible under the automatic enrollment arrangement other than highly compensated employees and employees who were eligible to participate in the 401(k) plan immediately before the qualified automatic enrollment arrangement is effective. The participation requirement is deemed to be satisfied for the first year the qualified automatic enrollment feature is in effect.

#### *Matching or nonelective contribution requirement*

##### *Contributions*

An automatic enrollment feature satisfies the contribution requirement if the employer either (1) satisfies a matching contribution requirement or (2) makes a nonelective contribution to a defined contribution plan of at least two percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the automatic enrollment feature. A plan generally satisfies the matching contribution requirement if, under the arrangement: (1) the employer makes a matching contribution on behalf of each nonhighly compensated employee that is equal to 50 percent of the employee's elective deferrals as do not exceed six percent of compensation<sup>97</sup> and (2) the rate of match

<sup>97</sup> Similar to the rule under the present-law safe harbor, in lieu of matching contributions at a rate equal to the safe harbor rate, a plan may provide for an alternative match if (1) the rate

with respect to any elective deferrals for highly compensated employees is not greater than the rate of match for nonhighly compensated employees. The matching contributions may be made to the plan of which the automatic enrollment arrangement is a part or to another plan of the employer.

A plan including an automatic enrollment feature that provides for matching contributions is deemed to satisfy the ACP test if, in addition to meeting the safe harbor contribution requirements applicable to the qualified automatic enrollment feature: (1) matching contributions are not provided with respect to elective deferrals in excess of six percent of compensation, (2) the rate of matching contribution does not increase as the rate of an employee's elective deferrals increases, and (3) the rate of matching contribution with respect to any rate of elective deferral of a highly compensated employee is no greater than the rate of matching contribution with respect to the same rate of deferral of a nonhighly compensated employee.

#### *Vesting*

Any matching or other employer contributions taken into account in determining whether the requirements for a qualified automatic enrollment feature are satisfied must vest at least as rapidly as under two-year cliff vesting. That is, employees with at least two years of service must be 100 percent vested with respect to such contributions.

#### *Withdrawal restrictions*

Any matching or other employer contributions taken into account in determining whether the requirements for a qualified automatic enrollment feature are satisfied are subject to the withdrawal rules applicable to elective contributions.

#### *Notice requirement*

Under the notice requirement, each employee covered by the arrangement must receive notice of the arrangement which is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations and is written in a manner calculated to be understood by the average employee to whom the arrangement applies.<sup>98</sup> The notice must explain: (1) the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to elect to have contributions made in a different amount; and (2) how contributions made under the automatic enrollment arrangement will be invested in the absence of any investment election by the employee. The employee must be given a reasonable period of time after receipt of the notice and before the first election contribution is to be made to make an election with respect to contributions and investments.

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of the matching contributions does not increase as an employee's rate of elective deferrals increases and (2) the aggregate amount of matching contributions at such rate of elective deferrals is at least equal to the aggregate amount of matching contributions which would be made if the rate of matching contributions equaled the safe harbor rates.

<sup>98</sup> Employees who are not required to be covered by the qualified automatic enrollment feature, i.e., employees previously covered under the 401(k) plan, are required to receive the notice if they are covered by the automatic enrollment feature.

*Corrective distributions*

The provision includes rules under which erroneous automatic contributions may be distributed from the plan. It is intended that distributions of such amounts are generally treated as a payment of compensation, rather than as a contribution to and then a distribution from the plan. Thus, for example, the 10-percent early withdrawal tax does not apply to distributions of erroneous automatic contributions. In addition, it is intended that such contributions are not taken into account for purposes of applying the non-discrimination rules, or the limit on elective deferrals. Similarly, it is intended that distributions of such contributions are not subject to the otherwise applicable withdrawal restrictions.

*Application to tax-sheltered annuities*

The new safe harbor rules for automatic contribution plans apply with respect to matching contributions under a section 403(b) annuity through the operation of section 403(b)(12).

## EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2005.

## D. TREATMENT OF DISTRIBUTIONS TO GUARDSMEN CALLED TO ACTIVE DUTY

(Sec. 904 of the bill and secs. 72(t), 401(k), 403(b) of the bill)

## PRESENT LAW

Under present law, a taxpayer who receives a distribution from a qualified retirement plan prior to age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception to the tax applies. Among other exceptions, the early distribution tax does not apply to distributions made to an employee who separates from service after age 55, or to distributions that are part of a series of substantially equal periodic payments made for the life (or life expectancy) of the employee or the joint lives (or life expectancies) of the employee and his or her beneficiary.

Certain amounts held in a 401(k) plan or in a 403(b) annuity may not be distributed before severance from employment, age 59½, death, disability, or financial hardship of the employee.

## REASONS FOR CHANGE

The Committee recognizes that members of reserve units who are called to active duty often face unique financial issues when the active duty is for an extended period of time. To help alleviate potential financial hardship due to extended active duty status, the Committee believes that reservists should be able to make needed withdrawals on their retirement savings. The Committee believes the 10-percent additional tax should not apply in these circumstances and reservists should have the opportunity to recontribute withdrawn amounts after they have completed their active duty service.

## EXPLANATION OF PROVISION

Under the provision, the 10-percent early withdrawal tax does not apply to a qualified reservist distribution. A qualified reservist distribution is a distribution (1) from an IRA or attributable to elective deferrals under a qualified cash or deferred arrangement (a “section 401(k) plan”) or similar arrangement, (2) made to an individual who (by reason of being a member of a reserve component) was ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and (3) that is made during the period beginning on the date of such order or call to duty and ending at the close of the active duty period. A 401(k) plan or tax-sheltered annuity does not violate the distribution restrictions applicable to such plans by reason of making a qualified reservist distribution.

An individual who receives a qualified reservist distribution may, at any time during the two-year period beginning on the day after the end of the active duty period, make one or more contributions to an IRA of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to IRAs do not apply to any contribution made pursuant to the provision. No deduction is allowed for any contribution made under the provision.

This provision applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. The two-year period for making recontributions of qualified reservist distributions does not end before the date that is two years after the date of enactment.

## EFFECTIVE DATE

The provision applies to distributions after September 11, 2001.

If refund or credit of any overpayment of tax resulting from the provision would be prevented at any time before the close of the one-year period beginning on the date of the enactment by the operation of any law or rule of law (including *res judicata*), such refund or credit may nevertheless be made or allowed if claim therefor is filed before the close of such period.

E. INAPPLICABILITY OF 10-PERCENT ADDITIONAL TAX ON EARLY  
DISTRIBUTIONS OF PENSION PLANS OF PUBLIC SAFETY EMPLOYEES

(Sec. 905 of the bill and sec. 72(t) of the Code)

## PRESENT LAW

Under present law, a taxpayer who receives a distribution from a qualified retirement plan prior to age 59½, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception to the tax applies. Among other exceptions, the early distribution tax does not apply to distributions made to an employee who separates from service after age 55, or to distributions that are part of a series of substantially equal periodic payments made for the life (or life expectancy) of the employee or the joint lives (or life expectancies) of the employee and his or her beneficiary.

## REASONS FOR CHANGE

The Committee recognizes that public safety employees often retire earlier than workers in other professions. The Committee believes that it is appropriate to allow public safety employees to receive certain pension plan benefits without the imposition of the early withdrawal tax even if the distribution is made prior to the attainment of age 55.

## EXPLANATION OF PROVISION

Under the provision, the 10-percent early withdrawal tax does not apply to distributions to a qualified safety employee from a governmental plan to the extent that such distributions are attributable to a deferred retirement option plan or “DROP” benefit. A DROP benefit is a feature of a governmental defined benefit plan under which an employee elects to receive credits to an account (including a notional account) in the plan which are not in excess of the plan benefits that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee’s accrued pension benefit under such defined benefit plan based on years of service after the effective date of the DROP election. The waiver of the penalty is available only to amounts that would have been payable as an annuity from the defined benefit plan had the individual retired and taken the defined benefit plan benefit.

A qualified public safety employee is an employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision and would have been eligible to retire on or before the effective date of the DROP election and receive an immediate retirement benefit under the defined benefit plan.

## EFFECTIVE DATE

The provision is effective for distributions made after the date of enactment.

## F. COMBAT ZONE COMPENSATION TAKEN INTO ACCOUNT FOR PURPOSES OF IRA CONTRIBUTIONS

(Sec. 906 of the bill and sec. 219 of the Code)

## PRESENT LAW

There are two general types of individual retirement arrangements (“IRAs”): traditional IRAs and Roth IRAs. The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount (\$4,000 for 2005); and (2) the amount of the individual’s compensation that is includible in gross income for the year. In the case of an individual who has attained age 50 before the end of the year, the dollar amount is increased by an additional amount (\$500 for 2005). In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses that is includible in gross income is at least equal to the

contributed amount. IRA contributions in excess of the applicable limit are generally subject to an excise tax of six percent per year until withdrawn.

An individual may make contributions to a traditional IRA (up to the contribution limit) without regard to his or her adjusted gross income. An individual may deduct his or her contributions to a traditional IRA if neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan. If an individual or the individual's spouse is an active participant in an employer-sponsored retirement plan, the deduction is phased out for taxpayers with adjusted gross income over certain levels.

Individuals with adjusted gross income below certain levels may make contributions to a Roth IRA (up to the contribution limit). Contributions to a Roth IRA are not deductible.

Present law provides an exclusion from gross income for combat pay received by members of the Armed Forces. Thus, combat pay is not includible compensation for purposes of applying the limit on IRA contributions.

#### REASONS FOR CHANGE

For members of the military serving in a combat zone, the exclusion of combat pay from compensation for IRA purposes may have the effect of reducing or even eliminating their ability to make IRA contributions. The Committee believes that compensation earned while serving in a combat zone should be taken into account for IRA purposes so that military personnel are not denied the opportunity to save for retirement while serving in a combat zone.

#### EXPLANATION OF PROVISION

Under the provision, for purposes of applying the limit on IRA contributions, an individual's gross income is determined without regard to the exclusion for combat pay. Thus, combat pay received by an individual is treated as includible compensation for purposes of determining the amount that the individual (and the individual's spouse) can contribute to an IRA.

#### EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2005.

#### G. DIRECT DEPOSIT OF TAX REFUNDS IN AN IRA

(Sec. 907 of the bill)

#### PRESENT LAW

Under current IRS procedures, a taxpayer may direct that his or her tax refund be deposited into a checking or savings account with a bank or other financial institution (such as a mutual fund, brokerage firm, or credit union) rather than having the refund sent to the taxpayer in the form of a check.

#### REASONS FOR CHANGE

The Committee believes that taxpayers should be encouraged to use their tax refunds to enhance their retirement savings by being



able to have such refunds deposited directly into an IRA in the same way they can be deposited directly to a checking or savings account under present law. This will provide further opportunities for retirement savings.

#### EXPLANATION OF PROVISION

The Secretary is directed to develop forms under which all or a portion of a taxpayer's refund may be deposited in an IRA of the taxpayer (or the spouse of the taxpayer in the case of a joint return). The provision does not modify the rules relating to IRAs, including the rules relating to timing and deductibility of contributions.

#### EFFECTIVE DATE

The form required by the provision is to be available for taxable years beginning after December 31, 2006.

#### H. IRA ELIGIBILITY FOR THE DISABLED

(Sec. 908 of the bill and sec. 219 of the Code)

#### PRESENT LAW

There are two general types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs. The total amount that an individual may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount (\$4,000 for 2005); and (2) the amount of the individual's compensation that is includible in gross income for the year. In the case of an individual who has attained age 50 before the end of the year, the dollar amount is increased by an additional amount (\$500 for 2005). In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses that is includible in gross income is at least equal to the contributed amount. IRA contributions in excess of the applicable limit are generally subject to an excise tax of six percent per year until withdrawn.

An individual may make contributions to a traditional IRA (up to the contribution limit) without regard to his or her adjusted gross income. An individual may deduct his or her contributions to a traditional IRA if neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan. If an individual or the individual's spouse is an active participant in an employer-sponsored retirement plan, the deduction is phased out for taxpayers with adjusted gross income over certain levels.

Individuals with adjusted gross income below certain levels may make contributions to a Roth IRA (up to the contribution limit). Contributions to a Roth IRA are not deductible.

#### REASONS FOR CHANGE

The Committee believes that an individual who is disabled should be permitted to accumulate savings for his or her later years on a tax-favored basis, even though he or she is unable to earn compensation.

## EXPLANATION OF PROVISION

Under the provision, an individual who is disabled and who has not attained age 70½ before the end of the taxable year may make contributions to an IRA even if he or she has no compensation. For this purpose, an individual is considered disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration.<sup>99</sup>

## EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2005.

## I. ROLLOVERS BY NONSPOUSE BENEFICIARIES

(Sec. 909 of the bill and secs. 402, 403(a)(4), 403(b)(8), and 457(e)(16) of the Code)

## PRESENT LAW

*Tax-free rollovers*

Under present law, a distribution from a qualified retirement plan, a tax-sheltered annuity (“section 403(b) annuity”), an eligible deferred compensation plan of a State or local government employer (a “governmental section 457 plan”), or an individual retirement arrangement (an “IRA”) generally is included in income for the year distributed. However, eligible rollover distributions may be rolled over tax free within 60 days to another plan, annuity, or IRA.<sup>100</sup>

In general, an eligible rollover distribution includes any distribution to the plan participant or IRA owner other than certain periodic distributions, minimum required distributions, and distributions made on account of hardship.<sup>101</sup> Distributions to a participant from a qualified retirement plan, a tax-sheltered annuity, or a governmental section 457 plan generally can be rolled over to any of such plans or an IRA.<sup>102</sup> Similarly, distributions from an IRA to the IRA owner generally are permitted to be rolled over into a qualified retirement plan, a tax-sheltered annuity, a governmental section 457 plan, or another IRA.

Similar rollovers are permitted in the case of a distribution to the surviving spouse of the plan participant or IRA owner, but not to other persons.

If an individual inherits an IRA from the individual’s deceased spouse, the IRA may be treated as the IRA of the surviving spouse. This treatment does not apply to IRAs inherited from someone

<sup>99</sup> Sec. 72(m)(7). An individual is not considered to be disabled unless he or she furnishes proof of the existence of the disability in such form and manner as the Secretary may require.

<sup>100</sup> The IRS has the authority to waive the 60-day requirement if failure to waive the requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual. Sec. 402(c)(3)(B).

<sup>101</sup> Sec. 402(c)(4). Certain other distributions also are not eligible rollover distributions, e.g., corrective distributions of elective deferrals in excess of the elective deferral limits and loans that are treated as deemed distributions.

<sup>102</sup> Some restrictions or special rules may apply to certain distributions. For example, after-tax amounts distributed from a plan can be rolled over only to a plan of the same type or to an IRA.

other than the deceased spouse. In such cases, the IRA is not treated as the IRA of the beneficiary. Thus, for example, the beneficiary may not make contributions to the IRA and cannot roll over any amounts out of the inherited IRA. Like the original IRA owner, no amount is generally included in income until distributions are made from the IRA. Distributions from the inherited IRA must be made under the rules that apply to distributions to beneficiaries, as described below.

#### *Minimum distribution rules*

Minimum distribution rules apply to tax-favored retirement arrangements. In the case of distributions prior to the death of the participant, distributions generally must begin by the April 1 of the calendar year following the later of the calendar year in which the participant (1) attains age 70½ or (2) retires.<sup>103</sup> The minimum distribution rules also apply to distributions following the death of the participant. If minimum distributions have begun prior to the participant's death, the remaining interest generally must be distributed at least as rapidly as under the minimum distribution method being used prior to the date of death. If the participant dies before minimum distributions have begun, then either (1) the entire remaining interest must be distributed within five years of the death, or (2) distributions must begin within one year of the death over the life (or life expectancy) of the designated beneficiary. A beneficiary who is the surviving spouse of the participant is not required to begin distributions until the date the deceased participant would have attained age 70½. Alternatively, if the surviving spouse makes a rollover from the plan into a plan or IRA of his or her own, minimum distributions generally would not need to begin until the surviving spouse attains age 70½.

#### REASONS FOR CHANGE

The Committee understands that, in practice, many plans provide that distributions to a beneficiary who is not the surviving spouse of the participant are paid out soon after the death of the participant in a lump sum, even though the minimum distribution rules would permit a longer payout period. The Committee understands that many beneficiaries would like to avoid the adverse tax consequences of an immediate lump sum, as well as take advantage of the opportunity to receive periodic payments for life or over the beneficiary's lifetime. The Committee wishes to provide beneficiaries with additional flexibility regarding timing of distributions, consistent with the minimum distribution rules applicable to nonspouse beneficiaries. To accomplish this result, the Committee bill allows nonspouse beneficiaries to rollover benefits received after the death of the participant to an IRA and to receive distributions in a manner consistent with the minimum distribution rules for nonspouse IRA beneficiaries.

#### EXPLANATION OF PROVISION

The provision provides that benefits of a beneficiary other than a surviving spouse may be transferred directly to an IRA. The IRA

<sup>103</sup> In the case of five-percent owners and distributions from an IRA, distributions must begin by the April 1 of the calendar year following the year in which the individual attains age 70½.

is treated as an inherited IRA of the nonspouse beneficiary. Thus, for example, distributions from the inherited IRA are subject to the distribution rules applicable to beneficiaries. The provision applies to amounts payable to a beneficiary under a qualified retirement plan, governmental section 457 plan, or a tax-sheltered annuity. To the extent provided by the Secretary, the provision applies to benefits payable to a trust maintained for a designated beneficiary to the same extent it applies to the beneficiary.

#### EFFECTIVE DATE

The provision is effective for distributions made after December 31, 2005.

### TITLE X: PROVISIONS TO ENHANCE HEALTH CARE AFFORDABILITY

#### A. TAX TREATMENT OF COMBINED ANNUITY OR LIFE INSURANCE CONTRACTS WITH A LONG-TERM CARE INSURANCE FEATURE

(Sec. 1001 of the bill and secs. 72, 1035, and 7702B and new sec. 6050U of the Code)

#### PRESENT LAW

##### *Annuity contracts*

In general, earnings and gains on amounts invested in a deferred annuity contract held by an individual are not subject to tax during the deferral period in the hands of the holder of the contract. When payout commences under a deferred annuity contract, the tax treatment of amounts distributed depends on whether the amount is received “as an annuity” (generally, as periodic payments under contract terms) or not.

For amounts received as an annuity by an individual, an “exclusion ratio” is provided for determining the taxable portion of each payment (sec. 72(b)). The portion of each payment that is attributable to recovery of the taxpayer’s investment in the contract is not taxed. The taxable portion of each payment is ordinary income. The exclusion ratio is the ratio of the taxpayer’s investment in the contract to the expected return under the contract, that is, the total of the payments expected to be received under the contract. The ratio is determined as of the taxpayer’s annuity starting date. Once the taxpayer has recovered his or her investment in the contract, all further payments are included in income. If the taxpayer dies before the full investment in the contract is recovered, a deduction is allowed on the final return for the remaining investment in the contract (sec. 72(b)(3)).

Amounts not received as an annuity generally are included as ordinary income if received on or after the annuity starting date. Amounts not received as an annuity are included in income to the extent allocable to income on the contract if received before the annuity starting date, i.e., as income first (sec. 72(e)(2)). In general, loans under the annuity contract, partial withdrawals and partial surrenders are treated as amounts not received as an annuity and are subject to tax as income first (sec. 72(e)(4)). Exceptions are provided in some circumstances, such as for certain grandfathered contracts, certain life insurance and endowment contracts (other than

modified endowment contracts), and contracts under qualified plans (sec. 72(e)(5)). Under these exceptions, the amount received is included in income, but only to the extent it exceeds the investment in the contract, i.e., as basis recovery first.

#### *Long-term care insurance contracts*

##### *Tax treatment*

Present law provides favorable tax treatment for qualified long-term care insurance contracts meeting the requirements of section 7702B.

A qualified long-term care insurance contract is treated as an accident and health insurance contract (sec. 7702B(a)(1)). Amounts received under the contract generally are excludable from income as amounts received for personal injuries or sickness (sec. 104(a)(3)). The excludable amount is subject to a dollar cap of \$175 per day or \$63,875 annually (for 1997), as indexed, on per diem contracts only (sec. 7702B(d)). If payments under such contracts exceed the dollar cap, then the excess is excludable only to the extent of costs in excess of the dollar cap that are incurred for long-term care services. Amounts in excess of the dollar cap, with respect to which no actual costs were incurred for long-term care services, are fully includable in income without regard to the rules relating to return of basis under section 72.

A plan of an employer providing coverage under a long-term care insurance contract generally is treated as an accident and health plan (benefits under which generally are excludable from the recipient's income under section 105).

Premiums paid for a qualified long-term care insurance contract are deductible as medical expenses, subject to a dollar cap on the deductible amount of the premium per year based on the insured person's age at the end of the taxable year (sec. 213(d)(10)). Medical expenses generally are allowed as a deduction only to the extent they exceed 7.5 percent of adjusted gross income (sec. 213(a)).

Unreimbursed expenses for qualified long-term care services provided to the taxpayer or the taxpayer's spouse or dependent are treated as medical expenses for purposes of the itemized deduction for medical expenses (subject to the floor of 7.5 percent of adjusted gross income). Amounts received under a qualified long-term care insurance contract (regardless of whether the contract reimburses expenses or pays benefits on a per diem or other periodic basis) are treated as reimbursement for expense actually incurred for medical care (sec. 7702B(a)(2)).

##### *Definitions*

A qualified long-term care insurance contract is defined as any insurance contract that provides only coverage of qualified long-term care services, and that meets additional requirements (sec. 7702B(b)). The contract is not permitted to provide for a cash surrender value or other money that can be paid, assigned or pledged as collateral for a loan, or borrowed (and premium refunds are to be applied as a reduction in future premiums or to increase future benefits). Per diem-type and reimbursement-type contracts are permitted.

Qualified long-term care services are necessary diagnostic, preventive, therapeutic, curing treating, mitigating, and rehabilitative services, and maintenance or personal care services that are required by a chronically ill individual and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner (sec. 7702B(c)(1)).

A chronically ill individual is generally one who has been certified within the previous 12 months by a licensed health care practitioner as being unable to perform (without substantial assistance) at least 2 activities of daily (ADLs) for at least 90 days due to a loss of functional capacity (or meeting other definitional requirements) (sec. 7702B(c)(2)).

*Long-term care riders on life insurance contracts*

In the case of long-term care insurance coverage provided by a rider on or as part of a life insurance contract, the requirements applicable to long-term care insurance contracts apply as if the portion of the contract providing such coverage were a separate contract (sec. 7702B(e)). The term “portion” means only the terms and benefits that are in addition to the terms and benefits under the life insurance contract without regard to long-term care coverage. As a result, if the applicable requirements are met by the long-term care portion of the contract, amounts received under the contract as provided by the rider are treated in the same manner as long-term care insurance benefits, whether or not the payment of such amounts causes a reduction in the contract’s death benefit or cash surrender value.

The guideline premium limitation applicable under section 7702(c)(2) is increased by the sum of charges (but not premium payments) against the life insurance contract’s cash surrender value, the imposition of which reduces premiums paid for the contract (within the meaning of sec. 7702(f)(1)).

No medical expense deduction generally is allowed under section 213 for charges against the life insurance contract’s cash surrender value, unless such charges are includible in income because the life insurance contract is treated as a “modified endowment contract” under section 72(e)(10) and 7702A (sec. 7702B(e)(3)).

*Tax-free exchanges of insurance contracts*

Present law provides for the exchange of certain insurance contracts without recognition of gain or loss (sec. 1035). No gain or loss is recognized on the exchange of: (1) a life insurance contract for another life insurance contract or for an endowment or annuity contract; or (2) an endowment contract for another endowment contract (that provides for regular payments beginning no later than under the exchanged contract) or for an annuity contract; or (3) an annuity contract for an annuity contract. The basis of the contract received in the exchange generally is the same as the basis of the contract exchanged (sec. 1031(d)). Tax-free exchanges of long-term care insurance contracts are not permitted.

*Capitalization of certain policy acquisition expenses of insurance companies*

In the case of an insurance company, specified policy acquisition expenses for any taxable year are required to be capitalized, and

are amortized generally over the 120-month period beginning with the first month in the second half of the taxable year (sec. 848). Specified policy acquisition expenses are determined as that portion of the insurance company's general deductions for the taxable year that does not exceed a specific percentage of the net premiums for the taxable year on each of three categories of insurance contracts. For annuity contracts, the percentage is 1.75; for group life insurance contracts, the percentage is 2.05; and for all other specified insurance contracts, the percentage is 7.7. With certain exceptions, a specified insurance contract is any life insurance, annuity, or noncancellable accident and health insurance contract or combination thereof.

#### REASONS FOR CHANGE

The Committee believes that Americans should be encouraged to provide for their long-term care needs as they age. The Committee notes that Congress has already provided favorable tax treatment to qualified long-term care insurance contracts and benefits, in recognition of the value of long-term care insurance as a means to defray the escalating costs to the government of long-term care provided through Medicaid and Medicare. Nevertheless, the cost of long-term care coverage, and the risk that the cost of such insurance will be lost if the purchaser does not need long-term care, among other factors, have hindered the widespread use of long-term care insurance to cover Americans' long-term care needs. The Committee believes that providing certain additional tax incentives would help to foster the social policy of encouraging the use of long-term care insurance. The Committee believes that combination products (life insurance or annuity contracts combined with long-term care insurance contracts) may be attractive to individuals by providing more than one type of protection in one product. Such combination products may be more affordable for consumers because of cross-subsidization of risks within the contract. Specifically, in the case of combination contracts that provide long-term care coverage as a rider to an annuity contract, permitting the cost of the long-term care coverage to be charged against the cash value of the annuity contract without being treated as a taxable distribution under the contract would foster this social policy goal. Thus, the bill provides tax incentives for annuity-long-term care combination contracts that are similar to those already provided to life insurance contracts with long-term care insurance riders in recognition of their efficiency in promoting this social policy. The Committee believes it is not appropriate to permit a medical expense deduction with respect to such charges, because the charges are not included in the contract holder's income (this is similar to the present-law rule). In addition, the Committee believes that the policy acquisition expenses of the insurance company should be subject to the present-law capitalization rule at the percentage applicable to long-term care insurance contracts (the highest applicable percentage). The Committee also believes that reporting with respect to these types of contracts is essential to full compliance and effective tax law enforcement.

## EXPLANATION OF PROVISION

The provision provides for the tax rules applicable to long-term care insurance that is provided by a rider on or as part of an annuity contract, and modifies the tax rules applicable to long-term care insurance coverage provided by a rider on or as part of a life insurance contract.

Under the provision, any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract that is part of or a rider on the annuity or life insurance contract is not includable in income. The investment in the contract is reduced (but not below zero) by the charge.

The provision expands the rules for tax-free exchanges of certain insurance contracts. The provision provides that no gain or loss is recognized on the exchange of a life insurance contract, an endowment contract, an annuity contract, or a qualified long-term care insurance contract for a qualified long-term care insurance contract. The provision provides that a contract does not fail to be treated as an annuity contract, or as a life insurance contract, solely because a qualified long-term care insurance contract is a part of or a rider on such contract, for purposes of the rules for tax-free exchanges of certain life insurance contracts.

The provision provides that, except as otherwise provided in regulations, for Federal tax purposes, in the case of a long-term care insurance contract (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract, the portion of the contract providing long-term care insurance coverage is treated as a separate contract. The term “portion” means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care coverage. As a result, if the applicable requirements are met by the long-term care portion of the contract, amounts received under the contract as provided by the rider are treated in the same manner as long-term care insurance benefits, whether or not the payment of such amounts causes a reduction in the life insurance contract’s death benefit or cash surrender value or in the annuity contract’s cash value.

No deduction as a medical expense is allowed for any payment made for coverage under a qualified long-term care insurance contract if the payment is made as a charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract.

For purposes of the definition of a life insurance contract, the guideline premium limitation is increased by charges against the contract’s cash surrender value for coverage under the qualified long-term care insurance contract (reduced by charges that reduce the premiums paid for the life insurance contract).

The provision provides that certain retirement-related arrangements are not treated as annuity contracts, for purposes of the provision.

The provision requires information reporting by any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, that is excludible from gross income under the provision. The information re-



quired to be reported includes the amount of the aggregate of such charges against each such contract for the calendar year, the amount of the reduction in the investment in the contract by reason of the charges, and the name, address, and taxpayer identification number of the holder of the contract.

The provision modifies the application of the rules relating to capitalization of policy acquisition expenses of insurance companies. In the case of an annuity or life insurance contract that includes a qualified long-term care insurance contract as a part of or rider on the annuity or life insurance contract, the specified policy acquisition expenses that must be capitalized is determined using 7.7 percent of the net premiums for the taxable year on such contracts.

The provision increases the amount of pre-funding permitted by treating qualified long-term care insurance coverage under the rider as a qualified additional benefit, for purposes of the present-law definition of a life insurance contract.

#### EFFECTIVE DATE

The provision is generally effective for contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after that date. The provision expanding the rules for tax-free exchanges of certain insurance contracts applies with respect to exchanges occurring after December 31, 2006.

#### B. DISPOSITION OF UNUSED HEALTH BENEFITS IN FLEXIBLE SPENDING ARRANGEMENTS

(Sec. 1002 of the bill and sec. 125 of the Code)

#### PRESENT LAW

##### *Flexible spending arrangements*

A flexible spending arrangement (“FSA”) is a reimbursement account or other arrangement under which an employee is reimbursed for medical expenses or other nontaxable employer-provided benefits, such as dependent care. Typically, FSAs are part of a cafeteria plan and may be funded through salary reduction. FSAs may also be provided by an employer outside of a cafeteria plan. FSAs are commonly used, for example, to reimburse employees for medical expenses not covered by insurance.

There is no special exclusion for benefits provided under an FSA. Thus, benefits provided under an FSA are excludable from income only if there is a specific exclusion for the benefits in the Code (e.g., the exclusion for employer-provided health care (other than long-term care) or dependant care assistance coverage). If certain requirements are satisfied, contributions to a health FSA and all distributions to pay medical expenses are excludable from income and from wages for FICA tax purposes.

FSAs that are part of a cafeteria plan must comply with the rules applicable to cafeteria plans generally. One of these rules is that a cafeteria plan may not offer deferred compensation except through a qualified cash or deferred arrangement.<sup>104</sup> Under proposed Treasury regulations, a cafeteria plan is considered to permit

<sup>104</sup>Sec. 401(k).

the deferral of compensation if it includes a health FSA which reimburses participants for medical expenses incurred beyond the end of the plan year.<sup>105</sup> Thus, amounts in an employee's account that are not used for medical expenses incurred before the end of a plan year must be forfeited. This rule is often referred to as the "use it or lose it" rule. The IRS recently issued guidance allowing a grace period immediately following the end of a plan year during which unused benefits or contributions remaining at the end of the plan year may be paid or reimbursed to plan participants for qualified benefit expenses incurred during a grace period.<sup>106</sup> A plan may allow benefits not used during the plan year to be used to reimburse qualified expenses incurred during the period, not to exceed two and one-half months, immediately following the end of the plan year.

Proposed Treasury regulations contain additional requirements with which health FSAs must comply in order for the coverage and benefits provided under the FSA to be excludable from income.<sup>107</sup> These rules apply with respect to a health FSA without regard to whether the health FSA is provided through a cafeteria plan (i.e., without regard to whether an employee has an election to take cash or benefits).

The proposed regulations define a health FSA as a benefit program that provides employees with coverage under which specified, incurred expenses may be reimbursed (subject to reimbursement maximums and any other reasonable conditions) and under which the maximum amount of reimbursement that is available to a participant for a period of coverage is not substantially in excess of the total premium (including both employee-paid and employer-paid portions of the premium) for such participant's coverage. A maximum amount of reimbursement is not substantially in excess of the total premium if the maximum amount is less than 500 percent of the premium.<sup>108</sup>

Under the proposed regulations, the employer-provided health coverage under the FSA and the reimbursements and other benefits received under the health FSA are excludable from an employee's income only if the health FSA satisfies certain additional requirements. According to the proposed regulations, health FSAs are required to: (1) Provide the maximum amount of reimbursement available under the FSA at all times during the period of coverage (properly reduced as of any particular time for prior reimbursements for the same period of coverage); (2) offer coverage for 12 months or, in the case of a short plan year, the entire short plan year; (3) only reimburse medical expenses which meet the definition of medical care under section 213(d); (4) reimburse medical expenses for which the participant provides a written statement from an independent third party stating the amount of the medical expense and that the medical expense has not been reimbursed or is not reimbursable under any other health plan; (5) reimburse medical expenses which are incurred during the participant's period of coverage; and (6) allocate experience gains with respect to a year

<sup>105</sup> Prop. Treas. Reg. 1.125-2 Q&A-5(a).

<sup>106</sup> Notice 2005-42.

<sup>107</sup> Prop. Treas. Reg. 1.125-2 Q&A-7(b).

<sup>108</sup> Prop. Treas. Reg. 1.125-2 Q&A-7(c).

of coverage among premium payers on a reasonable and uniform basis.<sup>109</sup>

#### *Health savings accounts*

Present law provides that individuals with a high deductible health plan (and no other health plan other than a plan that provides certain permitted coverage) may establish a health savings account (“HSA”).<sup>110</sup> An HSA is a tax-exempt trust or custodial account. Subject to certain limitations, contributions to an HSA are deductible above-the-line if made by the individual and are excludable from income and wages if made by the employer (including contributions made through a cafeteria plan through salary reduction). Earnings on amounts in an HSA accumulate on a tax-free basis. Distributions from an HSA that are for qualified medical expenses are excludable from gross income. Distributions from an HSA that are not used for qualified medical expenses are includable in gross income and are subject to an additional tax of 10 percent, unless the distribution is made after death, disability, or the individual attains the age of Medicare eligibility (i.e., age 65). HSAs provide the opportunity to pay for current out-of-pocket medical expenses on a tax-favored basis, as well as the ability to save for future medical and nonmedical expenses.

A high deductible health plan is a health plan that has a deductible that is at least \$1,000 for self-only coverage or \$2,000 for family coverage (for 2005) and that has an out-of-pocket expense limit that is no more than \$5,100 in the case of self-only coverage and \$10,200 in the case of family coverage (for 2005).

The maximum aggregate annual contribution that can be made to an HSA is the lesser of (1) 100 percent of the annual deductible under the high deductible health plan, or (2) for 2005, \$2,650 in the case of self-only coverage and \$5,250 in the case of family coverage.<sup>111</sup> The annual contribution limits are increased for individuals who have attained age 55 by the end of the taxable year. In the case of policyholders and covered spouses who are age 55 or older, the HSA annual contribution limit is greater than the otherwise applicable limit by \$600 in 2005, \$700 in 2006, \$800 in 2007, \$900 in 2008, and \$1,000 in 2009 and thereafter.

#### REASONS FOR CHANGE

The Committee believes that individuals should not be required to forfeit all amounts reserved for health care expenses simply because the individual has inadequate expenses for that year, especially because it is difficult to accurately predict annual medical expenses. The Committee believes that the forfeiture rules cause individuals to make unnecessary medical expenditures at the end of the year to avoid forfeiting their balances.

<sup>109</sup> Prop. Treas. Reg. 1.125-2 Q&A-7(b).

<sup>110</sup> Sec. 223. Revenue Ruling 2004-45 provides guidance on the extent to which individuals may make contributions to an HSA when also covered by a health FSA or a health reimbursement arrangement.

<sup>111</sup> These amounts are the same as the maximum deductible amounts permitted under a high deductible plan for purposes of Archer medical savings accounts (“MSAs”).

## EXPLANATION OF PROVISION

The provision allows up to \$500 of unused health benefits in an employee's health FSA to be carried forward to the employee's health FSA for the next plan year. An employee's unused health benefit is the excess of the maximum amount of reimbursement allowable to the employee over the actual amount of reimbursement made during the year.

In the case of employees who are eligible individuals under the HSA rules (i.e., individuals who are covered under a high deductible health plan and no other health plan, other than certain permitted coverage) the provision also allows up to \$500 of unused health benefits in an employee's health FSA to be contributed on the employee's behalf to an HSA maintained for the benefit of the employee. Amounts contributed to an HSA are treated as employer contributions for purposes of the HSA rules, including the limits on contributions. As in the case of other amounts contributed to an HSA through a cafeteria plan, such amounts are not subject to the requirement that, in the case of employer contributions, comparable contributions must be made on behalf of all employees.

## EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2005.

C. PERMIT TAX-FREE DISTRIBUTIONS FROM GOVERNMENTAL RETIREMENT PLANS FOR PREMIUMS FOR HEALTH AND LONG-TERM CARE INSURANCE FOR PUBLIC SAFETY OFFICERS

(Sec. 1003 of the bill and sec. 402 of the Code)

## PRESENT LAW

Under present law, a distribution from a qualified retirement plan under section 401(a), a qualified annuity plan under section 403(a), a tax-sheltered annuity under section 403(b) (a "403(b) annuity"), an eligible deferred compensation plan maintained by a State or local government under section 457 (a "governmental 457 plan"), or an individual retirement arrangement under section 408 (an "IRA") generally is included in income for the year distributed (except to the extent the amount received constitutes a return of after-tax contributions or a qualified distribution from a Roth IRA).<sup>112</sup> In addition, a distribution from a qualified retirement or annuity plan, a 403(b) annuity, or an IRA received before age 59-1/2, death, or disability generally is subject to a 10-percent early withdrawal tax on the amount includible in income, unless an exception applies.<sup>113</sup>

## REASONS FOR CHANGE

The Committee believes that retired public safety officers should be allowed to use certain pension distributions to pay for qualified health insurance premiums on a tax-free basis. The Committee believes that such treatment is appropriate when premiums are de-

<sup>112</sup> Secs. 402(a), 403(a), 403(b), 408(d), and 457(a).

<sup>113</sup> Sec. 72(t).

ducted from amounts payable from a retirement plan and paid directly to the insurer.

EXPLANATION OF PROVISION

The provision provides that certain pension distributions from an eligible retirement plan used to pay for qualified health insurance premiums are excludible from income. An eligible retirement plan includes a governmental qualified retirement or annuity plan, 403(b) annuity, or 457 plan. The exclusion applies with respect to eligible retired public safety officers who make an election to have qualified health insurance premiums deducted from amounts distributed from an eligible retirement plan and paid directly to the insurer. An eligible retired public safety officer is an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer<sup>114</sup> with the employer who maintains the eligible retirement plan from which pension distributions are made.

Qualified health insurance premiums include premiums for accident or health insurance or qualified long-term care insurance contracts covering the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. The qualified health insurance premiums do not have to be for a plan sponsored by the employer; however, the exclusion does not apply to premiums paid by the employee and reimbursed with pension distributions. The maximum amount that may be excluded in any year is \$5,000. Amounts excluded from income under the provision are not taken into account in determining the itemized deduction for medical expenses under section 213 or the deduction for health insurance of self-employed individuals under section 162.

EFFECTIVE DATE

The provision is effective for distributions made in taxable years beginning after December 31, 2005.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 2830, the "Pension Protection Act of 2005."

MOTION TO REPORT RECOMMENDATIONS

The Chairman's Amendment in the Nature of a Substitute, as amended, was ordered favorably reported by a rollcall vote of 23 yeas to 17 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas .....	X	.....	.....	Mr. Rangel .....	.....	X	.....
Mr. Shaw .....	X	.....	.....	Mr. Stark .....	.....	X	.....
Mrs. Johnson .....	X	.....	.....	Mr. Levin .....	.....	X	.....
Mr. Herger .....	X	.....	.....	Mr. Cardin .....	.....	X	.....
Mr. McCrery .....	X	.....	.....	Mr. McDermott .....	.....	X	.....

<sup>114</sup>The term "public safety officer" has the same meaning as under section 1204(8)(A) of the Omnibus Crime Control and Safe Streets Act of 1986.

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp .....	X	.....	.....	Mr. Lewis (GA) .....	.....	X	.....
Mr. Ramstad .....	X	.....	.....	Mr. Neal .....	.....	X	.....
Mr. Nussle .....	X	.....	.....	Mr. McNulty .....	.....	X	.....
Mr. Johnson .....	X	.....	.....	Mr. Jefferson .....	.....	X	.....
Mr. English .....	X	.....	.....	Mr. Tanner .....	.....	X	.....
Mr. Hayworth .....	X	.....	.....	Mr. Becerra .....	.....	X	.....
Mr. Weller .....	X	.....	.....	Mr. Doggett .....	.....	X	.....
Mr. Hulshof .....	X	.....	.....	Mr. Pomeroy .....	.....	X	.....
Mr. Lewis (KY) .....	X	.....	.....	Ms. Tubbs Jones .....	.....	X	.....
Mr. Foley .....	X	.....	.....	Mr. Thompson .....	.....	X	.....
Mr. Brady .....	X	.....	.....	Mr. Larson .....	.....	X	.....
Mr. Reynolds .....	X	.....	.....	Mr. Emanuel .....	.....	X	.....
Mr. Ryan .....	.....	X	.....				
Mr. Cantor .....	X	.....	.....				
Mr. Linder .....	X	.....	.....				
Mr. Beauprez .....	X	.....	.....				
Ms. Hart .....	X	.....	.....				
Mr. Chocola .....	X	.....	.....				
Mr. Nunes .....	X	.....	.....				

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendments to the Chairman’s Amendment in the Nature of a Substitute.

A substitute amendment by Mr. McDermott was defeated by a rollcall vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas .....	.....	X	.....	Mr. Rangel .....	X	.....	.....
Mr. Shaw .....	.....	X	.....	Mr. Stark .....	X	.....	.....
Mrs. Johnson .....	.....	X	.....	Mr. Levin .....	X	.....	.....
Mr. Herger .....	.....	X	.....	Mr. Cardin .....	X	.....	.....
Mr. McCreary .....	.....	X	.....	Mr. McDermott .....	X	.....	.....
Mr. Camp .....	.....	X	.....	Mr. Lewis (GA) .....	X	.....	.....
Mr. Ramstad .....	.....	X	.....	Mr. Neal .....	X	.....	.....
Mr. Nussle .....	.....	X	.....	Mr. McNulty .....	.....	X	.....
Mr. Johnson .....	.....	X	.....	Mr. Jefferson .....	X	.....	.....
Mr. English .....	.....	X	.....	Mr. Tanner .....	X	.....	.....
Mr. Hayworth .....	.....	X	.....	Mr. Becerra .....	X	.....	.....
Mr. Weller .....	.....	X	.....	Mr. Doggett .....	X	.....	.....
Mr. Hulshof .....	.....	X	.....	Mr. Pomeroy .....	X	.....	.....
Mr. Lewis (KY) .....	.....	X	.....	Ms. Tubbs Jones .....	X	.....	.....
Mr. Foley .....	.....	X	.....	Mr. Thompson .....	X	.....	.....
Mr. Brady .....	.....	X	.....	Mr. Larson .....	X	.....	.....
Mr. Reynolds .....	.....	X	.....	Mr. Emanuel .....	X	.....	.....
Mr. Ryan .....	.....	X	.....				
Mr. Cantor .....	.....	X	.....				
Mr. Linder .....	.....	X	.....				
Mr. Beauprez .....	.....	X	.....				
Ms. Hart .....	.....	X	.....				
Mr. Chocola .....	.....	X	.....				
Mr. Nunes .....	.....	X	.....				

**IV. BUDGET EFFECTS OF THE BILL**

**A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS**

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 2830 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2006–2010:

ESTIMATED REVENUE EFFECTS OF H.R. 2830,  
THE "PENSION PROTECTION ACT OF 2005,"  
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

Fiscal Years 2006 - 2010

[Millions of Dollars]

Provision	Effective	2006	2007	2008	2009	2010	2006-10
<b>I. Reform of Funding Rules for Single-Employer Defined Benefit Pension Plans [1]</b> .....	generally pyba 12/31/05	823	2,698	1,884	-1,345	-2,460	1,599
<b>II. Funding Rules for Multiemployer Defined Benefit Plans</b> .....	generally pyba 12/31/05	[2]	-2	-8	-18	-28	-56
<b>III. Other Provisions</b>							
A. Provisions Related to Interest Rates.....	generally yba 12/31/05						
B. Distributions During Working Retirement.....	dmi pyba 12/31/05	1	4	11	20	28	64
<b>Total of Other Provisions</b> .....		1	4	11	20	28	64
<b>IV. Improvements in PBGC Guarantee Provisions</b> .....	generally pyba 12/31/05						
<b>V. Disclosure: Section 4010 Filings with the PBGC</b> .....	pyba 12/31/06						
<b>VI. Prohibited Transaction Exemption for the Provision of Investment Advice</b> .....	[3]						
<b>VII. Improvements in Benefit Accrual Standards</b> .....	pbo/a 6/29/05		-24	-9	1	6	-29
<b>VIII. Deduction Limitations</b> .....	cf tyba 12/31/06						
<b>IX. Enhanced Retirement Savings and Defined Contribution Plans</b>							
A. Permanency of EGTRRA Pension and IRA Provisions							
1. EGTRRA pension provisions.....	generally yba 12/31/10						
2. EGTRRA IRA provisions.....	generally tyba 12/31/10						
B. Saver's Credit for Elective Deferrals and IRA Contributions Made Permanent; Allow Direct Deposit of Saver's Credit to an IRA or Plan.....	tyba 12/31/06		-481	-1,428	-1,318	-1,238	-4,464

----- Estimate Included in Item I. -----  
----- Estimate to be Provided by the Congressional Budget Office -----  
----- No Revenue Effect -----  
----- Negligible Revenue Effect -----  
----- Estimate Included in Item I. -----

Provision	Effective	2006	2007	2008	2009	2010	2006-10
C. Increase Participation Through Automatic Enrollment Arrangements.....	yba 12/31/05	-50	-174	-358	-528	-655	-1,766
D. Treatment of Distributions to Guardians Called to Active Duty.....	dma 9/11/01	-2	-1	-1	-1	[2]	-5
E. Inapplicability of 10-Percent Additional Tax on Early Distributions of Pension Plans of Public Safety Employees.....	dma DOE	-1	-3	-3	-3	-3	-13
F. Combat Zone Compensation Taken into Account for Purposes of IRA Contributions.....	yba 12/31/05	-2	-2	-2	-3	4	-13
G. Direct Deposit of Tax Refunds in an IRA.....	DOE	-25	-57	-68	-80	-94	-324
H. IRA Eligibility for Disabled Persons.....	yba 12/31/05	-8	-23	-32	-37	-35	-134
I. Rollovers by Nonspouse Beneficiaries of Certain Retirement Plan Distributions.....	dma 12/31/05	-88	-741	-1,892	-1,970	-2,029	-6,719
<b>Total of Enhanced Retirement Savings and Defined Contribution Plans .....</b>							
X. Provisions to Enhance Health Care Affordability							
A. Tax Treatment of Combined Annuity and Life Insurance Contracts with a Long-Term Care Insurance Feature.....	[4]	---	-63	-159	-284	-502	-1,009
B. Disposition of Unused Health Benefits in Flexible Spending Arrangements.....	yba 12/31/05	-682	-1,181	-1,441	-1,637	-1,748	-6,688
C. Permit Tax-Free Distributions from Governmental Retirement Plans for Premiums for Health and Long-Term Care Insurance for Public Safety Officers.....	dmi yba 12/31/05	-185	-246	-279	-317	-344	-1,371
<b>Total of Provisions to Enhance Health Care Affordability .....</b>		<b>-867</b>	<b>-1,490</b>	<b>-1,879</b>	<b>-2,238</b>	<b>-2,594</b>	<b>-9,068</b>
<b>NET TOTAL .....</b>		<b>-155</b>	<b>460</b>	<b>-1,883</b>	<b>-5,545</b>	<b>-7,086</b>	<b>-14,209</b>

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be December 1, 2005.

Legend for "Effective" column:

- dl = contributions for
- dma = distributions made after
- dmi = distributions made in
- DOE = date of enactment

- plb/a = periods beginning on or after
- yba = plan years beginning after
- yba = taxable years beginning after
- yba = years beginning after

[1] Estimate does not include any changes in direct spending associated with the PBGC, including premiums paid to the PBGC, which will be provided by the Congressional Budget Office.  
 [2] Loss of less than \$500,000.  
 [3] The proposal applies with respect to advice referred to in section 3(21)(A)(ii) of ERISA provided on or after January 1, 2006.  
 [4] Generally effective for contracts issued before, on, or after December 31, 2006, but only with respect to periods beginning after that date. The proposal expanding the rules for tax-free exchanges of certain insurance contracts applies with respect to exchanges occurring after December 31, 2006.



B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX  
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET  
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, December 2, 2005*

Hon. WILLIAM "BILL" M. THOMAS,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2830, the Pension Protection Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Craig Meklir.

Sincerely,

DONALD B. MARRON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*H.R. 2830—Pension Protection Act of 2005*

Summary: H.R. 2830 would make changes to the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC) that would affect the operations of private pension plans. It would also do so mostly by changing the funding requirements for tax-qualified, defined-benefit pension plans and the premiums paid to the Pension Benefit Guaranty corporation (PBGC). It would also extend certain tax incentives for retirement savings and modify tax provisions related to spending for health care.

The budgetary effects of the bill would result from:

- Increased income to the PBGC from premiums paid by the sponsors of pension plans—totaling an estimated \$8.2 billion over the next 10 years.
- A loss of federal income tax revenue, primarily because more rigorous funding rules would be imposed on plans' sponsors; the Joint Committee on Taxation (JCT) estimates that the changes in law related to defined-benefit pension plans would reduce federal revenues by \$5.0 billion over the 2006–2015 period.
- Additional benefit payments—totaling an estimated \$0.5 billion over 10 years—that the PBGC would have to make as a result of a number of changes made by the bill.

- Tax provisions affecting retirement savings and health care spending, which JCT estimates would reduce federal revenues by \$37.7 billion and \$29.2 billion, respectively, over the 2006–2015 period.

In combination, those effects would increase federal budget deficits over the 2006–2015 period by \$64.1 billion, CBO estimates. The additional premium income would have another effect: it would increase the balances in the PBGC's on-budget revolving fund and therefore forestall the need for significant transfers to that revolving fund from the PBGC's nonbudgetary trust fund in order to pay insured benefits. Because those transfers are treated in the budget as offsetting collections (that is, offsets to outlays), smaller transfers would result in higher net outlays for PBGC's on-budget revolving fund. The improvement in the financial condition of that fund would eliminate the need for \$7.4 billion in transfers to the fund from 2013 through 2015, CBO estimates, thereby increasing on-budget outlays by that amount. Adding that effect to the other impacts of the bill, CBO projects that enacting H.R. 2830 would increase federal budget deficits by \$71.5 billion over the 2006–2015 period.

Major provisions of H.R. 2830 would:

- Require sponsors of single-employer pension plans to meet a funding target that is at least 100 percent of current liabilities;
- Specify that the discount rate used to calculate the present value of current pension liabilities be based on a segmented yield curve of corporate bonds rather than the interest rate on 30-year Treasury bonds;
- Restrict the use of credit balances to offset required pension contributions;
- Place limits on benefit accruals for participants in certain underfunded plans;
- Increase the limits on the tax-deductible contributions sponsors may make to plans;
- Increase the per-participant premium paid to the PBGC for single-employer plans;
- Require sponsors of single-employer pension plans that have undergone distress or involuntary terminations to pay a termination premium for 3 years;
- Change the funding rules for multiemployer pension plans;
- Enhance disclosure requirements for both single-employer and multiemployer pension plans; and
- Address the legal status of so-called hybrid defined-benefit pension plans.
- Permanently extend tax provisions relating to pensions and individual retirement accounts currently set to expire at the end of 2010;
- Permanently extend the saver's tax credit for certain retirement savings accounts set to expire at the end of 2006;
- Change the rules governing health flexible spending accounts;
- Modify the rules about combinations of life and long-term care insurance;
- Encourage firms to provide automatic enrollment for their employees in defined-contribution pension plans; and

- Allow tax-free distributions from retirement plans for certain public safety officers if the funds are used to pay premiums for health or long-term care insurance.

Not all of these policies would directly affect federal spending or revenues.

Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting H.R. 2830 would not cause an increase in direct spending greater than \$5 billion in any of the 10-year periods between 2016 and 2055.

CBO has reviewed the nontax portions of H.R. 2830 and determined that they contain no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. Those provisions would impose a number of mandates on sponsors and administrators of single-employer and multiemployer private pension plans. CBO estimates that the direct cost of those private-sector mandates, less the direct savings from those mandates, would exceed the annual threshold specified in UMRA (\$123 million in 2005, adjusted annually for inflation) in 2009 and subsequent years.

JCT has determined that the tax provisions of H.R. 2830 contain no intergovernmental or private-sector mandates as defined in UMRA. CBO has reviewed the non-tax provisions of H.R. 2830 and determined that they contain no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2830 is shown in the following table. The costs of this legislation would fall within budget function 600 (income security).

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 2830

	By fiscal year, in millions of dollars—											
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015		
<b>CHANGES IN DIRECT SPENDING</b>												
Changes in Flat-Rate Premiums Paid to PBGC:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays .....	-79	-158	-240	-314	-552	-586	-655	-690	-759	-828		
Changes in Variable Premiums Paid to PBGC:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0		
Estimated Outlays .....	0	-14	-186	-264	-274	-212	-90	50	219	341		
Termination Premiums Paid to PBGC:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0		
Estimated Outlays .....	-36	-109	-220	-298	-343	-354	-364	-375	-386	-398		
Changes in Net Benefits Payments:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0		
Estimated Outlays .....	-1	*	6	19	35	54	72	88	101	112		
Subtotal:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0		
Estimated Outlays .....	-116	-281	-640	-857	-1,134	-1,097	-1,037	-927	-825	-773		
Changes in Transfers from PBGC's Nonbudgetary Trust Fund:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0		
Estimated Outlays .....	0	0	0	0	0	0	0	1,068	3,092	3,222		
Total Changes in Direct Spending:												
Estimated Budget Authority .....	0	0	0	0	0	0	0	0	0	0		
Estimated Outlays .....	-116	-281	-640	-857	-1,134	-1,097	-1,037	-927	-825	-773		
<b>CHANGES IN REVENUES</b>												
Changes to Funding Rules for Single-Employer Plans .....	823	2,698	1,884	-1,345	-2,460	-2,179	-1,790	-1,115	-805	-711		
Changes to Funding Rules for Multiemployer Plans .....	*	-2	-8	-18	-28	-34	-40	-46	-52	-58		
Changes in Benefit Accrual Standards .....	-24	-9	1	6	-3	-8	6	25	29	13		
Provisions Related to Retirement Savings .....	-88	-741	-1,892	-1,970	-2,029	-4,003	-5,732	-6,400	-7,078	-7,719		
Provisions Related to Health Care Spending .....	-867	-1,490	-1,879	-2,238	-2,594	-3,071	-3,595	-4,028	-4,472	-4,918		
Other Provisions .....	1	4	11	20	28	32	33	33	32	32		
Total Changes in Revenues .....	-155	460	-1,883	-5,545	-7,086	-9,263	-11,118	-11,531	-12,346	-13,361		
<b>NET INCREASE OR DECREASE (-) IN BUDGET DEFICITS</b>												
Net of Transfers from PBGC's Nonbudgetary Trust Fund .....	39	-741	1,243	4,688	5,952	8,166	10,081	11,672	14,613	15,810		

Excluding Transfers from PBGC's Nonbudgetary Trust Fund ..... 39    -741    1,243    4,688    5,952    8,166    10,081    10,604    11,521    12,588

Notes.—PBGC—Pension Benefit Guaranty Corporation. \* less than \$500,000.  
Sources: Congressional Budget Office and Joint Committee on Taxation.

Basis of Estimate: H.R. 2830 contains changes to both ERISA and the Internal Revenue Code that would affect sponsors of defined-benefit pension plans. Under current law, the funding rules are exactly the same in both ERISA and IRC. In certain instances, however, changes made by the bill to the pension funding requirements of ERISA are inconsistent with changes made to the funding rules in the IRC. That occurs because the amendments to the IRC adopted by the Ways and Means Committee reflect some policy differences from the amendments to ERISA adopted by the Committee on Education and the Workforce. CBO's and JCT's budget estimates assume that, if H.R. 2830 is enacted, additional changes would be made to ERISA to make it consistent with those changes made to IRC by H.R. 2830. Those estimates also assume that H.R. 2830 and the corresponding changes to the ERISA will be enacted by December 2005.

*Direct spending*

**Increase in Flat-Rate Premium.** Under current law, sponsors of single-employer pension plans insured by the PBGC are required to pay the agency a premium of \$19 per participant. H.R. 2830 would increase the flat-rate premium to \$30 per participant in 2006 and index it to wage growth starting in 2007. However, no plans would pay the full increase immediately. The bill would phase in the rate increase differently depending on whether the ratio of a plan's assets to its liabilities (known as its funding ratio) is above or below 80 percent. For plans that have a funding ratio of 80 percent or higher, the increased rate would be phased in over a five-year period; for plans with a funding ratio of less than 80 percent, the rate increase would be phased in over a three-year period. Both phase-in periods would begin in 2006 and the premium rate for all single-employer plans would be the same approximately—\$35 per participant—by 2010.

About 35 million people currently participate in tax-qualified, single-employer pension plans. This figure includes active workers, former workers who are vested but have not started collecting retirement benefits, and annuitants. The number of participants in single-employer plans insured by the PBGC has remained nearly constant for the past decade, and CBO assumes it would remain steady for the next 10 years.

The current premium of \$19 per participant generates about \$650 million in premium income annually for the PBGC. CBO estimates changes to the flat-rate premiums made by H.R. 2830 would increase receipts by \$1.3 billion over the 2006–2010 period and \$4.9 billion over the 2006–2015 period. The varying amounts of additional premiums from year to year reflect both the phase in of the rate increase and the rounding of the new rates to the nearest dollar, as specified by the bill. Because the PBGC's premiums are recorded as offsetting, collections to a mandatory spending account increases in premium collections are reflected in the budget as decreases in direct spending.

**Variable Premiums.** Under current law, sponsors of single-employer plans with assets less than liabilities are generally required to pay a variable premium, which is based on the amount of underfunding in the plan. The variable premium rate is \$9 per \$1,000 of underfunding. The amount of income from this type of premium

varies from year to year; in 2004 it generated approximately \$800 million in receipts.

H.R. 2830 would affect how much the PBGC collects from variable premiums because it would change the way plans' sponsors calculate the amount of underfunding. Starting in 2006, current law will require plans to discount their current liabilities, in order to determine the amount of underfunding, using an interest rate that is the four-year moving average of the rate on 30-year Treasury bonds. Public Law 108-218, the Pension Funding Equity Act, changed how current liabilities of covered plans are discounted during plan-years 2004 and 2005. During those two years current liabilities are discounted using an interest rate on high-grade corporate bonds, as determined by the Department of the Treasury. H.R. 2830 would extend the use of the corporate bond rate for plan-year 2006. Then, beginning with plan-year 2007, the bill would require plans to discount their pension obligations using a yield curve based on a three-year weighted average of yields on investment-grade corporate bonds. The yield curve, which would be determined by the Secretary of the Treasury would be divided into three segments: yields for bonds maturing in the five-year period following the first day of each new plan-year; yields for bonds maturing during the next 15-year period; and yields for bonds maturing after the initial 20-year period. These segments would be used to discount benefit payments expected to be made by plans during each of the three periods. The shift to the segmented yield curve would be phased in over three years.

When compared to interest rates on 30-year Treasury bonds, the segmented yield curve (and the single corporate bond rate) would result in lower discount rates for participants whose benefits will be paid in the near term, and higher discount rates for participants whose benefits will be paid in later years. Discount rates and the present value of pension liabilities have an inverse relationship: increasing the discount rate results in a lower valuation of liability, while lowering the discount rate produces a higher valuation of liability. Based on information provided by the PBGC, CBO estimates that the segmented yield curve would reduce the present value of liabilities among all underfunded plans by approximately 5 percent, thus reducing required future contributions by plans' sponsors.

Other changes to the funding rules (which are discussed in more detail later) would increase contributions. CBO estimates that, under H.R. 2830 firms initially would have to contribute less to their plans, but later would have to contribute more than under current law. The change in contribution patterns would affect how many plans are underfunded and how much underfunding exists in those plans. This, in turn, would affect the PBGC's income from variable premiums. (The change in contributions would also have significant effects on federal revenues, as discussed later in this estimate.)

H.R. 2830 would also have an effect on which plans are required to make a variable premium payment. Current law provides underfunded plans with ways to reduce or avoid variable premium payments. Plans that have reached a statutory "full funding limit" are exempt from paying a variable premium, even though they may be substantially underfunded. H.R. 2830 would eliminate the full

funding limit exemption and would require all plans that are underfunded to pay the variable premium on any underfunding.

CBO estimates that enacting H.R. 2830 would increase receipts from variable premiums by \$738 million over the 2007–2010 period and by \$430 million over the 2007–2015 period.<sup>1</sup> As with flat-rate premiums, increases in receipts from variable premiums are reflected as decreases in direct spending.

**Premiums for Certain Terminated Single-Employer Plans.** The legislation would create a new premium for sponsors of plans that are terminated on an involuntary or distressed-termination basis. The required payments would be \$1,250 per plan participant for three years after the termination. For sponsors whose plans were terminated while the program was being reorganized under chapter 11 of the bankruptcy code, the premium would be levied after the sponsor emerges from bankruptcy. The premium would not apply to firms that are liquidated by a bankruptcy court. CBO estimates that these new premiums would total about \$1.0 billion over the 2006–2010 period and \$2.9 billion over the 2006–2015 period.

Based on recent PBGC data on terminations, CBO estimates that underfunded plans with about 120,000 participants on average will be terminated in each of the next five years and the number of participants affected will be somewhat greater in subsequent years. We estimate that one-quarter of those terminations will involve liquidation bankruptcy filings. CBO assumes that firms will emerge from bankruptcy over several years following their filing date. The annual income from these payments would grow rapidly during the first few years as sponsors emerge from bankruptcy.

**PBGC's Disbursements.** H.R. 2830 would affect both how much sponsors are required to contribute to their plans and how much benefits may increase under certain plans insured by the PBGC. Such changes would affect the amount of unfunded liabilities that the PBGC assumes in the event that a pension plan is terminated (i.e., claims) and thus the payments the agency makes to beneficiaries in terminated plans. CBO estimates that the policies contained in H.R. 2930 would increase benefit outlays by \$59 million over the 2006–2010 period and by \$486 million over the 2006–2015 period.

Several of the changes to the pension funding rules would have countervailing effects on the contributions plans' sponsors would be required to make over the next 10 years. Basing the discount rate for calculating the present value of liabilities on corporate bonds instead of Treasuries would cause the present value of current liabilities among underfunded plans to shrink by more than \$50 billion in 2006, CBO estimates. This policy would have the effect of reducing required contributions by plans' sponsors.

Other changes made by the bill would also have an effect on required contributions. Current funding rules require that sponsors of insured plans make contributions above that amount are required only if the actuarial value of a plan's assets is less than 90 percent of its current liabilities. These additional payments (referred to as "deficit reduction contributions") can be amortized over periods ranging from three to 30 years, depending on how the

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<sup>1</sup> Because plans would be better funded on a current-liability basis in the long run, CBO expects that collections of variable premiums under H.R. 2830 would fall starting in 2013.



underfunding occurred.<sup>2</sup> H.R. 2830 would require that, in addition to covering its normal costs, a sponsor must make additional contributions if assets are less than 100 percent of current liabilities (referred to as its “funding target”). The bill generally would require the shortfall to be amortized over a period of seven years. These changes would have the effect of reducing required contributions for some plans (due to the seven-year amortization period) and increasing required contributions for others (because of the higher funding target).

The bill also would limit the use of previously accumulated funding balances, which can be used to offset required contributions. Funding balances usually occur when a sponsor contributes more than the minimum required in a given year. Under current law, no matter how underfunded a plan is, its sponsor may use funding balances to reduce or eliminate required contributions. In addition, the value of funding balances is not adjusted for actual gains or losses on the assets in which they are invested. Instead, these balances are increased each year by the same rate of return assumed for other assets held by the plan. H.R. 2830 would allow only plans that have a funding ratio of 80 percent or higher to use funding balances to offset required pension contributions. In addition, the bill would require plans to adjust the value of any balances for net gains or losses on the plan’s assets. These changes to the use of funding balances would generally have the effect of increasing required contributions.

H.R. 2830 would also affect required contributions by: reducing the “smoothie” period used to calculate the actuarial value of assets and liabilities; updating the mortality table used to project future benefits; and adding a “loading factor” to the funding target of plans that are less than 60 percent funded.

In addition to changes in the funding rules, H.R. 2830 would also restrict some benefit payments for certain underfunded plans. Specially, the bill would limit the ability of plans with a funding ratio of less than 80 percent to make lump-sum payments or to amend the plan to increase benefits. It also would effectively freeze normal benefit increases in plans with funding ratios of less than 60 percent. In addition, the bill would prohibit plans from paying benefits for unpredictable contingent events, such as shutdown benefits to workers in facilities that are closed. If enacted these policies would reduce liabilities, and therefore reduce benefit payments that the PBGC would be required to make for plans that are terminated in the future.

Accounting for all the policy changes contained in H.R. 2803, CBO estimates that the annual shortfall between assets and liabilities (on a present-value basis) among plans that the PBGC takes over during the 2006–2015 period would increase by several hundred million dollars. The larger shortfall would manifest itself in higher outlays for benefit payments by the PBGC, as those liabilities eventually come due, with a significant portion of those claims being paid well after 2015. The biggest reason for the increase in claims is the projected decrease in required contributions, as least during the first several years of the period, due to use of the cor-

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<sup>2</sup>Under certain circumstances, plans can be between 80 percent and 90 percent funded before being required to make deficit reduction contributions.

porate bond yield curve to discount current liabilities.<sup>3</sup> This effect would be offset to some degree, especially during the second half of the budget window, by the higher funding target and limits on benefits accruals. Overall, however, CBO estimates that the bill would lead to an increase in underfunding among plans that would be terminated over the next decade, thus increasing outlays by the PBGC for pension benefits.

**Transfers from PBGC's Trust Fund.** The PBGC's assets are held in two separate funds: an on-budget revolving fund and a nonbudgetary trust fund.<sup>4</sup> The on-budget fund receives premium payments and makes outlays for benefit payments and administrative costs. The nonbudgetary trust fund holds assets from terminated plans until those assets are liquidated, transferred to the on-budget revolving fund, and spent. Transfers from the nonbudgetary fund to the on-budget fund cover approximately half of all benefit payments and most of the PBGC's administrative costs. As with premiums, these transfers are offsetting collections to a mandatory account, and are reflected in the budget as offsets to outlays.

In CBO's current law projections, the combination of rising benefit payments and level premium income will cause the agency's on-budget fund to be completely exhausted in about 2013. No precedent exists for how the PBGC would proceed if its on-budget fund is depleted. However, CBO assumes that the agency would cover its expenses by increasing the percentage of benefits and other expenses being paid through transfers from its nonbudgetary trust fund, thus increasing offsetting collections above what they would have been if the fund had remained solvent.

CBO estimates the increases in premium receipts resulting from H.R. 2830 would cause the on-budget fund to remain solvent beyond 2015. Because the bill would improve the finances of the on-budget fund, the PBGC would not need to increase the amounts transferred from the nonbudgetary fund in order to help cover benefit payments and other expenses during most of the 10-year projection period. By allowing the on-budget fund to remain solvent through the next decade, the bill would reduce those transfers by \$7.4 billion over the 2013–2015 period. Because this change would reduce an offset to mandatory spending, it would result in a net increase in such spending.

### *Revenues*

H.R. 2830 would alter existing tax law related to the treatment of pension plans, certain types of retirement savings, and health care spending. CBO and JCT estimate that enacting H.R. 2830 would reduce revenues by \$14.2 billion over the 2006–2010 period and by \$71.8 billion over the 2006–2015 period (see Table 2).

H.R. 2830 would affect federal revenues by:

- Altering funding rules for single-employer, defined-benefit pension plans. By affecting the amount of tax-deductible con-

<sup>3</sup>The highest discount would be used to calculate plans' "current liabilities," which is used to determine funding requirements and any premium payments on underfunding. The bill would not, however, affect the discount rate used to calculate plans' "termination liability," which represents the present value of all future benefit payments owned by the PBGC upon termination of a plan.

<sup>4</sup>The PBGC has several different on-budget revolving funds and two nonbudgetary trust funds. For simplicity in the budgetary presentation, CBO combines the various on-budget and nonbudgetary funds into just two funds.

tributions firms make to their pension plans, these changes would increase revenues by \$5.4 billion over the 2006–2008 period and then decrease revenues by \$10.4 billion over the 2009–2015 period. The change from increases to decreases in revenues is due to the differing phase-in rates of the stricter funding rules and the new discount rates. In the short run, the higher discount rates would reduce contributions and increase revenues before the stricter funding rules come fully into effect. Over the longer term, however, the stricter funding rules would more than offset the effect of the higher discount rates, leading to overall revenue losses.

- Permanently extending provisions relating to pensions and individual retirement accounts (IRAs) that were enacted in the Economic Growth and Tax Relief Reconciliation Act 2001 (EGTRRA). Those provisions, which include increased annual contribution limits for IRAs and qualified pension plans, are scheduled to expire at the end of 2010. JCT estimates that the permanent extensions would decrease revenues by \$20.4 billion over the 2011–2015 period.

TABLE 2.—ESTIMATED IMPACT OF H.R. 2830 ON FEDERAL REVENUES

	By fiscal year, in millions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
<b>CHANGES IN REVENUES</b>										
Changing Funding Rules for Single-Employer Plans .....	823	2,698	1,884	-1,345	-2,460	-2,179	-1,790	-1,115	-805	-711
Permanent Extension of Certain EGTRRA Provisions .....	0	0	0	0	0	-1,899	-3,581	-4,274	-4,977	-5,625
Changing Flexible Spending Account Rules:										
On-Budget .....	-474	-825	-1,012	-1,155	-1,238	-1,336	-1,407	-1,465	-1,530	-1,587
Off-Budget .....	-207	-356	-429	-482	-510	-531	-551	-570	-585	-601
Subtotal .....	-682	-1,181	-1,441	-1,637	-1,748	-1,867	-1,958	-2,035	-2,115	-2,188
Permanent Extension of the EGTRRA Saver's Credit .....	0	-481	-1,428	-1,318	-1,238	-1,210	-1,181	-1,083	-1,009	-943
Changing Combined Insurance Rules .....	0	-63	-159	-284	-502	-833	-1,200	-1,523	-1,852	-2,188
Encouraging Automatic Enrollment .....	-50	-174	-358	-528	-655	-749	-818	-875	-927	-979
Tax-free Distributions for Public Safety Officers .....	-185	-246	-279	-317	-344	-371	-437	-470	-505	-542
Other Provisions .....	-61	-93	-102	-116	-139	-155	-153	-146	-156	-185
<b>Total Changes in Revenue:</b>										
On-Budget .....	52	816	-1,454	-5,063	-6,576	-8,732	-10,567	-10,961	-11,761	-12,760
Off-Budget .....	-207	-356	-429	-482	-510	-531	-551	-570	-585	-601
<b>Total .....</b>	<b>-155</b>	<b>460</b>	<b>-1,883</b>	<b>-5,545</b>	<b>-7,086</b>	<b>-9,263</b>	<b>-11,118</b>	<b>-11,531</b>	<b>-12,346</b>	<b>-13,361</b>

Notes.—EGTRRA = Economic Growth and Tax Relief Reconciliation Act of 2001. Revenue components may not sum to totals because of rounding.  
Source: Joint Committee on Taxation.

- Changing the rules for health flexible spending accounts (FSAs). Under current law, employees may participate in tax-preferred FSAs, and any balance remaining in the accounts at the end of the year reverts to the employer. This legislation would allow employees to carry to the next year up to \$500 in unused amounts in their FSAs. JCT estimates that this carry over would reduce revenues by \$6.7 billion over the 2006–2010 period and by \$16.9 billion over the 2006–2015 period. Of that decline, \$4.8 billion over the 2006–2015 period would be a reduction in receipts from Social Security taxes.

- Permanently extending a credit for contributions to certain retirement savings accounts. This “saver’s credit” was enacted in EGTRRA and is set to expire at the end of 2006. The non-refundable credit is available to taxpayers with incomes below certain thresholds who make contributions to qualified retirement plans, such as 401(k)s and IRAs. JCT estimates that making this credit permanent would reduce revenues by \$4.5 billion over the 2006–2010 period and by \$9.9 billion over the 2006–2015 period.

- Changing the rules about combinations of life and long-term care insurance. Currently, long-term care insurance benefits are tax free, but distributions from annuities that are used to pay for such insurance are not. The bill would allow annuities to include riders for long-term care insurance policies, and withdrawals from these new annuity combinations would be tax-free if used for long-term care. It would also modify the rules for policies containing both life insurance and long-term care coverage. This provision, JCT estimates, would decrease revenues by \$1.0 billion over the 2006–2010 period and by \$8.6 billion over the 2006–2015 period.

- Making it easier for firms to offer automatic enrollment. Currently employees must elect to participate in defined-contribution pension plans. In order to encourage employers to offer automatic participation in such plans, this bill would create safe harbors from nondiscrimination testing under certain circumstances. As a result employees would make more pre-tax contributions to those plans and employers would make larger tax deductible matching contributions. JCT estimates that this provision would reduce revenues by \$1.8 billion over the 2006–2010 period and by \$6.1 billion over the 2006–2015 period.

- Allowing certain public safety officers to withdraw limited amounts from governmental retirement plans tax-free. Under current law, amounts withdrawn from retirement plans are taxable if the contributions were made on a pre-tax basis. This bill would allow certain public safety officers to withdraw up to \$5,000 per year tax-free if the amounts are used to pay directly for premiums for health and long-term care insurance. JCT estimates that this provision would decrease revenues by \$1.4 billion over the 2006–2010 period and by \$3.7 billion over the 2006–2015 period.

Several other provisions would affect revenues. These include changing funding rules for multiemployer defined-benefit plans, changing IRA eligibility for the disabled, allowing rollovers by non-spouse beneficiaries, allowing distributions during working retirement, changing benefit accrual standards, and altering distribution

and contribution rules for guardsmen, public safety employees, and those receiving combat zone compensation. In sum, these provisions would reduce revenues by \$510 million over the 2006–2010 period and by \$1.3 billion over the 2006–2015 period, JCT estimates.

**Long-term effects on direct spending:** Pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting H.R. 2830 would not cause an increase in direct spending greater than \$5 billion in any of the 10-year periods between 2016 and 2055. During the four decades following 2015, reductions in outlays due to higher premium receipts would be larger than increases in outlays resulting from changes to transfers from the nonbudgetary fund and additional benefit payments.

**Estimated impact on state, local, and tribal governments:** CBO and JCT have reviewed the provisions of H.R. 2830 and determined they contain no intergovernmental mandates as defined in UMRA. State, local, and tribal governments are exempt from the provisions of ERISA that the bill would amend, and the remaining provisions of the bill contain no intergovernmental mandates and would not affect the budgets of state, local, or tribal governments.

**Estimated impact on the private sector:** Some of the bill's changes to ERISA would impose mandates on sponsors and administrators of single-employer and multiemployer private-pension plans. CBO estimates that the direct cost to affected entities of the mandates in the bill, less the direct savings resulting from those mandates, would exceed the annual threshold specified in UMRA (\$123 million in 2005, adjusted annually for inflation) in 2009 and thereafter. Most of the cost would result from the increase in premiums paid to the PBGC. JCT has determined that the tax provisions in the bill contain no private-sector mandates.

#### *Premiums*

The bill would increase the premiums that sponsors of single-employer plans are required to pay to the PBGC. CBO estimates that the additional premiums would total \$3.1 billion over the 2006–2010 period.

#### *Disclosures*

Title II would require multiemployer plans to provide certain information to participants and beneficiaries when a plan enters into “endangered” or “critical” status. Title V would require single-employer plans to provide certain information to participants and beneficiaries when one or more plans sponsored by the employer are in “at risk” status. Both single-employer and multiemployer plans would be required to provide annual funding notices to all participants and beneficiaries within 90 days of the end of the plan-year. CBO estimates that the direct cost of those new requirements would be less than \$30 million annually.

#### *Funding rules*

Title I would make several changes to the funding rules in ERISA for single-employer, defined-benefit pension plans. Changes in the discount rate plans are required to use to value future liabilities would decrease the contributions sponsors would be required

to make to their pension plans. Several other changes in funding rules would increase the amount of annual contributions that they would be required to make. Title II would change the funding rules in ERISA for multiemployer defined-benefit pension plans such that some sponsors would be required to increase the amount of annual contributions that they make to their plans.

The net effect of those changes would be to decrease the total amount of required pension contributions for sponsors of single-employer plans in the early years, and increase total required contributions in later years. The changes in funding rules would not change the liabilities that plans' sponsors have to current and future pension recipients, however. They would only affect the timing of the sponsors' contributions. Because we have little basis for estimating the costs or benefits to sponsors of changes in the amounts contributed to their pension plans (for example, the cost of borrowing additional funds or of using funds that would otherwise be available for other purposes), CBO cannot estimate the direct cost or savings from those provisions.

#### *Lump-sum distributions*

Title III would change the rules in ERISA used for determining the amounts of lump-sum distributions to plans' participants. A segmented interest rate based on corporate bond yields and an updated mortality table would be phased in for use in such calculations. Although the updated mortality table would cause a short-term increase in the amount of distributions, the substitution of the segmented interest rate for the 30-year Treasury rate would decrease that cost in most cases. Taken together, CBO estimates that these changes would likely have the net effect of reducing plans' costs.

Previous CBO estimate: On September 26, 2005, CBO transmitted a cost estimate for H.R. 2830, as ordered reported by the House Committee on Education and the Workforce on June 30, 2005. The pension provisions of the two versions of the bill are similar in many ways, but there are several significant differences. Rather than beginning the shift to the segmented bond rate in plan-year 2006, as in the Education and Workforce version of the bill, the Ways and Means Committee's version would extend the single corporate bond rate for one more year and begin the transition to the segmented bond rate in 2007. The latter version also includes a new premium on sponsors of plans that terminate and are taken over by the PBGC. The Ways and Means bill also includes numerous tax provisions affecting retirement savings and health care spending that are not in the earlier version of the bill.

The Education and the Workforce Committee's version of H.R. 2830 would increase federal budget deficits by an estimated \$6.5 billion over the 2006–2015 period. CBO and JCT estimate that this version of the bill would increase deficits by \$71.5 billion over the 10-year period.

Estimate prepared by: Federal Spending: Craig Meklir. Federal Revenues: Emily Schlect. Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Peter Richmond.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax Analysis.

#### D. MACROECONOMIC IMPACT ANALYSIS

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the staff of Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

### V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

#### A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning Americans' need for retirement security and the need for pension reforms that the Committee concluded that it is appropriate and timely to enact the provisions included in the bill as reported.

#### B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

#### C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises . . ."), and from the 16th Amendment to the Constitution.

#### D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the revenue provisions of the bill do not contain Federal mandates on the private sector. The Committee has determined that the revenue provision of the bill do not impose a Federal intergovernmental mandate on State, local, or tribal governments. With respect to the non-revenue provisions of the bill, see the CBO letter in part IV.C., above.

#### E. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provi-



sions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

**F. TAX COMPLEXITY ANALYSIS**

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the “Code”) and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have “widespread applicability” to individuals or small businesses.

**VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

Pursuant to the terms of the referral of the bill to the Committee, the Committee adopted an amendment striking those provisions which were referred to the Committee and inserting new text.

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the provisions of the bill referred to the Committee, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**INTERNAL REVENUE CODE OF 1986**

\* \* \* \* \*

**SUBTITLE A—INCOME TAXES**

\* \* \* \* \*

**CHAPTER 1—NORMAL TAXES AND SURTAXES**

\* \* \* \* \*

**Subchapter A—Determination of Tax Liability**

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**PART IV—CREDITS AGAINST TAX**

\* \* \* \* \*

**Subpart A—Nonrefundable Personal Credits**

\* \* \* \* \*

**SEC 25B. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS BY CERTAIN INDIVIDUALS.**

(a) \* \* \*

\* \* \* \* \*

[(h) **TERMINATION.**—This section shall not apply to taxable years beginning after December 31, 2006.]

(h) **VOLUNTARY DEPOSIT INTO QUALIFIED ACCOUNT.**—

(1) *IN GENERAL.*—So much of any overpayment under section 6401(b) as does not exceed the amount allowed as a tax credit under subsection (a) shall, at the election of the taxpayer, be paid on behalf of the individual taxpayer to an applicable retirement plan designated by the individual, except that in the case of a joint return, each spouse shall be entitled to designate an applicable retirement plan with respect to payments attributable to such spouse.

(2) *APPLICABLE RETIREMENT PLAN.*—For purposes of this subsection, the term “applicable retirement plan” means any eligible retirement plan (as defined in section 402(c)(8)(B)) that elects to accept deposits under this subsection.

\* \* \* \* \*

**Subchapter B—Computation of Taxable Income**

\* \* \* \* \*

**PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME**

\* \* \* \* \*

**SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.**

(a) \* \* \*

\* \* \* \* \*

(e) **AMOUNTS NOT RECEIVED AS ANNUITIES.**—

(1) \* \* \*

\* \* \* \* \*

(11) *SPECIAL RULES FOR CERTAIN COMBINATION CONTRACTS PROVIDING LONG-TERM CARE INSURANCE.*—Notwithstanding paragraphs (2), (5)(C), and (10), in the case of any charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract made as payment for coverage under a qualified long-term care insurance contract which is part of or a rider on such annuity or life insurance contract—

(A) the investment in the contract shall be reduced (but not below zero) by such charge, and

(B) such charge shall not be includible in gross income.

[(11)] (12) **ANTI-ABUSE RULES.**—

(A) \* \* \*

\* \* \* \* \*

## (t) 10-PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.—

(1) \* \* \*

(2) SUBSECTION NOT TO APPLY TO CERTAIN DISTRIBUTIONS.— Except as provided in paragraphs (3) and (4), paragraph (1) shall not apply to any of the following distributions:

(A) \* \* \*

\* \* \* \* \*

## (G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

(i) IN GENERAL.—Any qualified reservist distribution.

(ii) AMOUNT DISTRIBUTED MAY BE REPAID.—Any individual who receives a qualified reservist distribution may, at any time during the 2-year period beginning on the day after the end of the active duty period, make one or more contributions to an individual retirement plan of such individual in an aggregate amount not to exceed the amount of such distribution. The dollar limitations otherwise applicable to contributions to individual retirement plans shall not apply to any contribution made pursuant to the preceding sentence. No deduction shall be allowed for any contribution pursuant to this clause.

(iii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term “qualified reservist distribution” means any distribution to an individual if—

(I) such distribution is from an individual retirement plan, or from amounts attributable to employer contributions made pursuant to elective deferrals described in subparagraph (A) or (C) of section 402(g)(3) or section 501(c)(18)(D)(iii),

(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2007. In no event shall the 2-year period referred to in clause (ii) end before the date which is 2-years after the date of the enactment of this subparagraph.

## (H) DROP DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

(i) IN GENERAL.—Distributions to an individual who is a qualified public safety employee from a governmental plan within the meaning of section 414(d) to the extent such distributions are attributable to a DROP benefit.

(ii) DEFINITIONS.—For purposes of this subparagraph—

(I) *DROP BENEFIT.*—The term “DROP benefit” means a feature of a governmental plan which is a defined benefit plan and under which an employee elects to receive credits to an account (including a notional account) in the plan which are not in excess of the plan benefits (payable in the form of an annuity) that would have been provided if the employee had retired under the plan at a specified earlier retirement date and which are in lieu of increases in the employee’s accrued pension benefit based on years of service after the effective date of the DROP election.

(II) *QUALIFIED PUBLIC SAFETY EMPLOYEE.*—The term “qualified public safety employee” means any employee of any police department or fire department organized and operated by a State or political subdivision of a State if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision and if the employee was eligible to retire on or before the date of such election and receive immediate retirement benefits.

\* \* \* \* \*

**PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME**

\* \* \* \* \*

**SEC. 125. CAFETERIA PLANS.**

(a) \* \* \*

\* \* \* \* \*

(h) *CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.*—

(1) *IN GENERAL.*—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than \$500 of unused health benefits may be—

(A) carried forward to the succeeding plan year of such health flexible spending arrangement, or

(B) to the extent permitted by section 106(d), contributed by the employer to a health savings account (as defined in section 223(d)) maintained for the benefit of the employee.

(2) *HEALTH FLEXIBLE SPENDING ARRANGEMENT.*—For purposes of this subsection, the term “health flexible spending arrangement” means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1), without regard to subparagraphs (C) and (D) thereof).

(3) *UNUSED HEALTH BENEFITS.*—For purposes of this subsection, with respect to an employee, the term “unused health benefits” means the excess of—

(A) *the maximum amount of reimbursement allowable to the employee for a plan year under a health flexible spending arrangement, over*

(B) *the actual amount of reimbursement for such year under such arrangement.*

[(h)] (i) CROSS REFERENCE.—For reporting and recordkeeping requirements, see section 6039D.

[(i)] (j) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

\* \* \* \* \*

**PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS**

\* \* \* \* \*

**SEC. 219. RETIREMENT SAVINGS.**

(a) \* \* \*

\* \* \* \* \*

(f) OTHER DEFINITIONS AND SPECIAL RULES.—

(1) \* \* \*

\* \* \* \* \*

(7) *SPECIAL RULE FOR COMPENSATION EARNED BY MEMBERS OF THE ARMED FORCES FOR SERVICE IN A COMBAT ZONE.—For purposes of subsections (b)(1)(B) and (c), the amount of compensation includible in an individual's gross income shall be determined without regard to section 112.*

(8) *SPECIAL RULE FOR CERTAIN DISABLED INDIVIDUALS.—In the case of an individual—*

(A) *who is disabled (within the meaning of section 72(m)(7)), and*

(B) *who has not attained the applicable age (as defined in section 401(a)(9)(H)) before the close of the taxable year, subparagraph (B) of subsection (b)(1) shall not apply.*

[(7)] (9) ELECTION NOT TO DEDUCT CONTRIBUTIONS.—For election not to deduct contributions to individual retirement plans, see section 408(o)(2)(B)(ii).

\* \* \* \* \*

**Subchapter D—Deferred Compensation, Etc.**

**PART I PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.**

\* \* \* \* \*

**PART III RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS**

\* \* \* \* \*

**PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.**

\* \* \* \* \*

**Subpart A—General Rule**

\* \* \* \* \*

**SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.**

(a) **REQUIREMENTS FOR QUALIFICATION.**—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) \* \* \*

\* \* \* \* \*

**[(29) SECURITY REQUIRED UPON ADOPTION OF PLAN AMENDMENT RESULTING IN SIGNIFICANT UNDERFUNDING.—**

**[(A) IN GENERAL.—If—**

**[(i) a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and**

**[(ii) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,**

the trust of which such plan is a part shall not constitute a qualified trust under this subsection unless such amendment does not take effect until the contributing sponsor (or any member of the controlled group of the contributing sponsor) provides security to the plan.

**[(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—**

**[(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,**

**[(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or**

**[(iii) such other form of security as is satisfactory to the Secretary and the parties involved.**

**[(C) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—**

**[(i) the lesser of—**

**[(I) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or**

**[(II) the amount of the increase in current liability under the plan attributable to the plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment, over**

[(ii) \$10,000,000.

[(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

[(E) DEFINITIONS.—For purposes of this paragraph, the terms “current liability”, “funded current liability percentage”, and “unfunded current liability” shall have the meanings given such terms by section 412(l), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.]

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

\* \* \* \* \*

(32) TREATMENT OF FAILURE TO MAKE CERTAIN PAYMENTS IF PLAN HAS LIQUIDITY SHORTFALL.—

(A) IN GENERAL.—A trust forming part of a pension plan to which section [412(m)(5)] 430(j)(4) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section [412(m)(5)] 430(j)(4)).

\* \* \* \* \*

(C) PERIOD OF SHORTFALL.—For purposes of this paragraph, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under [section 412(m) by reason of paragraph (5)(A) thereof] section 430(j)(3) by reason of section 430(j)(4)(A).

(33) PROHIBITION ON BENEFIT INCREASES WHILE SPONSOR IS IN BANKRUPTCY.—

(A) \* \* \*

(B) EXCEPTIONS.—This paragraph shall not apply to any plan amendment if—

(i) the plan, were such amendment to take effect, would have a [funded current liability percentage (as defined in section 412(l)(8))] funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

\* \* \* \* \*

(iii) such amendment only repeals an amendment described in **subsection 412(c)(8)** *section 412(d)(2)*, or

\* \* \* \* \*

(D) EMPLOYER.—For purposes of this paragraph, the term “employer” means the employer referred to in **section 412(c)(11)** (without regard to subparagraph (B) thereof) *section 412(b) (without regard to paragraph (2) thereof)*.

\* \* \* \* \*

(35) DISTRIBUTIONS DURING WORKING RETIREMENT.—*A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because a distribution is made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.*

\* \* \* \* \*

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) \* \* \*

(2) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) \* \* \*

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee’s election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) \* \* \*

\* \* \* \* \*

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½, **or**

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, **and** *or*

(V) *in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins, and*

\* \* \* \* \*

(8) ARRANGEMENT NOT DISQUALIFIED IF EXCESS CONTRIBUTIONS DISTRIBUTED.—

(A) \* \* \*

\* \* \* \* \*

(E) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION *OR ERRONEOUS AUTOMATIC CONTRIBUTION*.—For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is



treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), an erroneous automatic contribution under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

\* \* \* \* \*

(13) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS.—

(A) IN GENERAL.—A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this paragraph, the term “qualified automatic contribution arrangement” means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (F).

(C) AUTOMATIC DEFERRAL.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii) ELECTION OUT.—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I) to not have such contributions made, or

(II) to make elective contributions at a level specified in such affirmative election.

(iii) QUALIFIED PERCENTAGE.—For purposes of this subparagraph, the term “qualified percentage” means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—

(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II) 4 percent during the first plan year following the plan year described in subclause (I),

(III) 5 percent during the second plan year following the plan year described in subclause (I), and

(IV) 6 percent during any subsequent plan year.

(iv) AUTOMATIC DEFERRAL FOR CURRENT EMPLOYEES NOT REQUIRED.—Clause (i) shall be applied without taking into account any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause).

**(D) PARTICIPATION.—**

(i) *IN GENERAL.*—An arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of the employees eligible to participate in the arrangement other than—

(I) highly compensated employees, and

(II) at the election of the plan administrator, employees described in subparagraph (C)(iv).

(ii) *FIRST PLAN YEAR.*—An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year with respect to which such arrangement is a qualified automatic contribution arrangement (determined without regard to this subparagraph).

**(E) MATCHING OR NONELECTIVE CONTRIBUTIONS.—**

(i) *IN GENERAL.*—The requirements of this subparagraph are met if, under the arrangement, the employer—

(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 6 percent of compensation, or

(II) is required, without regard to whether the employee makes an elective contribution or employer contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

(ii) *APPLICATION OF RULES FOR MATCHING CONTRIBUTIONS.*—The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) *WITHDRAWAL AND VESTING RESTRICTIONS.*—An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) *APPLICATION OF CERTAIN OTHER RULES.*—The rules of subparagraphs (E)(ii) and (F) of paragraph

(12) shall apply for purposes of subclauses (I) and (II) of clause (i).

**(F) NOTICE REQUIREMENTS.—**

(i) **IN GENERAL.**—The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written notice of the employee’s rights and obligations under the arrangement which—

(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(ii) **TIMING AND CONTENT REQUIREMENTS.**—A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

(I) the notice explains the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf (or to elect to have such contributions made at a different percentage),

(II) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

\* \* \* \* \*

**(m) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—**

(1) \* \* \*

\* \* \* \* \*

(12) **ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION ARRANGEMENTS.**—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

**[(12)] (13) CROSS REFERENCE.—**

For excise tax on certain excess contributions, see section 4979.

\* \* \* \* \*

**SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES’ TRUST.**

(a) \* \* \*

\* \* \* \* \*

**(c) RULES APPLICABLE TO ROLLOVERS FROM EXEMPT TRUSTS.—**

(1) \* \* \*

\* \* \* \* \*

(11) *DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NONSPOUSE BENEFICIARY.—*

(A) *IN GENERAL.—If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—*

*(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,*

*(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and*

*(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.*

(B) *CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.*

\* \* \* \* \*

(l) *DISTRIBUTIONS FROM GOVERNMENTAL PLANS FOR HEALTH AND LONG-TERM CARE INSURANCE.—*

(1) *IN GENERAL.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.*

(2) *LIMITATION.—The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed \$5,000.*

(3) *DISTRIBUTIONS MUST OTHERWISE BE INCLUDIBLE.—*

(A) *IN GENERAL.—An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).*

(B) *APPLICATION OF SECTION 72.—Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount*

which would have been so includible if all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(4) **DEFINITIONS.**—For purposes of this subsection—

(A) **ELIGIBLE RETIREMENT PLAN.**—For purposes of paragraph (1), the term “eligible retirement plan” means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

(B) **ELIGIBLE RETIRED PUBLIC SAFETY OFFICER.**—The term “eligible retired public safety officer” means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

(C) **PUBLIC SAFETY OFFICER.**—The term “public safety officer” shall have the same meaning given such term by section 1204(8)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(8)(A)).

(D) **QUALIFIED HEALTH INSURANCE PREMIUMS.**—The term “qualified health insurance premiums” means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

(5) **SPECIAL RULES.**—For purposes of this subsection—

(A) **DIRECT PAYMENT TO INSURER REQUIRED.**—Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

(B) **RELATED PLANS TREATED AS 1.**—All eligible retirement plans of an employer shall be treated as a single plan.

(6) **ELECTION DESCRIBED.**—

(A) **IN GENERAL.**—For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

(B) **SPECIAL RULE.**—A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(7) **COORDINATION WITH MEDICAL EXPENSE DEDUCTION.**—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(8) COORDINATION WITH DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(l).

\* \* \* \* \*

**SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.**

(a) TAXABILITY OF BENEFICIARY UNDER A QUALIFIED ANNUITY PLAN.—

(1) \* \* \*

(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

\* \* \* \* \*

(4) ROLLOVER AMOUNTS.—

(A) \* \* \*

(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

\* \* \* \* \*

(b) TAXABILITY OF BENEFICIARY UNDER ANNUITY PURCHASED BY SECTION 501(C)(3) ORGANIZATION OR PUBLIC SCHOOL.—

(1) \* \* \*

(2) SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.—To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

\* \* \* \* \*

(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) \* \* \*

(ii) under the custodial account no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D), encounters financial hardship.

\* \* \* \* \*

(8) ROLLOVER AMOUNTS.—

(A) \* \* \*

(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) [and (9)], (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

\* \* \* \* \*

(11) REQUIREMENT THAT DISTRIBUTIONS NOT BEGIN BEFORE AGE 59½, SEVERANCE FROM EMPLOYMENT, DEATH, OR DISABILITY.—This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)), [or]

(B) in the case of hardship[.], or

(C) for distributions to which section 72(t)(2)(G) applies.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

\* \* \* \* \*

**SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.**

(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) PENSION TRUSTS.—

(A) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), *in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan in an amount determined as follows:*

(i) \* \* \*

\* \* \* \* \*

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under [section 412] section 431, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under [section 412] section 431.

(B) SPECIAL RULE IN CASE OF CERTAIN AMENDMENTS.—**[In the case of a plan]** *In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph*

(in such manner and at such time as may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under **section 412(c)(7)** *section 431(c)(6)* for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under **section 412(c)(7)(B)** *section 431(c)(6)(D)* exceeds the amount determined under **section 412(c)(7)(A)** *section 431(c)(6)(A)*, and if the funding method and the actuarial assumptions used are those used for such year under **section 412** *section 431*, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying **section 412(c)(7)** *section 431(c)(6)* but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

\* \* \* \* \*

**[(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—**

**[(i) IN GENERAL.—**In the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l).

**[(ii) PLANS WITH 100 OR LESS PARTICIPANTS.—**For purposes of this subparagraph, in the case of a plan which has 100 or less participants for the plan year, unfunded current liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years.

**[(iii) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—**For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as one plan, but only employees of such member or employer shall be taken into account.

**[(iv) SPECIAL RULE FOR TERMINATING PLANS.—**In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, clause (i) shall be applied by substituting for unfunded current liability the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).]

**(D) MINIMUM DEDUCTION FOR MULTIEMPLOYER PLANS.—***In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the max-*



*imum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—*  
*(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over*  
*(ii) the value of the plan's assets determined under section 431(c)(2).*

\* \* \* \* \*

**[(F) ELECTION TO DISREGARD MODIFIED INTEREST RATE.—**  
 An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (1)(7)(C)(i)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph.]

\* \* \* \* \*

**(7) LIMITATION ON DEDUCTIONS WHERE COMBINATION OF DEFINED CONTRIBUTION PLAN AND DEFINED BENEFIT PLAN.—**

**(A) IN GENERAL.—**If amounts are deductible under the foregoing paragraphs of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans or in connection with trusts or plans described in 2 or more of such paragraphs, the total amount deductible in a taxable year under such plans shall not exceed the greater of—

(i) \* \* \*

(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans **[(for the plan year which ends with or within such taxable year (or for any prior plan year).)]** *which are multiemployer plans for the plan year which ends with or within such taxable year (or for any prior plan year) and the maximum amount of employer contributions allowable under subsection (o) with respect to any such defined benefit plans which are not multiemployer plans for the plan year.*

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section. For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under **[section 412(1)] paragraph (1)(D)(ii).**

\* \* \* \* \*

**(C) PARAGRAPH NOT TO APPLY IN CERTAIN CASES.—**

(i) \* \* \*

\* \* \* \* \*

(iii) *LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this*

*paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.*

**[(D) SECTION 412(i) PLANS.—For purposes of this paragraph, any plan described in section 412(i) shall be treated as a defined benefit plan.]**

*(D) INSURANCE CONTRACT PLANS.—For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.*

\* \* \* \* \*

*(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER PLANS.—For purposes of subsection (a)(1)(A)—*

*(1) IN GENERAL.—In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the amount determined under paragraph (2) with respect to each plan year ending with or within the taxable year.*

*(2) DETERMINATION OF AMOUNT.—The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—*

*(A) the greater of—*

*(i) the sum of—*

*(I) 150 percent of the funding target applicable to the plan for such plan year, determined under section 430, plus*

*(II) the target normal cost applicable to the plan for such plan year, determined under section 430(b), or*

*(ii) in the case of a plan that is not in an at-risk status (as determined under 430(i)), the sum of—*

*(I) the funding target which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), plus*

*(II) the target normal cost which would be applicable to the plan for such plan year if such plan were in an at-risk status, determined under section 430(d) (with regard to section 430(i)), over*

*(B) the value of the plan assets (determined under section 430(g)).*

*(3) SPECIAL RULE FOR TERMINATING PLANS.—In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall not be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).*

(4) *DEFINITIONS.*—Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.

**SEC. 404A. DEDUCTION FOR CERTAIN FOREIGN DEFERRED COMPENSATION PLANS.**

(a) \* \* \*

\* \* \* \* \*

(g) **OTHER SPECIAL RULES.**—

(1) \* \* \*

\* \* \* \* \*

(3) **ACTUARIAL ASSUMPTIONS MUST BE REASONABLE; FULL FUNDING.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), principles similar to those set forth in [paragraphs (3) and (7) of section 412(c)] *sections 430(h)(1) and 431(c)(3) and (6)* shall apply for purposes of this section.

\* \* \* \* \*

**SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED COMPENSATION UNDER NONQUALIFIED DEFERRED COMPENSATION PLANS.**

(a) \* \* \*

(b) **RULES RELATING TO FUNDING.**—

(1) \* \* \*

\* \* \* \* \*

(3) **EMPLOYER'S DEFINED BENEFIT PLAN IN AT-RISK STATUS.**—  
If—

(A) *during any period in which a defined benefit plan to which section 412 applies is in an at-risk status (as defined in section 430(i)(3)), assets are set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary), or transferred to such a trust or other arrangement, for purposes of paying deferred compensation under a nonqualified deferred compensation plan of the employer maintaining the defined benefit plan, or*

(B) *a nonqualified deferred compensation plan of the employer provides that assets will become restricted to the provision of benefits under the plan in connection with such at-risk status (or other similar financial measure determined by the Secretary) of the defined benefit plan, or assets are so restricted,*

*such assets shall for purposes of section 83 be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Subparagraph (A) shall not apply with respect to any assets which are so set aside before the defined benefit plan is in at-risk status.*

**[(3)] (4) INCOME INCLUSION FOR OFFSHORE TRUSTS AND EMPLOYER'S FINANCIAL HEALTH.**—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to [paragraph (1) or (2)] *paragraph (1), (2), or (3)*, any increase in value in, or earnings with respect to, such assets shall be treated as an ad-

ditional transfer of property under this subsection (to the extent not previously included in income).

[(4)] (5) INTEREST ON TAX LIABILITY PAYABLE WITH RESPECT TO TRANSFERRED PROPERTY.—

(A) IN GENERAL.—If amounts are required to be included in gross income by reason of [paragraph (1) or (2)] *paragraph (1), (2), or (3)* for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

(i) \* \* \*

\* \* \* \* \*

(B) INTEREST.—For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by [paragraph (1) or (2)] *paragraph (1), (2), or (3)* been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

\* \* \* \* \*

## SUBPART B—SPECIAL RULES

### SEC. 411. MINIMUM VESTING STANDARDS.

(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) \* \* \*

\* \* \* \* \*

(3) CERTAIN PERMITTED FORFEITURES, SUSPENSIONS, ETC.—  
For purposes of this subsection—

(A) \* \* \*

\* \* \* \* \*

(C) EFFECT OF RETROACTIVE PLAN AMENDMENTS.—A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in [section 412(c)(8)] *section 412(d)(2)*.

\* \* \* \* \*

(G) TREATMENT OF MATCHING CONTRIBUTIONS FORFEITED BY REASON OF EXCESS DEFERRAL OR CONTRIBUTION OR *ERRONEOUS AUTOMATIC CONTRIBUTION*.—A matching contribution (within the meaning of section 401(m)) shall not

be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B), an excess deferral under section 402(g)(2)(A), an erroneous automatic contribution under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

\* \* \* \* \*

(13) DETERMINATIONS OF ACCRUED BENEFIT AS BALANCE OF BENEFIT ACCOUNT.—

(A) IN GENERAL.—A defined benefit plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of subsection (a)(2) and section 417(e) solely because of the amount actually made available for such distribution under the terms of the plan, in any case in which the applicable interest rate that would be used under the terms of the plan to project the amount of the participant’s account balance to normal retirement age is not greater than a market rate of return.

(B) REGULATIONS.—The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subparagraph (A) and for permissible methods of crediting interest to the account (including variable interest rates) resulting in effective rates of return meeting the requirements of subparagraph (A).

(b) ACCRUED BENEFIT REQUIREMENTS.—

(1) DEFINED BENEFIT PLANS.—

(A) \* \* \*

\* \* \* \* \*

(F) CERTAIN INSURED DEFINED BENEFIT PLANS.—Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) \* \* \*

(ii) satisfies the requirements of [paragraphs (2) and (3) of section 412(i)] subparagraphs (B) and (C) of section 412(e)(3) (relating to certain insurance contract plans), but only if an employee’s accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of [paragraphs (4), (5), and (6) of section 412(i)] subparagraphs (D), (E), and (F) of section 412(e)(3) were satisfied.

\* \* \* \* \*

(H) CONTINUED ACCRUAL BEYOND NORMAL RETIREMENT AGE.—

(i) \* \* \*

\* \* \* \* \*

(vi) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

(I) *IN GENERAL.*—A plan shall not be treated as failing to meet the requirements of clause (i) if a participant's entire accrued benefit, as determined as of any date under the formula for determining benefits as set forth in the text of the plan documents, would be equal to or greater than that of any similarly situated, younger individual.

(II) *SIMILARLY SITUATED.*—For purposes of this clause, an individual is similarly situated to a participant if such individual is identical to such participant in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(III) *DISREGARD OF SUBSIDIZED EARLY RETIREMENT BENEFITS.*—In determining the entire accrued benefit for purposes of this clause, the subsidized portion of any early retirement benefit (including any early retirement subsidy that is fully or partially included or reflected in an employee's opening balance or other transition benefits) shall be disregarded.

(vii) *INTEREST ON HYPOTHETICAL ACCOUNTS.*—A plan under which the accrued benefit payable under the plan upon distribution (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant shall not be treated as failing to meet the requirements of clause (i) solely because interest accruing on such balance is taken into account.

(viii) *CERTAIN OFFSETS PERMITTED.*—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides allowable offsets against those benefits under the plan which are attributable to employer contributions, based on benefits which are provided under title II of the Social Security Act, the Railroad Retirement Act of 1974, another plan described in section 401(a) maintained by the same employer, or under any retirement program for officers or employees of the Federal Government or of the government of any State or political subdivision thereof. For purposes of this clause, allowable offsets based on such benefits consist of offsets equal to all or part of the actual benefit payment amounts, reasonable projections or estimations of such benefit payment amounts, or actuarial equivalents of such actual benefit payment amounts, projections, or estimations (determined on the basis of reasonable actuarial assumptions).

(ix) *PERMITTED DISPARITIES IN PLAN CONTRIBUTIONS OR BENEFITS.*—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) are met.

(x) *PRE-RETIREMENT INDEXING PERMITTED.*—

(I) *IN GENERAL.*—A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan provides for pre-retirement indexing of accrued benefits under the plan.

(II) *PRE-RETIREMENT INDEXING.*—For purposes of this clause, the term “pre-retirement indexing” means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized index or methodology so as to protect the economic value of the benefit against inflation prior to distribution.

\* \* \* \* \*

(d) SPECIAL RULES.—

(1) \* \* \*

\* \* \* \* \*

(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—

(A) *IN GENERAL.*—A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in [section 412(c)(8)] section 412(d)(2), or section 4281 of the Employee Retirement Income Security Act of 1974.

\* \* \* \* \*

**SEC. 412. MINIMUM FUNDING STANDARDS.**

(a) \* \* \*

(b) FUNDING STANDARD ACCOUNT.—

(1) \* \* \*

\* \* \* \* \*

(5) INTEREST.—

(A) \* \* \*

(B) *REQUIRED CHANGE OF INTEREST RATE.*—For purposes of determining a plan’s current liability and for purposes of determining a plan’s required contribution under section 412(l) for any plan year—

(i) \* \* \*

(ii) *PERMISSIBLE RANGE.*—For purposes of this subparagraph—

(I) \* \* \*

(II) *SPECIAL RULE FOR YEARS 2004 [AND 2005], 2005, AND 2006.*—In the case of plan years beginning after December 31, 2003, and before [January 1, 2006] January 1, 2007, the term “permissible range” means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary on the basis of 2 or more indices that are selected periodically by the Secretary and

that are in the top 3 quality levels available. The Secretary shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.

\* \* \* \* \*

(1) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

(1) \* \* \*

\* \* \* \* \*

(7) CURRENT LIABILITY.—For purposes of this subsection—

(A) \* \* \*

\* \* \* \* \*

(C) INTEREST RATE AND MORTALITY ASSUMPTIONS USED.—  
Effective for plan years beginning after December 31, 1994—

(i) INTEREST RATE.—

(I) \* \* \*

\* \* \* \* \*

(IV) SPECIAL RULE FOR 2004 [AND 2005], 2005, AND 2006.—For plan years beginning in 2004 [or 2005], 2005, or 2006, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).

\* \* \* \* \*

[Section 111(a) of H.R. 2830 amends section 412 to read as follows. Subsection (b) provides that the amendment shall apply to plan years beginning after December 31, 2006.]

**[SEC. 412. MINIMUM FUNDING STANDARDS.]**

[(a) GENERAL RULE.—Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

[(1) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

[(2) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year, the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term “accumulated funding deficiency” means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years. In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 418B.

[(b) FUNDING STANDARD ACCOUNT.—



[(1) ACCOUNT REQUIRED.—Each plan to which this section applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

[(A) the normal cost of the plan for the plan year,

[(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

[(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 40 plan years,

[(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 30 plan years,

[(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

[(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

[(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

[(C) the amount necessary to amortize each waived funding deficiency (within the meaning of subsection (d)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 5 plan years (15 plan years in the case of a multiemployer plan),

[(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D), and

[(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of subsection (c)(7)(A)(i)(I).

For additional requirements in the case of plans other than multiemployer plans, see subsection (1).

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

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

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

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

under the plan arising from plan amendments adopted in such year, over a period of 30 plan years,

[(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 5 plan years (15 plan years in the case of a multiemployer plan), and

[(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years (30 plan years in the case of a multiemployer plan),

[(C) the amount of the waived funding deficiency (within the meaning of subsection (d)(3)) for the plan year, and

[(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

[(4) COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.—Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

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

[(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

[(5) INTEREST.—

[(A) IN GENERAL.—The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

[(B) REQUIRED CHANGE OF INTEREST RATE.—For purposes of determining a plan's current liability and for purposes of determining a plan's required contribution under section 412(l) for any plan year—

[(i) IN GENERAL.—If any rate of interest used under the plan to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

[(ii) PERMISSIBLE RANGE.—For purposes of this subparagraph—

[(I) IN GENERAL.—Except as provided in subclause (II) or (III), the term “permissible range” means a rate of interest which is not more than

10 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

**[(II) SPECIAL RULE FOR YEARS 2004 AND 2005.—**In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the term “permissible range” means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the rates of interest on amounts invested conservatively in long-term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year. Such rates shall be determined by the Secretary on the basis of 2 or more indices that are selected periodically by the Secretary and that are in the top 3 quality levels available. The Secretary shall make the permissible range, and the indices and methodology used to determine the average rate, publicly available.

**[(III) SECRETARIAL AUTHORITY.—**If the Secretary finds that the lowest rate of interest permissible under subclause (I) or (II) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

**[(iii) ASSUMPTIONS.—**Notwithstanding subsection (c)(3)(A)(i), the interest rate used under the plan shall be—

**[(I)** determined without taking into account the experience of the plan and reasonable expectations, but

**[(II)** consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

**[(6) CERTAIN AMORTIZATION CHARGES AND CREDITS.—**In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

**[(A)** any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose;

**[(B)** any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose;

[(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises; and

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

[(i) was adopted before such date, and

[(ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

[(7) SPECIAL RULES FOR MULTIEMPLOYER PLANS.—For purposes of this section—

[(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

[(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

[(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

[(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

[(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

[(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of sub-

title E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

[(E) For purposes of the full funding limitation under subsection (c)(7), 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)).

[(F) ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.—

[(i) IN GENERAL.—With respect to the net experience loss of an eligible multiemployer plan for the first plan year beginning after December 31, 2001, the plan sponsor may elect to defer up to 80 percent of the amount otherwise required to be charged under paragraph (2)(B)(iv) for any plan year beginning after June 30, 2003, and before July 1, 2005, to any plan year selected by the plan from either of the 2 immediately succeeding plan years.

[(ii) INTEREST.—For the plan year to which a charge is deferred pursuant to an election under clause (i), the funding standard account shall be charged with interest on the deferred charge for the period of deferral at the rate determined under subsection (d) for multiemployer plans.

[(iii) RESTRICTIONS ON BENEFIT INCREASE.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any period for which a charge is deferred pursuant to an election under clause (i), unless—

[(I) the plan's enrolled actuary certifies (in such form and manner prescribed by the Secretary) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

[(II) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any such plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any such plan year ending on or after the date on which such amendment is adopted.

[(iv) ELIGIBLE MULTIEMPLOYER PLAN.—For purposes of this subparagraph, the term "eligible multiemployer plan" means a multiemployer plan—

[(I) which had a net investment loss for the first plan year beginning after December 31, 2001,

of at least 10 percent of the average fair market value of the plan assets during the plan year, and

[(II) with respect to which the plan's enrolled actuary certifies (not taking into account the application of this subparagraph), on the basis of the actuarial assumptions used for the last plan year ending before the date of the enactment of this subparagraph, that the plan is projected to have an accumulated funding deficiency (within the meaning of subsection (a)) for any plan year beginning after June 30, 2003, and before July 1, 2006.

For purposes of subclause (I), a plan's net investment loss shall be determined on the basis of the actual loss and not under any actuarial method used under subsection (c)(2).

[(v) EXCEPTION TO TREATMENT OF ELIGIBLE MULTI-EMPLOYER PLAN.—In no event shall a plan be treated as an eligible multiemployer plan under clause (iv) if—

[(I) for any taxable year beginning during the 10-year period preceding the first plan year for which an election is made under clause (i), any employer required to contribute to the plan failed to timely pay any excise tax imposed under section 4971 with respect to the plan,

[(II) for any plan year beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), the average contribution required to be made by all employers to the plan does not exceed 10 cents per hour or no employer is required to make contributions to the plan, or

[(III) with respect to any of the plan years beginning after June 30, 1993, and before the first plan year for which an election is made under clause (i), a waiver was granted under section 412(d) or section 303 of the Employee Retirement Income Security Act of 1974 with respect to the plan or an extension of an amortization period was granted under subsection (e) or section 304 of such Act with respect to the plan.

[(vi) ELECTION.—An election under this subparagraph shall be made at such time and in such manner as the Secretary may prescribe.

[(c) SPECIAL RULES.—

[(1) DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

[(2) VALUATION OF ASSETS.—

[(A) IN GENERAL.—For purposes of this section, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which

takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

[(B) ELECTION WITH RESPECT TO BONDS.—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary. In the case of a plan other than a multiemployer plan, this subparagraph shall not apply, but the Secretary may by regulations provide that the value of any dedicated bond portfolio of such plan shall be determined by using the interest rate under subsection (b)(5).

[(3) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

[(A) in the case of—

[(i) a plan other than a multiemployer plan, each of which is reasonable (taking into account the experience of the plan and reasonable expectations) or which, in the aggregate, result in a total contribution equivalent to that which would be determined if each such assumption and method were reasonable, or

[(ii) a multiemployer plan, which, in the aggregate, are reasonable (taking into account the experiences of the plan and reasonable expectations), and

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

[(4) TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.—For purposes of this section, if—

[(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

[(B) a change in the definition of the term "wages" under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5), results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

[(5) CHANGE IN FUNDING METHOD OR IN PLAN YEAR REQUIRES APPROVAL.—

[(A) IN GENERAL.—If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary.

**[(B) APPROVAL REQUIRED FOR CERTAIN CHANGES IN ASSUMPTIONS BY CERTAIN SINGLE-EMPLOYER PLANS SUBJECT TO ADDITIONAL FUNDING REQUIREMENT.—**

**[(i) IN GENERAL.—**No actuarial assumption (other than the assumptions described in subsection (1)(7)(C)) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary.

**[(ii) PLANS TO WHICH SUBPARAGRAPH APPLIES.—**This subparagraph shall apply to a plan only if—

**[(I)** the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies;

**[(II)** 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 members 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

**[(III)** the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the unfunded current liability of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the current liability of the plan before such change.

**[(6) FULL FUNDING.—**If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g)) in excess of the full funding limitation—

**[(A)** the funding standard account shall be credited with the amount of such excess, and

**[(B)** all amounts described in paragraphs (2)(B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

**[(7) FULL-FUNDING LIMITATION.—**

**[(A) IN GENERAL.—**For purposes of paragraph (6), the term “full-funding limitation” means the excess (if any) of—

**[(i)** the lesser of—

**[(I)** in the case of plan years beginning before January 1, 2004, the applicable percentage of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or



[(II) 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) CURRENT LIABILITY.—For purposes of subparagraph (D) and subclause (I) of subparagraph (A)(i), the term “current liability” has the meaning given such term by subsection (1)(7) (without regard to subparagraphs (C) and (D) thereof) and using the rate of interest used under subsection (b)(5)(B).

[(C) SPECIAL RULE FOR PARAGRAPH (6)(B).—For purposes of paragraph (6)(B), subparagraph (A)(i) shall be applied without regard to subclause (I) thereof.

[(D) REGULATORY AUTHORITY.—The Secretary may by regulations provide—

[(i) for adjustments to the percentage contained in subparagraph (A)(i) to take into account the respective ages or lengths of service of the participants, and

[(ii) alternative methods based on factors other than current liability for the determination of the amount taken into account under subparagraph (A)(i).

[(iii) [Stricken]

[(E) 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 liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

[(II) the value of the plan’s assets determined under paragraph (2).

[(ii) CURRENT LIABILITY: ASSETS.—For purposes of clause (i)—

[(I) the term “current liability” has the meaning given such term by subsection (1)(7) (without regard to subparagraph (D) thereof), and

[(II) assets shall not be reduced by any credit balance in the funding standard account.

[(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

<b>In the case of any plan year beginning in:</b>	<b>The applicable percentage is:</b>
2002 .....	165
2003 .....	170.

[(8) CERTAIN RETROACTIVE PLAN AMENDMENTS.—For purposes of this section, any amendment applying to a plan year which—

[(A) is adopted after the close of such plan year but no later than 2 and one-half months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

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

[(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances, shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year.

No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of Labor notifying him of such amendment and the Secretary of Labor has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of Labor unless he determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (d)(2)) and that a waiver under subsection (d)(1) is unavailable or inadequate.

**[(9) ANNUAL VALUATION.—**

[(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

**[(B) VALUATION DATE.—**

[(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

[(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (7)(B)).

[(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

[(iv) LIMITATION.—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

[(10) TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.—  
For purposes of this section—

[(A) DEFINED BENEFIT PLANS OTHER THAN MULTIEMPLOYER PLANS.—In the case of a defined benefit plan other than a multiemployer plan, any contributions for a plan year made by an employer during the period—

[(i) beginning on the day after the last day of such plan year, and

[(ii) ending on the day which is 8-1/2 months after the close of the plan year, shall be deemed to have been made on such last day.

[(B) OTHER PLANS.—In the case of a plan not described in subparagraph (A), any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

[(11) LIABILITY FOR CONTRIBUTIONS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of any contribution required by this section and any required installments under subsection (m) shall be paid by the employer responsible for contributing to or under the plan the amount described in subsection (b)(3)(A).

[(B) JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—

[(i) IN GENERAL.—In the case of a plan other than a multiemployer plan, if the employer referred to in subparagraph (A) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contribution or required installment.

[(ii) CONTROLLED GROUP.—For purposes of clause (i), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

[(12) ANTICIPATION OF BENEFIT INCREASES EFFECTIVE IN THE FUTURE.—In determining projected benefits, the funding method of a collectively bargained plan described in section 413(a) (other than a multiemployer plan) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.

[(d) VARIANCE FROM MINIMUM FUNDING STANDARD.—

[(1) WAIVER IN CASE OF BUSINESS HARDSHIP.—If an employer or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan, are unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary may waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding

standard other than the portion thereof determined under subsection (b)(2)(C). The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years. The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) for any plan year shall be—

[(A) in the case of a plan other than a multiemployer plan, the greater of (i) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or (ii) the rate of interest used under the plan in determining costs, (including adjustments under subsection (b)(5)(B)), and

[(B) in the case of a multiemployer plan, the rate determined under section 6621(b).

[(2) DETERMINATION OF BUSINESS HARDSHIP.—For purposes of this section, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

[(A) the employer is operating at an economic loss,

[(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

[(C) the sales and profits of the industry concerned are depressed or declining, and

[(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

[(3) WAIVED FUNDING DEFICIENCY.—For purposes of this section, the term “waived funding deficiency” means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C)) for a plan year waived by the Secretary and not satisfied by employer contributions.

[(4) APPLICATION MUST BE SUBMITTED BEFORE DATE 2-1/2 MONTHS AFTER CLOSE OF YEAR.—In the case of a plan other than a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

[(5) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—

[(A) IN GENERAL.—In the case of a plan other than a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

[(i) with respect to such employer, and

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

The Secretary may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary determines such analysis is not necessary because the taking into account of such member would not

significantly affect the determination under this subsection.

[(B) CONTROLLED GROUP.—For purposes of subparagraph (A), the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414.

[(e) EXTENSION OF AMORTIZATION PERIODS.—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary of Labor for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

[(1) result in—

[(A) a substantial risk to the voluntary continuation of the plan, or

[(B) a substantial curtailment of pension benefit levels or employee compensation, and

[(2) be adverse to the interests of plan participants in the aggregate.

In the case of a plan other than a multiemployer plan, the interest rate applicable for any plan year under any arrangement entered into by the Secretary in connection with an extension granted under this subsection shall be the greater of (A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

[(B) the rate of interest used under the plan in determining costs. In the case of a multiemployer plan, such rate shall be the rate determined under section 6621(b).

[(f) REQUIREMENTS RELATING TO WAIVERS AND EXTENSIONS.—

[(1) BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under subsection (d)(1) or an extension of time under subsection (e) is in effect with respect to the plan, or if a plan amendment described in subsection (c)(8) has been made at any time in the preceding 12 months (24 months for multiemployer plans). If a plan is amended in violation of the preceding sentence, any such waiver or extension of time shall not apply to any plan year ending on or after the date on which such amendment is adopted.

[(2) EXCEPTION.—Paragraph (1) shall not apply to any plan amendment which—

[(A) the Secretary of Labor determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

[(B) only repeals an amendment described in subsection (c)(8), or

[(C) is required as a condition of qualification under this part.

[(3) SECURITY FOR WAIVERS AND EXTENSIONS; CONSULTATIONS.—

[(A) SECURITY MAY BE REQUIRED.—

[(i) IN GENERAL.—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 4001(a)(15) of the Employee Retirement Income Security Act of 1974) to provide security to such plan as a condition for granting or modifying a waiver under subsection (d) or an extension under subsection (e).

[(ii) SPECIAL RULES.—Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of such Act), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).

[(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Except as provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under subsection (d) or an extension under subsection (e) 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, extension, 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 section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.

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

[(C) EXCEPTION FOR CERTAIN WAIVERS AND EXTENSIONS.—

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

[(I) the outstanding balance of the accumulated funding deficiencies (within the meaning of subsection (a) and section 302(a) of such Act) of the plan,

[(II) the outstanding balance of the amount of waived funding deficiencies of the plan waived under subsection (d) or section 303 of such Act, and

[(III) the outstanding balance of the amount of decreases in the minimum funding standard allowed under subsection (e) or section 304 of such Act, is less than \$1,000,000.

[(ii) ACCUMULATED FUNDING DEFICIENCIES.—For purposes of clause (i)(I), accumulated funding deficiencies shall include any increase in such amount which would result if all applications for waivers of the minimum funding standard under subsection (d) or section 303 of such Act and for extensions of the amortization period under subsection (e) or section 304 of such Act which are pending with respect to such plan were denied.

[(4) ADDITIONAL REQUIREMENTS.—

[(A) ADVANCE NOTICE.—The Secretary shall, before granting a waiver under subsection (d) or an extension under subsection (e), require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver or extension to each employee organization representing employees covered by the affected plan, and each participant, beneficiary, and alternate payee (within the meaning of section 414(p)(8)). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

[(B) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

[(g) ALTERNATIVE MINIMUM FUNDING STANDARD.—

[(1) IN GENERAL.—A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this subsection.

[(2) CHARGES AND CREDITS TO ACCOUNT.—For a plan year the alternative minimum funding standard account shall be—

[(A) charged with the sum of—

[(i) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

[(ii) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

[(iii) an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and

[(B) credited with the amount considered contributed by the employer to or under the plan for the plan year.

[(3) SPECIAL RULES.—The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.

[(h) EXCEPTIONS.—This section shall not apply to—

[(1) any profit-sharing or stock bonus plan,

[(2) any insurance contract plan described in subsection (i),

[(3) any governmental plan (within the meaning of section 414(d)),

[(4) any church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made,

[(5) any plan which has not, at any time after September 2, 1974, provided for employer contributions, or

[(6) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

No plan described in paragraph (3), (4), or (6) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.

[(i) CERTAIN INSURANCE CONTRACT PLANS.—A plan is described in this subsection if—

[(1) the plan is funded exclusively by the purchase of individual insurance contracts.

[(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),

[(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

[(4) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,

[(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

[(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

[(j) CERTAIN TERMINATED MULTIEMPLOYER PLANS.—This section applies with respect to a terminated multiemployer plan to which section 4021 of the Employee Retirement Income Security Act of



1974 applies, until the last day of the plan year in which the plan terminates, within the meaning of section 4041A(a)(2) of that Act.

[(k) FINANCIAL ASSISTANCE.—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary.

[(l) ADDITIONAL FUNDING REQUIREMENTS FOR PLANS WHICH ARE NOT MULTIEMPLOYER PLANS.—

[(1) IN GENERAL.—In the case of a defined benefit plan (other than a multiemployer plan) to which this subsection applies under paragraph (9) for any plan year, the amount charged to the funding standard account for such plan year shall be increased by the sum of—

[(A) the excess (if any) of—

[(i) the deficit reduction contribution determined under paragraph (2) for such plan year, over

[(ii) the sum of the charges for such plan year under subsection (b)(2), reduced by the sum of the credits for such plan year under subparagraph (B) of subsection (b)(3), plus

[(B) the unpredictable contingent event amount (if any) for such plan year.

Such increase shall not exceed the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

[(2) DEFICIT REDUCTION CONTRIBUTION.—For purposes of paragraph (1), the deficit reduction contribution determined under this paragraph for any plan year is the sum of—

[(A) the unfunded old liability amount,

[(B) the unfunded new liability amount,

[(C) the expected increase in current liability due to benefits accruing during the plan year, and

[(D) the aggregate of the unfunded mortality increase amounts.

[(3) UNFUNDED OLD LIABILITY AMOUNT.—For purposes of this subsection—

[(A) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year is the amount necessary to amortize the unfunded old liability under the plan in equal annual installments over a period of 18 plan years (beginning with the 1st plan year beginning after December 31, 1988).

[(B) UNFUNDED OLD LIABILITY.—The term “unfunded old liability” means the unfunded current liability of the plan as of the beginning of the 1st plan year beginning after December 31, 1987 (determined without regard to any plan amendment increasing liabilities adopted after October 16, 1987).

[(C) SPECIAL RULES FOR BENEFIT INCREASES UNDER EXISTING COLLECTIVE BARGAINING AGREEMENTS.—

[(i) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agree-

ments between employee representatives and the employer ratified before October 29, 1987, the unfunded old liability amount with respect to such plan for any plan year shall be increased by the amount necessary to amortize the unfunded existing benefit increase liability in equal annual installments over a period of 18 plan years beginning with—

【(I) the plan year in which the benefit increase with respect to such liability occurs, or

【(II) if the taxpayer elects, the 1st plan year beginning after December 31, 1988.

【(ii) UNFUNDED EXISTING BENEFIT INCREASE LIABILITIES.—For purposes of clause (i), the unfunded existing benefit increase liability means, with respect to any benefit increase under the agreements described in clause (i) which takes effect during or after the 1st plan year beginning after December 31, 1987, the unfunded current liability determined—

【(I) by taking into account only liabilities attributable to such benefit increase, and

【(II) by reducing (but not below zero) the amount determined under paragraph (8)(A)(ii) by the current liability determined without regard to such benefit increase.

【(iii) EXTENSIONS, MODIFICATIONS, ETC. NOT TAKEN INTO ACCOUNT.—For purposes of this subparagraph, any extension, amendment, or other modification of an agreement after October 28, 1987, shall not be taken into account.

【(D) SPECIAL RULE FOR REQUIRED CHANGES IN ACTUARIAL ASSUMPTIONS.—

【(i) IN GENERAL.—The unfunded old liability amount with respect to any plan for any plan year shall be increased by the amount necessary to amortize the amount of additional unfunded old liability under the plan in equal annual installments over a period of 12 plan years (beginning with the first plan year beginning after December 31, 1994).

【(ii) ADDITIONAL UNFUNDED OLD LIABILITY.—For purposes of clause (i), the term “additional unfunded old liability” means the amount (if any) by which—

【(I) the current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

【(II) the current liability of the plan as of the beginning of such first plan year, valued using the same assumptions used under subclause (I) (other than the assumptions required by paragraph (7)(C)), using the prior interest rate, and using such mortality assumptions as were used to determine current liability for the first plan year beginning after December 31, 1992.

[(iii) PRIOR INTEREST RATE.—For purposes of clause (ii), the term “prior interest rate” means the rate of interest that is the same percentage of the weighted average under subsection (b)(5)(B)(ii)(I) for the first plan year beginning after December 31, 1994, as the rate of interest used by the plan to determine current liability for the first plan year beginning after December 31, 1992, is of the weighted average under subsection (b)(5)(B)(ii)(I) for such first plan year beginning after December 31, 1992.

[(E) OPTIONAL RULE FOR ADDITIONAL UNFUNDED OLD LIABILITY.—

[(i) IN GENERAL.—If an employer makes an election under clause (ii), the additional unfunded old liability for purposes of subparagraph (D) shall be the amount (if any) by which—

[(I) the unfunded current liability of the plan as of the beginning of the first plan year beginning after December 31, 1994, valued using the assumptions required by paragraph (7)(C) as in effect for plan years beginning after December 31, 1994, exceeds

[(II) the unamortized portion of the unfunded old liability under the plan as of the beginning of the first plan year beginning after December 31, 1994.

[(ii) ELECTION.—

[(I) An employer may irrevocably elect to apply the provisions of this subparagraph as of the beginning of the first plan year beginning after December 31, 1994.

[(II) If an election is made under this clause, the increase under paragraph (1) for any plan year beginning after December 31, 1994, and before January 1, 2002, to which this subsection applies (without regard to this subclause) shall not be less than the increase that would be required under paragraph (1) if the provisions of this title as in effect for the last plan year beginning before January 1, 1995, had remained in effect.

[(4) UNFUNDED NEW LIABILITY AMOUNT.—For purposes of this subsection—

[(A) IN GENERAL.—The unfunded new liability amount with respect to any plan for any plan year is the applicable percentage of the unfunded new liability.

[(B) UNFUNDED NEW LIABILITY.—The term “unfunded new liability” means the unfunded current liability of the plan for the plan year determined without regard to—

[(i) the unamortized portion of the unfunded old liability, the unamortized portion of the additional unfunded old liability, the unamortized portion of each unfunded mortality increase, and the unamortized portion of the unfunded existing benefit increase liability, and

[(ii) the liability with respect to any unpredictable contingent event benefits (without regard to whether the event has occurred).

[(C) APPLICABLE PERCENTAGE.—The term “applicable percentage” means, with respect to any plan year, 30 percent, reduced by the product of—

[(i) .40 multiplied by

[(ii) the number of percentage points (if any) by which the funded current liability percentage exceeds 60 percent.

[(5) UNPREDICTABLE CONTINGENT EVENT AMOUNT.—

[(A) IN GENERAL.—The unpredictable contingent event amount with respect to a plan for any plan year is an amount equal to the greatest of—

[(i) the applicable percentage of the product of—

[(I) 100 percent, reduced (but not below zero) by the funded current liability percentage for the plan year, multiplied by

[(II) the amount of unpredictable contingent event benefits paid during the plan year, including (except as provided by the Secretary) any payment for the purchase of an annuity contract for a participant or beneficiary with respect to such benefits,

[(ii) the amount which would be determined for the plan year if the unpredictable contingent event benefit liabilities were amortized in equal annual installments over 7 plan years (beginning with the plan year in which such event occurs), or

[(iii) the additional amount that would be determined under paragraph (4)(A) if the unpredictable contingent event benefit liabilities were included in unfunded new liability notwithstanding paragraph (4)(B)(ii).

[(B) APPLICABLE PERCENTAGE.—

[In the case of plan years beginning in:	The applicable percentage is:
1989 and 1990 .....	5
1991 .....	10
1992 .....	15
1993 .....	20
1994 .....	30
1995 .....	40
1996 .....	50
1997 .....	60
1998 .....	70
1999 .....	80
2000 .....	90
2001 and thereafter .....	100.

[(C) PARAGRAPH NOT TO APPLY TO EXISTING BENEFITS.—This paragraph shall not apply to unpredictable contingent event benefits (and liabilities attributable thereto) for which the event occurred before the first plan year beginning after December 31, 1988.

[(D) SPECIAL RULE FOR FIRST YEAR OF AMORTIZATION.—Unless the employer elects otherwise, the amount determined under subparagraph (A) for the plan year in which

the event occurs shall be equal to 150 percent of the amount determined under subparagraph (A)(i). The amount under subparagraph (A)(ii) for subsequent plan years in the amortization period shall be adjusted in the manner provided by the Secretary to reflect the application of this subparagraph.

[(E) LIMITATION.—The present value of the amounts described in subparagraph (A) with respect to any one event shall not exceed the unpredictable contingent event benefit liabilities attributable to that event.

[(6) SPECIAL RULES FOR SMALL PLANS.—

[(A) PLANS WITH 100 OR FEWER PARTICIPANTS.—This subsection shall not apply to any plan for any plan year if on each day during the preceding plan year such plan had no more than 100 participants.

[(B) PLANS WITH MORE THAN 100 BUT NOT MORE THAN 150 PARTICIPANTS.—In the case of a plan to which subparagraph (A) does not apply and which on each day during the preceding plan year had no more than 150 participants, the amount of the increase under paragraph (1) for such plan year shall be equal to the product of—

[(i) such increase determined without regard to this subparagraph, multiplied by

[(ii) 2 percent for the highest number of participants in excess of 100 on any such day.

[(C) AGGREGATION OF PLANS.—For purposes of this paragraph, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

[(7) CURRENT LIABILITY.—For purposes of this subsection—

[(A) IN GENERAL.—The term “current liability” means all liabilities to employees and their beneficiaries under the plan.

[(B) TREATMENT OF UNPREDICTABLE CONTINGENT EVENT BENEFITS.—

[(i) IN GENERAL.—For purposes of subparagraph (A), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

[(ii) UNPREDICTABLE CONTINGENT EVENT BENEFIT.—The term “unpredictable contingent event benefit” means 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).

[(C) INTEREST RATE AND MORTALITY ASSUMPTIONS USED.—Effective for plan years beginning after December 31, 1994—

[(i) INTEREST RATE.—

[(I) IN GENERAL.—The rate of interest used to determine current liability under this subsection shall be the rate of interest used under subsection

(b)(5), except that the highest rate in the permissible range under subparagraph (B)(ii) thereof shall not exceed the specified percentage under subclause (II) of the weighted average referred to in such subparagraph.

[(II) SPECIFIED PERCENTAGE.—For purposes of subclause (I), the specified percentage shall be determined as follows:

[In the case of plan years beginning in calendar year:	The specified percentage is:
1995 .....	109
1996 .....	108
1997 .....	107
1998 .....	106
1999 and thereafter .....	105.

[(III) SPECIAL RULE FOR 2002 AND 2003.—For a plan year beginning in 2002 or 2003, notwithstanding subclause (I), in the case that the rate of interest used under subsection (b)(5) exceeds the highest rate permitted under subclause (I), the rate of interest used to determine current liability under this subsection may exceed the rate of interest otherwise permitted under subclause (I); except that such rate of interest shall not exceed 120 percent of the weighted average referred to in subsection (b)(5)(B)(ii).

[(IV) SPECIAL RULE FOR 2004 AND 2005.—For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).

[(ii) MORTALITY TABLES.—

[(I) COMMISSIONERS' STANDARD TABLE.—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause

[(II) apply, the mortality table used in determining current liability under this subsection shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

[(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

[(III) PERIODIC REVIEW.—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

[(iii) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (ii)—

[(I) IN GENERAL.—In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (ii)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The 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 individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

[(III) PLAN YEARS BEGINNING IN 1995.—In the case of any plan year beginning in 1995, a plan may use its own mortality assumptions for individuals who are entitled to benefits under the plan on account of disability.

[(D) CERTAIN SERVICE DISREGARDED.—

[(i) IN GENERAL.—In the case of a participant to whom this subparagraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

[(ii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage shall be determined as follows:

If the years of participation are:	The applicable percentage is:
11 .....	20
12 .....	40
13 .....	60
14 .....	80
15 or more .....	100.

[(iii) PARTICIPANTS TO WHOM SUBPARAGRAPH APPLIES.—This subparagraph shall apply to any participant who, at the time of becoming a participant—

[(I) has not accrued any other benefit under any defined benefit plan (whether or not terminated)

maintained by the employer or a member of the same controlled group of which the employer is a member,

[(II) who first becomes a participant under the plan in a plan year beginning after December 31, 1987, and

[(III) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.

[(iv) ELECTION.—An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary.

[(8) OTHER DEFINITIONS.—For purposes of this subsection—

[(A) UNFUNDED CURRENT LIABILITY.—The term “unfunded current liability” means, with respect to any plan year, the excess (if any) of—

[(i) the current liability under the plan, over

[(ii) value of the plan’s assets determined under subsection (c)(2).

[(B) FUNDED CURRENT LIABILITY PERCENTAGE.—The term “funded current liability percentage” means, with respect to any plan year, the percentage which—

[(i) the amount determined under subparagraph (A)(ii), is of

[(ii) the current liability under the plan.

[(C) CONTROLLED GROUP.—The term “controlled group” means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

[(D) ADJUSTMENTS TO PREVENT OMISSIONS AND DUPLICATIONS.—The Secretary shall provide such adjustments in the unfunded old liability amount, the unfunded new liability amount, the unpredictable contingent event amount, the current payment amount, and any other charges or credits under this section as are necessary to avoid duplication or omission of any factors in the determination of such amounts, charges, or credits.

[(E) DEDUCTION FOR CREDIT BALANCES.—For purposes of this subsection, the amount determined under subparagraph (A)(ii) shall be reduced by any credit balance in the funding standard account. The Secretary may provide for such reduction for purposes of any other provision which references this subsection.

[(9) APPLICABILITY OF SUBSECTION.—

[(A) IN GENERAL.—Except as provided in paragraph (6)(A), this subsection shall apply to a plan for any plan year if its funded current liability percentage for such year is less than 90 percent.

[(B) EXCEPTION FOR CERTAIN PLANS AT LEAST 80 PERCENT FUNDED.—Subparagraph (A) shall not apply to a plan for a plan year if—

[(i) the funded current liability percentage for the plan year is at least 80 percent, and

[(ii) such percentage for each of the 2 immediately preceding plan years (or each of the 2d and 3d immediately preceding plan years) is at least 90 percent.



**[(C) FUNDED CURRENT LIABILITY PERCENTAGE.**—For purposes of subparagraphs (A) and (B), the term “funded current liability percentage” has the meaning given such term by paragraph (8)(B), except that such percentage shall be determined for any plan year—

**[(i)** without regard to paragraph (8)(E), and

**[(ii)** by using the rate of interest which is the highest rate allowable for the plan year under paragraph (7)(C).

**[(D) TRANSITION RULES.**—For purposes of this paragraph:

**[(i) FUNDED PERCENTAGE FOR YEARS BEFORE 1995.**—The funded current liability percentage for any plan year beginning before January 1, 1995, shall be treated as not less than 90 percent only if for such plan year the plan met one of the following requirements (as in effect for such year):

**[(I)** The full-funding limitation under subsection (c)(7) for the plan was zero.

**[(II)** The plan had no additional funding requirement under this subsection (or would have had no such requirement if its funded current liability percentage had been determined under subparagraph (C)).

**[(III)** The plan’s additional funding requirement under this subsection did not exceed the lesser of 0.5 percent of current liability or \$5,000,000.

**[(ii) SPECIAL RULE FOR 1995 AND 1996.**—For purposes of determining whether subparagraph (B) applies to any plan year beginning in 1995 or 1996, a plan shall be treated as meeting the requirements of subparagraph (B)(ii) if the plan met the requirements of clause (i) of this subparagraph for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive).

**[(10) UNFUNDED MORTALITY INCREASE AMOUNT.**—

**[(A) IN GENERAL.**—The unfunded mortality increase amount with respect to each unfunded mortality increase is the amount necessary to amortize such increase in equal annual installments over a period of 10 plan years (beginning with the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III)).

**[(B) UNFUNDED MORTALITY INCREASE.**—For purposes of subparagraph (A), the term “unfunded mortality increase” means an amount equal to the excess of—

**[(i)** the current liability of the plan for the first plan year for which a plan uses any new mortality table issued under paragraph (7)(C)(ii)(II) or (III), over

**[(ii)** the current liability of the plan for such plan year which would have been determined if the mortality table in effect for the preceding plan year had been used.

**[(11) PHASE-IN OF INCREASES IN FUNDING REQUIRED BY RETIREMENT PROTECTION ACT OF 1994.**—

[(A) IN GENERAL.—For any applicable plan year, at the election of the employer, the increase under paragraph (1) shall not exceed the greater of—

[(i) the increase that would be required under paragraph (1) if the provisions of this title as in effect for plan years beginning before January 1, 1995, had remained in effect, or

[(ii) the amount which, after taking into account charges (other than the additional charge under this subsection) and credits under subsection (b), is necessary to increase the funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) for the applicable plan year to a percentage equal to the sum of the initial funded current liability percentage of the plan plus the applicable number of percentage points for such applicable plan year.

[(B) APPLICABLE NUMBER OF PERCENTAGE POINTS.—

[(i) INITIAL FUNDED CURRENT LIABILITY PERCENTAGE OF 75 PERCENT OR LESS.—Except as provided in clause (ii), for plans with an initial funded current liability percentage of 75 percent or less, the applicable number of percentage points for the applicable plan year is:

<b>In the case of applicable plan years beginning in:</b>	<b>The applicable number of percentage points is:</b>
1995 .....	3
1996 .....	6
1997 .....	9
1998 .....	12
1999 .....	15
2000 .....	19
2001 .....	24.

[(ii) OTHER CASES.—In the case of a plan to which this clause applies, the applicable number of percentage points for any such applicable plan year is the sum of—

[(I) 2 percentage points;

[(II) the applicable number of percentage points (if any) under this clause for the preceding applicable plan year;

[(III) the product of .10 multiplied by the excess (if any) of (a) 85 percentage points over (b) the sum of the initial funded current liability percentage and the number determined under subclause (II);

[(IV) for applicable plan years beginning in 2000, 1 percentage point; and

[(V) for applicable plan years beginning in 2001, 2 percentage points.

[(iii) PLANS TO WHICH CLAUSE (II) APPLIES.—

[(I) IN GENERAL.—Clause (ii) shall apply to a plan for an applicable plan year if the initial funded current liability percentage of such plan is more than 75 percent.

[(II) PLANS INITIALLY UNDER CLAUSE (I).—In the case of a plan which (but for this subclause) has an initial funded current liability percentage of 75 percent or less, clause (ii) (and not clause (i)) shall apply to such plan with respect to applicable plan years beginning after the first applicable plan year for which the sum of the initial funded current liability percentage and the applicable number of percentage points (determined under clause (i)) exceeds 75 percent. For purposes of applying clause (ii) to such a plan, the initial funded current liability percentage of such plan shall be treated as being the sum referred to in the preceding sentence.

[(C) DEFINITIONS.—For purposes of this paragraph:

[(i) The term “applicable plan year” means a plan year beginning after December 31, 1994, and before January 1, 2002.

[(ii) The term “initial funded current liability percentage” means the funded current liability percentage as of the first day of the first plan year beginning after December 31, 1994.

[(12) ELECTION FOR CERTAIN PLANS.—

[(A) IN GENERAL.—In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of—

[(i) 20 percent of the increased amount under paragraph (1) determined without regard to this paragraph, or

[(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

[(B) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any applicable plan year, unless—

[(i) the plan’s enrolled actuary certifies (in such form and manner prescribed by the Secretary) that the amendment provides for an increase in annual contributions which will exceed the increase in annual charges to the funding standard account attributable to such amendment, or

[(ii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph.

If a plan is amended during any applicable plan year in violation of the preceding sentence, any election under this

paragraph shall not apply to any applicable plan year ending on or after the date on which such amendment is adopted.

**[(C) APPLICABLE EMPLOYER.—**For purposes of this paragraph, the term “applicable employer” means an employer which is—

**[(i)** a commercial passenger airline,

**[(ii)** primarily engaged in the production or manufacture of a steel mill product or the processing of iron ore pellets, or

**[(iii)** an organization described in section 501(c)(5) and which established the plan to which this paragraph applies on June 30, 1955.

**[(D) APPLICABLE PLAN YEAR.—**For purposes of this paragraph—

**[(i) IN GENERAL.—**The term “applicable plan year” means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

**[(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED.—**An election may not be made under this paragraph with respect to more than 2 plan years.

**[(E) ELECTION.—**An election under this paragraph shall be made at such time and in such manner as the Secretary may prescribe.

**[(m) QUARTERLY CONTRIBUTIONS REQUIRED.—**

**[(1) IN GENERAL.—**If a defined benefit plan (other than a multiemployer plan) which has a funded current liability percentage (as defined in subsection (l)(8)) for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

**[(A)** 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

**[(B)** the rate of interest used under the plan in determining costs (including adjustments under subsection (b)(5)(B)).

**[(2) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—**For purposes of paragraph (1)—

**[(A) AMOUNT.—**The amount of the underpayment shall be the excess of—

**[(i)** the required installment, over

**[(ii)** the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

**[(B) PERIOD OF UNDERPAYMENT.—**The period for which interest is charged under this subsection with regard to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan (determined without regard to subsection (c)(10)).

[(C) ORDER OF CREDITING CONTRIBUTIONS.—For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

[(3) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this subsection—

[(A) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each plan year.

[(B) TIME FOR PAYMENT OF INSTALLMENTS.—

[In the case of the following required installments:	The due date is:
1st .....	April 15
2nd .....	July 15
3rd .....	October 15
4th .....	January 15 of the following year.

[(4) AMOUNT OF REQUIRED INSTALLMENT.—For purposes of this subsection—

[(A) IN GENERAL.—The amount of any required installment shall be the applicable percentage of the required annual payment.

[(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term “required annual payment” means the lesser of—

[(i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 (without regard to any waiver under subsection (c) thereof), or

[(ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

[(C) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

[For plan years beginning in:	The applicable percentage is:
1989 .....	6.25
1990 .....	12.5
1991 .....	18.75
1992 and thereafter .....	25.

[(D) SPECIAL RULES FOR UNPREDICTABLE CONTINGENT EVENT BENEFITS.—In the case of a plan to which subsection (1) applies for any calendar year and which has any unpredictable contingent event benefit liabilities—

[(i) LIABILITIES NOT TAKEN INTO ACCOUNT.—Such liabilities shall not be taken into account in computing the required annual payment under subparagraph (B).

[(ii) INCREASE IN INSTALLMENTS.—Each required installment shall be increased by the greatest of—

[(I) the unfunded percentage of the amount of benefits described in subsection (1)(5)(A)(i) paid during the 3-month period preceding the month in which the due date for such installment occurs,

[(II) 25 percent of the amount determined under subsection (1)(5)(A)(ii) for the plan year, or

[(III) 25 percent of the amount determined under subsection (1)(5)(A)(iii) for the plan year.

[(iii) UNFUNDED PERCENTAGE.—For purposes of clause (ii)(I), the term “unfunded percentage” means the percentage determined under subsection (1)(5)(A)(i)(I) for the plan year.

[(iv) LIMITATION ON INCREASE.—In no event shall the increases under clause (ii) exceed the amount necessary to increase the funded current liability percentage (within the meaning of subsection (1)(8)(B)) for the plan year to 100 percent.

[(5) LIQUIDITY REQUIREMENT.—

[(A) IN GENERAL.—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether 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 defined benefit plan (other than a multiemployer plan or a plan described in subsection (1)(6)(A)) which—

[(i) is required to pay installments under this subsection 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 (1), 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 funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing during the plan year) to 100 percent.

[(E) DEFINITIONS.—For purposes of this paragraph:

[(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 the base amount with respect to such quarter over 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 (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

[(iii) DISBURSEMENTS FROM THE PLAN.—The term “disbursements from the plan” means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

[(iv) ADJUSTED DISBURSEMENTS.—The term “adjusted disbursements” means disbursements from the plan reduced by the product of—

[(I) the plan’s funded current liability percentage (as defined in subsection (l)(8)) for the plan year, and

[(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

[(v) LIQUID ASSETS.—The term “liquid assets” means cash, marketable securities and such other assets as specified by the Secretary in regulations.

[(vi) QUARTER.—The term “quarter” means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

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

[(6) FISCAL YEARS AND SHORT YEARS.—

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

[(B) SHORT PLAN YEAR.—This subsection shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

[(7) SPECIAL RULE FOR 2002.—In any case in which the interest rate used to determine current liability is determined under subsection (l)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (l)(7)(C)(i)(II).

[(n) IMPOSITION OF LIEN WHERE FAILURE TO MAKE REQUIRED CONTRIBUTIONS.—

[(1) IN GENERAL.—In the case of a plan to which this section applies, if—

[(A) any person fails to make a required installment under subsection (m) or any other payment required under

this section before the due date for such installment or other payment, and

[(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other payments for which payment was not made before the due date (including interest), exceeds \$1,000,000, then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

[(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funded current liability percentage (within the meaning of subsection (1)(8)(B)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).

[(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

[(A) for plan years beginning after 1987, and

[(B) for which payment has not been made before the due date.

[(4) NOTICE OF FAILURE; LIEN.—

[(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required installment or other payment.

[(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required installment or other payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B).

Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

[(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

[(5) ENFORCEMENT.—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

[(6) DEFINITIONS.—For purposes of this subsection—



[(A) DUE DATE; REQUIRED INSTALLMENT.—The terms “due date” and “required installment” have the meanings given such terms by subsection (m), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.]

[(B) CONTROLLED GROUP.—The term “controlled group” means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.]

**SEC. 412. MINIMUM FUNDING STANDARDS.**

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

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

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

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

(B) *in the case of a money purchase plan which is not a multiemployer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and*

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

(b) **LIABILITY FOR CONTRIBUTIONS.—**

(1) *IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 430(j)) shall be paid by the employer responsible for making contributions to or under the plan.*

(2) *JOINT AND SEVERAL LIABILITY WHERE EMPLOYER MEMBER OF CONTROLLED GROUP.—In the case of a defined benefit plan which is not a multiemployer plan, if the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.*

(c) **VARIANCE FROM MINIMUM FUNDING STANDARDS.—**

(1) **WAIVER IN CASE OF BUSINESS HARDSHIP.—**

(A) **IN GENERAL.—If—**

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

(ii) *application of the standard would be adverse to the interests of plan participants in the aggregate,*

the Secretary may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

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

(i) in the case of a defined benefit plan which is not a multiemployer plan, the minimum required contribution under section 430 for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 430(e), and

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 431(b)(3)(C) with the amount of the waived funding deficiency and such amount shall be amortized as required under section 431(b)(2)(C).

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

(2) **DETERMINATION OF BUSINESS HARDSHIP.**—For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

(A) the employer is operating at an economic loss,

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

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

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

(3) **WAIVED FUNDING DEFICIENCY.**—For purposes of this section and part III of this subchapter, the term “waived funding deficiency” means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary and not satisfied by employer contributions.

(4) **SECURITY FOR WAIVERS FOR SINGLE-EMPLOYER PLANS, CONSULTATIONS.**—

(A) **SECURITY MAY BE REQUIRED.**—

(i) **IN GENERAL.**—Except as provided in subparagraph (C), the Secretary may require an employer maintaining a defined benefit plan which is not a multiemployer plan to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

(ii) **SPECIAL RULES.**—Any security provided under clause (i) may be perfected and enforced only by the

*Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 4001(a)(13) of the Employee Retirement Income Security Act of 1974), or a member of such sponsor's controlled group (within the meaning of section 4001(a)(14) of such Act).*

**(B) CONSULTATION WITH THE PENSION BENEFIT GUARANTY CORPORATION.**—*Except as provided in subparagraph (C), the Secretary 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 section 3(4) of the Employee Retirement Income Security Act of 1974) representing participants in the plan which are submitted in writing to the Secretary in connection with such application.*

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

**(C) EXCEPTION FOR CERTAIN WAIVERS.**—

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

*(I) the aggregate unpaid minimum required contribution (within the meaning of section 4971(c)(4)) for the plan year and all preceding plan years, and*

*(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 430(e)(2),*

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

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

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

**(A) APPLICATION MUST BE SUBMITTED BEFORE DATE 2<sup>1</sup>/<sub>2</sub> MONTHS AFTER CLOSE OF YEAR.**—*In the case of a defined benefit plan which is not a multiemployer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is*

submitted to the Secretary not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) *SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.*—In the case of a defined benefit plan which is not a multiemployer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

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

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

(6) *ADVANCE NOTICE.*—

(A) *IN GENERAL.*—The Secretary shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV and for benefit liabilities.

(B) *CONSIDERATION OF RELEVANT INFORMATION.*—The Secretary shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) *RESTRICTION ON PLAN AMENDMENTS.*—

(A) *IN GENERAL.*—No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 431(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) *EXCEPTION.*—Paragraph (1) shall not apply to any plan amendment which—

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

(ii) only repeals an amendment described in subsection (d)(2), or

(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1.

(d) *MISCELLANEOUS RULES.*—

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

(2) *CERTAIN RETROACTIVE PLAN AMENDMENTS.*—For purposes of this section, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

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

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

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless the Secretary determines that such amendment is necessary because of a substantial business hardship (as determined under subsection (c)(2)) and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 431(d)) is unavailable or inadequate.

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

(e) *PLANS TO WHICH SECTION APPLIES.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), this section applies to a plan if, for any plan year beginning after December 31, 2006—

(A) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

(B) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

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

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

(B) any insurance contract plan described in paragraph (3),

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

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

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

(F) any plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if

*no part of the contributions to or under such plan are made by employers of participants in such plan. No plan described in subparagraph (C), (D), or (F) shall be treated as a qualified plan for purposes of section 401(a) unless such plan meets the requirements of section 401(a)(7) as in effect on September 1, 1974.*

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

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

*(B) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase becomes effective),*

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

*(D) premiums payable for the plan year, and all prior plan years, under such contracts have been paid before lapse or there is reinstatement of the policy,*

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

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

*A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this paragraph.*

\* \* \* \* \*

**SEC. 414. DEFINITIONS AND SPECIAL RULES.**

(a) \* \* \*

\* \* \* \* \*

**(1) MERGER AND CONSOLIDATIONS OF PLANS OR TRANSFERS OF PLAN ASSETS.—**

(1) \* \* \*

**(2) ALLOCATION OF ASSETS IN PLAN SPIN-OFFS, ETC.—**

(A) \* \* \*

**(B) APPLICABLE PERCENTAGE.—**For purposes of subparagraph (A), the term “applicable percentage” means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

(i) the excess (if any) of—

**[(I) the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over]**

*(I) the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the target liability amount and*

target normal cost determined under section 430 in the case of any other plan), over

\* \* \* \* \*

(w) **AUTOMATIC CONTRIBUTION ARRANGEMENTS.**—

(1) **IN GENERAL.**—No tax shall be imposed under section 72(t) on a distribution from an applicable employer plan to the employee with respect to whom such contribution relates if such distribution does not exceed the erroneous automatic contribution amount and is made not later than the 1st April 15 following the close of the taxable year in which such contribution was made.

(2) **ERRONEOUS AUTOMATIC CONTRIBUTION AMOUNT.**—For purposes of this subsection—

(A) **IN GENERAL.**—The term “erroneous automatic contribution amount” means the lesser of—

(i) the amount of automatic contributions made during the applicable period which the employee elects in a notice to the plan administrator to treat as an erroneous automatic contribution amount for purposes of this subsection, or

(ii) \$500.

(B) **AUTOMATIC CONTRIBUTION.**—The term “automatic contribution” means contributions which, under the terms of the plan—

(i) the employee can elect to be made as contributions under the plan on behalf of the employee, or to the employee directly in cash, and

(ii) which are made on behalf of the employee under the plan pursuant to a plan provision treating the employee as having elected to have the employer make such contributions on behalf of the employee until the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions as a specified level.

(3) **APPLICABLE EMPLOYER PLAN.**—For purposes of this subsection, the term “applicable employer plan” means—

(A) an employees’ trust described in section 401(a) which is exempt from tax under section 501(a), and

(B) a plan under which amounts are contributed by an individual’s employer for an annuity contract described in section 403(b).

(4) **APPLICABLE PERIOD.**—For purposes of this subsection, the term “applicable period” means, with respect to any employee, the three month period that begins on the first date that an automatic contribution described in paragraph (2)(B) is made with respect to such employee.

**SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.**

(a) \* \* \*

(b) **LIMITATION FOR DEFINED BENEFIT PLANS.**—

(1) \* \* \*

(2) **ANNUAL BENEFIT.**—

(A) \* \* \*

\* \* \* \* \*

(E) LIMITATION ON CERTAIN ASSUMPTIONS.—

(i) \* \* \*

[(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for “5 percent” in clause (i), except that in the case of plan years beginning in 2004 or 2005, “5.5 percent” shall be substituted for “5 percent” in clause (i).]

*(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greater of—*

*(I) 5.5 percent,*

*(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or*

*(III) the rate specified under the plan.*

\* \* \* \* \*

**SEC. 416. SPECIAL RULES FOR TOP-HEAVY PLANS.**

(a) \* \* \*

\* \* \* \* \*

(g) TOP-HEAVY PLAN DEFINED.—For purposes of this section—

(1) \* \* \*

\* \* \* \* \*

(4) OTHER SPECIAL RULES.—For purposes of this subsection—

(A) \* \* \*

\* \* \* \* \*

(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term “top-heavy plan” shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12) or 401(k)(13), and

(ii) matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.

\* \* \* \* \*

**SEC. 417. DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS.**

(a) \* \* \*

\* \* \* \* \*

(e) RESTRICTIONS ON CASH-OUTS.—

(1) \* \* \*

\* \* \* \* \*

(3) DETERMINATION OF PRESENT VALUE.—

(A) IN GENERAL.—

(i) \* \* \*

[(ii) DEFINITIONS.—For purposes of clause (i)—



[(I) APPLICABLE MORTALITY TABLE.—The term “applicable mortality table” means the table prescribed by the Secretary. Such table shall be based on the prevailing commissioners’ standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5)).

[(II) APPLICABLE INTEREST RATE.—The term “applicable interest rate” means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe.]

(ii) For purposes of clause (i), the term “applicable mortality table” means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under section 430(h)(3).

(iii) For purposes of clause (i), the term “applicable interest rate” means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.

(iv) For purposes of clause (iii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) if—

(I) section 430(h)(2)(D)(i) were applied by substituting “the yields” for “a 3-year weighted average of yields”,

(II) section 430(h)(2)(G)(i)(II) were applied by substituting “section 417(e)(3)(A)(ii)(II)” for “section 412(b)(5)(B)(ii)(II)”, and

(III) the applicable percentage under section 430(h)(2)(G) were determined in accordance with the following table:

In the case of plan years beginning in:	The applicable percentage is:
2007 .....	20 percent
2008 .....	40 percent
2009 .....	60 percent
2010 .....	80 percent.

\* \* \* \* \*

**Subpart C—Special Rules for Multiemployer Plans**

\* \* \* \* \*

**SEC. 418. REORGANIZATION STATUS.**

(a) \* \* \*

(b) REORGANIZATION INDEX.—For purposes of this subpart—

(1) \* \* \*

(2) NET CHARGE TO FUNDING STANDARD ACCOUNT.—The net charge to the funding standard account for any plan year is the excess (if any) of—

(A) the charges to the funding standard account for such year under **[section 412(b)(2)] section 431(b)(2)**, over

(B) the credits to the funding standard account under **[section 412(b)(3)(B)] section 431(b)(3)(B)**.

\* \* \* \* \*

**SEC. 418B. MINIMUM CONTRIBUTION REQUIREMENT.**

(a) \* \* \*

\* \* \* \* \*

(d) LIMITATION ON REQUIRED INCREASES IN RATE OF EMPLOYER CONTRIBUTIONS.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) (without regard to subsection (b)(2)) shall not exceed an amount which is equal to the sum of—

(A) \* \* \*

(B) if for the plan year a change in benefits is first required to be considered in computing the charges under **[section 412(b)(2)(A) or (B)] section 431(b)(2)(A) or (B)**, the sum of—

(i) \* \* \*

\* \* \* \* \*

(e) CERTAIN RETROACTIVE PLAN AMENDMENTS.—In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under **[section 412(c)(8)] section 412(d)(2)**.

\* \* \* \* \*

(g) ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.—For purposes of making any determination under this subpart, the requirements of **[section 412(c)(3)] section 431(c)(3)** shall apply.

\* \* \* \* \*

**SEC. 418D. ADJUSTMENTS IN ACCRUED BENEFITS.**

(a) ADJUSTMENTS IN ACCRUED BENEFITS.—

(1) \* \* \*

(2) ADJUSTMENT OF VESTED BENEFITS CHARGE.—In determining the minimum contribution requirement with respect to a plan for a plan year under section 418B(b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or **[section 412(c)(8)] section 412(d)(2)**, but only if the amendment is adopted and effective no later than 2-1/2 months after the end of the plan year, or within such extended period as the Secretary may prescribe by regulations under **[section 412(c)(10)] section 431(c)(8)**.

\* \* \* \* \*

**SEC. 418E. INSOLVENT PLANS.**

(a) \* \* \*

\* \* \* \* \*

(d) **PLAN SPONSOR DETERMINATION.**—

(1) **TRIENNIAL TEST.**—As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 418B(b)(3)(B)(ii)) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next **3 plan years** *5 plan years*. *If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.*

\* \* \* \* \*

**Subpart E—Transfer of Excess Pension Assets to Retiree Health Accounts**

\* \* \* \* \*

**SEC. 420. TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.**

(a) \* \* \*

\* \* \* \* \*

(e) **DEFINITION AND SPECIAL RULES.**—For purposes of this section—

(1) \* \* \*

**[(2) EXCESS PENSION ASSETS.**—The term “excess pension assets” means the excess (if any) of—

**[(A) the amount determined under section 412(c)(7)(A)(ii), over**

**[(B) the greater of—**

**[(i) the amount determined under section 412(c)(7)(A)(i), or**

**[(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).**

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.]

(2) *EXCESS PENSION ASSETS.*—*The term “excess pension assets” means the excess (if any) of—*

*(A) the lesser of—*

*(i) the fair market value of the plan’s assets (reduced by the pre-funding balance and the funding standard carryover balance, as determined under section 430(f)), or*

*(ii) the value of plan assets as determined under section 430(g)(3) (reduced by the pre-funding balance and*

*the funding standard carryover balance, as determined under section 430(f)), over*  
*(B) 125 percent of the sum of the target liability amount and the target normal cost determined under section 430 for such plan year.*

\* \* \* \* \*  
**[(4) COORDINATION WITH SECTION 412.—In the case of a qualified transfer to a health benefits account—**

**[(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and**

**[(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting “10 plan years” for “5 plan years”.]**

*(4) COORDINATION WITH SECTION 430.—In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.*

\* \* \* \* \*

**PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS**

*Subpart A. Minimum funding standards for pension plans.  
 Subpart B. Benefit limitations under single-employer plans.*

**Subpart A—Minimum Funding Standards for Pension Plans**

- Sec. 430. Minimum funding standards for single-employer defined benefit pension plans.*
- Sec. 431. Minimum funding standards for multiemployer plans.*
- Sec. 432. Additional funding rules for multiemployer plans in endangered status or critical status.*

**SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS.**

*(a) MINIMUM REQUIRED CONTRIBUTION.—For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term “minimum required contribution” means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—*

- (1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—*
  - (A) the target normal cost of the plan for the plan year,*
  - (B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and*

- (C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);
- (2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced by such excess; or
- (3) in any other case, the target normal cost of the plan for the plan year.

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

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

(1) **IN GENERAL.**—For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

(2) **SHORTFALL AMORTIZATION INSTALLMENT.**—The plan sponsor shall determine, with respect to the shortfall amortization base of the plan for any plan year, the amounts necessary to amortize such shortfall amortization base, in level annual installments over a period of 7 plan years beginning with such plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 7-plan-year period is the shortfall amortization installment for such plan year with respect to such shortfall amortization base. In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

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

- (A) the funding shortfall of such plan for such plan year, over
- (B) the sum of—

(i) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments, for such plan year and the 5 succeeding plan years, which have been determined with respect to the shortfall amortization bases of the plan for each of the 6 plan years preceding such plan year, and

(ii) the present value (as so determined) of the aggregate total of the waiver amortization installments for such plan year and the 5 succeeding plan years, which

have been determined with respect to the waiver amortization bases of the plan for each of the 5 plan years preceding such plan year.

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

**(4) FUNDING SHORTFALL.—**

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

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

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

**(B) TRANSITION RULE.—**

(i) **IN GENERAL.—**For purposes of paragraph (3), in the case of a non-deficit reduction plan, subparagraph (A) shall be applied to plan years beginning after 2006 and before 2011 by substituting for the amount described in subparagraph (A)(i) the applicable percentage of the funding target of the plan for the plan year determined under the following table:

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

(ii) **NON-DEFICIT REDUCTION PLAN.—**For purposes of clause (i), the term “non-deficit reduction plan” means any plan—

(I) to which section 412 (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) applied for the plan year beginning in 2006, and

(II) to which subsection (l) of such section (as so in effect) did not apply for such plan year.

**(5) EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.—**In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

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

**(1) FUNDING TARGET.—**Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all liabilities to participants and their beneficiaries under the plan for the plan year.

(2) *FUNDING TARGET ATTAINMENT PERCENTAGE.*—The “funding target attainment percentage” of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

(e) *WAIVER AMORTIZATION CHARGE.*—

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

(2) *WAIVER AMORTIZATION INSTALLMENT.*—The plan sponsor shall determine, with respect to the waiver amortization base of the plan for any plan year, the amounts necessary to amortize such waiver amortization base, in level annual installments over a period of 5 plan years beginning with the succeeding plan year. For purposes of paragraph (1), the annual installment of such amortization for each plan year in such 5-plan year period is the waiver amortization installment for such plan year with respect to such waiver amortization base.

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

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

(5) *EARLY DEEMED AMORTIZATION UPON ATTAINMENT OF FUNDING TARGET.*—In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization base for all preceding plan years shall be reduced to zero.

(f) *REDUCTION OF MINIMUM REQUIRED CONTRIBUTION BY PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.*—

(1) *ELECTION TO MAINTAIN BALANCES.*—

(A) *PRE-FUNDING BALANCE.*—The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a pre-funding balance.

(B) *FUNDING STANDARD CARRYOVER BALANCE.*—

(i) *IN GENERAL.*—In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) *PLANS MAINTAINING FUNDING STANDARD ACCOUNT IN 2006.*—A plan is described in this clause if the plan—

(I) was in effect for a plan year beginning in 2006, and

(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

(2) APPLICATION OF BALANCES.—A pre-funding balance and a funding standard carryover balance maintained pursuant to this paragraph—

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) ELECTION TO APPLY BALANCES AGAINST MINIMUM REQUIRED CONTRIBUTION.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the pre-funding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

(B) COORDINATION WITH FUNDING STANDARD CARRYOVER BALANCE.—To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the pre-funding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) LIMITATION FOR UNDERFUNDED PLANS.—The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), 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.

(4) EFFECT OF BALANCES ON AMOUNTS TREATED AS VALUE OF PLAN ASSETS.—In the case of any plan maintaining a pre-funding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

(A) APPLICABILITY OF SHORTFALL AMORTIZATION BASE.—For purposes of subsection (c)(3), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance, but only if an election under paragraph (2) applying any portion of the pre-funding balance



*in reducing the minimum required contribution is in effect for the plan year.*

**(B) DETERMINATION OF EXCESS ASSETS, FUNDING SHORTFALL, AND FUNDING TARGET ATTAINMENT PERCENTAGE.**—*For purposes of subsections (a), (c)(4)(A)(ii), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance and the funding standard carryover balance.*

**(C) AVAILABILITY OF BALANCES IN PLAN YEAR FOR CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.**—*For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the pre-funding balance.*

**(5) ELECTION TO REDUCE BALANCE PRIOR TO DETERMINATIONS OF VALUE OF PLAN ASSETS AND CREDITING AGAINST MINIMUM REQUIRED CONTRIBUTION.**—

**(A) IN GENERAL.**—*The plan sponsor may elect to reduce by any amount the balance of the pre-funding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).*

**(B) COORDINATION BETWEEN PRE-FUNDING BALANCE AND FUNDING STANDARD CARRYOVER BALANCE.**—*To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the pre-funding balance.*

**(6) PRE-FUNDING BALANCE.**—

**(A) IN GENERAL.**—*A pre-funding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).*

**(B) INCREASES.**—*As of the valuation date for each plan year beginning after 2007, the pre-funding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—*

*(i) the aggregate total of employer contributions to the plan for the preceding plan year, over*

*(ii) the minimum required contribution for such preceding plan year (increased by interest on any portion of such minimum required contribution remaining unpaid as of the valuation date for the current plan year, at the effective interest rate for the plan for the preceding plan year, for the period beginning with the first day of such preceding plan year and ending on the date that payment of such portion is made).*

**(C) DECREASES.**—*As of the valuation date for each plan year after 2007, the pre-funding balance of a plan shall be decreased (but not below zero) by the sum of—*

(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) any reduction in such balance elected under paragraph (5).

(7) **FUNDING STANDARD CARRYOVER BALANCE.**—

(A) **IN GENERAL.**—A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) **BEGINNING BALANCE.**—The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

(C) **DECREASES.**—As of the valuation date for each plan year after 2007, the funding standard carryover balance of a plan shall be decreased (but not below zero) by the sum of—

(i) the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) any reduction in such balance elected under paragraph (5).

(8) **ADJUSTMENTS TO BALANCES.**—In determining the pre-funding balance or the funding standard carryover balance of a plan as of the valuation date (before applying any increase or decrease under paragraph (6) or (7)), the plan sponsor shall, in accordance with regulations which shall be prescribed by the Secretary, adjust such balance so as to reflect the rate of net gain or loss (determined, notwithstanding subsection (g)(3), on the basis of fair market value) experienced by all plan assets for the period beginning with the valuation date for the preceding plan year and ending with the date preceding the valuation date for the current plan year, properly taking into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

(9) **ELECTIONS.**—Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

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

(1) **TIMING OF DETERMINATIONS.**—Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

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

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

(B) **EXCEPTION FOR SMALL PLANS.**—If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all

*defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.*

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

*(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.*—*In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.*

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

**(3) AUTHORIZATION OF USE OF ACTUARIAL VALUE.**—*For purposes of this section, the value of plan assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary, except that—*

*(A) any such method providing for averaging of fair market values may not provide for averaging of such values over more than the 3 most recent plan years (including the current plan year), and*

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

**(4) ACCOUNTING FOR CONTRIBUTION RECEIPTS.**—*For purposes of this section—*

*(A) CONTRIBUTIONS FOR PRIOR PLAN YEARS TAKEN INTO ACCOUNT.*—*For purposes of determining the value of plan assets for any current plan year, in any case in which a contribution properly allocable to amounts owed for a preceding plan year is made on or after the valuation date of the plan for such current plan year, such contribution shall be taken into account, except that any such contribution made during any such current plan year beginning after 2007 shall be taken into account only in an amount equal to its present value (determined using the effective rate of interest for the plan for the preceding plan year) as of the valuation date of the plan for such current plan year.*

*(B) CONTRIBUTIONS FOR CURRENT PLAN YEAR DISREGARDED.*—*For purposes of determining the value of plan assets for any current plan year, contributions which are properly allocable to amounts owed for such plan year shall not be taken into account, and, in the case of any such contribution made before the valuation date of the plan for such plan year, such value of plan assets shall be reduced for interest on such amount determined using the effective rate of interest of the plan for the current plan year for the period beginning when such payment was made and ending on the valuation date of the plan.*

(5) *ACCOUNTING FOR PLAN LIABILITIES.*—For purposes of this section—

(A) *LIABILITIES TAKEN INTO ACCOUNT FOR CURRENT PLAN YEAR.*—In determining the value of liabilities under a plan for a plan year, liabilities shall be taken into account to the extent attributable to benefits (including any early retirement or similar benefit) accrued or earned as of the beginning of the plan year.

(B) *ACCRUALS DURING CURRENT PLAN YEAR DISREGARDED.*—For purposes of subparagraph (A), benefits accrued or earned during such plan year shall not be taken into account, irrespective of whether the valuation date of the plan for such plan year is later than the first day of such plan year.

(h) *ACTUARIAL ASSUMPTIONS AND METHODS.*—

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

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

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

(2) *INTEREST RATES.*—

(A) *EFFECTIVE INTEREST RATE.*—For purposes of this section, the term “effective interest rate” means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's liabilities referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

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

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

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

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

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

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

maturing during the 5-year period commencing with such month.

(ii) **SECOND SEGMENT RATE.**—The term “second segment rate” means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) **THIRD SEGMENT RATE.**—The term “third segment rate” means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

(D) **CORPORATE BOND YIELD CURVE.**—For purposes of this paragraph—

(i) **IN GENERAL.**—The term “corporate bond yield curve” means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects a 3-year weighted average of yields on investment grade corporate bonds with varying maturities.

(ii) **3-YEAR WEIGHTED AVERAGE.**—The term “3-year weighted average” means an average determined by using a methodology under which the most recent year is weighted 50 percent, the year preceding such year is weighted 35 percent, and the second year preceding such year is weighted 15 percent.

(E) **APPLICABLE MONTH.**—For purposes of this paragraph, the term “applicable month” means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

(F) **PUBLICATION REQUIREMENTS.**—The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(A)(iv)(I) for such month and each of the rates determined under subparagraph (B) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan’s projection of future interest rates.

(G) **TRANSITION RULE.**—

(i) **IN GENERAL.**—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in

2007 or 2008, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

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

(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) **APPLICABLE PERCENTAGE.**—For purposes of clause (i), the applicable percentage is  $33\frac{1}{3}$  percent for plan years beginning in 2007 and  $66\frac{2}{3}$  percent for plan years beginning in 2008.

(iii) **NEW PLANS INELIGIBLE.**—Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

(3) **MORTALITY TABLE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (C), the mortality table used in determining any present value or making any computation under this section shall be the RP-2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Protection Act of 2005 and as revised from time to time under subparagraph (B).

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

(C) **SUBSTITUTE MORTALITY TABLE.**—

(i) **IN GENERAL.**—Upon request by the plan sponsor and approval by the Secretary for a period not to exceed 10 years, a mortality table which meets the requirements of clause (ii) shall be used in determining any present value or making any computation under this section. A mortality table described in this clause shall cease to be in effect if the plan actuary determines at any time that such table does not meet the requirements of subclauses (I) and (II) of clause (ii).

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

(I) such table reflects the actual experience of the pension plan and projected trends in such experience, and

(II) such table is significantly different from the table described in subparagraph (A).

(iii) **DEADLINE FOR DISPOSITION OF APPLICATION.**—Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect for the succeeding plan year unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and pro-

vides the reasons that such table fails to meet the requirements of clause (ii).

(D) **TRANSITION RULE.**—Under regulations of the Secretary, 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 412(l)(7)(C)(ii) (as in effect for plan years beginning in 2006) shall be phased in ratably over the first period of 5 plan years beginning in or after 2007 so as to be fully effective for the fifth plan year. The preceding sentence shall not apply to any plan if the first plan year of the plan begins after December 31, 2006.

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

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, 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 plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

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

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

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

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

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

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

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

(B) *SUPPLEMENTAL ACTUARIAL ASSUMPTIONS.*—*The actuarial assumptions used in determining the valuation of the funding target shall include, in addition to the actuarial assumptions described in subsection (h), an assumption that all participants will elect benefits at such times and in such forms as will result in the highest present value of liabilities under subparagraph (A)(i).*

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

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

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

(2) *TARGET NORMAL COST OF AT-RISK PLANS.*—*In any case in which a plan is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be the sum of—*

(A) *the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined under the actuarial assumptions used under paragraph (1), plus*

(B) *the loading factor under paragraph (1)(C), excluding the portion of the loading factor described in paragraph (1)(C)(i).*

(3) *DETERMINATION OF AT-RISK STATUS.*—*For purposes of this subsection, a plan is in “at-risk status” for a plan year if the funding target attainment percentage of the plan for the preceding plan year was less than 60 percent.*

(4) *TRANSITION BETWEEN APPLICABLE FUNDING TARGETS AND BETWEEN APPLICABLE TARGET 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 this paragraph, the “transition percentage” for a plan year is the product derived by multiplying—

(i) 20 percent, by

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

(j) *PAYMENT OF MINIMUM REQUIRED CONTRIBUTIONS.*—

(1) *IN GENERAL.*—For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

(2) *INTEREST.*—Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

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

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

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

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

(B) *AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.*—For purposes of subparagraph (A)—

(i) *AMOUNT.*—The amount of the underpayment shall be the excess of—

(I) the required installment, over

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

(ii) *PERIOD OF UNDERPAYMENT.*—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

(iii) *ORDER OF CREDITING CONTRIBUTIONS.*—For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) *NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.*—For purposes of this paragraph—

(i) *PAYABLE IN 4 INSTALLMENTS.*—There shall be 4 required installments for each plan year.

(ii) *TIME FOR PAYMENT OF INSTALLMENTS.*—The due dates for required installments are set forth in the following 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.

(D) *AMOUNT OF REQUIRED INSTALLMENT.*—For purposes of this paragraph—

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

(ii) *REQUIRED ANNUAL PAYMENT.*—For purposes of clause (i), the term “required annual payment” means the lesser of—

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

(II) in the case of a plan year beginning after 2007, 100 percent of the minimum required contribution (without regard to any waiver under section 412(c)) to the plan for the preceding plan year. Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

(E) *FISCAL YEARS AND SHORT YEARS.*—

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

(ii) *SHORT PLAN YEAR.*—This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

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

(A) *IN GENERAL.*—A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether 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 (f)(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 (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) *DISBURSEMENTS FROM THE PLAN.*—The term “disbursements from the plan” means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) *ADJUSTED DISBURSEMENTS.*—The term “adjusted disbursements” means disbursements from the plan reduced by the product of—

(I) the plan’s funding target attainment percentage for the plan year, and

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

(v) *LIQUID ASSETS.*—The term “liquid assets” means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

(vi) *QUARTER.*—The term “quarter” means, with respect to any required installment, the 3-month period

preceding the month in which the due date for such installment occurs.

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

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

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

(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds \$1,000,000, then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) PLANS TO WHICH SUBSECTION APPLIES.—This subsection shall apply to a defined benefit plan (other than a multiemployer plan) for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Pension Protection Act of 2005).

(3) AMOUNT OF LIEN.—For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

(4) NOTICE OF FAILURE; LIEN.—

(A) NOTICE OF FAILURE.—A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

(B) PERIOD OF LIEN.—The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) CERTAIN RULES TO APPLY.—Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) *ENFORCEMENT.*—Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

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

(A) *CONTRIBUTION PAYMENT.*—The term “contribution payment” means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (i).

(B) *DUE DATE; REQUIRED INSTALLMENT.*—The terms “due date” and “required installment” have the meanings given such terms by subsection (j), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430.

(C) *CONTROLLED GROUP.*—The term “controlled group” means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

(l) *QUALIFIED TRANSFERS TO HEALTH BENEFIT ACCOUNTS.*—In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

**SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER PLANS.**

(a) *IN GENERAL.*—For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which section 412 applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 418B.

(b) *FUNDING STANDARD ACCOUNT.*—

(1) *ACCOUNT REQUIRED.*—Each multiemployer plan to which section 412 applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

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

(A) the normal cost of the plan for the plan year,

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

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year

to which section 412 applies, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

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

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

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005).

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

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

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

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

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

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005), the excess (if any) of any debit bal-

ance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) *SPECIAL RULE FOR AMOUNTS FIRST AMORTIZED TO PLAN YEARS BEFORE 2007.*—In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) over any period beginning with a plan year beginning before 2007, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) *COMBINING AND OFFSETTING AMOUNTS TO BE AMORTIZED.*—Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

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

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) *INTEREST.*—Except as provided in subsection (c)(9), the funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(7) *CERTAIN AMORTIZATION CHARGES AND CREDITS.*—In the case of a plan which, immediately before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, was a multiemployer plan (within the meaning of section 414(f) as in effect immediately before such date)—

(A) any amount described in paragraph (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the amount arose,

(B) any amount described in paragraph (2)(B)(iv) or (3)(B)(ii) of this subsection which arose in a plan year beginning before such date shall be amortized in equal annual installments (until fully amortized) over 20 plan years, beginning with the plan year in which the amount arose,

(C) any change in past service liability which arises during the period of 3 plan years beginning on or after such date, and results from a plan amendment adopted before such date, shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises, and

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

- (i) was adopted before such date, and
- (ii) was effective for any plan participant before the beginning of the first plan year beginning on or after such date,

shall be amortized in equal annual installments (until fully amortized) over 40 plan years, beginning with the plan year in which the change arises.

(8) SPECIAL RULES RELATING TO CHARGES AND CREDITS TO FUNDING STANDARD ACCOUNT.—For purposes of this section—

(A) WITHDRAWAL LIABILITY.—Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) ADJUSTMENTS WHEN A MULTIEMPLOYER PLAN LEAVES REORGANIZATION.—If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

- (i) shall be eliminated by an offsetting credit or charge (as the case may be), but
- (ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 418B(a) as of the end of the last plan year that the plan was in reorganization.

(C) PLAN PAYMENTS TO SUPPLEMENTAL PROGRAM OR WITHDRAWAL LIABILITY PAYMENT FUND.—Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of the Employee Retirement Income Security Act of 1974 or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

(D) INTERIM WITHDRAWAL LIABILITY PAYMENTS.—Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.



(E) *ELECTION FOR DEFERRAL OF CHARGE FOR PORTION OF NET EXPERIENCE LOSS.*—If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2005) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iv) shall not apply to the amount so charged).

(F) *FINANCIAL ASSISTANCE.*—Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

(G) *SHORT-TERM BENEFITS.*—To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are payable under the plan during a period that does not exceed 14 years, paragraph (2)(B)(iii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for “15”.

(c) *ADDITIONAL RULES.*—

(1) *DETERMINATIONS TO BE MADE UNDER FUNDING METHOD.*—For purposes of this section, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) *VALUATION OF ASSETS.*—

(A) *IN GENERAL.*—For purposes of this section, the value of the plan’s assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) *ELECTION WITH RESPECT TO BONDS.*—The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

(3) *ACTUARIAL ASSUMPTIONS MUST BE REASONABLE.*—For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

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

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

(4) *TREATMENT OF CERTAIN CHANGES AS EXPERIENCE GAIN OR LOSS.*—For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term “wages” under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) *FULL FUNDING.*—If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) *FULL-FUNDING LIMITATION.*—

(A) *IN GENERAL.*—For purposes of paragraph (5), the term “full-funding limitation” means the excess (if any) of—

(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(ii) the lesser of—

(I) the fair market value of the plan’s assets, or

(II) the value of such assets determined under paragraph (2).

(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 liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan’s assets determined under paragraph (2).

(ii) *ASSETS.*—For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(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 rate of interest determined under subparagraph (E).

(iv) *MORTALITY TABLES.*—

(I) *COMMISSIONERS' STANDARD TABLE.*—In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) *SECRETARIAL AUTHORITY.*—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) *SEPARATE MORTALITY TABLES FOR THE DISABLED.*—Notwithstanding clause (iv)—

(I) *IN GENERAL.*—In the case of plan years beginning after December 31, 1995, the Secretary 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. The 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 individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(vi) *PERIODIC REVIEW.*—The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent the Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) *REQUIRED CHANGE OF INTEREST RATE.*—For purposes of determining a plan's current liability for purposes of this paragraph—

(i) *IN GENERAL.*—If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) *PERMISSIBLE RANGE.*—For purposes of this subparagraph—

(I) *IN GENERAL.*—Except as provided in subclause (II), the term “permissible range” means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) *SECRETARIAL AUTHORITY.*—If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) *ASSUMPTIONS.*—Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) *ANNUAL VALUATION.*—

(A) *IN GENERAL.*—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) *VALUATION DATE.*—

(i) *CURRENT YEAR.*—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) *USE OF PRIOR YEAR VALUATION.*—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the as-

sets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) *ADJUSTMENTS.*—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) *LIMITATION.*—A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) *TIME WHEN CERTAIN CONTRIBUTIONS DEEMED MADE.*—For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

(9) *INTEREST RULE FOR WAIVERS AND EXTENSIONS.*—The interest rate applicable for any plan year for purposes of computing the amortization charge described in subsection (b)(2)(C) and in connection with an extension granted under subsection (d) shall be the greater of—

(A) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

(B) the rate of interest used under the plan for determining costs.

(d) *EXTENSION OF AMORTIZATION PERIODS FOR MULTIEMPLOYER PLANS.*—In the case of a multiemployer plan—

(1) *EXTENSION.*—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan shall be extended by the Secretary for a period of time (not in excess of 5 years) if the Secretary determines that—

(A) absent the extension, the plan would have an accumulated funding deficiency in any of the next 10 plan years,

(B) the plan sponsor has adopted a plan to improve the plan's funding status, and

(C) taking into account the extension, the plan is projected to have sufficient assets to timely pay its expected benefit liabilities and other anticipated expenditures

(2) *ADDITIONAL EXTENSION.*—The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any multiemployer plan may be extended (in addition to any extension under paragraph (1)) by the Secretary for a period of time (not in excess of 5 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and would provide adequate protection for participants under the

plan and their beneficiaries and if the Secretary determines that the failure to permit such extension would—

(A) result in—

(i) a substantial risk to the voluntary continuation of the plan, or

(ii) a substantial curtailment of pension benefit levels or employee compensation, and

(B) be adverse to the interests of plan participants in the aggregate.

(3) **ADVANCE NOTICE.**—

(A) **IN GENERAL.**—The Secretary shall, before granting an extension under this section, require each applicant to provide evidence satisfactory to the Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under title IV of such Act and for benefit liabilities.

(B) **CONSIDERATION OF RELEVANT INFORMATION.**—The Secretary shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

**SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS OR CRITICAL STATUS.**

(a) **ANNUAL CERTIFICATION BY PLAN ACTUARY.**—

(1) **IN GENERAL.**—During the 90-day period beginning on first day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary whether or not the plan is in endangered status for such plan year and whether or not the plan is in critical status for such plan year.

(2) **ACTUARIAL PROJECTIONS OF ASSETS AND LIABILITIES.**—

(A) **IN GENERAL.**—In making the determinations under paragraph (1), the plan actuary shall make projections under subsections (b)(2) and (c)(2) for the current and succeeding plan years, using reasonable actuarial assumptions and methods, of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year, as based on the actuarial statement prepared for the preceding plan year under section 103(d) of the Employee Retirement Income Security Act of 1974.

(B) **DETERMINATIONS OF FUTURE CONTRIBUTIONS.**—Any such actuarial projection of plan assets shall assume—

(i) reasonably anticipated employer and employee contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(ii) that employer and employee contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no

significant demographic changes that would make continued application of such terms unreasonable.

(3) **PRESUMED STATUS IN ABSENCE OF TIMELY ACTUARIAL CERTIFICATION.**—If certification under this subsection is not made before the end of the 90-day period specified in paragraph (1), the plan shall be presumed to be in critical status for such plan year until such time as the plan actuary makes a contrary certification.

(4) **NOTICE.**—In any case in which a multiemployer plan is certified to be in endangered status under paragraph (1) or enters into critical status, the plan sponsor shall, not later than 30 days after the date of the certification or entry, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, the Secretary of the Treasury, and the Secretary of Labor.

(b) **FUNDING RULES FOR MULTIEMPLOYER PLANS IN ENDANGERED STATUS.**—

(1) **IN GENERAL.**—In any case in which a multiemployer plan is in endangered status for a plan year and no funding improvement plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a funding improvement plan upon approval thereof by the bargaining parties under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan is certified to be in endangered status under subsection (a)(1).

(2) **ENDANGERED STATUS.**—A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under subsection (a)—

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year under section 431 or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

(3) **FUNDING IMPROVEMENT PLAN.**—

(A) **BENCHMARKS.**—A funding improvement plan shall consist of amendments to the plan formulated to provide, under reasonable actuarial assumptions, for the attainment, during the funding improvement period under the funding improvement plan, of the following benchmarks:

(i) **INCREASE IN FUNDED PERCENTAGE.**—An increase in the plan's funded percentage such that—

(I) the difference between 100 percent and the plan's funded percentage for the last year of the funding improvement period, is not more than

(II)  $\frac{2}{3}$  of the difference between 100 percent and the plan's funded percentage for the first year of the funding improvement period.

(ii) **AVOIDANCE OF ACCUMULATED FUNDING DEFICIENCIES.**—No accumulated funding deficiency for any plan year during the funding improvement period (tak-

ing into account any extension of amortization periods under section 431(d).

(B) *FUNDING IMPROVEMENT PERIOD.*—The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date after the day of the certification as of which collective bargaining agreements covering on the day of such certification at least 75 percent of active participants in such multiemployer plan have expired.

(C) *SPECIAL RULES FOR CERTAIN SERIOUSLY UNDERFUNDED PLANS.*—

(i) In the case of a plan in which the funded percentage of a plan for the plan year is 70 percent or less, subparagraph (A)(i)(II) shall be applied by substituting “ $\frac{4}{5}$ ” for “ $\frac{2}{3}$ ” and subparagraph (B) shall be applied by substituting “the 15-year period” for “the 10-year period”.

(ii) In the case of a plan in which the funded percentage of a plan for the plan year is more than 70 percent but less than 80 percent, and—

(I) the plan actuary certifies within 30 days after certification under subsection (a)(1) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), and

(II) the plan year is prior to the day described in subparagraph (B)(ii), subparagraph (A)(i)(II) shall be applied by substituting “ $\frac{4}{5}$ ” for “ $\frac{2}{3}$ ” and subparagraph (B) shall be applied by substituting “the 15-year period” for “the 10-year period”.

(iii) For any plan year following the year described in clause (ii)(II), subparagraph (A)(i)(II) and subparagraph (B) shall apply, except that for each plan year ending after such date for which the plan actuary certifies (at the time of the annual certification under subsection (a)(1) for such plan year) that the plan is not able to attain the increase described in subparagraph (A)(i) over the period described in subparagraph (B), subparagraph (B) shall be applied by substituting “the 15-year period” for “the 10-year period”.

(D) *REPORTING.*—A summary of any funding improvement plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement Income Security Act of 1974 and in the summary annual report described in section 104(b)(3) of such Act.

(4) *DEVELOPMENT OF FUNDING IMPROVEMENT PLAN.*—



(A) *ACTIONS BY PLAN SPONSOR PENDING APPROVAL.*—Pending the approval of a funding improvement plan under this paragraph, the plan sponsor shall take all reasonable actions, consistent with the terms of the plan and applicable law, necessary to ensure—

- (i) an increase in the plan's funded percentage, and
- (ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Such actions include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(B) *RECOMMENDATIONS BY PLAN SPONSOR.*—

(i) *IN GENERAL.*—During the period of 90 days following the date on which a multiemployer plan is certified to be in endangered status, the plan sponsor shall develop and provide to the bargaining parties alternative proposals for revised benefit structures, contribution structures, or both, which, if adopted as amendments to the plan, may be reasonably expected to meet the benchmarks described in paragraph (3)(A). Such proposals shall include—

(I) at least one proposal for reductions in the amount of future benefit accruals necessary to achieve the benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) at least one proposal for increases in contributions under the plan necessary to achieve the benchmarks, assuming no amendments reducing future benefit accruals under the plan.

(ii) *REQUESTS BY BARGAINING PARTIES.*—Upon the request of any bargaining party who—

(I) employs at least 5 percent of the active participants, or

(II) represents as an employee organization, for purposes of collective bargaining, at least 5 percent of the active participants,

the plan sponsor shall provide all such parties information as to other combinations of increases in contributions and reductions in future benefit accruals which would result in achieving the benchmarks.

(iii) *OTHER INFORMATION.*—The plan sponsor may, as it deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution structures or benefit structures or other information relevant to the funding improvement plan.

(5) *MAINTENANCE OF CONTRIBUTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.*—Pending approval of a funding

improvement plan by the bargaining parties with respect to a multiemployer plan, the multiemployer plan may not be amended so as to provide—

(A) a reduction in the level of contributions for participants who are not in pay status,

(B) a suspension of contributions with respect to any period of service, or

(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(6) **BENEFIT RESTRICTIONS PENDING APPROVAL OF FUNDING IMPROVEMENT PLAN.**—Pending approval of a funding improvement plan by the bargaining parties with respect to a multiemployer plan—

(A) **RESTRICTIONS ON LUMP SUM AND SIMILAR DISTRIBUTIONS.**—In any case in which the present value of a participant's accrued benefit under the plan exceeds \$5,000, such benefit may not be distributed as an immediate distribution or in any other accelerated form.

(B) **PROHIBITION ON BENEFIT INCREASES.**—

(i) **IN GENERAL.**—No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted.

(ii) **EXCEPTION.**—Clause (i) shall not apply to any plan amendment which is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A.

(7) **DEFAULT CRITICAL STATUS IF NO FUNDING IMPROVEMENT PLAN ADOPTED.**—If no plan amendment adopting a funding improvement plan has been adopted by the end of the 240-day period referred to in subsection (b)(1), the plan enters into critical status as of the first day of the succeeding plan year.

(8) **RESTRICTIONS UPON APPROVAL OF FUNDING IMPROVEMENT PLAN.**—Upon adoption of a funding improvement plan with respect to a multiemployer plan, the plan may not be amended—

(A) so as to be inconsistent with the funding improvement plan, or

(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to meet the benchmarks described in paragraph (3)(A).

(c) **FUNDING RULES FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.**—

(1) **IN GENERAL.**—In any case in which a multiemployer plan is in critical status for a plan year as described in paragraph (2) (or otherwise enters into critical status under this section) and no rehabilitation plan under this subsection with respect to such multiemployer plan is in effect for the plan year, the plan sponsor shall, in accordance with this subsection, amend the multiemployer plan to include a rehabilitation plan under this subsection. The amendment shall be adopted not later than 240 days after the date on which the plan enters into critical status.

(2) **CRITICAL STATUS.**—A multiemployer plan is in critical status for a plan year if—

(A) the plan is in endangered status for the preceding plan year and the requirements of subsection (b)(1) were not met with respect to the plan for such preceding plan year, or

(B) as determined by the plan actuary under subsection (a), the plan is described in paragraph (3).

(3) *CRITICALITY DESCRIPTION.*—For purposes of paragraph (2)(B), a plan is described in this paragraph if the plan is described in at least one of the following subparagraphs:

(A) A plan is described in this subparagraph if, as of the beginning of the current plan year—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the market value of plan assets, plus

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if, as of the beginning of the current plan year, the sum of—

(i) the market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer and employee contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year remain in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits for all participants and beneficiaries projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(C) A plan is described in this subparagraph if—

(i) as of the beginning of the current plan year, the funded percentage of the plan is less than 65 percent, and

(ii) the plan has an accumulated funding deficiency for the current plan year or is projected to have an accumulated funding deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

(D) A plan is described in this subparagraph if—

(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining cost under the plan) for the current plan year

on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value, as of the beginning of the current plan year, of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value, as of the beginning of the current plan year, of nonforfeitable benefits of active participants, and

(iii) the plan is projected to have an accumulated funding deficiency for the current plan year or any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

(E) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is greater than 65 percent for the current plan year, and

(ii) the plan is projected to have an accumulated funding deficiency during any of the succeeding 3 plan years, not taking into account any extension of amortization periods under section 431(d).

(4) REHABILITATION PLAN.—

(A) IN GENERAL.—A rehabilitation plan shall consist of—

(i) amendments to the plan providing (under reasonable actuarial assumptions) for measures, agreed to by the bargaining parties, to increase contributions, reduce plan expenditures (including plan mergers and consolidations), or reduce future benefit accruals, or to take any combination of such actions, determined necessary to cause the plan to cease, during the rehabilitation period, to be in critical status, or

(ii) reasonable measures to forestall possible insolvency (within the meaning of section 418E) if the plan sponsor determines that, upon exhaustion of all reasonable measures, the plan would not cease during the rehabilitation period to be in critical status.

(B) REHABILITATION PERIOD.—The rehabilitation period for any rehabilitation plan adopted pursuant to this subsection is the 10-year period beginning on the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the first day of the first plan year of the multiemployer plan following the plan year in which occurs the first date, after the date of the plan's entry into critical status, as of which collective bargaining agreements covering at least 75 percent of active participants in such multiemployer plan (determined as of such date of entry) have expired.

(C) REPORTING.—A summary of any rehabilitation plan or modification thereto adopted during any plan year, together with annual updates regarding the funding ratio of the plan, shall be included in the annual report for such plan year under section 104(a) of the Employee Retirement

*Income Security Act of 1974 and in the summary annual report described in section 104(b)(3).*

(5) DEVELOPMENT OF REHABILITATION PLAN.—

(A) PROPOSALS BY PLAN SPONSOR.—

(i) IN GENERAL.—*Within 90 days after the date of entry into critical status (or the date as of which the requirements of subsection (b)(1) are not met with respect to the plan), the plan sponsor shall propose to all bargaining parties a range of alternative schedules of increases in contributions and reductions in future benefit accruals that would serve to carry out a rehabilitation plan under this subsection.*

(ii) PROPOSAL ASSUMING NO CONTRIBUTION INCREASES.—*Such proposals shall include, as one of the proposed schedules, a schedule of those reductions in future benefit accruals that would be necessary to cause the plan to cease to be in critical status if there were no further increases in rates of contribution to the plan.*

(iii) PROPOSAL WHERE CONTRIBUTIONS ARE NECESSARY.—*If the plan sponsor determines that the plan will not cease to be in critical status during the rehabilitation period unless the plan is amended to provide for an increase in contributions, the plan sponsor's proposals shall include a schedule of those increases in contribution rates that would be necessary to cause the plan to cease to be in critical status if future benefit accruals were reduced to the maximum extent permitted by law.*

(B) REQUESTS FOR ADDITIONAL SCHEDULES.—*Upon the request of any bargaining party who—*

(i) *employs at least 5 percent of the active participants, or*

(ii) *represents as an employee organization, for purposes of collective bargaining, at least 5 percent of active participants,*

*the plan sponsor shall include among the proposed schedules such schedules of increases in contributions and reductions in future benefit accruals as may be specified by the bargaining parties.*

(C) SUBSEQUENT AMENDMENTS.—*Upon the adoption of a schedule of increases in contributions or reductions in future benefit accruals as part of the rehabilitation plan, the plan sponsor may amend the plan thereafter to update the schedule to adjust for any experience of the plan contrary to past actuarial assumptions, except that such an amendment may be made not more than once in any 3-year period.*

(D) ALLOCATION OF REDUCTIONS IN FUTURE BENEFIT ACCRUALS.—*Any schedule containing reductions in future benefit accruals forming a part of a rehabilitation plan shall be applicable with respect to any group of active participants who are employed by any bargaining party (as an employer obligated to contribute under the plan) in propor-*

tion to the extent to which increases in contributions under such schedule apply to such bargaining party.

(E) *LIMITATION ON REDUCTION IN RATES OF FUTURE ACCRUALS.*—Any schedule proposed under this paragraph shall not reduce the rate of future accruals below the lower of—

(i) a monthly benefit 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 plan year in which the plan enters critical status,

or  
(ii) if lower, the accrual rate under the plan on such date.

The equivalent standard accrual rate shall be determined by the trustees based on the standard or average contribution base units that they determine to be representative for active participants and such other factors as they determine to be relevant.

(6) *MAINTENANCE OF CONTRIBUTIONS AND RESTRICTIONS ON BENEFITS PENDING ADOPTION OF REHABILITATION PLAN.*—The rules of paragraphs (5) and (6) of subsection (b) shall apply for purposes of this subsection by substituting the term “rehabilitation plan” for “funding improvement plan”.

(7) *RESTRICTIONS UPON APPROVAL OF REHABILITATION PLAN.*—Upon adoption of a rehabilitation plan with respect to a multiemployer plan, the plan may not be amended—

(A) so as to be inconsistent with the rehabilitation plan,

or  
(B) so as to increase future benefit accruals, unless the plan actuary certifies in advance that, after taking into account the proposed increase, the plan is reasonably expected to cease to be in critical status.

(8) *IMPLEMENTATION OF DEFAULT SCHEDULE UPON FAILURE TO ADOPT REHABILITATION PLAN.*—If the plan is not amended by the end of the 240-day period after entry into critical status to include a rehabilitation plan, the plan sponsor shall amend the plan to implement the schedule required by paragraph (5)(A)(ii).

(9) *DEEMED WITHDRAWAL.*—Upon the failure of any employer who has an obligation to contribute under the plan to make contributions in compliance with the schedule adopted under paragraph (4) as part of the rehabilitation plan, the failure of the employer may, at the discretion of the plan sponsor, be treated as a withdrawal by the employer from the plan under section 4203 of the Employee Retirement Income Security Act of 1974 or a partial withdrawal by the employer under section 4205 of such Act.

(d) *DEFINITIONS.*—For purposes of this section—

(1) *BARGAINING PARTY.*—The term “bargaining party” means, in connection with a multiemployer plan—

(A) an employer who has an obligation to contribute under the plan, and

- (B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.
- (2) **FUNDED PERCENTAGE.**—The term “funded percentage” means the percentage expressed as a ratio of which—
- (A) the numerator of which is the value of the plan’s assets, as determined under section 431(c)(2), and
- (B) the denominator of which is the accrued liability of the plan.
- (3) **ACCUMULATED FUNDING DEFICIENCY.**—The term “accumulated funding deficiency” has the meaning provided such term in section 431(a).
- (4) **ACTIVE PARTICIPANT.**—The term “active participant” means, in connection with a multiemployer plan, a participant who is in covered service under the plan.
- (5) **INACTIVE PARTICIPANT.**—The term “inactive participant” means, in connection with a multiemployer plan, a participant who—
- (A) is not in covered service under the plan, and
- (B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.
- (6) **PAY STATUS.**—A person is in “pay status” under a multiemployer plan if—
- (A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or
- (B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.
- (7) **OBLIGATION TO CONTRIBUTE.**—The term “obligation to contribute” has the meaning provided such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.
- (8) **ENTRY INTO CRITICAL STATUS.**—A plan shall be treated as entering into critical status as of the date that such plan is certified to be in critical status under subsection (a)(1), is presumed to be in critical status under subsection (a)(3), or enters into critical status under subsection (b)(7).

### **Subpart B—Benefit Limitations Under Single-employer Plans**

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

Sec. 437. Funding-based limits on benefits and benefit accruals under single-employer plans.

#### **SEC. 436. PROHIBITION OF SHUTDOWN BENEFITS AND OTHER UNPREDICTABLE CONTINGENT EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.**

(a) **IN GENERAL.**—No pension plan which is defined benefit plan (other than a multiemployer plan) may provide benefits to which participants are entitled solely by reason of the occurrence of—

- (1) a plant shutdown, or
- (2) any other unpredictable contingent event.

(b) *UNPREDICTABLE CONTINGENT EVENT.*—For purposes of this subsection, the term “unpredictable contingent event” means an event other than—

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

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

**SEC. 437. FUNDING-BASED LIMITS ON BENEFITS AND BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER PLANS.**

(a) *LIMITATIONS ON PLAN AMENDMENTS INCREASING LIABILITY FOR BENEFITS.*—

(1) *IN GENERAL.*—No amendment to a defined benefit plan (other than a multiemployer plan) which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable to the plan may take effect during any plan year if the funding target attainment percentage as of the valuation date of the plan for such plan year is—

(A) less than 80 percent, or

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

For purposes of this subparagraph, any increase in benefits under the plan by reason of an increase in the benefit rate provided under the plan or on the basis of an increase in compensation shall be treated as effected by plan amendment.

(2) *EXEMPTION.*—Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first date of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

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

(B) in the case of paragraph (1)(B), the amount sufficient to result in a funding target attainment percentage of 80 percent.

(b) *FUNDING-BASED LIMITATION ON CERTAIN FORMS OF DISTRIBUTION.*—

(1) *IN GENERAL.*—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the plan for a plan year is less than 80 percent, the plan may not after such date pay any payment described in section 401(a)(32)(B).

(2) *EXCEPTION.*—Paragraph (1) shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on June 29, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

(c) *LIMITATIONS ON BENEFIT ACCRUALS FOR PLANS WITH SEVERE FUNDING SHORTFALLS.*—A defined benefit plan (other than a multiemployer plan) shall provide that, in any case in which the plan’s funding target attainment percentage as of the valuation date of the



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

(d) *NEW PLANS.*—Subsections (a) and (c) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

(e) *PRESUMED UNDERFUNDING FOR PURPOSES OF BENEFIT LIMITATIONS BASED ON PRIOR YEAR'S FUNDING STATUS.*—

(1) *PRESUMPTION OF CONTINUED UNDERFUNDING.*—In any case in which a benefit limitation under subsection (a), (b), or (c) has been applied to a plan with respect to the plan year preceding the current plan year, the funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year shall be presumed to be equal to the funding target attainment percentage of the plan as of the valuation date of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year.

(2) *PRESUMPTION OF UNDERFUNDING AFTER 10TH MONTH.*—In any case in which no such certification is made with respect to the plan before the first day of the 10th month of the current plan year, for purposes of subsections (a), (b), and (c), the plan's funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of the first day of such 10th month, and such day shall be deemed, for purposes of such subsections, to be the valuation date of the plan for the current plan year.

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

(A) a benefit limitation under subsection (a), (b), or (c) did not apply to a plan with respect to the plan year preceding the current plan year, but the funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual funding target attainment percentage of the plan as of the valuation date of the plan for the current plan year, until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the funding target attainment percentage of the plan as of the valuation date of the plan for such preceding plan year.

(f) *RESTORATION BY PLAN AMENDMENT OF BENEFITS OR BENEFIT ACCRUAL.*—In any case in which a prohibition under subsection (b) of the payment of lump sum distributions or benefits in any other accelerated form or a cessation of benefit accruals under subsection

(c) is applied to a plan with respect to any plan year and such prohibition or cessation, as the case may be, ceases to apply to any subsequent plan year, the plan may provide for the resumption of such benefit payment or such benefit accrual only by means of the adoption of a plan amendment after the valuation date of the plan for such subsequent plan year. The preceding sentence shall not apply to a prohibition or cessation required by reason of subsection (e).

(g) **FUNDING TARGET ATTAINMENT PERCENTAGE.**—

(1) **IN GENERAL.**—For purposes of this section, the term “funding target attainment percentage” means, with respect to any plan for any plan year, the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as determined under section 430(g)) reduced by the pre-funding balance and the funding standard carryover balance (within the meaning of section 430(f)), bears to

(B) the funding target of the plan for the plan year (as determined under section 430(d)(1), but without regard to section 430(i)(1)).

(2) **APPLICATION TO PLANS WHICH ARE FULLY FUNDED WITHOUT REGARD TO REDUCTIONS FOR FUNDING BALANCES.**—In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to this paragraph and without regard to the reduction under paragraph (1)(A) for the pre-funding balance and the funding standard carryover balance), paragraph (1) shall be applied without regard to such reduction.

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**Subchapter E—Accounting Periods and Methods of Accounting**

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**PART II—METHODS OF ACCOUNTING**

\* \* \* \* \*

**Subpart B—Taxable Year for Which Items of Gross Income Included**

\* \* \* \* \*

**SEC. 457. DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.**

(a) **YEAR OF INCLUSION IN GROSS INCOME.**—

(1) \* \* \*

\* \* \* \* \*

(3) **SPECIAL RULE FOR HEALTH AND LONG-TERM CARE INSURANCE.**—In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.

\* \* \* \* \*

(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) \* \* \*

\* \* \* \* \*

(16) ROLLOVER AMOUNTS.—

(A) \* \* \*

(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) [and (9)], (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

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**Subchapter L—Insurance Companies**

\* \* \* \* \*

**PART III—PROVISIONS OF GENERAL APPLICATION**

\* \* \* \* \*

**SEC. 848. CAPITALIZATION OF CERTAIN POLICY ACQUISITION EXPENSES.**

(a) \* \* \*

\* \* \* \* \*

(e) CLASSIFICATION OF CONTRACTS.—For purposes of this section—

(1) \* \* \*

\* \* \* \* \*

(6) TREATMENT OF CERTAIN QUALIFIED LONG-TERM CARE INSURANCE CONTRACT ARRANGEMENTS.—An annuity or life insurance contract which includes a qualified long-term care insurance contract as a part of or a rider on such annuity or life insurance contract shall be treated as a specified insurance contract not described in subparagraph (A) or (B) of subsection (c)(1).

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**Subchapter O—Gain or Loss on Disposition of Property**

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**PART III—COMMON NONTAXABLE EXCHANGES**

\* \* \* \* \*

**SEC. 1035. CERTAIN EXCHANGES OF INSURANCE POLICIES.**

(a) GENERAL RULES.—No gain or loss shall be recognized on the exchange of—

(1) a contract of life insurance for another contract of life insurance or for an endowment or annuity [contract;] contract or for a qualified long-term care insurance contract; or

(2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular pay-

ments beginning at a date not later than the date payments would have begun under the contract exchanged, or (B) for an annuity **【contract; or】** *contract*, or (C) for a qualified long-term care insurance contract;

(3) an annuity contract for an annuity **【contract.】** *contract* or for a qualified long-term care insurance contract; or

(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.

(b) DEFINITIONS.—For the purpose of this section—

(1) \* \* \*

(2) ANNUITY CONTRACT.—An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments. *For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.*

(3) LIFE INSURANCE CONTRACT.—A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured. *For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.*

\* \* \* \* \*

## SUBTITLE D—MISCELLANEOUS EXCISE TAXES

\* \* \* \* \*

### CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

\* \* \* \* \*

#### SEC. 4971. TAXES ON FAILURE TO MEET MINIMUM FUNDING STANDARDS.

**【(a) INITIAL TAX.**—For each taxable year of an employer who maintains a plan to which section 412 applies, there is hereby imposed a tax of 10 percent (5 percent in the case of a multiemployer plan) on the amount of the accumulated funding deficiency under the plan, determined as of the end of the plan year ending with or within such taxable year.

**【(b) ADDITIONAL TAX.**—In any case in which an initial tax is imposed by subsection (a) on an accumulated funding deficiency and such accumulated funding deficiency is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of such accumulated funding deficiency to the extent not corrected.**】**

*(a) INITIAL TAX.—If at any time during any taxable year an employer maintains a plan to which section 412 applies, there is hereby imposed for the taxable year a tax equal to—*

*(1) in the case of a defined benefit plan which is not a multi-employer plan, 10 percent of the aggregate unpaid minimum re-*

quired contributions for all plan years remaining unpaid as of the end of any plan year ending with or within the taxable year, and

(2) in the case of a multiemployer plan, 5 percent of the accumulated funding deficiency determined under section 431 as of the end of any plan year ending with or within the taxable year.

(b) **ADDITIONAL TAX.**—If—

(1) a tax is imposed under subsection (a)(1) on any unpaid required minimum contribution and such amount remains unpaid as of the close of the taxable period, or

(2) a tax is imposed under subsection (a)(2) on any accumulated funding deficiency and the accumulated funding deficiency is not corrected within the taxable period,

there is hereby imposed a tax equal to 100 percent of the unpaid minimum required contribution or accumulated funding deficiency, whichever is applicable, to the extent not so paid or corrected.

(c) **DEFINITIONS.**—For purposes of this section—

(1) **ACCUMULATED FUNDING DEFICIENCY.**—The term “accumulated funding deficiency” has the meaning given to such term by [the last two sentences of section 412(a)] *section 431*.

\* \* \* \* \*

(4) **UNPAID MINIMUM REQUIRED CONTRIBUTION.**—

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

(B) **ORDERING RULE.**—Any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years in the order in which such contributions became due and then to the minimum required contribution under section 430 for the plan year.

\* \* \* \* \*

(e) **LIABILITY FOR TAX.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the tax imposed by subsection (a), (b), or (f) shall be paid by the employer responsible for contributing to or under the plan the amount described in [section 412(b)(3)(A)] *section 412(a)(2)*.

\* \* \* \* \*

(f) **FAILURE TO PAY LIQUIDITY SHORTFALL.**—

(1) **IN GENERAL.**—In the case of a plan to which [section 412(m)(5)] *section 430(j)(4)* applies, there is hereby imposed a tax of 10 percent of the excess (if any) of

(A) the amount of the liquidity shortfall for any quarter, over

(B) the amount of such shortfall which is paid by the required installment under [section 412(m)] *section 430(j)(3)* for such quarter (but only if such installment is paid on or before the due date for such installment).

\* \* \* \* \*

**SEC. 4972. TAX ON NONDEDUCTIBLE CONTRIBUTIONS TO QUALIFIED EMPLOYER PLANS.**

(a) \* \* \*

\* \* \* \* \*

(c) **NONDEDUCTIBLE CONTRIBUTIONS.**—For purposes of this section—

(1) \* \* \*

\* \* \* \* \*

(6) **EXCEPTIONS.**—IN DETERMINING THE AMOUNT OF NONDEDUCTIBLE CONTRIBUTIONS FOR ANY TAXABLE YEAR, THERE SHALL NOT BE TAKEN INTO ACCOUNT—

[(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

[(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) and as adjusted under section 404(a)(12)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

[(ii) the amount of contributions described in section 401(m)(4)(A), or]

(A) *so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the amount of contributions described in section 401(m)(4)(A), or*

(7) **DEFINED BENEFIT PLAN EXCEPTION.**—In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan [except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof)] *except, in the case of a multiemployer plan, to the extent that such contributions exceed the full-funding limitation (as defined in section 431(c)(6))*. For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

\* \* \* \* \*

**SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.**

(a) \* \* \*

\* \* \* \* \*

(d) **EXEMPTIONS.**—Except as provided in subsection (f)(6), the prohibitions provided in subsection (c) shall not apply to—

(1) \* \* \*

\* \* \* \* \*

(15) a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1) (E) or (F); **[or]**

(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

(A) \* \* \*

\* \* \* \* \*

(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made**[.];** or

(17) any transaction described in subsection (f)(8)(A) in connection with the provision of investment advice described in subsection (e)(3)(B)(i), in any case in which—

(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

(C) the requirements of subsection (f)(8)(B) are met in connection with the provision of the advice.

\* \* \* \* \*

(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) \* \* \*

\* \* \* \* \*

(8) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(17), in connection with the provision of investment advice by a fiduciary adviser, are the following:

(i) the provision of the advice to the plan, participant, or beneficiary;

(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of

*this subparagraph (referred to in subsection (d)(17)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—*

*(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—*

*(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,*

*(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,*

*(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,*

*(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,*

*(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and*

*(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,*

*(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,*

*(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,*

*(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and*

*(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.*

*(C) STANDARDS FOR PRESENTATION OF INFORMATION.—  
The notification required to be provided to participants and*



beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(D) **EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.**—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

(E) **MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.**—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(17) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(F) **EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.**—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(17)—

(i) FIDUCIARY ADVISER.—The term “fiduciary adviser” means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(II) a bank or similar financial institution referred to in subsection (d)(4) or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1))), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(III) an insurance company qualified to do business under the laws of a State,

(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

(V) an affiliate of a person described in any of subclauses (I) through (IV), or

(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

(ii) AFFILIATE.—The term “affiliate” of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

(iii) REGISTERED REPRESENTATIVE.—The term “registered representative” of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)).

*(substituting the entity for the investment adviser referred to in such section).*

\* \* \* \* \*

**SUBTITLE F—PROCEDURE AND ADMINISTRATION**

\* \* \* \* \*

**CHAPTER 61—INFORMATION AND RETURNS**

\* \* \* \* \*

**Subchapter A—Returns and Records**

\* \* \* \* \*

**PART III—INFORMATIONAL RETURNS**

\* \* \* \* \*

**Subpart B—Information Concerning Transactions with Other Persons**

Sec. 6041. Information at source.

\* \* \* \* \*

Sec. 6050U. *Charges or payments for qualified long-term care insurance contracts under combined arrangements.*

\* \* \* \* \*

**SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS UNDER COMBINED ARRANGEMENTS.**

*(a) REQUIREMENT OF REPORTING.—Any person who makes a charge against the cash value of an annuity contract, or the cash surrender value of a life insurance contract, which is excludible from gross income under section 72(e)(11) shall make a return, according to the forms or regulations prescribed by the Secretary, setting forth—*

- (1) the amount of the aggregate of such charges against each such contract for the calendar year,*
- (2) the amount of the reduction in the investment in each such contract by reason of such charges, and*
- (3) the name, address, and TIN of the individual who is the holder of each such contract.*

*(b) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return a written statement showing—*

- (1) the name, address, and phone number of the information contact of the person making the payments, and*
- (2) the information required to be shown on the return with respect to such individual.*

*The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.*

\* \* \* \* \*

**Subpart E—Registration of and Information Concerning Pensions Etc., Plans**

\* \* \* \* \*

**SEC. 6059. PERIODIC REPORT OF ACTUARY.**

(a) \* \* \*

(b) ACTUARIAL REPORT.—The actuarial report of a plan required by subsection (a) shall be prepared and signed by an enrolled actuary (within the meaning of section 7701(a)(35)) and shall contain—

(1) \* \* \*

(2) a certification of the contribution necessary to reduce **[(the accumulated funding deficiency (as defined in section 412(a))]** *the minimum required contribution determined under section 430, or the accumulated funding deficiency determined under section 431, to zero,*

(3) a statement—

(A) \* \* \*

**[(B) the requirements of section 412(c) (relating to reasonable actuarial assumptions) have been complied with,]**

*(B) the requirements for reasonable actuarial assumptions under section 430(h)(1) or 431(c)(3), whichever are applicable, have been complied with,*

\* \* \* \* \*

**CHAPTER 79—DEFINITIONS**

\* \* \* \* \*

**SEC. 7702. LIFE INSURANCE CONTRACT DEFINED.**

(a) \* \* \*

\* \* \* \* \*

(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) \* \* \*

\* \* \* \* \*

(5) QUALIFIED ADDITIONAL BENEFITS.—

(A) IN GENERAL.—The term “qualified additional benefits” means any—

(i) \* \* \*

(iv) disability waiver benefit, **[or]**

*(v) qualified long-term care insurance contract which is a part of or a rider on the contract, or*

**[(v)] (vi) other benefit prescribed under regulations.**

\* \* \* \* \*

**SEC. 7702B. TREATMENT OF QUALIFIED LONG-TERM CARE INSURANCE.**

(a) \* \* \*

\* \* \* \* \*

[(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE CONTRACT.—Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract—

[(1) IN GENERAL.—This section shall apply as if the portion of the contract providing such coverage is a separate contract.

[(2) APPLICATION OF SECTION 7702.—Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to a life insurance contract, as of any date—

[(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A) for such coverage made to that date under the contract, less

[(B) any such charges the imposition of which reduces the premiums paid for the contract (within the meaning of section 7702(f)(1).

[(3) APPLICATION OF SECTION 213.—No deduction shall be allowed under section 213(a) for charges against the life insurance contract's cash surrender value described in paragraph (2), unless such charges are includible in income as a result of the application of section 72(e)(10) and the rider is a qualified long-term care insurance contract under subsection (b).

[(4) PORTION DEFINED.—For purposes of this subsection, the term “portion” means only the terms and benefits under a life insurance contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.]

(e) TREATMENT OF COVERAGE PROVIDED AS PART OF A LIFE INSURANCE OR ANNUITY CONTRACT.—

(1) COVERAGE TREATED AS CONTRACT.—*Except as otherwise provided in regulations prescribed by the Secretary, in the case of any long-term care insurance coverage (whether or not qualified) provided by a rider on or as part of a life insurance contract or an annuity contract, this title shall apply as if the portion of the contract providing such coverage is a separate contract.*

(2) DENIAL OF DEDUCTION UNDER SECTION 213.—*No deduction shall be allowed under section 213(a) for any payment made for coverage under a qualified long-term care insurance contract if such payment is made as a charge against the cash value of an annuity contract or the cash surrender value of a life insurance contract.*

(3) APPLICATION OF SECTION 7702.—*Section 7702(c)(2) (relating to the guideline premium limitation) shall be applied by increasing the guideline premium limitation with respect to the life insurance contract, as of any date—*

*(A) by the sum of any charges (but not premium payments) against the life insurance contract's cash surrender value (within the meaning of section 7702(f)(2)(A)) for cov-*

*erage under the qualified long-term care insurance contract made to that date under the life insurance contract, less*

*(B) any such charges the imposition of which reduces the premiums paid for the life insurance contract (within the meaning of section 7702(f)(1)).*

*(4) PORTION DEFINED.—For purposes of this subsection, the term “portion” means only the terms and benefits under a life insurance contract or annuity contract that are in addition to the terms and benefits under the contract without regard to long-term care insurance coverage.*

*(5) ANNUITY CONTRACTS TO WHICH PARAGRAPH (1) DOES NOT APPLY.—For purposes of this subsection, none of the following shall be treated as an annuity contract:*

*(A) A trust described in section 401(a) which is exempt from tax under section 501(a).*

*(B) A contract—*

*(i) purchased by a trust described in subparagraph (A),*

*(ii) purchased as part of a plan described in section 403(a),*

*(iii) described in section 403(b),*

*(iv) provided for employees of a life insurance company under a plan described in section 818(a)(3), or*

*(v) from an individual retirement account or an individual retirement annuity.*

*(C) A contract purchased by an employer for the benefit of the employee (or the employee’s spouse).*

*Any dividend described in section 404(k) which is received by a participant or beneficiary shall, for purposes of this paragraph, be treated as paid under a separate contract to which subparagraph (B)(i) applies.*

\* \* \* \* \*

**SECTION 769 OF THE RETIREMENT PROTECTION ACT OF 1994**

**SEC. 769. SPECIAL FUNDING RULES FOR CERTAIN PLANS.**

(a) \* \* \*

\* \* \* \* \*

(c) **TRANSITION RULES FOR CERTAIN PLANS.—**

(1) \* \* \*

\* \* \* \* \*

(3) **SPECIAL RULES.—**In the case of plan years beginning in 2004 [and 2005], 2005 and 2006, the following transition rules shall apply in lieu of the transition rules described in paragraph (2):

(A) \* \* \*

\* \* \* \* \*

[Section 121(e)(1) of H.R. 2830 repeals section 769(c). Paragraph (2) of such subsection provides that the amendment shall take effect on December 31, 2006.]

[(c) **TRANSITION RULES FOR CERTAIN PLANS.—**

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

[(A) was not required to pay a variable rate premium for the plan year beginning in 1996;

[(B) has not, in any plan year beginning after 1995 and before 2009, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor); and

[(C) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

except as provided in paragraph (3), the transition rules described in paragraph (2) shall apply for any plan year beginning after 1996 and before 2010.

[(2) TRANSITION RULES.—The transition rules described in this paragraph are as follows:

[(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974—

[(i) the funded current liability percentage for any plan year beginning after 1996 and before 2005 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage is at least 85 percent, and

[(ii) the funded current liability percentage for any plan year beginning after 2004 and before 2010 shall be treated as not less than 90 percent if for such plan year the funded current liability percentage satisfies the minimum percentage determined according to the following table:

<b>[(In the case of a plan year beginning in:</b>	<b>The minimum percentage is:</b>
2005 .....	86 percent
2006 .....	87 percent
2007 .....	88 percent
2008 .....	89 percent
2009 and thereafter .....	90 percent.

[(B) Sections 412(c)(7)(E)(i)(I) of such Code and 302(c)(7)(E)(i)(I) of such Act shall be applied—

[(i) by substituting “85 percent” for “90 percent” for plan years beginning after 1996 and before 2005, and

[(ii) by substituting the minimum percentage specified in the table contained in subparagraph (A)(ii) for “90 percent” for plan years beginning after 2004 and before 2010.

[(C) In the event the funded current liability percentage of a plan is less than 85 percent for any plan year beginning after 1996 and before 2005, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan if contributions for such a plan year are made to the plan in an amount equal to the lesser of—

[(i) the amount necessary to result in a funded current liability percentage of 85 percent, or

[(ii) the greater of—

【(I) 2 percent of the plan’s current liability as of the beginning of such plan year, or

【(II) the amount necessary to result in a funded current liability percentage of 80 percent as of the end of such plan year.

For the plan year beginning in 2005 and for each of the 3 succeeding plan years, the transition rules under subparagraphs (A) and (B) shall continue to apply to the plan for such plan year only if contributions to the plan for such plan year equal at least the expected increase in current liability due to benefits accruing during such plan year.

【(3) SPECIAL RULES.—In the case of plan years beginning in 2004 and 2005, the following transition rules shall apply in lieu of the transition rules described in paragraph (2):

【(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

【(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

【(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.】

\* \* \* \* \*

**EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974**

\* \* \* \* \*

**TITLE IV—PLAN TERMINATION INSURANCE**

**SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION**

\* \* \* \* \*

**PREMIUM RATES**

**SEC. 4006. (a)(1) \* \* \***

\* \* \* \* \*

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

【(i) in the case of a single-employer plan, for plan years beginning after December 31, 1990, an amount equal to the sum of \$19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;】

*(i) in the case of a single-employer plan, an amount equal to—*



(I) for plan years beginning after December 31, 1990, and before January 1, 2006, \$19, or  
 (II) for plan years beginning after December 31, 2005, the amount determined under subparagraph (F), plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

\* \* \* \* \*  
 (E)(i) \* \* \* \* \*  
 \* \* \* \* \*  
 (iii) For purposes of clause (ii)—  
 (I) \* \* \* \* \*

(V) In the case of plan years beginning after December 31, 2003, and before January 1, [2006] 2007, the annual yield taken into account under subclause (II) shall be the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the month in which the plan year begins. For purposes of the preceding sentence, the Secretary of the Treasury shall determine such rate of interest on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the rate, publicly available.

[Section 401(c)(2) of H.R. 2830 repeals clauses (iii)-(iv) of section 4006(a)(3)(E) and inserts a new clause (iii). Subsection (d)(3) provides that the amendment shall take effect on December 31, 2006.]

[(iii) For purposes of clause (ii)—  
 [(I) Except as provided in subclause (II) or (III), the term “unfunded vested benefits” means the amount which would be the unfunded current liability (within the meaning of section 302(d)(8)(A)) if only vested benefits were taken into account.  
 [(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the applicable percentage of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins. For purposes of this subclause, the applicable percentage is 80 percent for plan years beginning before July 1, 1997, 85 percent for plan years beginning after June 30, 1997, and before the 1st plan year to which the first tables prescribed under section 302(d)(7)(C)(ii)(II) apply, and 100 percent for such 1st plan year and subsequent plan years.  
 [(III) In the case of any plan year for which the applicable percentage under subclause (II) is 100 percent, the value of the plan’s assets used in determining unfunded current liability under subclause (I) shall be their fair market value.  
 [(IV) In the case of plan years beginning after December 31, 2001, and before January 1, 2004, subclause (II) shall be applied by substituting “100 percent” for “85 percent”. Subclause (III) shall be applied for such years without re-

gard to the preceding sentence. Any reference to this clause or this subparagraph by any other sections or subsections (other than sections 4005, 4010, 4011, and 4043) shall be treated as a reference to this clause or this subparagraph without regard to this subclause.

[(V) In the case of plan years beginning after December 31, 2003, and before January 1, 2006, the annual yield taken into account under subclause (II) shall be the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the month in which the plan year begins. For purposes of the preceding sentence, the Secretary of the Treasury shall determine such rate of interest on the basis of 2 or more indices that are selected periodically by the Secretary of the Treasury and that are in the top 3 quality levels available. The Secretary of the Treasury shall make the permissible range, and the indices and methodology used to determine the rate, publicly available.]

[(iv) No premium shall be determined under this subparagraph for any plan year if, as of the close of the preceding plan year, contributions to the plan for the preceding plan year were not less than the full funding limitation for the preceding plan year under section 412(c)(7) of the Internal Revenue Code of 1986.]

*(iii)(I) For purposes of clause (ii), except as provided in subclause (II), the term “unfunded vested benefits” means, for a plan year, the amount which would be the plan’s funding shortfall (as defined in section 303(c)(4)), if the value of plan assets of the plan were equal to the fair market value of such assets and only vested benefits were taken into account.*

*(II) The interest rate used in valuing vested benefits for purposes of subclause (I) shall be equal to the first, second, or third segment rate which would be determined under section 303(h)(2)(C) if section 303(h)(2)(D)(i) were applied by substituting “the yields” for “the 3-year weighted average of yields”, as applicable under rules similar to the rules under section 303(h)(2)(B).*

*(F)(i) Except as otherwise provided in this subparagraph, for purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits guaranteed under this title, the amount determined under this subparagraph is the greater of \$30 or the adjusted amount determined under clause (ii).*

*(ii) For plan years beginning after 2006, the adjusted amount determined under this clause is the product derived by multiplying \$30 by the ratio of—*

*(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which the plan year begins, to*

*(II) the national average wage index (as so defined) for 2004, with such product, if not a multiple of \$1, being rounded to the next higher multiple of \$1 where such product is a multiple of \$0.50 but not of \$1, and to the nearest multiple of \$1 in any other case.*

*(iii) For purposes of determining the annual premium rate payable to the corporation by a single-employer plan for basic benefits*

guaranteed under this title for any plan year beginning after 2005 and before 2010—

(I) except as provided in subclause (II), the premium amount referred to in subparagraph (A)(i)(II) for any such plan year is the amount set forth in connection with such plan year in the following table:

<b>If the plan year begins in:</b>	<b>The amount is:</b>
2006 .....	\$21.20
2007 .....	\$23.40
2008 .....	\$25.60
2009 .....	\$27.80; or

(II) if the plan’s funding target attainment percentage for the plan year preceding the current plan year was less than 80 percent, the premium amount referred to in subparagraph (A)(i)(II) for such current plan year is the amount set forth in connection with such current plan year in the following table:

<b>If the plan year begins in:</b>	<b>The amount is:</b>
2006 .....	\$22.67
2007 .....	\$26.33
2008 or 2009 .....	the amount provided under clause (i).

(iv) For purposes of this subparagraph, the term “funding target attainment percentage” has the meaning provided such term in section 303(d)(2).

\* \* \* \* \*

**(7) PREMIUM RATE FOR CERTAIN TERMINATED SINGLE-EMPLOYER PLANS.—**

(A) **IN GENERAL.**—If there is a termination of a single-employer plan under clause (ii) or (iii) of section 4041(c)(2)(B) or section 4042, there shall be payable to the corporation, with respect to each applicable 12-month period, a premium at a rate equal to \$1,250 multiplied by the number of individuals who were participants in the plan immediately before the termination date. Such premium shall be in addition to any other premium under this section.

(B) **SPECIAL RULE FOR PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.**—If the plan is terminated under 4041(c)(2)(B)(ii) or under section 4042 and, as of the termination date, a person who is (as of such date) a contributing sponsor of the plan or a member of such sponsor’s controlled group has filed or has had filed against such person a petition seeking reorganization in a case under title 11 of the United States Code, or under any similar law of a State or a political subdivision of a State (or a case described in section 4041(c)(2)(B)(i) filed by or against such person has been converted, as of such date, to such a case in which reorganization is sought), subparagraph (A) shall not apply to such plan until the date of the discharge of such person in such case.

(C) *APPLICABLE 12-MONTH PERIOD.*—For purposes of subparagraph (A)—

(i) *IN GENERAL.*—The term “applicable 12-month period” means—

(I) the 12-month period beginning with the first month following the month in which the termination date occurs, and

(II) each of the first two 12-month periods immediately following the period described in subclause (I).

(ii) *PLANS TERMINATED IN BANKRUPTCY REORGANIZATION.*—In any case in which the requirements of subparagraph (B) are met in connection with the termination of the plan with respect to 1 or more persons described in such subparagraph, the 12-month period described in clause (i)(I) shall be the 12-month period beginning with the first month following the month which includes the earliest date as of which each such person is discharged in the case described in such clause in connection with such person.

(D) *COORDINATION WITH SECTION 4007.*—

(i) Notwithstanding section 4007—

(I) premiums under this paragraph shall be due within 30 days after the beginning of any applicable 12-month period, and

(II) the designated payor shall be the person who is the contributing sponsor as of immediately before the termination date.

(ii) The fifth sentence of section 4007(a) shall not apply in connection with premiums determined under this paragraph.

\* \* \* \* \*

#### **SEC. 4010. AUTHORITY TO REQUIRE CERTAIN INFORMATION.**

(a) \* \* \*

(b) *PERSONS REQUIRED TO PROVIDE INFORMATION.*—The persons covered by subsection (a) are each contributing sponsor, and each member of a contributing sponsor’s controlled group, of a single-employer plan covered by this title, if—

[(1) the aggregate unfunded vested benefits at the end of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of plans maintained by the contributing sponsor and the members of its controlled group exceed \$50,000,000 (disregarding plans with no unfunded vested benefits);]

(1) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 60 percent;

(2)(A) the aggregate funding target attainment percentage of the plan (as defined in subsection (d)(2)) is less than 75 percent, and

(B) the plan sponsor is in an industry with respect to which the corporation determines that there is substantial unemployment or underemployment and the sales and profits are depressed or declining;

[(2)] (3) the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of this Act or section 412(n)(1)(A) and (B) of the Internal Revenue Code of 1986 have been met

with respect to any plan maintained by the contributing sponsor or any member of its controlled group; or

~~[(3)]~~ (4) minimum funding waivers in excess of \$1,000,000 have been granted with respect to any plan maintained by the contributing sponsor or any member of its controlled group, and any portion thereof is still outstanding.

\* \* \* \* \*

(d) *NOTICE TO PARTICIPANTS AND BENEFICIARIES.*—

(1) *IN GENERAL.*—Not later than 90 days after the submission by any person to the corporation of information or documentary material with respect to any plan pursuant to subsection (a), such person shall provide notice of such submission to each participant and beneficiary under the plan (and under all plans maintained by members of the controlled group of each contributing sponsor of the plan). Such notice shall also set forth—

(A) the number of single-employer plans covered by this title which are in at-risk status and are maintained by contributing sponsors of such plan (and by members of their controlled groups) with respect to which the funding target attainment percentage for the preceding plan year of each plan is less than 60 percent;

(B) the value of the assets of each of the plans described in subparagraph (A) for the plan year, the funding target for each of such plans for the plan year, and the funding target attainment percentage of each of such plans for the plan year; and

(C) taking into account all single-employer plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year—

(i) the aggregate total of the values of plan assets of such plans as of the end of such plan year,

(ii) the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right, and

(iii) the aggregate funding targets attainment percentage with respect to the contributing sponsor for the preceding plan year.

(2) *DEFINITIONS.*—For purposes of this subsection—

(A) *VALUE OF PLAN ASSETS.*—The term “value of plan assets” means the value of plan assets, as determined under section 303(g)(3).

(B) *FUNDING TARGET.*—The term “funding target” has the meaning provided under section 303(d)(1).

(C) *FUNDING TARGET ATTAINMENT PERCENTAGE.*—The term “funding target attainment percentage” has the meaning provided in section 303(d)(2).

(D) *AGGREGATE FUNDING TARGETS ATTAINMENT PERCENTAGE.*—The term “aggregate funding targets attainment percentage” with respect to a contributing sponsor for a plan year is the percentage, taking into account all plans maintained by the contributing sponsor and the members of its controlled group as of the end of such plan year, which

(i) the aggregate total of the values of plan assets, as of the end of such plan year, of such plans, is of

(ii) *the aggregate total of the funding targets of such plans, as of the end of such plan year, taking into account only benefits to which participants and beneficiaries have a nonforfeitable right.*

(E) *AT-RISK STATUS.*—*The term “at-risk status” has the meaning provided in section 303(i)(3).*

(3) *COMPLIANCE.*—

(A) *IN GENERAL.*—*Any notice required to be provided under paragraph (1) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to individuals to whom the information is required to be provided.*

(B) *LIMITATIONS.*—*In no case shall a participant or beneficiary be entitled under this subsection to receive more than one notice described in paragraph (1) during any one 12-month period. The person required to provide such notice may make a reasonable charge to cover copying, mailing, and other costs of furnishing such notice pursuant to paragraph (1). The corporation may by regulations prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.*

(4) *NOTICE TO CONGRESS.*—*Concurrent with the provision of any notice under paragraph (1), such person shall provide such notice to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate, which shall be treated as materials provided in executive session.*

\* \* \* \* \*

## VII. DISSENTING VIEWS

We recognize that legislation to strengthen the defined benefit retirement system is in order. Millions of American workers rely on those pension benefits. We should ensure that the pension promises made to those workers are kept. However, we cannot support the legislation reported by the Committee, and the reasons for our opposition can be stated quite simply.

### THE COMMITTEE BILL WOULD ENDANGER THE RETIREMENT SECURITY OF MILLIONS OF AMERICANS

The Committee bill contains a large number of technical changes to the funding rules applicable to defined benefit pension plans. These changes would have the effect of changing how the liabilities under the pension plan are valued, how the assets of the plan are invested, when the required contributions are made to the plan, and the accounting for those contributions. These changes are very technical and difficult to understand. We believe that these changes would result in lower pension benefits for millions of Americans. We believe that many companies would either freeze or terminate their plans because of these changes.

We are not alone in reaching that conclusion. The Committee on Investment of Employees Benefits Assets (an association of the Chief Investment Officers of many of the nation's largest corporate pension plans) concluded that proposals similar to those reported by the Committee would "have long-term consequences for current and future workers, with the potential to damage the retirement security of millions of Americans." According to a survey of their members (representing pension plans covering 5 million participants), it would be likely or highly likely that approximately 60% of those pension plans would reduce benefits to current or future workers if the Committee bill became law. These are not plans of financially troubled companies where the managers expect the plan to be terminated because of business conditions. These are adequately-funded ongoing plans that will reduce benefits if the Committee bill becomes law.

The first rule for any effective legislation is "do not harm". The Committee bill fails to meet this standard.

### THE COMMITTEE BILL WILL DO LITTLE TO STOP COMPANIES FROM DUMPING THEIR PENSION PLANS IN BANKRUPTCY

We have seen a large number of companies use the bankruptcy laws to dump their pension liabilities on the Pension Benefit Guaranty Corporation (PBGC). The PBGC is at present juggling a record 350 plans in bankruptcy. A Wall Street stock analyst stated "bankruptcy has become a management tool these days". As a result, the PBGC faces large unfunded liabilities and a current deficit

of more than \$23 billion. Also, millions of Americans have seen their pension benefits being reduced in bankruptcy.

Unless the Congress acts, there could be rush to the bottom as companies figure out how to use bankruptcy to shed their pension obligations. Companies who have successfully used the bankruptcy process to rid themselves of pension liabilities have emerged with cost advantages over their competitors who have not so used the bankruptcy system. As a result, if this bill becomes law, there would be increasing pressure on other companies to seek these cost-cutting measures in bankruptcy.

The Committee bill does little in this area to curb this practice. Congressman McDermott offered a substitute that would have taken steps to reduce the incentives for bankruptcy filings. The substitute was defeated by unanimous vote of the Republican Members of the Committee

#### THE COMMITTEE BILL WORSENS PBGC'S LIABILITIES

The PBGC, in a series of briefings with lawmakers, has consistently maintained that it would be better off under current law than the Committee bill.

The purpose of this legislation should be to strengthen the security of pensions and reduce future terminations of employer provided pension plans. Even the Administration officials that were present during the Committee markup conceded that the bill did not meet that goal. These officials stated that their analysis concluded that the Committee bill would not affect the number of plans that would be terminated in the future nor the unfunded liabilities that would be shifted to the PBGC. Therefore, we can conclude that the bill would not make worker's pensions more secure.

#### THE COMMITTEE BILL IS ANOTHER UNAFFORDABLE TAX CUT

The Committee bill would cost \$70 billion over the next 10 years. Only approximately \$5 billion of that revenue cost is attributable to the provisions that relate to defined benefit pension plans. This demonstrates that the bill is not about securing the pension benefits of workers within the defined benefit system.

During the markup there was no response to Congressman Levin's question of how the bill would be paid for. In fact, the Committee bill is another unfunded tax cut, the cost of which will be met by borrowing, largely from foreign investors.

#### THE COMMITTEE BILL PREVENTS ACTION ON ISSUES REQUIRING IMMEDIATE ACTION

Congress has permitted companies to use a corporate bond rate rather than the 30-year Treasury Bond rate, on a temporary basis, to calculate their pension liabilities. That temporary relief was required given the fact that the Treasury Department had stopped issuing 30-year bonds. The temporary relief terminates at the end of this calendar year, and everyone concedes that it should be extended.

Rather than immediately act on this issue, the Republican majority has decided to hold it hostage to force action on their overreaching pension legislation. The Republican majority on the Com-



mittee unanimously rejected the substitute offered by Mr. McDermott that would have permitted prompt action on this issue.

CONCLUSION

We believe there is still an opportunity to do the right thing for American workers. We are willing to work in a bipartisan manner to pass legislation that would protect the security of our pension system and the more than 34 million workers it serves.

CHARLES B. RANGEL.  
JIM McDERMOTT.  
RAHM EMANUEL.  
WM. J. JEFFERSON.  
STEPHANIE TUBBS JONES.  
XAVIER BECERRA.  
BEN CARDIN.  
SANDER LEVIN.  
JOHN B. LARSON.  
JOHN LEWIS.  
EARL POMEROY.  
PETE STARK.  
MIKE THOMPSON.  
RICHARD E. NEAL.  
JOHN TANNER.

