

110TH CONGRESS
2D SESSION

H. R. 6143

To make technical corrections to the Pension Protection Act of 2006 relating to the Employee Retirement Income Security Act of 1974, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2008

Mr. ANDREWS (for himself and Mr. GEORGE MILLER of California) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To make technical corrections to the Pension Protection Act of 2006 relating to the Employee Retirement Income Security Act of 1974, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pension Protection Act ERISA Amendments of 2008”.

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

Sec. 1. Short title and table of contents.

TITLE I—WORKER PROTECTION MODIFICATIONS

- Sec. 101. Repeal of new rules for termination date in the case of bankruptcy of employer.
- Sec. 102. Age requirement for commercial airline pilots.
- Sec. 103. Pro-Rata Recovery under ERISA.
- Sec. 104. Correction of effective dates for collectively bargained plans.
- Sec. 105. Retiree health benefit protections in group health plans.

TITLE II—MULTIEMPLOYER MODIFICATIONS

- Sec. 201. Crediting and termination of surcharges in connection with multiemployer plan in critical status upon adoption of rehabilitation plan.
- Sec. 202. Schedules required to be provided by multiemployer plans in endangered status.
- Sec. 203. Amendments to funding rules for multiemployer plans.

TITLE III—SINGLE-EMPLOYER MODIFICATIONS

- Sec. 301. Asset smoothing.
- Sec. 302. Prohibited payments.
- Sec. 303. Clarification of age discrimination rules in connection with the Young Women's Christian Association Pension Plan.
- Sec. 304. Prohibited transactions exemption for divestment of employer securities.
- Sec. 305. Special rule relating to at-risk status for employees offered early retirement in 2006 or 2007.
- Sec. 306. Phase-in of funding target.

TITLE IV—SMALL EMPLOYER MODIFICATIONS

- Sec. 401. Treatment of employees of certain cooperatives as affiliated service group employees.

TITLE V—PROHIBITED TRANSACTIONS MODIFICATIONS

- Sec. 501. Clarification of parties in interest affected by prohibited transaction exemption for block trading.
- Sec. 502. Clarification of scope of prohibited transaction exemption for electronic communication networks.
- Sec. 503. Increase in maximum bond amount for plans holding employer securities.

1 **TITLE I—WORKER PROTECTION**
2 **MODIFICATIONS**

3 **SEC. 101. REPEAL OF NEW RULES FOR TERMINATION DATE**
4 **IN THE CASE OF BANKRUPTCY OF EM-**
5 **PLOYER.**

6 (a) IN GENERAL.—Section 404 of the Pension Pro-
7 tection Act of 2006 (Public Law 109–280; 120 Stat. 928)
8 (including the amendments made thereby) is hereby re-
9 pealed.

10 (b) EFFECTIVE DATE.—Subsection (a) shall be effec-
11 tive as if included in the enactment of the Pension Protec-
12 tion Act of 2006.

13 **SEC. 102. AGE REQUIREMENT FOR COMMERCIAL AIRLINE**
14 **PILOTS.**

15 (a) SINGLE-EMPLOYER PLAN BENEFITS GUARAN-
16 TEED.—Section 4022(b)(3) of the Employee Retirement
17 Income Security Act of 1974 (29 U.S.C. 1322(b)(3)) is
18 amended, in the flush matter following subparagraph (B),
19 by adding at the end the following: “If, at the time of
20 termination of a plan under this title or at the time of
21 the freezing of benefit accruals under a plan pursuant to
22 subsections (a)(1) and (b) of section 402 of the Pension
23 Protection Act of 2006, regulations prescribed by the Fed-
24 eral Aviation Administration require an individual to sepa-
25 rate from service as a commercial airline pilot after attain-

1 ing a specified age which is less than age 65, the first
2 sentence of this paragraph shall be applied to an indi-
3 vidual who is a participant in the plan by reason of such
4 service by substituting such age for age 65.”.

5 (b) AGGREGATE LIMIT ON BENEFITS GUARAN-
6 TEED.—Section 4022B(a) of such Act (29 U.S.C.
7 1322b(a)) is amended by adding at the end the following:
8 “If, at the time of termination of a plan under this title
9 or at the time of the freezing of benefit accruals under
10 a plan pursuant to subsections (a)(1) and (b) of section
11 402 of the Pension Protection Act of 2006, regulations
12 prescribed by the Federal Aviation Administration require
13 an individual to separate from service as a commercial air-
14 line pilot after attaining a specified age which is less than
15 age 65, this subsection shall be applied to an individual
16 who is a participant in the plan by reason of such service
17 by substituting such age for age 65.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to benefits payable on or after the
20 date of the enactment of this Act.

21 **SEC. 103. PRO-RATA RECOVERY UNDER ERISA.**

22 (a) IN GENERAL.—Section 502 of the Employee Re-
23 tirement Income Security Act of 1974 (29 U.S.C. 1132)
24 is amended—

1 (1) in subsection (a)(3)(B)(ii), by inserting
2 “subject to subsection (b)(4)” before “the terms of
3 the plan”; and

4 (2) in subsection (b), by adding at the end the
5 following new paragraph:

6 “(4)(A) No action by a fiduciary under subsection
7 (a)(3)(B)(ii) to enforce subrogation rights under the terms
8 of the plan which is brought against a third party to seek
9 reimbursement from a recovery by a participant or bene-
10 ficiary may result in recovery by the fiduciary of an
11 amount that is greater than an amount that bears the
12 same ratio to the recovery by the participant or beneficiary
13 as the amount of the net tort recovery by the participant
14 or beneficiary bears to the total compensatory damages
15 awarded to the participant or beneficiary.

16 “(B) In an action described in subparagraph (A), any
17 subrogation claim of the fiduciary as calculated pursuant
18 to subparagraph (A) shall be reduced by an amount that
19 is equal to the percentage that the costs of the tort recov-
20 ery bear to the total sum upon which the costs of the tort
21 recovery are computed.”.

22 (b) EFFECTIVE DATE.—The amendments made by
23 subsection (a) shall apply with respect to actions (de-
24 scribed in section 502(b)(4) of the Employee Retirement
25 Income Security Act of 1974 as amended by subsection

1 (a) commenced on or after the date of the enactment of
2 this Act.

3 **SEC. 104. CORRECTION OF EFFECTIVE DATES FOR COLLEC-**
4 **TIVELY BARGAINED PLANS.**

5 (a) PERIODIC PENSION BENEFIT STATEMENTS.—
6 Section 508(c)(2) of the Pension Protection Act of 2006
7 (Public Law 109–280; 120 Stat. 952) is amended—

8 (1) by striking “paragraph (1) shall be applied
9 to benefits pursuant to, and individuals covered by,
10 any such agreement by substituting for ‘December
11 31, 2006’ the earlier of” and inserting “the amend-
12 ments made by this section shall not apply to plan
13 years beginning before the earlier of”; and

14 (2) in subparagraph (A)(i), by striking “Decem-
15 ber 31, 2007” and inserting “December 31, 2006”.

16 (b) REQUIREMENTS FOR EMPLOYER STOCK DIVER-
17 SIFICATION.—Section 901(c)(2) of the Pension Protection
18 Act of 2006 (Public Law 109–280; 120 Stat. 1032) is
19 amended—

20 (1) by striking “paragraph (1) shall be applied
21 to benefits pursuant to, and individuals covered by,
22 any such agreement by substituting for ‘December
23 31, 2006’ the earlier of” and inserting “the amend-
24 ments made by this section shall not apply to plan
25 years beginning before the earlier of”; and

1 (2) in subparagraph (A)(i), by striking “Decem-
2 ber 31, 2007” and inserting “December 31, 2006”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply as if included in the enactment
5 of the Pension Protection Act of 2006.

6 **SEC. 105. RETIREE HEALTH BENEFIT PROTECTIONS IN**
7 **GROUP HEALTH PLANS.**

8 (a) AMENDMENTS TO ERISA.—

9 (1) IN GENERAL.—Subtitle B of title I of the
10 Employee Retirement Income Security Act of 1974
11 is amended by adding at the end a new part 8 as
12 follows:

13 **“PART 8—EMERGENCY RETIREE HEALTH**
14 **BENEFIT PROTECTIONS**

15 **“SEC. 801. PROHIBITION AGAINST POST-RETIREMENT RE-**
16 **DUCTIONS OF RETIREE HEALTH BENEFITS**
17 **BY GROUP HEALTH PLANS.**

18 “(a) IN GENERAL.—Notwithstanding that a group
19 health plan described in subsection (b) may contain a pro-
20 vision reserving the general power to amend or terminate
21 the plan or a provision specifically authorizing the plan
22 to make post-retirement reductions in retiree health bene-
23 fits, it shall be prohibited for any group health plan,
24 whether through amendment or otherwise, to reduce the
25 benefits provided to a retired participant or his or her ben-

1 beneficiary under the terms of the plan if such reduction of
2 benefits occurs after the date the participant retired for
3 purposes of the plan and reduces benefits that were pro-
4 vided to the participant, or his or her beneficiary, as of
5 the date the participant retired. Any group health plan
6 provision which purports to authorize the reduction of
7 benefits in a manner inconsistent with the foregoing prohi-
8 bition shall be void as against public policy.

9 “(b) GROUP HEALTH PLAN.—The term ‘group
10 health plan’ shall have the same meaning as in section
11 607(1).

12 “(c) PROHIBITED REDUCTION OF BENEFITS.—As
13 used in this section, references to a prohibited reduction
14 of benefits means any group health plan amendment or
15 other action which has the effect of—

16 “(1) canceling, decreasing or limiting the
17 amount, type, level, or form of any benefit or option
18 provided prior to the amendment or action;

19 “(2) imposing or increasing the out-of-pocket
20 costs a retired participant, or his or her beneficiary,
21 must pay in order to keep or obtain any benefits
22 that were provided to the participant or beneficiary
23 prior to the amendment or action; or

24 “(3) modifying the manner by which medical
25 services are delivered under the plan so that after

1 the amendment or action a retired participant, or
2 his or her beneficiary, has less ready access to the
3 delivery of any such medical services than the partic-
4 ipant or beneficiary had prior to the amendment or
5 action.

6 “(d) TREATMENT OF PLAN TERMINATION.—

7 “(1) IN GENERAL.—Subject to paragraph (2), a
8 termination of a group health plan shall be treated
9 as violating the prohibition contained in this section
10 if, after the termination, the plan sponsor of the ter-
11 minated plan fails to continue to provide to the par-
12 ticipants who retired prior to the termination and to
13 their beneficiaries the same retiree health benefits
14 that were provided prior to the termination.

15 “(2) WAIVER.—Paragraph (1) shall not apply
16 in the case of the termination of a group health plan
17 if the Secretary issues a waiver under this para-
18 graph in connection with such termination. The Sec-
19 retary shall issue such a waiver if and only if the
20 plan sponsor demonstrates to the satisfaction of the
21 Secretary, in accordance with regulations prescribed
22 by the Secretary, that such plan sponsor will be un-
23 able to continue in business unless such a waiver is
24 issued.

1 “(e) CONSENT OR AUTHORIZATION BY PARTICI-
2 PANT.—A reduction of benefits shall not be treated as pro-
3 hibited by this section if such reduction is consented to
4 in writing by any retired participant or is authorized with
5 respect to the retired participant under the terms of one
6 or more agreements which the Secretary finds to be collec-
7 tive bargaining agreements between one or more employee
8 representatives who were representing such participant at
9 the time of the entry into such agreement and one or more
10 employers.

11 **“SEC. 802. ADOPTION BY GROUP HEALTH PLANS OF PROVI-**
12 **SION BARRING POST-RETIREMENT REDUC-**
13 **TIONS IN RETIREE HEALTH BENEFITS.**

14 “Every group health plan shall contain a provision
15 which expressly bars the plan, or any fiduciary of the plan,
16 from reducing the benefits provided under the plan to a
17 retired participant, or his or her beneficiary, if such reduc-
18 tion affects the benefits provided to the participant or ben-
19 eficiary as of the date the participant retired for purposes
20 of the plan and such reduction occurs after the partici-
21 pant’s retirement.

22 **“SEC. 803. RESTORATION BY GROUP HEALTH PLANS OF**
23 **BENEFITS REDUCED AFTER RETIREMENT.**

24 “(a) IN GENERAL.—The plan sponsor of each group
25 health plan shall provide, in accordance with this section,

1 the option of benefit restoration to each retired participant
2 that meets the following requirements:

3 “(1) The retired participant is entitled to ben-
4 efit coverage under the plan as of the date of enact-
5 ment of the Emergency Retiree Health Benefits Pro-
6 tection Act of 2007.

7 “(2) The amount, type, level, or form of any
8 benefits or option provided to the retired participant
9 under the plan as of the date the participant retired
10 was reduced after the participant’s date of retire-
11 ment. For purposes of the preceding sentence, the
12 term ‘reduced’ has the same meaning as in section
13 801(c).

14 “(3) The retired participant has elected to re-
15 store benefits under the plan within the restoration
16 period prescribed by subsection (c) and in accord-
17 ance with such procedures established by the plan
18 pursuant to regulations of the Secretary.

19 “(b) EXCEPTION FOR CERTAIN PLANS.—In accord-
20 ance with regulations prescribed by the Secretary, sub-
21 section (a) shall not apply to any group health plan with
22 less than 100 participants both on and after the date of
23 enactment of the Emergency Retiree Health Benefits Pro-
24 tection Act of 2007.

1 “(c) RESTORATION PERIOD.—The term ‘restoration
2 period’ means the period which—

3 “(1) begins not later than 1 year after the date
4 of enactment of the Emergency Retiree Health Ben-
5 efits Protection Act of 2007;

6 “(2) ends before 2 years from such date, unless
7 extended by the Secretary pursuant to section
8 804(g); and

9 “(3) is of no less than 60 days duration.

10 “(d) NOTICE REQUIREMENTS CONCERNING RES-
11 TORATION OF BENEFITS.—In accordance with regulations
12 prescribed by the Secretary, each group health plan sub-
13 ject to the requirements of subsection (a) shall, within no
14 less than 30 days prior to the commencement of the plan’s
15 restoration of benefits period, provide written notice to
16 each retired participant of the plan who meets the require-
17 ments of subsection (a) of the following:

18 “(1) A description of all benefits the retired
19 participant is entitled to have restored.

20 “(2) The administrative procedure established
21 under the plan which may be used to submit a claim
22 for the restoration of any benefits.

23 “(3) An itemization of the value of each benefit
24 the retired participant is entitled to have restored,

1 as determined in accordance with regulations of the
2 Secretary, and the total value of all such benefits.

3 “(4) A description of any post-retirement in-
4 creases in retiree health benefits the retired partici-
5 pant received which the plan sponsor could rescind
6 if the retired participant asserts a claim for the res-
7 toration of benefits.

8 “(5) An itemization of the value of each retiree
9 health benefit the plan sponsor could rescind, as de-
10 termined in accordance with regulations of the Sec-
11 retary, and the total value of all such benefits.

12 “(6) If the plan sponsor has filed an application
13 for a substantial business hardship exemption under
14 section 804, the date such application was filed, the
15 date notice of such application was given to retired
16 participants entitled to submit a claim for the res-
17 toration of benefits, and the status of such applica-
18 tion as of the date of the notice sent pursuant to
19 this subsection.

20 “(7) Such other information in such form and
21 detail as may be prescribed by the Secretary to carry
22 out the purposes of this part.

23 “(e) DEADLINE FOR RESTORATION OF BENEFITS.—
24 Regardless of any extension that may be granted by the
25 Secretary pursuant to section 804(g), all benefits required

1 to be restored under this section shall be restored within
2 no more than 3 years from the date of enactment of the
3 Emergency Retiree Health Benefits Protection Act of
4 2007, or the date the plan sponsor files an application for
5 an exemption under section 804, whichever comes last.

6 **“SEC. 804. EXEMPTION FROM RESTORATION OF BENEFITS**
7 **REQUIREMENTS.**

8 “(a) APPLICATION FOR EXEMPTION.—Any plan
9 sponsor of a group health plan that would sustain substan-
10 tial business hardship if required to fulfill, in whole or in
11 part, the restoration of benefits requirements contained in
12 section 803, may file an application for an exemption with
13 the Secretary from any or all of such requirements.

14 “(b) AUTHORITY FOR WAIVER OR VARIANCE.—In re-
15 sponse to an application filed by a plan sponsor pursuant
16 to subsection (a), the Secretary may waive or vary the re-
17 quirements of section 803 with respect to any or all of
18 such requirements, including postponing for reasonable
19 periods of time the obligation of the plan sponsor to re-
20 store reduced benefits, if the Secretary finds that compli-
21 ance by the plan sponsor with the requirements of section
22 803 would—

23 “(1) be adverse to the interests of plan partici-
24 pants in the aggregate;

25 “(2) not be administratively feasible; and

1 “(3) cause substantial business hardship to the
2 plan sponsor.

3 “(c) FACTORS TAKEN INTO ACCOUNT.—For pur-
4 poses of this section, the factors to be taken into account
5 in determining substantial business hardship shall include
6 (but shall not be limited to) whether—

7 “(1) the plan sponsor is operating at an eco-
8 nomic loss;

9 “(2) compliance with the restoration of benefits
10 requirements would necessitate substantial future re-
11 ductions in health benefits provided to participants
12 under the plan or cause a substantial decline in em-
13 ployment with the plan sponsor;

14 “(3) it is reasonable to expect that the plan will
15 be continued only if a waiver or appropriate variance
16 is granted; and

17 “(4) the provisions of the Retiree Health Loan
18 Guarantee Program established under section 805
19 are unavailable to the plan sponsor submitting the
20 application, or, if available, still would not provide a
21 sufficient basis for denying a waiver or variance.

22 “(d) REQUIREMENT OF SATISFACTORY EVIDENCE.—

23 “(1) IN GENERAL.—The Secretary shall, before
24 granting a waiver or variance under this section, re-
25 quire each applicant to provide evidence satisfactory

1 to the Secretary that the applicant has provided
2 timely written notice of the filing of an application
3 for such waiver or variance to each retired partici-
4 pant entitled to submit a claim for the restoration
5 of benefits under the applicant’s plan.

6 “(2) TIMELINESS.—For purposes of paragraph
7 (1), a written notice shall be considered timely if it
8 is provided not later than 60 days prior to the date
9 the plan sponsor files an application for a waiver or
10 variance under this section.

11 “(3) INFORMATION REQUIRED.—The notice re-
12 ferred to in paragraph (1) shall include information
13 with respect to the specific relief that will be sought
14 by the plan sponsor’s application, the period of time
15 for which relief is sought, and such other relevant
16 information as the Secretary may prescribe.

17 “(e) PARTICIPATION IN PROCEEDINGS BY RETIRED
18 PLAN PARTICIPANTS.—Each retired participant entitled
19 to submit a claim for the restoration of benefits within
20 the meaning of this section shall be provided a reasonable
21 opportunity to submit comments or otherwise participate
22 in any proceeding established by the Secretary to deter-
23 mine whether to grant or deny an application for a waiver
24 or variance filed by the retired participant’s plan sponsor.

1 “(f) EXCEPTION FOR CERTAIN APPLICATIONS.—The
2 Secretary shall not be authorized to grant any application
3 for a waiver or variance purporting to satisfy the require-
4 ments of subsection (b) if—

5 “(1) within the 5-year period preceding the date
6 of the plan sponsor’s application the plan sponsor
7 could have transferred excess pension assets to a
8 health benefits account within the meaning of sec-
9 tion 420 of the Internal Revenue Code of 1986 (as
10 in effect on the date of the enactment of the Tax
11 Relief Extension Act of 1999) but failed to do so,
12 and the plan sponsor is submitting an application on
13 behalf of such retiree health account; or

14 “(2) the plan sponsor submitting the applica-
15 tion also maintains a fully funded pension plan with
16 respect to which—

17 “(A) retired participants eligible to submit
18 a claim for the restoration of benefits under
19 section 803 are also eligible to receive ad hoc
20 cost-of-living adjustment benefits;

21 “(B) the assets of the fully funded pension
22 plan, over the past 5 years preceding the date
23 of application for a waiver or variance, on aver-
24 age have exceeded 120 percent of the plan’s li-
25 abilities;

1 “(1) BOARD.—The term ‘Board’ means the
2 Emergency Retiree Health Loan Guarantee Board
3 established under subsection (c).

4 “(2) PROGRAM.—The term ‘Program’ means
5 the Emergency Retiree Health Loan Guarantee Pro-
6 gram established under subsection (b).

7 “(3) ELIGIBLE PLAN SPONSOR.—The term ‘eli-
8 gible plan sponsor’ means any plan sponsor as de-
9 fined in section 3(16)(B) that maintains a group
10 health plan subject to the retiree health benefits res-
11 toration requirements of section 803.

12 “(b) ESTABLISHMENT OF EMERGENCY RETIREE
13 HEALTH LOAN GUARANTEE PROGRAM.—There is estab-
14 lished the Retiree Health Loan Guarantee Program, to be
15 administered by the Board, the purpose of which is to pro-
16 vide loan guarantees to eligible plan sponsors in accord-
17 ance with this section.

18 “(c) RETIREE HEALTH LOAN GUARANTEE BOARD
19 MEMBERSHIP.—There is established a Retiree Health
20 Loan Guarantee Board, which shall be composed of—

21 “(1) the Secretary of Labor, who shall serve as
22 Chairman of the Board;

23 “(2) the Secretary of Commerce;

24 “(3) the Secretary of the Treasury;

1 “(4) the Secretary of Health and Human Serv-
2 ices; and

3 “(5) the Chairman of the Council of Economic
4 Advisers.

5 “(d) RETIREE HEALTH LOAN GUARANTEE PRO-
6 GRAM.—

7 “(1) AUTHORITY.—The Program may guar-
8 antee loans provided by private banking and invest-
9 ment institutions to eligible plan sponsors for pur-
10 poses of assisting such plan sponsors to meet their
11 obligations under section 803. Such loan guarantees
12 shall be provided to the extent provided in advance
13 in appropriation Acts pursuant to paragraph (4) and
14 only in accordance with the procedures, rules, and
15 regulations established by the Board.

16 “(2) TOTAL GUARANTEE LIMIT.—The aggre-
17 gate amount of loans guaranteed and outstanding at
18 any time under this section may not exceed
19 \$5,000,000,000.

20 “(3) INDIVIDUAL GUARANTEE LIMIT.—The ag-
21 gregate amount of loans guaranteed under this sec-
22 tion with respect to a single eligible plan sponsor
23 may not exceed \$5,000,000.

24 “(4) ADDITIONAL COSTS.—For the additional
25 cost of loans guaranteed under this subsection, in-

1 including the costs of modifying the loans, as defined
2 in section 502 of the Congressional Budget Act of
3 1974 (2 U.S.C. 661a), there is authorized to be ap-
4 propriated \$200,000,000, to remain available until
5 expended.

6 “(e) REQUIREMENTS FOR LOAN GUARANTEES.—A
7 loan guarantee may be issued under this section upon ap-
8 plication to the Board by an eligible plan sponsor pursuant
9 to an agreement to provide a loan to that eligible plan
10 sponsor by a private bank or investment company, if the
11 Board determines that—

12 “(1) credit is not otherwise available to that eli-
13 gible plan sponsor under reasonable terms and con-
14 ditions sufficient to meet its financing needs with re-
15 spect to the restoration of retiree health benefits, as
16 reflected in the financial and business plans of that
17 eligible plan sponsor;

18 “(2) the prospective earning power of that eligi-
19 ble plan sponsor, together with the character and
20 value of the security pledged, furnish reasonable as-
21 surance of repayment of the loan to be guaranteed
22 in accordance with its terms;

23 “(3) the loan to be guaranteed bears interest at
24 a rate determined by the Board to be reasonable,
25 taking into account the current average yield on out-

1 standing obligations of the United States with re-
2 maining periods of maturity comparable to the ma-
3 turity of such loan;

4 “(4) the loan to be guaranteed will materially
5 assist that eligible plan sponsor to discharge its obli-
6 gation to comply with the restoration of benefits re-
7 quirements contained in section 803; and

8 “(5) the eligible plan sponsor has agreed to an
9 audit by the Government Accountability Office prior
10 to the issuance of the loan guarantee and annually
11 while any such guaranteed loan is outstanding.

12 “(f) TERMS AND CONDITIONS OF LOAN GUAR-
13 ANTEE.—

14 “(1) LOAN DURATION.—All loans guaranteed
15 under this section shall be payable in full not later
16 than December 31, 2015, and the terms and condi-
17 tions of each such loan shall provide that the loan
18 may not be amended or any provision thereof waived
19 without the consent of the Board.

20 “(2) LOAN SECURITY.—Any commitment to
21 issue a loan guarantee under this section shall con-
22 tain such affirmative and negative covenants and
23 other protective provisions that the Board deter-
24 mines are appropriate.

1 “(3) FEES.—An eligible plan sponsor receiving
2 a guarantee under this section shall pay a fee in an
3 amount equal to 0.5 percent of the outstanding prin-
4 cipal balance of the guaranteed loan to the Depart-
5 ment of the Treasury.

6 “(g) REPORTS TO CONGRESS.—The Secretary of
7 Labor shall submit annually to each House of the Con-
8 gress a full report of the activities of the Board under
9 this section during 2008 and 2009, and annually there-
10 after during such period as any loan guaranteed under
11 this section is outstanding. Such report shall be submitted
12 not later than January 31 of each year (beginning in
13 2008).

14 “(h) SALARIES AND ADMINISTRATIVE EXPENSES.—
15 For necessary expenses to administer the Program, there
16 is authorized to be appropriated to the Department of
17 Labor (and to be transferred to the Office of the Assistant
18 Secretary for Pension and Welfare Benefits Administra-
19 tion) \$10,000,000, to remain available until expended.

20 “(i) TERMINATION OF GUARANTEE AUTHORITY.—
21 The authority of the Board to make commitments to guar-
22 antee any loan under this section shall terminate on De-
23 cember 31, 2013.

24 “(j) REGULATORY ACTION.—The Board shall issue
25 such final procedures, rules, and regulations as may be

1 necessary to carry out this section not later than 90 days
2 after the date of enactment of the Emergency Retiree
3 Health Benefits Protection Act of 2007. In no event shall
4 the Board issue a procedure, rule, or regulation which au-
5 thorizes it to approve or deny any application for a loan
6 guarantee in more than 270 days after receipt of such ap-
7 plication.

8 “(k) EMERGENCY DESIGNATION.—The entire
9 amount made available to carry out this section—

10 “(1) is designated by Congress as an emergency
11 requirement pursuant to section 251(b)(2)(A) of the
12 Balanced Budget and Emergency Deficit Control
13 Act of 1985 (2 U.S.C. 901(b)(2)(A)); and

14 “(2) shall be available only to the extent that
15 an official budget request that includes designation
16 of the entire amount as an emergency requirement
17 (as defined in the Balanced Budget and Emergency
18 Deficit Control Act of 1985) is transmitted by the
19 President to the Congress.

20 **“SEC. 806. EFFECT ON OTHER CLAIMS.**

21 “(a) OTHER CLAIMS UNAFFECTED.—Nothing con-
22 tained in this part shall be construed to alter, impair, or
23 eliminate any claim for retiree health benefits based on
24 conduct alleged to violate the terms of a group health plan,
25 any provision of this Act (other than this part), or both,

1 regardless of whether such conduct occurred prior to, on,
2 or after, the effective date of this part.

3 “(b) OTHER CAUSES OF ACTION NOT AUTHOR-
4 IZED.—Unless the conduct giving rise to a claim for re-
5 tiree health benefits is alleged to violate the provisions of
6 this part, nothing contained in this part shall be construed
7 to authorize any other cause of action for the recovery of
8 retiree health benefits.

9 **“SEC. 807. REGULATIONS.**

10 “The Secretary may promulgate such regulations as
11 may be necessary to carry out the provisions of this part.
12 The Secretary may promulgate any interim final rules as
13 the Secretary deems are appropriate to carry out this part.

14 **“SEC. 808. ENFORCEMENT.**

15 “The enforcement provisions of sections 501 and 502
16 shall be applicable to this part.”.

17 (2) CIVIL PENALTY SECTION.—Section 502(c)
18 of the Employee Retirement Income Security Act of
19 1974 (29 U.S.C. 1132(e)) is amended—

20 (A) by redesignating paragraph (9) as
21 paragraph (10); and

22 (B) by inserting after paragraph (8) the
23 following new paragraph:

24 “(9) The Secretary may assess a civil penalty of not
25 more than \$1,000 for each separate violation of section

1 801, 802, or 803 by any person individually with respect
 2 to each participant or beneficiary aggrieved by such viola-
 3 tion.”.

4 (3) CONFORMING AMENDMENT.—The table of
 5 contents in section 1 of such Act is amended by in-
 6 serting after the item relating to section 734 the fol-
 7 lowing new items:

“PART 8—EMERGENCY RETIREE HEALTH BENEFIT PROTECTIONS

“Sec. 801. Prohibition against post-retirement reductions of retiree health ben-
 efits by group health plans.

“Sec. 802. Adoption by group health plans of provision barring post-retirement
 reductions in retiree health benefits.

“Sec. 803. Restoration by group health plans of benefits reduced after retire-
 ment.

“Sec. 804. Exemption from restoration of benefits requirements.

“Sec. 805. Establishment of Emergency Retiree Health Loan Guarantee Pro-
 gram.

“Sec. 806. Effect on other claims.

“Sec. 807. Regulations.

“Sec. 808. Enforcement.”.

8 (b) SEPARABILITY OF PROVISIONS.—The provisions
 9 of section 509 of the Employee Retirement Income Secu-
 10 rity Act of 1974 (29 U.S.C. 1139) shall be applicable to
 11 this section and the amendments made thereby.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall take effect on the date of the enactment
 14 of this Act.

1 **TITLE II—MULTIEMPLOYER**
2 **MODIFICATIONS**

3 **SEC. 201. CREDITING AND TERMINATION OF SURCHARGES**
4 **IN CONNECTION WITH MULTIEMPLOYER**
5 **PLAN IN CRITICAL STATUS UPON ADOPTION**
6 **OF REHABILITATION PLAN.**

7 (a) AMENDMENTS TO ERISA.—Section 305(e)(7) of
8 the Employee Retirement Income Security Act of 1974
9 (29 U.S.C. 1085(e)(7)) is amended by adding at the end
10 the following new subparagraph:

11 “(F) SPECIAL RULE IN THE CASE OF SUFFICIENT CONTRIBUTION RATES.—In any case in
12 which the plan sponsor of a multiemployer plan
13 which is in critical status and with respect to
14 which the rehabilitation plan has been adopted
15 pursuant to this subsection determines that the
16 terms of a collective bargaining agreement (or
17 other agreement pursuant to which the em-
18 ployer contributes) provide for a contribution
19 rate increase that became effective during the
20 24-month period before the initial critical year
21 and determines that such agreement includes
22 terms consistent with a schedule presented by
23 the plan sponsor under paragraph (1)(B)(i) (as
24 modified under paragraph (3)(B))—
25

1 “(i) surcharges payable by an em-
2 ployer under this paragraph in connection
3 with such critical status shall cease to be
4 payable by the employer with respect to
5 employees covered by such agreement on
6 and after the date of such determination
7 by the plan sponsor, and

8 “(ii) any such surcharges which have
9 been paid by an employer in connection
10 with such critical status with respect to
11 such employees covered under such agree-
12 ment shall be credited against contribu-
13 tions payable by such employer under such
14 schedule.”.

15 (b) CONFORMING AMENDMENTS TO THE CODE.—
16 Section 432(e)(7) of the Internal Revenue Code of 1986
17 is amended by adding at the end the following new sub-
18 paragraph:

19 “(F) SPECIAL RULE IN THE CASE OF SUFFICIENT CONTRIBUTION RATES.—In any case in
20 which the plan sponsor of a multiemployer plan
21 which is in critical status and with respect to
22 which the rehabilitation plan has been adopted
23 pursuant to this subsection determines that the
24 terms of a collective bargaining agreement (or
25

1 other agreement pursuant to which the em-
2 ployer contributes) provide for a contribution
3 rate increase that became effective during the
4 24-month period before the initial critical year
5 and determines that such agreement includes
6 terms consistent with a schedule presented by
7 the plan sponsor under paragraph (1)(B)(i) (as
8 modified under paragraph (3)(B))—

9 “(i) surcharges payable by an em-
10 ployer under this paragraph in connection
11 with such critical status shall cease to be
12 payable by the employer with respect to
13 employees covered by such agreement on
14 and after the date of such determination
15 by the plan sponsor, and

16 “(ii) any such surcharges which have
17 been paid by an employer in connection
18 with such critical status with respect to
19 such employees covered under such agree-
20 ment shall be credited against contribu-
21 tions payable by such employer under such
22 schedule.”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to determinations
25 made on or after the date of the enactment of this Act.

1 **SEC. 202. SCHEDULES REQUIRED TO BE PROVIDED BY MUL-**
2 **TIEMPLOYER PLANS IN ENDANGERED STA-**
3 **TUS.**

4 (a) AMENDMENTS TO ERISA.—Section
5 305(c)(1)(B)(i) of the Employee Retirement Income Secu-
6 rity Act of 1974 (29 U.S.C. 1085(c)(1)(B)(i)) is amend-
7 ed—

8 (1) by striking “bargaining parties 1 or more
9 schedules” and all that follows through
10 “including—” and inserting “bargaining parties—”;

11 (2) in subclause (I), by inserting after “(I)” the
12 following: “a schedule showing revised benefit struc-
13 tures, revised contribution structures, or both,
14 which, if adopted, may reasonably be expected to en-
15 able the multimeployer plan to meet the applicable
16 benchmarks in accordance with the funding improve-
17 ment plan, including”; and

18 (3) by striking subclause (II) and inserting the
19 following:

20 “(II) a schedule which would
21 consist of a combination of benefit
22 modifications and contribution in-
23 creases, and”.

24 (b) CONFORMING AMENDMENTS TO THE CODE.—
25 Section 432(c)(1)(B)(i) of the Internal Revenue Code of
26 1986 is amended—

1 (1) by striking “bargaining parties 1 or more
2 schedules” and all that follows through
3 “including—” and inserting “bargaining parties—”;

4 (2) in subclause (I), by inserting after “(I)” the
5 following: “a schedule showing revised benefit struc-
6 tures, revised contribution structures, or both,
7 which, if adopted, may reasonably be expected to en-
8 able the multimeployer plan to meet the applicable
9 benchmarks in accordance with the funding improve-
10 ment plan, including”; and

11 (3) by striking subclause (II) and inserting the
12 following:

13 “(II) a schedule which would
14 consist of a combination of benefit
15 modifications and contribution in-
16 creases, and”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply with respect to funding improve-
19 ment plans adopted on or after the date of the enactment
20 of this Act.

21 **SEC. 203. AMENDMENTS TO FUNDING RULES FOR MULTI-**
22 **EMPLOYER PLANS.**

23 (a) AMENDMENT RELATED TO SECTIONS 201 AND
24 211.—

1 (1) IN GENERAL.—Section 201(b)(2)(A) of the
2 Pension Protection Act of 2006 (Public Law 109–
3 280; 120 Stat. 867) is amended by striking “has not
4 used” and inserting “has not adopted, or ceased
5 using,”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by this subsection shall apply as if included in the
8 enactment of section 201 of the Pension Protection
9 Act of 2006.

10 (b) AMENDMENTS RELATED TO SECTIONS 202 AND
11 212.—

12 (1) AMENDMENTS TO THE EMPLOYEE RETIRE-
13 MENT INCOME SECURITY ACT OF 1974.—

14 (A) Section 305(b)(3)(C) of the Employee
15 Retirement Income Security Act of 1974 (29
16 U.S.C. 1085(b)(3)(C)) is amended by striking
17 “section 101(b)(4)” and inserting “section
18 101(b)(1)”.

19 (B) Section 305(b)(3)(D) of such Act (29
20 U.S.C. 1085(b)(3)(D)) is amended by striking
21 “The Secretary” in clause (iii) and inserting
22 “The Secretary of the Treasury, in consultation
23 with the Secretary”.

24 (C) Section 305(c)(7) of such Act (29
25 U.S.C. 1085(c)(7)) is amended—

1 (i) by striking “to agree on” and all
2 that follows in subparagraph (A)(ii) and
3 inserting “to adopt a contribution schedule
4 with terms consistent with the funding im-
5 provement plan and a schedule from the
6 plan sponsor,” and

7 (ii) by striking subparagraph (B) and
8 inserting the following new subparagraph:

9 “(B) DATE OF IMPLEMENTATION.—The
10 date specified in this subparagraph is the date
11 which is 180 days after the date on which the
12 collective bargaining agreement described in
13 subparagraph (A) expires.” and

14 (iii) by adding at the end the fol-
15 lowing new subparagraph:

16 “(C) FAILURE TO MAKE SCHEDULED CON-
17 TRIBUTIONS.—Any failure to make a contribu-
18 tion under a schedule of contribution rates pro-
19 vided under this paragraph shall be treated as
20 a delinquent contribution under section 515 and
21 shall be enforceable as such.”.

22 (D) Section 305(e) of such Act (29 U.S.C.
23 1085(e)) is amended—

24 (i) in paragraph (3)(C)—

1 (I) by striking all that follows “to
2 adopt a” in clause (i)(II) and insert-
3 ing “to adopt a contribution schedule
4 with terms consistent with the reha-
5 bilitation plan and a schedule from
6 the plan sponsor under paragraph
7 (1)(B)(i),”

8 (II) by striking clause (ii) and in-
9 serting the following new clause:

10 “(ii) DATE OF IMPLEMENTATION.—
11 The date specified in this clause is the date
12 which is 180 days after the date on which
13 the collective bargaining agreement de-
14 scribed in clause (i) expires.”, and

15 (III) by adding at the end the
16 following new clause:

17 “(iii) FAILURE TO MAKE SCHEDULED
18 CONTRIBUTIONS.—Any failure to make a
19 contribution under a schedule of contribu-
20 tion rates provided under this subsection
21 shall be treated as a delinquent contribu-
22 tion under section 515 and shall be en-
23 forceable as such.”,

24 (ii) in paragraph (4)—

1 (I) by striking “the date of” in
2 subparagraph (A)(ii), and

3 (II) by striking “and taking” in
4 subparagraph (B) and inserting “but
5 taking”,

6 (iii) in paragraph (6)—

7 (I) by striking “paragraph
8 (1)(B)(i)” and inserting “the last sen-
9 tence of paragraph (1)”, and

10 (II) by striking “established” and
11 inserting “establish”,

12 (iv) in paragraph (8)(C)(iii)—

13 (I) by striking “the Secretary” in
14 subclause (I) and inserting “the Sec-
15 retary of the Treasury, in consultation
16 with the Secretary”, and

17 (II) by striking “Secretary” in
18 the last sentence and inserting “Sec-
19 retary of the Treasury”, and

20 (v) by striking “an employer’s with-
21 drawal liability” in paragraph (9)(B) and
22 inserting “the allocation of unfunded vest-
23 ed benefits to an employer”.

24 (E) Section 305(f)(2)(A)(i) of such Act
25 (29 U.S.C. 1085(f)(2)(A)(i)) is amended by in-

1 serting “to a participant or beneficiary whose
2 annuity starting date (as defined in section
3 205(h)(2)) occurs after such date,” after the
4 comma at the end.

5 (F) Section 305(g) of such Act (29 U.S.C.
6 1085(g)) is amended by inserting “under sub-
7 section (c)” after “funding improvement plan”
8 the first place it appears.

9 (G) Section 302(b)(3) of such Act (29
10 U.S.C. 1082(b)(3)) is amended by striking “the
11 plan adopts” and inserting “the plan sponsor
12 adopts”.

13 (H) Section 502(c)(2) of such Act (29
14 U.S.C. 1132(c)(2)) is amended by striking
15 “101(b)(4)” and inserting “101(b)(1)”.

16 (I) Section 502(c)(8)(A) of such Act (29
17 U.S.C. 1132(c)(8)(A)) is amended by inserting
18 “plan” after “multiemployer”.

19 (2) CONFORMING AMENDMENTS TO THE INTER-
20 NAL REVENUE CODE OF 1986.—

21 (A) Section 432(b)(3)(C) of the Internal
22 Revenue Code of 1986 is amended by striking
23 “section 101(b)(4)” and inserting “section
24 101(b)(1)”.

1 (B) Section 432(b)(3)(D)(iii) of such Code
2 is amended by striking “The Secretary of
3 Labor” and inserting “The Secretary, in con-
4 sultation with the Secretary of Labor”.

5 (C) Section 432(e) of such Code is amend-
6 ed—

7 (i) in paragraph (3), by striking “sec-
8 tion 304(d)” in subparagraph (A)(ii) and
9 inserting “section 431(d)”, and

10 (ii) in paragraph (7)—

11 (I) by striking “to agree on” and
12 all that follows in subparagraph
13 (A)(ii) and inserting “to adopt a con-
14 tribution schedule with terms con-
15 sistent with the funding improvement
16 plan and a schedule from the plan
17 sponsor,” and

18 (II) by striking subparagraph (B)
19 and inserting the following new sub-
20 paragraph:

21 “(B) DATE OF IMPLEMENTATION.—The
22 date specified in this subparagraph is the date
23 which is 180 days after the date on which the
24 collective bargaining agreement described in
25 subparagraph (A) expires.”.

1 (D) Section 432(e) of such Code is amend-
2 ed—

3 (i) in paragraph (3)(C)—

4 (I) by striking all that follows “to
5 adopt a” in clause (i)(II) and insert-
6 ing “to adopt a contribution schedule
7 with terms consistent with the reha-
8 bilitation plan and a schedule from
9 the plan sponsor under paragraph
10 (1)(B)(i),”, and

11 (II) by striking clause (ii) and in-
12 serting the following new clause:

13 “(ii) DATE OF IMPLEMENTATION.—
14 The date specified in this clause is the date
15 which is 180 days after the date on which
16 the collective bargaining agreement de-
17 scribed in clause (i) expires.”,

18 (ii) in paragraph (4)—

19 (I) by striking “the date of” in
20 subparagraph (A)(ii), and

21 (II) by striking “and taking” in
22 subparagraph (B) and inserting “but
23 taking”,

24 (iii) in paragraph (6)—

1 (I) by striking “paragraph
2 (1)(B)(i)” and inserting “the last sen-
3 tence of paragraph (1)”, and

4 (II) by striking “established” and
5 inserting “establish”,
6 (iv) in paragraph (8)—

7 (I) by striking “section 204(g)”
8 in subparagraph (A)(i) and inserting
9 “section 411(d)(6)”,

10 (II) by inserting “of the Em-
11 ployee Retirement Income Security
12 Act of 1974” after “4212(a)” in sub-
13 paragraph (C)(i)(II),

14 (III) by striking “the Secretary
15 of Labor” in subparagraph (C)(iii)(I)
16 and inserting “the Secretary, in con-
17 sultation with the Secretary of
18 Labor”, and

19 (IV) by striking “the Secretary of
20 Labor” in the last sentence of sub-
21 paragraph (C)(iii) and inserting “the
22 Secretary”, and

23 (v) by striking “an employer’s with-
24 drawal liability” in paragraph (9)(B) and

1 inserting “the allocation of unfunded vest-
2 ed benefits to an employer”.

3 (E) Section 432(f)(2)(A)(i) of such Code is
4 amended—

5 (i) by striking “section 411(b)(1)(A)”
6 and inserting “section 411(a)(9)”, and

7 (ii) by inserting “to a participant or
8 beneficiary whose annuity starting date (as
9 defined in section 417(f)(2)) occurs after
10 such date,” after the comma at the end.

11 (F) Section 432(g) of such Code is amend-
12 ed by inserting “under subsection (c)” after
13 “funding improvement plan” the first place it
14 appears.

15 (G) Section 432(i) of such Code is amend-
16 ed—

17 (i) by striking “section 412(a)” in
18 paragraph (3) and inserting “section
19 431(a)”, and

20 (ii) by striking paragraph (9) and in-
21 serting the following new paragraph:

22 “(9) PLAN SPONSOR.—For purposes of this sec-
23 tion, section 431, and section 4971(g)—

24 “(A) IN GENERAL.—The term ‘plan spon-
25 sor’ means, with respect to any multiemployer

1 plan, the association, committee, joint board of
2 trustees, or other similar group of representa-
3 tives of the parties who establish or maintain
4 the plan.

5 “(B) SPECIAL RULE FOR SECTION 404(c)
6 PLANS.—In the case of a plan described in sec-
7 tion 404(c) (or a continuation of such plan),
8 such term means the bargaining parties de-
9 scribed in paragraph (1).”.

10 (H) Section 412(b)(3) of such Code is
11 amended by striking “the plan adopts” and in-
12 sserting “the plan sponsor adopts”.

13 (I) Section 4971(g)(4) of such Code is
14 amended—

15 (i) in subparagraph (B)(ii), by strik-
16 ing “first day of” and inserting “day fol-
17 lowing the close of”, and

18 (ii) by striking clause (ii) of subpara-
19 graph (C) and inserting the following new
20 clause:

21 “(ii) PLAN SPONSOR.—For purposes
22 of clause (i), the term ‘plan sponsor’ has
23 the meaning given such term by section
24 432(i)(9).”.

1 (3) AMENDMENTS TO THE PENSION PROTEC-
2 TION ACT OF 2006.—

3 (A) Section 212(b)(2) of the Pension Pro-
4 tection Act of 2006 (Public Law 109–280; 120
5 Stat. 917) is amended by striking “Section
6 4971(c)(2) of such Code” and inserting “Sec-
7 tion 4971(e)(2) of such Code”.

8 (B) Section 212(e)(1) of such Act (Public
9 Law 109–280; 120 Stat. 917) is amended by
10 inserting “, except that the amendments made
11 by subsection (b) shall apply to taxable years
12 beginning after 2007, but only with respect to
13 plan years beginning after 2007 which end with
14 or within any such taxable year” before the pe-
15 riod at the end.

16 (C) Section 212(e)(2) of such Act (Public
17 Law 109–280; 120 Stat. 917) is amended by
18 striking “section 305(b)(3) of the Employee Re-
19 tirement Income Security Act of 1974” and in-
20 serting “section 432(b)(3) of the Internal Rev-
21 enue Code of 1986”.

22 (4) EFFECTIVE DATES.—

23 (A) The amendments made by paragraphs
24 (1) and (2) shall take effect as if included in

1 the enactment of sections 202 and 212, respec-
2 tively, of the Pension Protection Act of 2006.

3 (B) The amendments made by paragraph
4 (3) shall take effect as if included in the enact-
5 ment of section 212 of the Pension Protection
6 Act of 2006.

7 **TITLE III—SINGLE-EMPLOYER**
8 **MODIFICATIONS**

9 **SEC. 301. ASSET SMOOTHING.**

10 (a) AMENDMENT TO ERISA.—The last sentence of
11 section 303(g)(3)(B) of the Employee Retirement Income
12 Security Act of 1974 (29 U.S.C. 1083(g)(3)(B)) is amend-
13 ed to read as follows: “Any such averaging shall be ad-
14 justed for contributions, distributions, and expected earn-
15 ings (as determined by the plan’s actuary on the basis of
16 an assumed earnings rate specified by the actuary but not
17 in excess of the third segment rate applicable under sub-
18 section (h)(2)(C)(iii)), as specified by the Secretary of the
19 Treasury.”.

20 (b) CONFORMING AMENDMENT TO INTERNAL REV-
21 ENUE CODE.—The last sentence of section 430(g)(3)(B)
22 of the Internal Revenue Code of 1986 is amended to read
23 as follows: “Any such averaging shall be adjusted for con-
24 tributions, distributions, and expected earnings (as deter-
25 mined by the plan’s actuary on the basis of an assumed

1 earnings rate specified by the actuary but not in excess
2 of the third segment rate applicable under subsection
3 (h)(2)(C)(iii)), as specified by the Secretary.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 subsections (a) and (b) shall apply as if included in the
6 enactment of sections 102 and 112, respectively, of the
7 Pension Protection Act of 2006.

8 **SEC. 302. PROHIBITED PAYMENTS.**

9 (a) AMENDMENT TO ERISA.—Paragraph (3) of sec-
10 tion 206(g) of the Employee Retirement Income Security
11 Act of 1974 (29 U.S.C. 1056(g)(3)) is amended—

12 (1) by striking subparagraph (C) and redesignig-
13 nating subparagraphs (D) and (E) as subparagraphs
14 (C) and (D), respectively; and

15 (2) by striking subparagraph (A) and inserting
16 the following:

17 “(A) FUNDING PERCENTAGE LESS THAN
18 80 PERCENT.—A defined benefit plan which is
19 a single-employer plan shall provide that, in any
20 case in which the plan’s adjusted funding target
21 attainment percentage for a plan year is less
22 than 80 percent, the plan may not pay any pro-
23 hibited payment after the valuation date for the
24 plan year to the extent the amount of the pay-
25 ment exceeds the product of—

1 “(i) the amount of the payment which
2 could be made without regard to this sub-
3 section; multiplied by

4 “(ii) the plan’s adjusted funding tar-
5 get attainment percentage for the plan
6 year.”.

7 (b) CONFORMING AMENDMENT TO INTERNAL REV-
8 ENUE CODE.—Subsection (d) of section 436 of the Inter-
9 nal Revenue Code of 1986 is amended—

10 (1) by striking paragraph (3) and redesignating
11 paragraphs (4) and (5) as subparagraphs (3) and
12 (4), respectively; and

13 (2) by striking paragraph (1) and inserting the
14 following:

15 “(1) FUNDING PERCENTAGE LESS THAN 80
16 PERCENT.—A defined benefit plan which is a single-
17 employer plan shall provide that, in any case in
18 which the plan’s adjusted funding target attainment
19 percentage for a plan year is less than 80 percent,
20 the plan may not pay any prohibited payment after
21 the valuation date for the plan year to the extent the
22 amount of the payment exceeds the product of—

23 “(A) the amount of the payment which
24 could be made without regard to this sub-
25 section; multiplied by

1 “(B) the plan’s adjusted funding target at-
2 tainment percentage for the plan year.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 subsections (a) and (b) shall apply as if included in the
5 enactment of sections 103 and 113, respectively, of the
6 Pension Protection Act of 2006.

7 **SEC. 303. CLARIFICATION OF AGE DISCRIMINATION RULES**
8 **IN CONNECTION WITH THE YOUNG WOMEN’S**
9 **CHRISTIAN ASSOCIATION PENSION PLAN.**

10 (a) PURPOSE.—The purpose of this section is to clar-
11 ify the age discrimination rules under section
12 204(b)(1)(H) of the Employee Retirement Income Secu-
13 rity Act of 1974 and section 4(i)(1) of the Age Discrimina-
14 tion in Employment Act of 1967, as they relate, in connec-
15 tion with benefits provided under the Young Women’s
16 Christian Association Pension Plan, to periods prior to
17 June 29, 2005, during which violations of such rules are
18 alleged to have occurred in civil actions commenced on or
19 after April 25, 2007.

20 (b) CLARIFICATION OF AGE DISCRIMINATION
21 RULES.—In the case of any civil action which—

22 (1) is commenced on or after April 25, 2007,
23 and

24 (2) alleges a violation of section 204(b)(1)(H)
25 of the Employee Retirement Income Security Act of

1 1974 (29 U.S.C. 1054(b)(1)(H)) or section 4(i)(1)
2 of the Age Discrimination in Employment Act of
3 1967 (29 U.S.C. 623(i)(1)) occurring before June
4 29, 2005, with respect to any benefit provided under
5 the Young Women’s Christian Association Pension
6 Plan,
7 such sections 204(b)(1)(H) and 4(i)(1) shall be applied
8 as if paragraph (5) of section 204(b) of the Employee Re-
9 tirement Income Security Act of 1974 (as added by section
10 701(a)(1) of the Pension Protection Act of 2006 (29
11 U.S.C. 1054(b)(5); 120 Stat. 981) and paragraph (10) of
12 section 4(i) of the Age Discrimination in Employment Act
13 of 1967 (29 U.S.C. 623(i)(10); 120 Stat. 998) applied to
14 any period in which such alleged violation occurred.

15 (c) YOUNG WOMEN’S CHRISTIAN ASSOCIATION PEN-
16 SION PLAN.—For purposes of this section, the term
17 “Young Women’s Christian Association Pension Plan”
18 means the defined benefit plan (as defined in section 3(35)
19 of the Employee Retirement Income Security Act of 1974)
20 established on January 1, 1926, and maintained by the
21 Young Women’s Christian Association Retirement Fund,
22 a corporation created by an Act of the State of New York
23 which became law on April 12, 1924.

1 **SEC. 304. PROHIBITED TRANSACTIONS EXEMPTION FOR DI-**
2 **VESTMENT OF EMPLOYER SECURITIES.**

3 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
4 INCOME SECURITY ACT OF 1974.—Section 408(b) of the
5 Employee Retirement Income Security Act of 1974 (29
6 U.S.C. 1108(b)) is amended by adding at the end the fol-
7 lowing new paragraph:

8 “(21) PROHIBITED TRANSACTIONS EXEMPTION FOR
9 DIVESTMENT OF EMPLOYER SECURITIES.—A transaction
10 involving the sale of employer securities held in the ac-
11 count of a plan participant under the plan, if—

12 “(A) the proceeds from the sale are invested in
13 the account,

14 “(B) the notice requirements of section
15 404(c)(5)(B) are met in connection with the plan
16 with respect to the plan year during which the trans-
17 action occurs,

18 “(C) under the plan—

19 “(i) the participant is treated as having
20 elected to effect the transaction, in the absence
21 of a specific election by the participant not to
22 have the transaction effected, and

23 “(ii) participants are provided a reasonable
24 period of time after the notice provided pursu-
25 ant to section 404(c)(5)(B) with respect to each

1 plan year and before the beginning of such plan
2 year to make such a specific election, and

3 “(D) the transaction is consistent with regula-
4 tions which shall be promulgated by the Secretary
5 and which shall take into account the importance of
6 diversifying the investment of retirement account as-
7 sets as a plan participant nears retirement age.”.

8 (b) CONFORMING AMENDMENTS TO THE INTERNAL
9 REVENUE CODE OF 1986.—Subsection (d) of section
10 4975 of the Internal Revenue Code of 1986 (relating to
11 exemptions) is amended by striking “or” at the end of
12 paragraph (22), by striking the period at the end of para-
13 graph (23) and inserting “, or”, and by adding at the
14 end the following new paragraph:

15 “(24) PROHIBITED TRANSACTIONS EXEMPTION
16 FOR DIVESTMENT OF EMPLOYER SECURITIES.—A
17 transaction involving the sale of employer securities
18 held in the account of a plan participant under the
19 plan, if—

20 “(A) the proceeds from the sale are in-
21 vested in the account,

22 “(B) the notice requirements of section
23 404(c)(5)(B) of the Employee Retirement In-
24 come Security Act of 1974 are met in connec-

1 tion with the plan with respect to the plan year
2 during which the transaction occurs,

3 “(C) under the plan—

4 “(i) the participant is treated as hav-
5 ing elected to effect the transaction, in the
6 absence of a specific election by the partici-
7 pant not to have the transaction effected,
8 and

9 “(ii) participants are provided a rea-
10 sonable period of time after the notice pro-
11 vided pursuant to section 404(c)(5)(B) of
12 the Employee Retirement Income Security
13 Act of 1974 with respect to each plan year
14 and before the beginning of such plan year
15 to make such a specific election, and

16 “(D) the transaction is consistent with reg-
17 ulations promulgated by the Secretary of Labor
18 pursuant to section 408(b)(21)(D) of the Em-
19 ployee Retirement Income Security Act of
20 1974.”.

21 (c) ISSUANCE OF REGULATIONS.—The Secretary of
22 Labor shall issue initial final regulations pursuant to sec-
23 tion 408(b)(21)(D) of the Employee Retirement Income
24 Security Act of 1974 (as added by this section) not later
25 than 180 days after the date of the enactment of this Act.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to transactions occurring after the
3 date of the enactment of this Act.

4 **SEC. 305. SPECIAL RULE RELATING TO AT-RISK STATUS**
5 **FOR EMPLOYEES OFFERED EARLY RETIRE-**
6 **MENT IN 2006 OR 2007.**

7 (a) AMENDMENTS TO ERISA.—Section 303(i)(4)(C)
8 of the Employee Retirement Income Security Act of 1974
9 (29 U.S.C. 1083(i)(4)(C)(i)) is amended—

10 (1) in the heading, by inserting “OR 2007” after
11 “2006”;

12 (2) in clause (i)(II), by striking “2010” and in-
13 serting “2011”; and

14 (3) in clause (i)(III), by inserting “or 2007”
15 after “2006” the first place it appears, and by strik-
16 ing “2006” the second place it appears and insert-
17 ing “2007”.

18 (b) CONFORMING AMENDMENTS TO THE INTERNAL
19 REVENUE CODE OF 1986.—Section 430(i)(4)(C) of the
20 Internal Revenue Code of 1986 (relating to special rule
21 for employees offered early retirement in 2006) is amend-
22 ed—

23 (1) in the heading, by inserting “OR 2007” after
24 “2006”;

1 (2) in clause (i)(II), by striking “2010” and in-
2 serting “2011”; and

3 (3) in clause (ii)(III), by inserting “or 2007”
4 after “2006” the first place it appears, and by strik-
5 ing “2006” the second place it appears and insert-
6 ing “2007”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 subsections (a) and (b) shall apply as if included in the
9 enactment of sections 102 and 112, respectively, of the
10 Pension Protection Act of 2006.

11 **SEC. 306. PHASE-IN OF FUNDING TARGET.**

12 (a) AMENDMENT TO ERISA.—Subparagraph (B) of
13 section 303(c)(5) of the Employee Retirement Income Se-
14 curity Act of 1974 (as amended by this Act) is further
15 amended—

16 (1) by striking clause (iii) and redesignating
17 clause (iv) as clause (iii); and

18 (2) by striking clause (i) and inserting the fol-
19 lowing:

20 “(i) IN GENERAL.—Except as pro-
21 vided in clause (iii), in the case of plan
22 years beginning after the applicable fund-
23 ing pre-effective date year (as defined in
24 section 21(i)(1) of the Pension Protection
25 Act Amendments of 2008) and before the

1 calendar year that is three years after the
2 applicable funding effective date year (as
3 defined in section 21(i)(2) of the Pension
4 Protection Act Amendments of 2007), only
5 the applicable percentage of the funding
6 target shall be taken into account under
7 paragraph (3)(A) in determining the fund-
8 ing shortfall for purposes of paragraph
9 (3)(A) and subparagraph (A).”.

10 (b) CONFORMING AMENDMENT TO INTERNAL REV-
11 ENUE CODE.—Subparagraph (B) of section 430(c)(5) of
12 the Internal Revenue Code of 1986 (as amended by this
13 Act) is further amended—

14 (1) by striking clause (iii) and redesignating
15 clause (iv) as clause (iii); and

16 (2) by striking clause (i) and inserting the fol-
17 lowing:

18 “(i) IN GENERAL.—Except as pro-
19 vided in clause (iii), in the case of plan
20 years beginning after the applicable fund-
21 ing pre-effective date year (as defined in
22 section 21(i)(1) of the Pension Protection
23 Act Amendments of 2008) and before the
24 calendar year that is three years after the
25 applicable funding effective date year (as

1 defined in section 21(i)(2) of the Pension
 2 Protection Act Amendments of 2007), only
 3 the applicable percentage of the funding
 4 target shall be taken into account under
 5 paragraph (3)(A) in determining the fund-
 6 ing shortfall for purposes of paragraph
 7 (3)(A) and subparagraph (A).”.

8 (c) EFFECTIVE DATE.—The amendments made by
 9 subsections (a) and (b) shall apply as if included in the
 10 enactment of sections 102 and 112, respectively, of the
 11 Pension Protection Act of 2006.

12 **TITLE IV—SMALL EMPLOYER**
 13 **MODIFICATIONS**

14 **SEC. 401. TREATMENT OF EMPLOYEES OF CERTAIN CO-**
 15 **OPERATIVES AS AFFILIATED SERVICE GROUP**
 16 **EMPLOYEES.**

17 (a) IN GENERAL.—Section 210 of the Employee Re-
 18 tirement Income Security Act of 1974 (29 U.S.C. 1060)
 19 is amended by adding at the end the following new sub-
 20 section:

21 “(f) TREATMENT OF EMPLOYEES OF CERTAIN CO-
 22 OPERATIVES AS AFFILIATED SERVICE GROUP EMPLOY-
 23 EES.—

24 “(1) IN GENERAL.—For purposes of sections
 25 202, 203, and 204—

1 “(A) all employees of all shareholders of a
2 corporation which is an affiliated service group
3 shall be treated as employed by such corpora-
4 tion as a single employer, and

5 “(B) a plan maintained by a corporation
6 which is an affiliated service group shall be
7 treated as a single-employer plan maintained by
8 the corporation.

9 “(2) AFFILIATED SERVICE GROUP.—For pur-
10 poses of this subsection, the term ‘affiliated service
11 group’ means a corporation if—

12 “(A) the corporation has at least 21 share-
13 holders and operates on a cooperative basis sub-
14 ject to the provisions of subchapter T of chap-
15 ter 1 of the Internal Revenue Code of 1986,

16 “(B) all shareholders of the corporation
17 engage in business operations using the same
18 four-digit North American Industrial Classifica-
19 tion System (NAIC) code root, and

20 “(C) the corporation assumes responsibility
21 pursuant to a written agreement with each
22 shareholder, with respect to all worksite em-
23 ployees providing services to such shareholder,
24 for the provision of employee benefits.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to plan years beginning on or after
3 the date of the enactment of this Act.

4 **TITLE V—PROHIBITED**
5 **TRANSACTIONS MODIFICATIONS**

6 **SEC. 501. CLARIFICATION OF PARTIES IN INTEREST AF-**
7 **FECTED BY PROHIBITED TRANSACTION EX-**
8 **EMPTION FOR BLOCK TRADING.**

9 (a) AMENDMENT TO ERISA.—Section 408(b)(15)(A)
10 of the Employee Retirement Income Security Act of 1974
11 (29 U.S.C. 1108(b)(15)(A)) is amended—

12 (1) by striking “a party in interest (other than
13 a fiduciary described in section 3(21)(A)) with re-
14 spect to a plan” and inserting “a party in interest
15 (other than a fiduciary described in section 3(21)(A)
16 who has investment discretion or provides invest-
17 ment advice with respect to the transaction)”; and

18 (2) in clause (i), by inserting “directed by a fi-
19 duciary described in section 3(21)(A)” after “block
20 trade”.

21 (b) CONFORMING AMENDMENT TO THE CODE.—
22 Paragraph (18) of section 4975(d) of the Internal Rev-
23 enue Code of 1986 (relating to exemptions from prohibited
24 transactions) is amended—

1 (1) by striking “a party in interest (other than
2 a fiduciary described in subsection (e)(3)(B))” and
3 inserting “a disqualified person (other than a fidu-
4 ciary who has investment discretion or provides in-
5 vestment advice with respect to the transaction)”;
6 and

7 (2) in subparagraph (A), by inserting “directed
8 by a fiduciary described in subsection (e)(3)(B)”
9 after “block trade”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply as if included in the enactment
12 of section 601 of the Pension Protection Act of 2006.

13 **SEC. 502. CLARIFICATION OF SCOPE OF PROHIBITED**
14 **TRANSACTION EXEMPTION FOR ELECTRONIC**
15 **COMMUNICATION NETWORKS.**

16 (a) AMENDMENTS TO ERISA.—Section 408(b)(16)
17 of the Employee Retirement Income Security Act of 1974
18 (29 U.S.C. 1108(b)) is amended—

19 (1) in subparagraph (A), by inserting “ex-
20 change, automated quotation system,” after “elec-
21 tronic communication network,”;

22 (2) in subparagraph (D), by striking “if the
23 party in interest has an ownership interest” and in-
24 serting “if the fiduciary directing the transaction

1 has an ownership interest of at least 10 percent by
2 value”; and

3 (3) in subparagraph (E), by inserting after
4 “(E)” the following: “if the fiduciary directing the
5 transaction has an ownership interest of at least 10
6 percent by value in the system or venue described in
7 subparagraph (A),”.

8 (b) CONFORMING AMENDMENTS TO CODE.—Para-
9 graph (19) of section 4975(d) of the Internal Revenue
10 Code of 1986 (relating to exemptions from prohibited
11 transactions) is amended—

12 (1) in subparagraph (A), by inserting “ex-
13 change, automated quotation system,” after “elec-
14 tronic communication network,”;

15 (2) in subparagraph (D), by striking “if the
16 party in interest has an ownership interest” and in-
17 serting “if the fiduciary directing the transaction
18 has an ownership interest of at least 10 percent by
19 value”; and

20 (3) in subparagraph (E), by inserting after
21 “(E)” the following: “if the fiduciary directing the
22 transaction has an ownership interest of at least 10
23 percent by value in the system or venue described in
24 subparagraph (A),”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply as if included in the enactment
3 of section 611 of the Pension Protection Act of 2006.

4 **SEC. 503. INCREASE IN MAXIMUM BOND AMOUNT FOR**
5 **PLANS HOLDING EMPLOYER SECURITIES.**

6 (a) IN GENERAL.—Section 412(a) of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1112(a)) is amended by striking the last sentence and in-
9 serting the following: “In any case in which a dedicated
10 portfolio of plan assets is primarily invested in employer
11 securities (within the meaning of section 407(d)(1)), if
12 such employer securities have been contributed directly by
13 the plan sponsor (or an affiliate (within the meaning of
14 section 408(g)(11)(B)) of the plan sponsor) or the decision
15 to purchase such employer securities has been made by
16 an employee of the plan sponsor (or of such an affiliate
17 of the plan sponsor), this subsection shall be applied in
18 requiring each person who handles such plan assets to be
19 bonded by substituting in this subsection ‘\$1,000,000’ for
20 ‘\$500,000’ each place it appears.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply as if included in the enactment
23 of section 622 of the Pension Protection Act of 2006.

○