

In the Senate of the United States,

June 18, 2010.

Resolved, That the bill from the House of Representatives (H.R. 3962) entitled “An Act to provide affordable, quality health care for all Americans and reduce the growth in health care spending, and for other purposes.”, do pass with the following

AMENDMENTS:

Strike all after the enacting clause and insert the following:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Preservation of Access*
3 *to Care for Medicare Beneficiaries and Pension Relief Act*
4 *of 2010”.*

5 ***TITLE I—HEALTH PROVISIONS***

6 ***SEC. 101. PHYSICIAN PAYMENT UPDATE.***

7 *(a) IN GENERAL.—Section 1848(d) of the Social Secu-*
8 *urity Act (42 U.S.C. 1395w-4(d)) is amended—*

1 (1) *in paragraph (10), in the heading, by strik-*
2 *ing “PORTION” and inserting “JANUARY THROUGH*
3 *MAY ”; and*

4 (2) *by adding at the end the following new para-*
5 *graph:*

6 “(11) *UPDATE FOR JUNE THROUGH NOVEMBER*
7 *OF 2010.—*

8 “(A) *IN GENERAL.—Subject to paragraphs*
9 *(7)(B), (8)(B), (9)(B), and (10)(B), in lieu of the*
10 *update to the single conversion factor established*
11 *in paragraph (1)(C) that would otherwise apply*
12 *for 2010 for the period beginning on June 1,*
13 *2010, and ending on November 30, 2010, the up-*
14 *date to the single conversion factor shall be 2.2*
15 *percent.*

16 “(B) *NO EFFECT ON COMPUTATION OF CON-*
17 *VERSION FACTOR FOR REMAINING PORTION OF*
18 *2010 AND SUBSEQUENT YEARS.—The conversion*
19 *factor under this subsection shall be computed*
20 *under paragraph (1)(A) for the period beginning*
21 *on December 1, 2010, and ending on December*
22 *31, 2010, and for 2011 and subsequent years as*
23 *if subparagraph (A) had never applied.”.*

24 (b) *STATUTORY PAYGO.—The budgetary effects of this*
25 *Act, for the purpose of complying with the Statutory Pay-*

1 *As-You-Go Act of 2010, shall be determined by reference to*
2 *the latest statement titled “Budgetary Effects of PAYGO*
3 *Legislation” for this Act, jointly submitted for printing in*
4 *the Congressional Record by the Chairmen of the House and*
5 *Senate Budget Committees, provided that such statement*
6 *has been submitted prior to the vote on passage in the House*
7 *acting first on this conference report or amendment between*
8 *the Houses.*

9 **SEC. 102. CLARIFICATION OF 3-DAY PAYMENT WINDOW.**

10 (a) *IN GENERAL.*—Section 1886 of the Social Security
11 Act (42 U.S.C. 1395ww) is amended—

12 (1) *by adding at the end of subsection (a)(4) the*
13 *following new sentence: “In applying the first sen-*
14 *tence of this paragraph, the term ‘other services re-*
15 *lated to the admission’ includes all services that are*
16 *not diagnostic services (other than ambulance and*
17 *maintenance renal dialysis services) for which pay-*
18 *ment may be made under this title that are provided*
19 *by a hospital (or an entity wholly owned or operated*
20 *by the hospital) to a patient—*

21 “(A) *on the date of the patient’s inpatient*
22 *admission; or*

23 “(B) *during the 3 days (or, in the case of*
24 *a hospital that is not a subsection (d) hospital,*
25 *during the 1 day) immediately preceding the*

1 *date of such admission unless the hospital dem-*
2 *onstrates (in a form and manner, and at a time,*
3 *specified by the Secretary) that such services are*
4 *not related (as determined by the Secretary) to*
5 *such admission.”; and*

6 *(2) in subsection (d)(7)—*

7 *(A) in subparagraph (A), by striking “and”*
8 *at the end;*

9 *(B) in subparagraph (B), by striking the*
10 *period and inserting “, and”; and*

11 *(C) by adding at the end the following new*
12 *subparagraph:*

13 *“(C) the determination of whether services*
14 *provided prior to a patient’s inpatient admis-*
15 *sion are related to the admission (as described in*
16 *subsection (a)(4)).”.*

17 *(b) EFFECTIVE DATE.—The amendments made by sub-*
18 *section (a) shall apply to services furnished on or after the*
19 *date of the enactment of this Act.*

20 *(c) NO REOPENING OF PREVIOUSLY BUNDLED*
21 *CLAIMS.—*

22 *(1) IN GENERAL.—The Secretary of Health and*
23 *Human Services may not reopen a claim, adjust a*
24 *claim, or make a payment pursuant to any request*
25 *for payment under title XVIII of the Social Security*

1 *Act, submitted by an entity (including a hospital or*
2 *an entity wholly owned or operated by the hospital)*
3 *for services described in paragraph (2) for purposes of*
4 *treating, as unrelated to a patient's inpatient admis-*
5 *sion, services provided during the 3 days (or, in the*
6 *case of a hospital that is not a subsection (d) hospital,*
7 *during the 1 day) immediately preceding the date of*
8 *the patient's inpatient admission.*

9 (2) *SERVICES DESCRIBED.*—*For purposes of*
10 *paragraph (1), the services described in this para-*
11 *graph are other services related to the admission (as*
12 *described in section 1886(a)(4) of the Social Security*
13 *Act (42 U.S.C. 1395ww(a)(4)), as amended by sub-*
14 *section (a)) which were previously included on a*
15 *claim or request for payment submitted under part A*
16 *of title XVIII of such Act for which a reopening, ad-*
17 *justment, or request for payment under part B of*
18 *such title, was not submitted prior to the date of the*
19 *enactment of this Act.*

20 (d) *IMPLEMENTATION.*—*Notwithstanding any other*
21 *provision of law, the Secretary of Health and Human Serv-*
22 *ices may implement the provisions of this section (and*
23 *amendments made by this section) by program instruction*
24 *or otherwise.*

1 (e) *RULE OF CONSTRUCTION.*—*Nothing in the amend-*
 2 *ments made by this section shall be construed as changing*
 3 *the policy described in section 1886(a)(4) of the Social Se-*
 4 *curity Act (42 U.S.C. 1395ww(a)(4)), as applied by the*
 5 *Secretary of Health and Human Services before the date*
 6 *of the enactment of this Act, with respect to diagnostic serv-*
 7 *ices.*

8 **SEC. 103. ESTABLISH A CMS-IRS DATA MATCH TO IDENTIFY**
 9 **FRAUDULENT PROVIDERS.**

10 (a) *AUTHORITY TO DISCLOSE RETURN INFORMATION*
 11 *CONCERNING OUTSTANDING TAX DEBTS FOR PURPOSES OF*
 12 *ENHANCING MEDICARE PROGRAM INTEGRITY.*—

13 (1) *IN GENERAL.*—*Section 6103(l) of the Inter-*
 14 *nal Revenue Code of 1986 is amended by adding at*
 15 *the end the following new paragraph:*

16 “(22) *DISCLOSURE OF RETURN INFORMATION TO*
 17 *DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR*
 18 *PURPOSES OF ENHANCING MEDICARE PROGRAM IN-*
 19 *TEGRITY.*—

20 “(A) *IN GENERAL.*—*The Secretary shall,*
 21 *upon written request from the Secretary of*
 22 *Health and Human Services, disclose to officers*
 23 *and employees of the Department of Health and*
 24 *Human Services return information with respect*
 25 *to a taxpayer who has applied to enroll, or re-*

1 enroll, as a provider of services or supplier under
2 the Medicare program under title XVIII of the
3 Social Security Act. Such return information
4 shall be limited to—

5 “(i) the taxpayer identity information
6 with respect to such taxpayer;

7 “(ii) the amount of the delinquent tax
8 debt owed by that taxpayer; and

9 “(iii) the taxable year to which the de-
10 linquent tax debt pertains.

11 “(B) *RESTRICTION ON DISCLOSURE.*—Re-
12 turn information disclosed under subparagraph
13 (A) may be used by officers and employees of the
14 Department of Health and Human Services for
15 the purposes of, and to the extent necessary in,
16 establishing the taxpayer’s eligibility for enroll-
17 ment or reenrollment in the Medicare program,
18 or in any administrative or judicial proceeding
19 relating to, or arising from, a denial of such en-
20 rollment or reenrollment, or in determining the
21 level of enhanced oversight to be applied with re-
22 spect to such taxpayer pursuant to section
23 1866(j)(3) of the Social Security Act.

24 “(C) *DELINQUENT TAX DEBT.*—For pur-
25 poses of this paragraph, the term ‘delinquent tax

1 *debt’ means an outstanding debt under this title*
2 *for which a notice of lien has been filed pursuant*
3 *to section 6323, but the term does not include a*
4 *debt that is being paid in a timely manner pur-*
5 *suant to an agreement under section 6159 or*
6 *7122, or a debt with respect to which a collection*
7 *due process hearing under section 6330 is re-*
8 *quested, pending, or completed and no payment*
9 *is required.”.*

10 (2) *CONFORMING AMENDMENTS.—Section*
11 *6103(p)(4) of such Code, as amended by sections 1414*
12 *and 3308 of Public Law 111–148, in the matter pre-*
13 *ceding subparagraph (A) and in subparagraph*
14 *(F)(ii), is amended by striking “or (17)” and insert-*
15 *ing “(17), or (22)” each place it appears.*

16 (b) *SECRETARY’S AUTHORITY TO USE INFORMATION*
17 *FROM THE DEPARTMENT OF TREASURY IN MEDICARE EN-*
18 *ROLLMENTS AND REENROLLMENTS.—Section 1866(j)(2) of*
19 *the Social Security Act (42 U.S.C. 1395cc(j)), as inserted*
20 *by section 6401(a) of Public Law 111–148, is further*
21 *amended—*

22 (1) *by redesignating subparagraph (E) as sub-*
23 *paragraph (F); and*

24 (2) *by inserting after subparagraph (D) the fol-*
25 *lowing new subparagraph:*

1 “(E) *USE OF INFORMATION FROM THE DE-*
2 *PARTMENT OF TREASURY CONCERNING TAX*
3 *DEBTS.—In reviewing the application of a pro-*
4 *vider of services or supplier to enroll or reenroll*
5 *under the program under this title, the Secretary*
6 *shall take into account the information supplied*
7 *by the Secretary of the Treasury pursuant to sec-*
8 *tion 6103(l)(22) of the Internal Revenue Code of*
9 *1986, in determining whether to deny such ap-*
10 *plication or to apply enhanced oversight to such*
11 *provider of services or supplier pursuant to*
12 *paragraph (3) if the Secretary determines such*
13 *provider of services or supplier owes such a*
14 *debt.”.*

15 (c) *AUTHORITY TO ADJUST PAYMENTS OF PROVIDERS*
16 *OF SERVICES AND SUPPLIERS WITH THE SAME TAX IDEN-*
17 *TIFICATION NUMBER FOR MEDICARE OBLIGATIONS.—Sec-*
18 *tion 1866(j)(6) of the Social Security Act (42 U.S.C.*
19 *1395cc(j)(6)), as inserted by section 6401(a) of Public Law*
20 *111–148 and as redesignated by section 1304 of Public Law*
21 *111–152, is amended—*

22 (1) *in the paragraph heading, by striking “PAST-*
23 *DUE” and inserting “MEDICARE”;*

24 (2) *in subparagraph (A), by striking “past-due*
25 *obligations described in subparagraph (B)(ii) of an”*

1 and inserting “amount described in subparagraph
2 (B)(ii) due from such”; and

3 (3) in subparagraph (B)(ii), by striking “a past-
4 due obligation” and inserting “an amount that is
5 more than the amount required to be paid”.

6 **TITLE II—PENSION FUNDING**
7 **RELIEF**

8 **Subtitle A—Single Employer Plans**

9 **SEC. 201. EXTENDED PERIOD FOR SINGLE-EMPLOYER DE-**
10 **FINED BENEFIT PLANS TO AMORTIZE CER-**
11 **TAIN SHORTFALL AMORTIZATION BASES.**

12 (a) *AMENDMENTS TO ERISA.*—

13 (1) *IN GENERAL.*—Paragraph (2) of section
14 303(c) of the Employee Retirement Income Security
15 Act of 1974 (29 U.S.C. 1083(c)) is amended by add-
16 ing at the end the following subparagraph:

17 “(D) *SPECIAL ELECTION FOR ELIGIBLE*
18 *PLAN YEARS.*—

19 “(i) *IN GENERAL.*—If a plan sponsor
20 elects to apply this subparagraph with re-
21 spect to the shortfall amortization base of a
22 plan for any eligible plan year (in this sub-
23 paragraph and paragraph (7) referred to as
24 an ‘election year’), then, notwithstanding
25 subparagraphs (A) and (B)—

1 “(I) the shortfall amortization in-
2 stallments with respect to such base
3 shall be determined under clause (ii) or
4 (iii), whichever is specified in the elec-
5 tion, and

6 “(II) the shortfall amortization
7 installment for any plan year in the 9-
8 plan-year period described in clause
9 (ii) or the 15-plan-year period de-
10 scribed in clause (iii), respectively,
11 with respect to such shortfall amortiza-
12 tion base is the annual installment de-
13 termined under the applicable clause
14 for that year for that base.

15 “(ii) 2 PLUS 7 AMORTIZATION SCHED-
16 ULE.—The shortfall amortization install-
17 ments determined under this clause are—

18 “(I) in the case of the first 2 plan
19 years in the 9-plan-year period begin-
20 ning with the election year, interest on
21 the shortfall amortization base of the
22 plan for the election year (determined
23 using the effective interest rate for the
24 plan for the election year), and

1 “(II) *in the case of the last 7 plan*
2 *years in such 9-plan-year period, the*
3 *amounts necessary to amortize the re-*
4 *maining balance of the shortfall amor-*
5 *tization base of the plan for the elec-*
6 *tion year in level annual installments*
7 *over such last 7 plan years (using the*
8 *segment rates under subparagraph (C)*
9 *for the election year).*

10 “(iii) *15-YEAR AMORTIZATION.—The*
11 *shortfall amortization installments deter-*
12 *mined under this subparagraph are the*
13 *amounts necessary to amortize the shortfall*
14 *amortization base of the plan for the elec-*
15 *tion year in level annual installments over*
16 *the 15-plan-year period beginning with the*
17 *election year (using the segment rates under*
18 *subparagraph (C) for the election year).*

19 “(iv) *ELECTION.—*

20 “(I) *IN GENERAL.—The plan*
21 *sponsor of a plan may elect to have*
22 *this subparagraph apply to not more*
23 *than 2 eligible plan years with respect*
24 *to the plan, except that in the case of*
25 *a plan described in section 106 of the*

1 *Pension Protection Act of 2006, the*
2 *plan sponsor may only elect to have*
3 *this subparagraph apply to a plan*
4 *year beginning in 2011.*

5 “(II) *AMORTIZATION SCHED-*
6 *ULE.—Such election shall specify*
7 *whether the amortization schedule*
8 *under clause (ii) or (iii) shall apply to*
9 *an election year, except that if a plan*
10 *sponsor elects to have this subpara-*
11 *graph apply to 2 eligible plan years,*
12 *the plan sponsor must elect the same*
13 *schedule for both years.*

14 “(III) *OTHER RULES.—Such elec-*
15 *tion shall be made at such time, and in*
16 *such form and manner, as shall be pre-*
17 *scribed by the Secretary of the Treas-*
18 *ury, and may be revoked only with the*
19 *consent of the Secretary of the Treas-*
20 *ury. The Secretary of the Treasury*
21 *shall, before granting a revocation re-*
22 *quest, provide the Pension Benefit*
23 *Guaranty Corporation an opportunity*
24 *to comment on the conditions applica-*
25 *ble to the treatment of any portion of*

1 *the election year shortfall amortization*
2 *base that remains unamortized as of*
3 *the revocation date.*

4 “(v) *ELIGIBLE PLAN YEAR.*—*For pur-*
5 *poses of this subparagraph, the term ‘eligi-*
6 *ble plan year’ means any plan year begin-*
7 *ning in 2008, 2009, 2010, or 2011, except*
8 *that a plan year shall only be treated as an*
9 *eligible plan year if the due date under sub-*
10 *section (j)(1) for the payment of the min-*
11 *imum required contribution for such plan*
12 *year occurs on or after the date of the enact-*
13 *ment of this subparagraph.*

14 “(vi) *REPORTING.*—*A plan sponsor of*
15 *a plan who makes an election under clause*
16 *(i) shall—*

17 “(I) *give notice of the election to*
18 *participants and beneficiaries of the*
19 *plan, and*

20 “(II) *inform the Pension Benefit*
21 *Guaranty Corporation of such election*
22 *in such form and manner as the Direc-*
23 *tor of the Pension Benefit Guaranty*
24 *Corporation may prescribe.*

1 “(vii) *INCREASES IN REQUIRED IN-*
2 *STALLMENTS IN CERTAIN CASES.—For in-*
3 *creases in required contributions in cases of*
4 *excess compensation or extraordinary divi-*
5 *dends or stock redemptions, see paragraph*
6 *(7).”.*

7 (2) *INCREASES IN REQUIRED INSTALLMENTS IN*
8 *CERTAIN CASES.—Section 303(c) of the Employee Re-*
9 *irement Income Security Act of 1974 (29 U.S.C.*
10 *1083(c)) is amended by adding at the end the fol-*
11 *lowing paragraph:*

12 “(7) *INCREASES IN ALTERNATE REQUIRED IN-*
13 *STALLMENTS IN CASES OF EXCESS COMPENSATION OR*
14 *EXTRAORDINARY DIVIDENDS OR STOCK REDEMP-*
15 *TIONS.—*

16 “(A) *IN GENERAL.—If there is an install-*
17 *ment acceleration amount with respect to a plan*
18 *for any plan year in the restriction period with*
19 *respect to an election year under paragraph*
20 *(2)(D), then the shortfall amortization install-*
21 *ment otherwise determined and payable under*
22 *such paragraph for such plan year shall, subject*
23 *to the limitation under subparagraph (B), be in-*
24 *creased by such amount.*

1 “(B) *TOTAL INSTALLMENTS LIMITED TO*
2 *SHORTFALL BASE.*—Subject to rules prescribed
3 by the Secretary of the Treasury, if a shortfall
4 amortization installment with respect to any
5 shortfall amortization base for an election year
6 is required to be increased for any plan year
7 under subparagraph (A)—

8 “(i) such increase shall not result in
9 the amount of such installment exceeding
10 the present value of such installment and all
11 succeeding installments with respect to such
12 base (determined without regard to such in-
13 crease but after application of clause (ii)),
14 and

15 “(ii) subsequent shortfall amortization
16 installments with respect to such base shall,
17 in reverse order of the otherwise required in-
18 stallments, be reduced to the extent nec-
19 essary to limit the present value of such
20 subsequent shortfall amortization install-
21 ments (after application of this paragraph)
22 to the present value of the remaining
23 unamortized shortfall amortization base.

24 “(C) *INSTALLMENT ACCELERATION*
25 *AMOUNT.*—For purposes of this paragraph—

1 “(i) *IN GENERAL.*—*The term ‘install-*
2 *ment acceleration amount’ means, with re-*
3 *spect to any plan year in a restriction pe-*
4 *riod with respect to an election year, the*
5 *sum of—*

6 “(I) *the aggregate amount of ex-*
7 *cess employee compensation determined*
8 *under subparagraph (D) with respect*
9 *to all employees for the plan year, plus*

10 “(II) *the aggregate amount of ex-*
11 *traordinary dividends and redemp-*
12 *tions determined under subparagraph*
13 *(E) for the plan year.*

14 “(ii) *ANNUAL LIMITATION.*—*The in-*
15 *stallment acceleration amount for any plan*
16 *year shall not exceed the excess (if any) of—*

17 “(I) *the sum of the shortfall amor-*
18 *tization installments for the plan year*
19 *and all preceding plan years in the*
20 *amortization period elected under*
21 *paragraph (2)(D) with respect to the*
22 *shortfall amortization base with respect*
23 *to an election year, determined without*
24 *regard to paragraph (2)(D) and this*
25 *paragraph, over*

1 “(II) *the sum of the shortfall am-*
2 *ortization installments for such plan*
3 *year and all such preceding plan*
4 *years, determined after application of*
5 *paragraph (2)(D) (and in the case of*
6 *any preceding plan year, after appli-*
7 *cation of this paragraph).*

8 “(iii) *CARRYOVER OF EXCESS INSTALL-*
9 *MENT ACCELERATION AMOUNTS.—*

10 “(I) *IN GENERAL.—If the install-*
11 *ment acceleration amount for any plan*
12 *year (determined without regard to*
13 *clause (ii)) exceeds the limitation*
14 *under clause (ii), then, subject to sub-*
15 *clause (II), such excess shall be treated*
16 *as an installment acceleration amount*
17 *with respect to the succeeding plan*
18 *year.*

19 “(II) *CAP TO APPLY.—If any*
20 *amount treated as an installment ac-*
21 *celeration amount under subclause (I)*
22 *or this subclause with respect any suc-*
23 *ceeding plan year, when added to other*
24 *installment acceleration amounts (de-*
25 *termined without regard to clause (ii))*

1 *with respect to the plan year, exceeds*
2 *the limitation under clause (ii), the*
3 *portion of such amount representing*
4 *such excess shall be treated as an in-*
5 *stallment acceleration amount with re-*
6 *spect to the next succeeding plan year.*

7 “(III) *LIMITATION ON YEARS TO*
8 *WHICH AMOUNTS CARRIED FOR.—No*
9 *amount shall be carried under sub-*
10 *clause (I) or (II) to a plan year which*
11 *begins after the first plan year fol-*
12 *lowing the last plan year in the re-*
13 *striction period (or after the second*
14 *plan year following such last plan year*
15 *in the case of an election year with re-*
16 *spect to which 15-year amortization*
17 *was elected under paragraph (2)(D)).*

18 “(IV) *ORDERING RULES.—For*
19 *purposes of applying subclause (II),*
20 *installment acceleration amounts for*
21 *the plan year (determined without re-*
22 *gard to any carryover under this*
23 *clause) shall be applied first against*
24 *the limitation under clause (ii) and*
25 *then carryovers to such plan year shall*

1 *be applied against such limitation on*
2 *a first-in, first-out basis.*

3 “(D) *EXCESS EMPLOYEE COMPENSATION.*—

4 *For purposes of this paragraph—*

5 “(i) *IN GENERAL.*—*The term ‘excess*
6 *employee compensation’ means, with respect*
7 *to any employee for any plan year, the ex-*
8 *cess (if any) of—*

9 “(I) *the aggregate amount includ-*
10 *ible in income under chapter 1 of the*
11 *Internal Revenue Code of 1986 for re-*
12 *muneration during the calendar year*
13 *in which such plan year begins for*
14 *services performed by the employee for*
15 *the plan sponsor (whether or not per-*
16 *formed during such calendar year),*
17 *over*

18 “(II) *\$1,000,000.*

19 “(ii) *AMOUNTS SET ASIDE FOR NON-*
20 *QUALIFIED DEFERRED COMPENSATION.*—*If*
21 *during any calendar year assets are set*
22 *aside or reserved (directly or indirectly) in*
23 *a trust (or other arrangement as determined*
24 *by the Secretary of the Treasury), or trans-*
25 *ferred to such a trust or other arrangement,*

1 by a plan sponsor for purposes of paying
2 deferred compensation of an employee under
3 a nonqualified deferred compensation plan
4 (as defined in section 409A of such Code) of
5 the plan sponsor, then, for purposes of
6 clause (i), the amount of such assets shall be
7 treated as remuneration of the employee in-
8 cludible in income for the calendar year un-
9 less such amount is otherwise includible in
10 income for such year. An amount to which
11 the preceding sentence applies shall not be
12 taken into account under this paragraph for
13 any subsequent calendar year.

14 “(iii) *ONLY REMUNERATION FOR CER-*
15 *TAIN POST-2009 SERVICES COUNTED.—Re-*
16 *muneration shall be taken into account*
17 *under clause (i) only to the extent attrib-*
18 *utable to services performed by the employee*
19 *for the plan sponsor after February 28,*
20 *2010.*

21 “(iv) *EXCEPTION FOR CERTAIN EQUITY*
22 *PAYMENTS.—*

23 “(I) *IN GENERAL.—There shall*
24 *not be taken into account under clause*
25 *(i)(I) any amount includible in income*

1 *with respect to the granting after Feb-*
2 *ruary 28, 2010, of service recipient*
3 *stock (within the meaning of section*
4 *409A of the Internal Revenue Code of*
5 *1986) that, upon such grant, is subject*
6 *to a substantial risk of forfeiture (as*
7 *defined under section 83(c)(1) of such*
8 *Code) for at least 5 years from the date*
9 *of such grant.*

10 “(II) *SECRETARIAL AUTHORITY.—The Secretary of the Treasury*
11 *may by regulation provide for the ap-*
12 *plication of this clause in the case of a*
13 *person other than a corporation.*

14 “(v) *OTHER EXCEPTIONS.—The fol-*
15 *lowing amounts includible in income shall*
16 *not be taken into account under clause*
17 *(i)(I):*

18 “(I) *COMMISSIONS.—Any remun-*
19 *eration payable on a commission*
20 *basis solely on account of income di-*
21 *rectly generated by the individual per-*
22 *formance of the individual to whom*
23 *such remuneration is payable.*
24

1 “(II) *CERTAIN PAYMENTS UNDER*
2 *EXISTING CONTRACTS.*—*Any remun-*
3 *eration consisting of nonqualified de-*
4 *ferred compensation, restricted stock,*
5 *stock options, or stock appreciation*
6 *rights payable or granted under a*
7 *written binding contract that was in*
8 *effect on March 1, 2010, and which*
9 *was not modified in any material re-*
10 *spect before such remuneration is paid.*

11 “(vi) *SELF-EMPLOYED INDIVIDUAL*
12 *TREATED AS EMPLOYEE.*—*The term ‘em-*
13 *ployee’ includes, with respect to a calendar*
14 *year, a self-employed individual who is*
15 *treated as an employee under section 401(c)*
16 *of such Code for the taxable year ending*
17 *during such calendar year, and the term*
18 *‘compensation’ shall include earned income*
19 *of such individual with respect to such self-*
20 *employment.*

21 “(vii) *INDEXING OF AMOUNT.*—*In the*
22 *case of any calendar year beginning after*
23 *2010, the dollar amount under clause (i)(II)*
24 *shall be increased by an amount equal to—*

1 “(I) such dollar amount, multi-
2 plied by

3 “(II) the cost-of-living adjustment
4 determined under section 1(f)(3) of
5 such Code for the calendar year, deter-
6 mined by substituting ‘calendar year
7 2009’ for ‘calendar year 1992’ in sub-
8 paragraph (B) thereof.

9 If the amount of any increase under clause
10 (i) is not a multiple of \$1,000, such in-
11 crease shall be rounded to the next lowest
12 multiple of \$1,000.

13 “(E) *EXTRAORDINARY DIVIDENDS AND RE-*
14 *DEMPTIONS.—*

15 “(i) *IN GENERAL.—*The amount deter-
16 mined under this subparagraph for any
17 plan year is the excess (if any) of the sum
18 of the dividends declared during the plan
19 year by the plan sponsor plus the aggregate
20 amount paid for the redemption of stock of
21 the plan sponsor redeemed during the plan
22 year over the greater of—

23 “(I) the adjusted net income
24 (within the meaning of section 4043) of
25 the plan sponsor for the preceding plan

1 year, determined without regard to
2 any reduction by reason of interest,
3 taxes, depreciation, or amortization, or
4 “(II) in the case of a plan sponsor
5 that determined and declared dividends
6 in the same manner for at least 5 con-
7 secutive years immediately preceding
8 such plan year, the aggregate amount
9 of dividends determined and declared
10 for such plan year using such manner.

11 “(ii) ONLY CERTAIN POST-2009 DIVI-
12 DENDS AND REDEMPTIONS COUNTED.—For
13 purposes of clause (i), there shall only be
14 taken into account dividends declared, and
15 redemptions occurring, after February 28,
16 2010.

17 “(iii) EXCEPTION FOR INTRA-GROUP
18 DIVIDENDS.—Dividends paid by one mem-
19 ber of a controlled group (as defined in sec-
20 tion 302(d)(3)) to another member of such
21 group shall not be taken into account under
22 clause (i).

23 “(iv) EXCEPTION FOR CERTAIN RE-
24 DEMPTIONS.—Redemptions that are made
25 pursuant to a plan maintained with respect

1 to employees, or that are made on account
2 of the death, disability, or termination of
3 employment of an employee or shareholder,
4 shall not be taken into account under clause
5 (i).

6 “(v) *EXCEPTION FOR CERTAIN PRE-*
7 *FERRED STOCK.—*

8 “(I) *IN GENERAL.—Dividends*
9 *and redemptions with respect to appli-*
10 *cable preferred stock shall not be taken*
11 *into account under clause (i) to the ex-*
12 *tent that dividends accrue with respect*
13 *to such stock at a specified rate in all*
14 *events and without regard to the plan*
15 *sponsor’s income, and interest accrues*
16 *on any unpaid dividends with respect*
17 *to such stock.*

18 “(II) *APPLICABLE PREFERRED*
19 *STOCK.—For purposes of subclause (I),*
20 *the term ‘applicable preferred stock’*
21 *means preferred stock which was issued*
22 *before March 1, 2010 (or which was*
23 *issued after such date and is held by*
24 *an employee benefit plan subject to the*
25 *provisions of this title).*

1 “(F) *OTHER DEFINITIONS AND RULES.*—

2 *For purposes of this paragraph—*

3 “(i) *PLAN SPONSOR.*—*The term ‘ plan*
4 *sponsor’ includes any member of the plan*
5 *sponsor’s controlled group (as defined in*
6 *section 302(d)(3)).*

7 “(ii) *RESTRICTION PERIOD.*—*The term*
8 *‘restriction period’ means, with respect to*
9 *any election year—*

10 “(I) *except as provided in sub-*
11 *clause (II), the 3-year period beginning*
12 *with the election year (or, if later, the*
13 *first plan year beginning after Decem-*
14 *ber 31, 2009), and*

15 “(II) *if the plan sponsor elects 15-*
16 *year amortization for the shortfall am-*
17 *ortization base for the election year, the*
18 *5-year period beginning with the elec-*
19 *tion year (or, if later, the first plan*
20 *year beginning after December 31,*
21 *2009).*

22 “(iii) *ELECTIONS FOR MULTIPLE*
23 *PLANS.*—*If a plan sponsor makes elections*
24 *under paragraph (2)(D) with respect to 2*
25 *or more plans, the Secretary of the Treas-*

1 *ury shall provide rules for the application*
2 *of this paragraph to such plans, including*
3 *rules for the ratable allocation of any in-*
4 *stallment acceleration amount among such*
5 *plans on the basis of each plan’s relative re-*
6 *duction in the plan’s shortfall amortization*
7 *installment for the first plan year in the*
8 *amortization period described in subpara-*
9 *graph (A) (determined without regard to*
10 *this paragraph).*

11 *“(iv) MERGERS AND ACQUISITIONS.—*
12 *The Secretary of the Treasury shall pre-*
13 *scribe rules for the application of paragraph*
14 *(2)(D) and this paragraph in any case*
15 *where there is a merger or acquisition in-*
16 *volving a plan sponsor making the election*
17 *under paragraph (2)(D).”.*

18 *(3) CONFORMING AMENDMENTS.—Section 303 of*
19 *such Act (29 U.S.C. 1083) is amended—*

20 *(A) in subsection (c)(1), by striking “the*
21 *shortfall amortization bases for such plan year*
22 *and each of the 6 preceding plan years” and in-*
23 *serting “any shortfall amortization base which*
24 *has not been fully amortized under this sub-*
25 *section”, and*

1 (B) in subsection (j)(3), by adding at the
2 end the following:

3 “(F) QUARTERLY CONTRIBUTIONS NOT TO
4 INCLUDE CERTAIN INCREASED CONTRIBU-
5 TIONS.—Subparagraph (D) shall be applied
6 without regard to any increase under subsection
7 (c)(7).”.

8 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF
9 1986.—

10 (1) IN GENERAL.—Paragraph (2) of section
11 430(c) is amended by adding at the end the following
12 subparagraph:

13 “(D) SPECIAL ELECTION FOR ELIGIBLE
14 PLAN YEARS.—

15 “(i) IN GENERAL.—If a plan sponsor
16 elects to apply this subparagraph with re-
17 spect to the shortfall amortization base of a
18 plan for any eligible plan year (in this sub-
19 paragraph and paragraph (7) referred to as
20 an ‘election year’), then, notwithstanding
21 subparagraphs (A) and (B)—

22 “(I) the shortfall amortization in-
23 stallments with respect to such base
24 shall be determined under clause (ii) or

1 (iii), whichever is specified in the elec-
2 tion, and

3 “(II) the shortfall amortization
4 installment for any plan year in the 9-
5 plan-year period described in clause
6 (ii) or the 15-plan-year period de-
7 scribed in clause (iii), respectively,
8 with respect to such shortfall amortiza-
9 tion base is the annual installment de-
10 termined under the applicable clause
11 for that year for that base.

12 “(ii) 2 PLUS 7 AMORTIZATION SCHED-
13 ULE.—The shortfall amortization install-
14 ments determined under this clause are—

15 “(I) in the case of the first 2 plan
16 years in the 9-plan-year period begin-
17 ning with the election year, interest on
18 the shortfall amortization base of the
19 plan for the election year (determined
20 using the effective interest rate for the
21 plan for the election year), and

22 “(II) in the case of the last 7 plan
23 years in such 9-plan-year period, the
24 amounts necessary to amortize the re-
25 maining balance of the shortfall amor-

1 *tization base of the plan for the elec-*
2 *tion year in level annual installments*
3 *over such last 7 plan years (using the*
4 *segment rates under subparagraph (C)*
5 *for the election year).*

6 “(iii) 15-YEAR AMORTIZATION.—*The*
7 *shortfall amortization installments deter-*
8 *mined under this subparagraph are the*
9 *amounts necessary to amortize the shortfall*
10 *amortization base of the plan for the elec-*
11 *tion year in level annual installments over*
12 *the 15-plan-year period beginning with the*
13 *election year (using the segment rates under*
14 *subparagraph (C) for the election year).*

15 “(iv) ELECTION.—

16 “(I) IN GENERAL.—*The plan*
17 *sponsor of a plan may elect to have*
18 *this subparagraph apply to not more*
19 *than 2 eligible plan years with respect*
20 *to the plan, except that in the case of*
21 *a plan described in section 106 of the*
22 *Pension Protection Act of 2006, the*
23 *plan sponsor may only elect to have*
24 *this subparagraph apply to a plan*
25 *year beginning in 2011.*

1 “(II) *AMORTIZATION SCHED-*
2 *ULE.—Such election shall specify*
3 *whether the amortization schedule*
4 *under clause (ii) or (iii) shall apply to*
5 *an election year, except that if a plan*
6 *sponsor elects to have this subpara-*
7 *graph apply to 2 eligible plan years,*
8 *the plan sponsor must elect the same*
9 *schedule for both years.*

10 “(III) *OTHER RULES.—Such elec-*
11 *tion shall be made at such time, and in*
12 *such form and manner, as shall be pre-*
13 *scribed by the Secretary, and may be*
14 *revoked only with the consent of the*
15 *Secretary. The Secretary shall, before*
16 *granting a revocation request, provide*
17 *the Pension Benefit Guaranty Cor-*
18 *poration an opportunity to comment*
19 *on the conditions applicable to the*
20 *treatment of any portion of the election*
21 *year shortfall amortization base that*
22 *remains unamortized as of the revoca-*
23 *tion date.*

24 “(v) *ELIGIBLE PLAN YEAR.—For pur-*
25 *poses of this subparagraph, the term ‘eligi-*

1 *ble plan year’ means any plan year begin-*
2 *ning in 2008, 2009, 2010, or 2011, except*
3 *that a plan year shall only be treated as an*
4 *eligible plan year if the due date under sub-*
5 *section (j)(1) for the payment of the min-*
6 *imum required contribution for such plan*
7 *year occurs on or after the date of the enact-*
8 *ment of this subparagraph.*

9 *“(vi) REPORTING.—A plan sponsor of*
10 *a plan who makes an election under clause*
11 *(i) shall—*

12 *“(I) give notice of the election to*
13 *participants and beneficiaries of the*
14 *plan, and*

15 *“(II) inform the Pension Benefit*
16 *Guaranty Corporation of such election*
17 *in such form and manner as the Direc-*
18 *tor of the Pension Benefit Guaranty*
19 *Corporation may prescribe.*

20 *“(vii) INCREASES IN REQUIRED IN-*
21 *STALLMENTS IN CERTAIN CASES.—For in-*
22 *creases in required contributions in cases of*
23 *excess compensation or extraordinary divi-*
24 *dends or stock redemptions, see paragraph*
25 *(7).”.*

1 (2) *INCREASES IN REQUIRED CONTRIBUTIONS IF*
2 *EXCESS COMPENSATION PAID.*—Section 430(c) is
3 *amended by adding at the end the following para-*
4 *graph:*

5 “(7) *INCREASES IN ALTERNATE REQUIRED IN-*
6 *STALLMENTS IN CASES OF EXCESS COMPENSATION OR*
7 *EXTRAORDINARY DIVIDENDS OR STOCK REDEMP-*
8 *TIONS.*—

9 “(A) *IN GENERAL.*—If there is an install-
10 *ment acceleration amount with respect to a plan*
11 *for any plan year in the restriction period with*
12 *respect to an election year under paragraph*
13 *(2)(D), then the shortfall amortization install-*
14 *ment otherwise determined and payable under*
15 *such paragraph for such plan year shall, subject*
16 *to the limitation under subparagraph (B), be in-*
17 *creased by such amount.*

18 “(B) *TOTAL INSTALLMENTS LIMITED TO*
19 *SHORTFALL BASE.*—Subject to rules prescribed
20 *by the Secretary, if a shortfall amortization in-*
21 *stallment with respect to any shortfall amortiza-*
22 *tion base for an election year is required to be*
23 *increased for any plan year under subparagraph*
24 *(A)*—

1 “(i) such increase shall not result in
2 the amount of such installment exceeding
3 the present value of such installment and all
4 succeeding installments with respect to such
5 base (determined without regard to such in-
6 crease but after application of clause (ii)),
7 and

8 “(ii) subsequent shortfall amortization
9 installments with respect to such base shall,
10 in reverse order of the otherwise required in-
11 stallments, be reduced to the extent nec-
12 essary to limit the present value of such
13 subsequent shortfall amortization install-
14 ments (after application of this paragraph)
15 to the present value of the remaining
16 unamortized shortfall amortization base.

17 “(C) INSTALLMENT ACCELERATION
18 AMOUNT.—For purposes of this paragraph—

19 “(i) IN GENERAL.—The term ‘install-
20 ment acceleration amount’ means, with re-
21 spect to any plan year in a restriction pe-
22 riod with respect to an election year, the
23 sum of—

24 “(I) the aggregate amount of ex-
25 cess employee compensation determined

1 under subparagraph (D) with respect
2 to all employees for the plan year, plus

3 “(II) the aggregate amount of ex-
4 traordinary dividends and redemp-
5 tions determined under subparagraph
6 (E) for the plan year.

7 “(ii) ANNUAL LIMITATION.—The in-
8 stallment acceleration amount for any plan
9 year shall not exceed the excess (if any) of—

10 “(I) the sum of the shortfall amor-
11 tization installments for the plan year
12 and all preceding plan years in the
13 amortization period elected under
14 paragraph (2)(D) with respect to the
15 shortfall amortization base with respect
16 to an election year, determined without
17 regard to paragraph (2)(D) and this
18 paragraph, over

19 “(II) the sum of the shortfall am-
20 ortization installments for such plan
21 year and all such preceding plan
22 years, determined after application of
23 paragraph (2)(D) (and in the case of
24 any preceding plan year, after appli-
25 cation of this paragraph).

1 “(iii) *CARRYOVER OF EXCESS INSTALL-*
2 *MENT ACCELERATION AMOUNTS.*—

3 “(I) *IN GENERAL.*—*If the install-*
4 *ment acceleration amount for any plan*
5 *year (determined without regard to*
6 *clause (ii)) exceeds the limitation*
7 *under clause (ii), then, subject to sub-*
8 *clause (II), such excess shall be treated*
9 *as an installment acceleration amount*
10 *with respect to the succeeding plan*
11 *year.*

12 “(II) *CAP TO APPLY.*—*If any*
13 *amount treated as an installment ac-*
14 *celeration amount under subclause (I)*
15 *or this subclause with respect any suc-*
16 *ceeding plan year, when added to other*
17 *installment acceleration amounts (de-*
18 *termined without regard to clause (ii))*
19 *with respect to the plan year, exceeds*
20 *the limitation under clause (ii), the*
21 *portion of such amount representing*
22 *such excess shall be treated as an in-*
23 *stallment acceleration amount with re-*
24 *spect to the next succeeding plan year.*

1 “(III) *LIMITATION ON YEARS TO*
2 *WHICH AMOUNTS CARRIED FOR.*—No
3 *amount shall be carried under sub-*
4 *clause (I) or (II) to a plan year which*
5 *begins after the first plan year fol-*
6 *lowing the last plan year in the re-*
7 *striction period (or after the second*
8 *plan year following such last plan year*
9 *in the case of an election year with re-*
10 *spect to which 15-year amortization*
11 *was elected under paragraph (2)(D)).*

12 “(IV) *ORDERING RULES.*—For
13 *purposes of applying subclause (II),*
14 *installment acceleration amounts for*
15 *the plan year (determined without re-*
16 *gard to any carryover under this*
17 *clause) shall be applied first against*
18 *the limitation under clause (ii) and*
19 *then carryovers to such plan year shall*
20 *be applied against such limitation on*
21 *a first-in, first-out basis.*

22 “(D) *EXCESS EMPLOYEE COMPENSATION.*—
23 *For purposes of this paragraph—*

24 “(i) *IN GENERAL.*—The term ‘*excess*
25 *employee compensation*’ means, with respect

1 to any employee for any plan year, the ex-
2 cess (if any) of—

3 “(I) the aggregate amount includ-
4 ible in income under this chapter for
5 remuneration during the calendar year
6 in which such plan year begins for
7 services performed by the employee for
8 the plan sponsor (whether or not per-
9 formed during such calendar year),
10 over

11 “(II) \$1,000,000.

12 “(ii) *AMOUNTS SET ASIDE FOR NON-*
13 *QUALIFIED DEFERRED COMPENSATION.*—If
14 during any calendar year assets are set
15 aside or reserved (directly or indirectly) in
16 a trust (or other arrangement as determined
17 by the Secretary), or transferred to such a
18 trust or other arrangement, by a plan spon-
19 sor for purposes of paying deferred com-
20 pensation of an employee under a non-
21 qualified deferred compensation plan (as de-
22 fined in section 409A) of the plan sponsor,
23 then, for purposes of clause (i), the amount
24 of such assets shall be treated as remunera-
25 tion of the employee includible in income

1 *for the calendar year unless such amount is*
2 *otherwise includible in income for such*
3 *year. An amount to which the preceding*
4 *sentence applies shall not be taken into ac-*
5 *count under this paragraph for any subse-*
6 *quent calendar year.*

7 “(iii) *ONLY REMUNERATION FOR CER-*
8 *TAIN POST-2009 SERVICES COUNTED.—Re-*
9 *muneration shall be taken into account*
10 *under clause (i) only to the extent attrib-*
11 *utable to services performed by the employee*
12 *for the plan sponsor after February 28,*
13 *2010.*

14 “(iv) *EXCEPTION FOR CERTAIN EQUITY*
15 *PAYMENTS.—*

16 “(I) *IN GENERAL.—There shall*
17 *not be taken into account under clause*
18 *(i)(I) any amount includible in income*
19 *with respect to the granting after Feb-*
20 *ruary 28, 2010, of service recipient*
21 *stock (within the meaning of section*
22 *409A) that, upon such grant, is subject*
23 *to a substantial risk of forfeiture (as*
24 *defined under section 83(c)(1)) for at*

1 *least 5 years from the date of such*
2 *grant.*

3 “(II) *SECRETARIAL AUTHORITY.*—*The Secretary may by regulation*
4 *provide for the application of this*
5 *clause in the case of a person other*
6 *than a corporation.*

7 “(v) *OTHER EXCEPTIONS.*—*The fol-*
8 *lowing amounts includible in income shall*
9 *not be taken into account under clause*
10 *(i)(I):*

11 “(I) *COMMISSIONS.*—*Any remun-*
12 *eration payable on a commission*
13 *basis solely on account of income di-*
14 *rectly generated by the individual per-*
15 *formance of the individual to whom*
16 *such remuneration is payable.*

17 “(II) *CERTAIN PAYMENTS UNDER*
18 *EXISTING CONTRACTS.*—*Any remun-*
19 *eration consisting of nonqualified de-*
20 *ferred compensation, restricted stock,*
21 *stock options, or stock appreciation*
22 *rights payable or granted under a*
23 *written binding contract that was in*
24 *effect on March 1, 2010, and which*
25

1 *was not modified in any material re-*
2 *spect before such remuneration is paid.*

3 “(vi) *SELF-EMPLOYED INDIVIDUAL*
4 *TREATED AS EMPLOYEE.—The term ‘em-*
5 *ployee’ includes, with respect to a calendar*
6 *year, a self-employed individual who is*
7 *treated as an employee under section 401(c)*
8 *for the taxable year ending during such cal-*
9 *endar year, and the term ‘compensation’*
10 *shall include earned income of such indi-*
11 *vidual with respect to such self-employment.*

12 “(vii) *INDEXING OF AMOUNT.—In the*
13 *case of any calendar year beginning after*
14 *2010, the dollar amount under clause (i)(II)*
15 *shall be increased by an amount equal to—*

16 “(I) *such dollar amount, multi-*
17 *plied by*

18 “(II) *the cost-of-living adjustment*
19 *determined under section 1(f)(3) for*
20 *the calendar year, determined by sub-*
21 *stituting ‘calendar year 2009’ for ‘cal-*
22 *endar year 1992’ in subparagraph (B)*
23 *thereof.*

24 *If the amount of any increase under clause*
25 *(i) is not a multiple of \$1,000, such in-*

1 crease shall be rounded to the next lowest
2 multiple of \$1,000.

3 “(E) *EXTRAORDINARY DIVIDENDS AND RE-*
4 *DEMPTIONS.—*

5 “(i) *IN GENERAL.—*The amount deter-
6 mined under this subparagraph for any
7 plan year is the excess (if any) of the sum
8 of the dividends declared during the plan
9 year by the plan sponsor plus the aggregate
10 amount paid for the redemption of stock of
11 the plan sponsor redeemed during the plan
12 year over the greater of—

13 “(I) *the adjusted net income*
14 *(within the meaning of section 4043 of*
15 *the Employee Retirement Income Secu-*
16 *rity Act of 1974) of the plan sponsor*
17 *for the preceding plan year, deter-*
18 *mined without regard to any reduction*
19 *by reason of interest, taxes, deprecia-*
20 *tion, or amortization, or*

21 “(II) *in the case of a plan sponsor*
22 *that determined and declared dividends*
23 *in the same manner for at least 5 con-*
24 *secutive years immediately preceding*
25 *such plan year, the aggregate amount*

1 *of dividends determined and declared*
2 *for such plan year using such manner.*

3 “(ii) *ONLY CERTAIN POST-2009 DIVI-*
4 *DENDS AND REDEMPTIONS COUNTED.—For*
5 *purposes of clause (i), there shall only be*
6 *taken into account dividends declared, and*
7 *redemptions occurring, after February 28,*
8 *2010.*

9 “(iii) *EXCEPTION FOR INTRA-GROUP*
10 *DIVIDENDS.—Dividends paid by one mem-*
11 *ber of a controlled group (as defined in sec-*
12 *tion 412(d)(3)) to another member of such*
13 *group shall not be taken into account under*
14 *clause (i).*

15 “(iv) *EXCEPTION FOR CERTAIN RE-*
16 *DEMPTIONS.—Redemptions that are made*
17 *pursuant to a plan maintained with respect*
18 *to employees, or that are made on account*
19 *of the death, disability, or termination of*
20 *employment of an employee or shareholder,*
21 *shall not be taken into account under clause*
22 *(i).*

23 “(v) *EXCEPTION FOR CERTAIN PRE-*
24 *FERRED STOCK.—*

1 “(I) *IN GENERAL.*—*Dividends*
2 *and redemptions with respect to appli-*
3 *cable preferred stock shall not be taken*
4 *into account under clause (i) to the ex-*
5 *tent that dividends accrue with respect*
6 *to such stock at a specified rate in all*
7 *events and without regard to the plan*
8 *sponsor’s income, and interest accrues*
9 *on any unpaid dividends with respect*
10 *to such stock.*

11 “(II) *APPLICABLE PREFERRED*
12 *STOCK.*—*For purposes of subclause (I),*
13 *the term ‘applicable preferred stock’*
14 *means preferred stock which was issued*
15 *before March 1, 2010 (or which was*
16 *issued after such date and is held by*
17 *an employee benefit plan subject to the*
18 *provisions of title I of Employee Re-*
19 *tirement Income Security Act of 1974).*

20 “(F) *OTHER DEFINITIONS AND RULES.*—
21 *For purposes of this paragraph—*

22 “(i) *PLAN SPONSOR.*—*The term ‘ plan*
23 *sponsor’ includes any member of the plan*
24 *sponsor’s controlled group (as defined in*
25 *section 412(d)(3)).*

1 “(ii) *RESTRICTION PERIOD.*—*The term*
2 *‘restriction period’ means, with respect to*
3 *any election year—*

4 “(I) *except as provided in sub-*
5 *clause (II), the 3-year period beginning*
6 *with the election year (or, if later, the*
7 *first plan year beginning after Decem-*
8 *ber 31, 2009), and*

9 “(II) *if the plan sponsor elects 15-*
10 *year amortization for the shortfall am-*
11 *ortization base for the election year, the*
12 *5-year period beginning with the elec-*
13 *tion year (or, if later, the first plan*
14 *year beginning after December 31,*
15 *2009).*

16 “(iii) *ELECTIONS FOR MULTIPLE*
17 *PLANS.*—*If a plan sponsor makes elections*
18 *under paragraph (2)(D) with respect to 2*
19 *or more plans, the Secretary shall provide*
20 *rules for the application of this paragraph*
21 *to such plans, including rules for the ratable*
22 *allocation of any installment acceleration*
23 *amount among such plans on the basis of*
24 *each plan’s relative reduction in the plan’s*
25 *shortfall amortization installment for the*

1 *first plan year in the amortization period*
2 *described in subparagraph (A) (determined*
3 *without regard to this paragraph).*

4 “(iv) *MERGERS AND ACQUISITIONS.—*
5 *The Secretary shall prescribe rules for the*
6 *application of paragraph (2)(D) and this*
7 *paragraph in any case where there is a*
8 *merger or acquisition involving a plan*
9 *sponsor making the election under para-*
10 *graph (2)(D).”.*

11 (3) *CONFORMING AMENDMENTS.—Section 430 is*
12 *amended—*

13 (A) *in subsection (c)(1), by striking “the*
14 *shortfall amortization bases for such plan year*
15 *and each of the 6 preceding plan years” and in-*
16 *serting “any shortfall amortization base which*
17 *has not been fully amortized under this sub-*
18 *section”, and*

19 (B) *in subsection (j)(3), by adding at the*
20 *end the following:*

21 “(F) *QUARTERLY CONTRIBUTIONS NOT TO*
22 *INCLUDE CERTAIN INCREASED CONTRIBU-*
23 *TIONS.—Subparagraph (D) shall be applied*
24 *without regard to any increase under subsection*
25 *(c)(7).”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
2 *section shall apply to plan years beginning after December*
3 *31, 2007.*

4 **SEC. 202. APPLICATION OF EXTENDED AMORTIZATION PE-**
5 **RIOD TO PLANS SUBJECT TO PRIOR LAW**
6 **FUNDING RULES.**

7 (a) *IN GENERAL.*—*Title I of the Pension Protection*
8 *Act of 2006 is amended by redesignating section 107 as sec-*
9 *tion 108 and by inserting the following after section 106:*
10 **“SEC. 107. APPLICATION OF EXTENDED AMORTIZATION PE-**
11 **RIODS TO PLANS WITH DELAYED EFFECTIVE**
12 **DATE.**

13 “(a) *IN GENERAL.*—*If the plan sponsor of a plan to*
14 *which section 104, 105, or 106 of this Act applies elects*
15 *to have this section apply for any eligible plan year (in*
16 *this section referred to as an ‘election year’), section 302*
17 *of the Employee Retirement Income Security Act of 1974*
18 *and section 412 of the Internal Revenue Code of 1986 (as*
19 *in effect before the amendments made by this subtitle and*
20 *subtitle B) shall apply to such year in the manner described*
21 *in subsection (b) or (c), whichever is specified in the elec-*
22 *tion. All references in this section to ‘such Act’ or ‘such*
23 *Code’ shall be to such Act or such Code as in effect before*
24 *the amendments made by this subtitle and subtitle B.*

1 “(b) *APPLICATION OF 2 AND 7 RULE.*—*In the case of*
2 *an election year to which this subsection applies—*

3 “(1) *2-YEAR LOOKBACK FOR DETERMINING DEF-*
4 *ICIT REDUCTION CONTRIBUTIONS FOR CERTAIN*
5 *PLANS.*—*For purposes of applying section 302(d)(9)*
6 *of such Act and section 412(l)(9) of such Code, the*
7 *funded current liability percentage (as defined in sub-*
8 *paragraph (C) thereof) for such plan for such plan*
9 *year shall be such funded current liability percentage*
10 *of such plan for the second plan year preceding the*
11 *first election year of such plan.*

12 “(2) *CALCULATION OF DEFICIT REDUCTION CON-*
13 *TRIBUTION.*—*For purposes of applying section 302(d)*
14 *of such Act and section 412(l) of such Code to a plan*
15 *to which such sections apply (after taking into ac-*
16 *count paragraph (1))—*

17 “(A) *in the case of the increased unfunded*
18 *new liability of the plan, the applicable percent-*
19 *age described in section 302(d)(4)(C) of such Act*
20 *and section 412(l)(4)(C) of such Code shall be the*
21 *third segment rate described in sections 104(b),*
22 *105(b), and 106(b) of this Act, and*

23 “(B) *in the case of the excess of the un-*
24 *funded new liability over the increased unfunded*

1 *new liability, such applicable percentage shall be*
2 *determined without regard to this section.*

3 “(c) *APPLICATION OF 15-YEAR AMORTIZATION.—In*
4 *the case of an election year to which this subsection applies,*
5 *for purposes of applying section 302(d) of such Act and sec-*
6 *tion 412(l) of such Code—*

7 “(1) *in the case of the increased unfunded new*
8 *liability of the plan, the applicable percentage de-*
9 *scribed in section 302(d)(4)(C) of such Act and sec-*
10 *tion 412(l)(4)(C) of such Code for any pre-effective*
11 *date plan year beginning with or after the first elec-*
12 *tion year shall be the ratio of—*

13 “(A) *the annual installments payable in*
14 *each year if the increased unfunded new liability*
15 *for such plan year were amortized over 15 years,*
16 *using an interest rate equal to the third segment*
17 *rate described in sections 104(b), 105(b), and*
18 *106(b) of this Act, to*

19 “(B) *the increased unfunded new liability*
20 *for such plan year, and*

21 “(2) *in the case of the excess of the unfunded new*
22 *liability over the increased unfunded new liability,*
23 *such applicable percentage shall be determined with-*
24 *out regard to this section.*

25 “(d) *ELECTION.—*

1 “(1) *IN GENERAL.*—*The plan sponsor of a plan*
2 *may elect to have this section apply to not more than*
3 *2 eligible plan years with respect to the plan, except*
4 *that in the case of a plan to which section 106 of this*
5 *Act applies, the plan sponsor may only elect to have*
6 *this section apply to 1 eligible plan year.*

7 “(2) *AMORTIZATION SCHEDULE.*—*Such election*
8 *shall specify whether the rules under subsection (b) or*
9 *(c) shall apply to an election year, except that if a*
10 *plan sponsor elects to have this section apply to 2 eli-*
11 *gible plan years, the plan sponsor must elect the same*
12 *rule for both years.*

13 “(3) *OTHER RULES.*—*Such election shall be*
14 *made at such time, and in such form and manner,*
15 *as shall be prescribed by the Secretary of the Treas-*
16 *ury, and may be revoked only with the consent of the*
17 *Secretary of the Treasury.*

18 “(e) *DEFINITIONS.*—*For purposes of this section—*

19 “(1) *ELIGIBLE PLAN YEAR.*—*For purposes of this*
20 *subparagraph, the term ‘eligible plan year’ means*
21 *any plan year beginning in 2008, 2009, 2010, or*
22 *2011, except that a plan year beginning in 2008 shall*
23 *only be treated as an eligible plan year if the due*
24 *date for the payment of the minimum required con-*

1 *tribution for such plan year occurs on or after the*
2 *date of the enactment of this clause.*

3 “(2) *PRE-EFFECTIVE DATE PLAN YEAR.*—*The*
4 *term ‘pre-effective date plan year’ means, with respect*
5 *to a plan, any plan year prior to the first year in*
6 *which the amendments made by this subtitle and sub-*
7 *title B apply to the plan.*

8 “(3) *INCREASED UNFUNDED NEW LIABILITY.*—
9 *The term ‘increased unfunded new liability’ means,*
10 *with respect to a year, the excess (if any) of the un-*
11 *funded new liability over the amount of unfunded*
12 *new liability determined as if the value of the plan’s*
13 *assets determined under subsection 302(c)(2) of such*
14 *Act and section 412(c)(2) of such Code equaled the*
15 *product of the current liability of the plan for the*
16 *year multiplied by the funded current liability per-*
17 *centage (as defined in section 302(d)(8)(B) of such*
18 *Act and 412(l)(8)(B) of such Code) of the plan for the*
19 *second plan year preceding the first election year of*
20 *such plan.*

21 “(4) *OTHER DEFINITIONS.*—*The terms ‘unfunded*
22 *new liability’ and ‘current liability’ shall have the*
23 *meanings set forth in section 302(d) of such Act and*
24 *section 412(l) of such Code.”.*

1 (b) *ELIGIBLE CHARITY PLANS.*—Section 104 of the
2 *Pension Protection Act of 2006* is amended—

3 (1) by striking “eligible cooperative plan” wher-
4 ever it appears in subsections (a) and (b) and insert-
5 ing “eligible cooperative plan or an eligible charity
6 plan”, and

7 (2) by adding at the end the following new sub-
8 section:

9 “(d) *ELIGIBLE CHARITY PLAN DEFINED.*—For pur-
10 poses of this section, a plan shall be treated as an eligible
11 charity plan for a plan year if the plan is maintained by
12 more than one employer (determined without regard to sec-
13 tion 414(c) of the Internal Revenue Code) and 100 percent
14 of the employers are described in section 501(c)(3) of such
15 Code.”.

16 (c) *EFFECTIVE DATE.*—

17 (1) *IN GENERAL.*—The amendment made by sub-
18 section (a) shall take effect as if included in the *Pen-*
19 *sion Protection Act of 2006.*

20 (2) *ELIGIBLE CHARITY PLAN.*—The amendments
21 made by subsection (b) shall apply to plan years be-
22 ginning after December 31, 2007, except that a plan
23 sponsor may elect to apply such amendments to plan
24 years beginning after December 31, 2008. Any such
25 election shall be made at such time, and in such form

1 *and manner, as shall be prescribed by the Secretary*
2 *of the Treasury, and may be revoked only with the*
3 *consent of the Secretary of the Treasury.*

4 **SEC. 203. LOOKBACK FOR CERTAIN BENEFIT RESTRIC-**
5 **TIONS.**

6 *(a) IN GENERAL.—*

7 *(1) AMENDMENT TO ERISA.—Section 206(g)(9) of*
8 *the Employee Retirement Income Security Act of*
9 *1974 is amended by adding at the end the following:*

10 *“(D) SPECIAL RULE FOR CERTAIN YEARS.—*
11 *Solely for purposes of any applicable provi-*
12 *sion—*

13 *“(i) IN GENERAL.—For plan years be-*
14 *ginning on or after October 1, 2008, and be-*
15 *fore October 1, 2010, the adjusted funding*
16 *target attainment percentage of a plan shall*
17 *be the greater of—*

18 *“(I) such percentage, as deter-*
19 *mined without regard to this subpara-*
20 *graph, or*

21 *“(II) the adjusted funding target*
22 *attainment percentage for such plan*
23 *for the plan year beginning after Octo-*
24 *ber 1, 2007, and before October 1,*
25 *2008, as determined under rules pre-*

1 scribed by the Secretary of the Treas-
2 ury.

3 “(ii) *SPECIAL RULE.*—*In the case of a*
4 *plan for which the valuation date is not the*
5 *first day of the plan year—*

6 “(I) *clause (i) shall apply to plan*
7 *years beginning after December 31,*
8 *2007, and before January 1, 2010, and*

9 “(II) *clause (i)(II) shall apply*
10 *based on the last plan year beginning*
11 *before November 1, 2007, as determined*
12 *under rules prescribed by the Secretary*
13 *of the Treasury.*

14 “(iii) *APPLICABLE PROVISION.*—*For*
15 *purposes of this subparagraph, the term*
16 *‘applicable provision’ means—*

17 “(I) *paragraph (3), but only for*
18 *purposes of applying such paragraph*
19 *to a payment which, as determined*
20 *under rules prescribed by the Secretary*
21 *of the Treasury, is a payment under a*
22 *social security leveling option which*
23 *accelerates payments under the plan*
24 *before, and reduces payments after, a*
25 *participant starts receiving social secu-*

1 *rity benefits in order to provide sub-*
2 *stantially similar aggregate payments*
3 *both before and after such benefits are*
4 *received, and*

5 *“(II) paragraph (4).”.*

6 *(2) AMENDMENT TO INTERNAL REVENUE CODE*
7 *OF 1986.—Section 436(j) of the Internal Revenue Code*
8 *of 1986 is amended by adding at the end the fol-*
9 *lowing:*

10 *“(3) SPECIAL RULE FOR CERTAIN YEARS.—Sole-*
11 *ly for purposes of any applicable provision—*

12 *“(A) IN GENERAL.—For plan years begin-*
13 *ning on or after October 1, 2008, and before Oc-*
14 *tober 1, 2010, the adjusted funding target attain-*
15 *ment percentage of a plan shall be the greater*
16 *of—*

17 *“(i) such percentage, as determined*
18 *without regard to this paragraph, or*

19 *“(ii) the adjusted funding target at-*
20 *tainment percentage for such plan for the*
21 *plan year beginning after October 1, 2007,*
22 *and before October 1, 2008, as determined*
23 *under rules prescribed by the Secretary.*

1 “(B) *SPECIAL RULE.*—*In the case of a plan*
2 *for which the valuation date is not the first day*
3 *of the plan year—*

4 “(i) *subparagraph (A) shall apply to*
5 *plan years beginning after December 31,*
6 *2007, and before January 1, 2010, and*

7 “(ii) *subparagraph (A)(ii) shall apply*
8 *based on the last plan year beginning before*
9 *November 1, 2007, as determined under*
10 *rules prescribed by the Secretary.*

11 “(C) *APPLICABLE PROVISION.*—*For pur-*
12 *poses of this paragraph, the term ‘applicable*
13 *provision’ means—*

14 “(i) *subsection (d), but only for pur-*
15 *poses of applying such paragraph to a pay-*
16 *ment which, as determined under rules pre-*
17 *scribed by the Secretary, is a payment*
18 *under a social security leveling option*
19 *which accelerates payments under the plan*
20 *before, and reduces payments after, a par-*
21 *ticipant starts receiving social security ben-*
22 *efits in order to provide substantially simi-*
23 *lar aggregate payments both before and*
24 *after such benefits are received, and*

25 “(ii) *subsection (e).”.*

1 (b) *INTERACTION WITH WRERA RULE.*—Section 203
2 *of the Worker, Retiree, and Employer Recovery Act of 2008*
3 *shall apply to a plan for any plan year in lieu of the*
4 *amendments made by this section applying to sections*
5 *206(g)(4) of the Employee Retirement Income Security Act*
6 *of 1974 and 436(e) of the Internal Revenue Code of 1986*
7 *only to the extent that such section produces a higher ad-*
8 *justed funding target attainment percentage for such plan*
9 *for such year.*

10 (c) *EFFECTIVE DATE.*—

11 (1) *IN GENERAL.*—Except as provided in para-
12 *graph (2), the amendments made by this section shall*
13 *apply to plan years beginning on or after October 1,*
14 *2008.*

15 (2) *SPECIAL RULE.*—In the case of a plan for
16 *which the valuation date is not the first day of the*
17 *plan year, the amendments made by this section shall*
18 *apply to plan years beginning after December 31,*
19 *2007.*

20 **SEC. 204. LOOKBACK FOR CREDIT BALANCE RULE FOR**
21 **PLANS MAINTAINED BY CHARITIES.**

22 (a) *AMENDMENT TO ERISA.*—Paragraph (3) of section
23 *303(f) of the Employee Retirement Income Security Act of*
24 *1974 is amended by adding the following at the end thereof:*

1 “(D) *SPECIAL RULE FOR CERTAIN YEARS*
2 *OF PLANS MAINTAINED BY CHARITIES.*—

3 “(i) *IN GENERAL.*—*For purposes of ap-*
4 *plying subparagraph (C) for plan years be-*
5 *ginning after August 31, 2009, and before*
6 *September 1, 2011, the ratio determined*
7 *under such subparagraph for the preceding*
8 *plan year shall be the greater of—*

9 “(I) *such ratio, as determined*
10 *without regard to this subparagraph,*
11 *or*

12 “(II) *the ratio for such plan for*
13 *the plan year beginning after August*
14 *31, 2007, and before September 1,*
15 *2008, as determined under rules pre-*
16 *scribed by the Secretary of the Treas-*
17 *ury.*

18 “(ii) *SPECIAL RULE.*—*In the case of a*
19 *plan for which the valuation date is not the*
20 *first day of the plan year—*

21 “(I) *clause (i) shall apply to plan*
22 *years beginning after December 31,*
23 *2008, and before January 1, 2011, and*

24 “(II) *clause (i)(II) shall apply*
25 *based on the last plan year beginning*

1 *before September 1, 2007, as deter-*
2 *mined under rules prescribed by the*
3 *Secretary of the Treasury.*

4 “(iii) *LIMITATION TO CHARITIES.—*
5 *This subparagraph shall not apply to any*
6 *plan unless such plan is maintained exclu-*
7 *sively by one or more organizations de-*
8 *scribed in section 501(c)(3) of the Internal*
9 *Revenue Code of 1986.”.*

10 (b) *AMENDMENT TO INTERNAL REVENUE CODE OF*
11 *1986.—Paragraph (3) of section 430(f) of the Internal Rev-*
12 *enue Code of 1986 is amended by adding the following at*
13 *the end thereof:*

14 “(D) *SPECIAL RULE FOR CERTAIN YEARS*
15 *OF PLANS MAINTAINED BY CHARITIES.—*

16 “(i) *IN GENERAL.—For purposes of ap-*
17 *plying subparagraph (C) for plan years be-*
18 *ginning after August 31, 2009, and before*
19 *September 1, 2011, the ratio determined*
20 *under such subparagraph for the preceding*
21 *plan year of a plan shall be the greater of—*

22 “(I) *such ratio, as determined*
23 *without regard to this subsection, or*

24 “(II) *the ratio for such plan for*
25 *the plan year beginning after August*

1 31, 2007 and before September 1, 2008,
2 as determined under rules prescribed
3 by the Secretary.

4 “(i) *SPECIAL RULE.*—In the case of a
5 plan for which the valuation date is not the
6 first day of the plan year—

7 “(I) clause (i) shall apply to plan
8 years beginning after December 31,
9 2007, and before January 1, 2010, and

10 “(II) clause (i)(II) shall apply
11 based on the last plan year beginning
12 before September 1, 2007, as deter-
13 mined under rules prescribed by the
14 Secretary.

15 “(iii) *LIMITATION TO CHARITIES.*—
16 This subparagraph shall not apply to any
17 plan unless such plan is maintained exclu-
18 sively by one or more organizations de-
19 scribed in section 501(c)(3).”.

20 (c) *EFFECTIVE DATE.*—

21 (1) *IN GENERAL.*—Except as provided in para-
22 graph (2), the amendments made by this section shall
23 apply to plan years beginning after August 31, 2009.

24 (2) *SPECIAL RULE.*—In the case of a plan for
25 which the valuation date is not the first day of the

1 *plan year, the amendments made by this section shall*
2 *apply to plan years beginning after December 31,*
3 *2008.*

4 ***Subtitle B—Multiemployer Plans***

5 **SEC. 211. ADJUSTMENTS TO FUNDING STANDARD ACCOUNT**

6 **RULES.**

7 (a) *ADJUSTMENTS.*—

8 (1) *AMENDMENT TO ERISA.*—*Section 304(b) of*
9 *the Employee Retirement Income Security Act of*
10 *1974 (29 U.S.C. 1084(b)) is amended by adding at*
11 *the end the following new paragraph:*

12 “(8) *SPECIAL RELIEF RULES.*—*Notwithstanding*
13 *any other provision of this subsection—*

14 “(A) *AMORTIZATION OF NET INVESTMENT*
15 *LOSSES.*—

16 “(i) *IN GENERAL.*—*A multiemployer*
17 *plan with respect to which the solvency test*
18 *under subparagraph (C) is met may treat*
19 *the portion of any experience loss or gain*
20 *attributable to net investment losses in-*
21 *curring in either or both of the first two plan*
22 *years ending after August 31, 2008, as an*
23 *item separate from other experience losses,*
24 *to be amortized in equal annual install-*

1 ments (until fully amortized) over the pe-
2 riod —

3 “*(I) beginning with the plan year*
4 *in which such portion is first recog-*
5 *nized in the actuarial value of assets,*
6 *and*

7 “*(II) ending with the last plan*
8 *year in the 30-plan year period begin-*
9 *ning with the plan year in which such*
10 *net investment loss was incurred.*

11 “*(ii) COORDINATION WITH EXTEN-*
12 *SIONS.—If this subparagraph applies for*
13 *any plan year—*

14 “*(I) no extension of the amortiza-*
15 *tion period under clause (i) shall be al-*
16 *lowed under subsection (d), and*

17 “*(II) if an extension was granted*
18 *under subsection (d) for any plan year*
19 *before the election to have this subpara-*
20 *graph apply to the plan year, such ex-*
21 *tension shall not result in such amorti-*
22 *zation period exceeding 30 years.*

23 “*(iii) NET INVESTMENT LOSSES.—For*
24 *purposes of this subparagraph—*

1 “(I) *IN GENERAL.*—*Net invest-*
2 *ment losses shall be determined in the*
3 *manner prescribed by the Secretary of*
4 *the Treasury on the basis of the dif-*
5 *ference between actual and expected re-*
6 *turns (including any difference attrib-*
7 *utable to any criminally fraudulent in-*
8 *vestment arrangement).*

9 “(II) *CRIMINALLY FRAUDULENT*
10 *INVESTMENT ARRANGEMENTS.*—*The de-*
11 *termination as to whether an arrange-*
12 *ment is a criminally fraudulent invest-*
13 *ment arrangement shall be made under*
14 *rules substantially similar to the rules*
15 *prescribed by the Secretary of the*
16 *Treasury for purposes of section 165 of*
17 *the Internal Revenue Code of 1986.*

18 “(B) *EXPANDED SMOOTHING PERIOD.*—

19 “(i) *IN GENERAL.*—*A multiemployer*
20 *plan with respect to which the solvency test*
21 *under subparagraph (C) is met may change*
22 *its asset valuation method in a manner*
23 *which—*

24 “(I) *spreads the difference between*
25 *expected and actual returns for either*

1 or both of the first 2 plan years ending
2 after August 31, 2008, over a period of
3 not more than 10 years,

4 “(II) provides that for either or
5 both of the first 2 plan years beginning
6 after August 31, 2008, the value of
7 plan assets at any time shall not be
8 less than 80 percent or greater than
9 130 percent of the fair market value of
10 such assets at such time, or

11 “(III) makes both changes de-
12 scribed in subclauses (I) and (II) to
13 such method.

14 “(i) ASSET VALUATION METHODS.—If
15 this subparagraph applies for any plan
16 year—

17 “(I) the Secretary of the Treasury
18 shall not treat the asset valuation
19 method of the plan as unreasonable
20 solely because of the changes in such
21 method described in clause (i), and

22 “(II) such changes shall be deemed
23 approved by such Secretary under sec-
24 tion 302(d)(1) and section 412(d)(1) of
25 such Code.

1 “(iii) *AMORTIZATION OF REDUCTION*
2 *IN UNFUNDED ACCRUED LIABILITY.*—If this
3 subparagraph and subparagraph (A) both
4 apply for any plan year, the plan shall
5 treat any reduction in unfunded accrued li-
6 ability resulting from the application of
7 this subparagraph as a separate experience
8 amortization base, to be amortized in equal
9 annual installments (until fully amortized)
10 over a period of 30 plan years rather than
11 the period such liability would otherwise be
12 amortized over.

13 “(C) *SOLVENCY TEST.*—The solvency test
14 under this paragraph is met only if the plan ac-
15 tuary certifies that the plan is projected to have
16 sufficient assets to timely pay expected benefits
17 and anticipated expenditures over the amortiza-
18 tion period, taking into account the changes in
19 the funding standard account under this para-
20 graph.

21 “(D) *RESTRICTION ON BENEFIT IN-*
22 *CREASES.*—If subparagraph (A) or (B) apply to
23 a multiemployer plan for any plan year, then,
24 in addition to any other applicable restrictions
25 on benefit increases, a plan amendment increas-

1 *ing benefits may not go into effect during either*
2 *of the 2 plan years immediately following such*
3 *plan year unless—*

4 *“(i) the plan actuary certifies that—*

5 *“(I) any such increase is paid for*
6 *out of additional contributions not al-*
7 *located to the plan immediately before*
8 *the application of this paragraph to*
9 *the plan, and*

10 *“(II) the plan’s funded percentage*
11 *and projected credit balances for such 2*
12 *plan years are reasonably expected to*
13 *be at least as high as such percentage*
14 *and balances would have been if the*
15 *benefit increase had not been adopted,*
16 *or*

17 *“(ii) the amendment is required as a*
18 *condition of qualification under part I of*
19 *subchapter D of chapter 1 of the Internal*
20 *Revenue Code of 1986 or to comply with*
21 *other applicable law.*

22 *“(E) REPORTING.—A plan sponsor of a*
23 *plan to which this paragraph applies shall—*

1 “(i) give notice of such application to
2 participants and beneficiaries of the plan,
3 and

4 “(ii) inform the Pension Benefit Guar-
5 anty Corporation of such application in
6 such form and manner as the Director of
7 the Pension Benefit Guaranty Corporation
8 may prescribe.”.

9 (2) *AMENDMENT TO INTERNAL REVENUE CODE*
10 *OF 1986.—Section 431(b) is amended by adding at the*
11 *end the following new paragraph:*

12 “(8) *SPECIAL RELIEF RULES.—Notwithstanding*
13 *any other provision of this subsection—*

14 “(A) *AMORTIZATION OF NET INVESTMENT*
15 *LOSSES.—*

16 “(i) *IN GENERAL.—A multiemployer*
17 *plan with respect to which the solvency test*
18 *under subparagraph (C) is met may treat*
19 *the portion of any experience loss or gain*
20 *attributable to net investment losses in-*
21 *curring in either or both of the first two plan*
22 *years ending after August 31, 2008, as an*
23 *item separate from other experience losses,*
24 *to be amortized in equal annual install-*

1 *ments (until fully amortized) over the pe-*
2 *riod —*

3 *“(I) beginning with the plan year*
4 *in which such portion is first recog-*
5 *nized in the actuarial value of assets,*
6 *and*

7 *“(II) ending with the last plan*
8 *year in the 30-plan year period begin-*
9 *ning with the plan year in which such*
10 *net investment loss was incurred.*

11 *“(ii) COORDINATION WITH EXTEN-*
12 *SIONS.—If this subparagraph applies for*
13 *any plan year—*

14 *“(I) no extension of the amortiza-*
15 *tion period under clause (i) shall be al-*
16 *lowed under subsection (d), and*

17 *“(II) if an extension was granted*
18 *under subsection (d) for any plan year*
19 *before the election to have this subpara-*
20 *graph apply to the plan year, such ex-*
21 *tension shall not result in such amorti-*
22 *zation period exceeding 30 years.*

23 *“(iii) NET INVESTMENT LOSSES.—For*
24 *purposes of this subparagraph—*

1 “(I) *IN GENERAL.*—*Net invest-*
2 *ment losses shall be determined in the*
3 *manner prescribed by the Secretary on*
4 *the basis of the difference between ac-*
5 *tual and expected returns (including*
6 *any difference attributable to any*
7 *criminally fraudulent investment ar-*
8 *rangement).*

9 “(II) *CRIMINALLY FRAUDULENT*
10 *INVESTMENT ARRANGEMENTS.*—*The de-*
11 *termination as to whether an arrange-*
12 *ment is a criminally fraudulent invest-*
13 *ment arrangement shall be made under*
14 *rules substantially similar to the rules*
15 *prescribed by the Secretary for pur-*
16 *poses of section 165.*

17 “(B) *EXPANDED SMOOTHING PERIOD.*—

18 “(i) *IN GENERAL.*—*A multiemployer*
19 *plan with respect to which the solvency test*
20 *under subparagraph (C) is met may change*
21 *its asset valuation method in a manner*
22 *which—*

23 “(I) *spreads the difference between*
24 *expected and actual returns for either*
25 *or both of the first 2 plan years ending*

1 *after August 31, 2008, over a period of*
2 *not more than 10 years,*

3 *“(II) provides that for either or*
4 *both of the first 2 plan years beginning*
5 *after August 31, 2008, the value of*
6 *plan assets at any time shall not be*
7 *less than 80 percent or greater than*
8 *130 percent of the fair market value of*
9 *such assets at such time, or*

10 *“(III) makes both changes de-*
11 *scribed in subclauses (I) and (II) to*
12 *such method.*

13 *“(i) ASSET VALUATION METHODS.—If*
14 *this subparagraph applies for any plan*
15 *year—*

16 *“(I) the Secretary shall not treat*
17 *the asset valuation method of the plan*
18 *as unreasonable solely because of the*
19 *changes in such method described in*
20 *clause (i), and*

21 *“(II) such changes shall be deemed*
22 *approved by the Secretary under sec-*
23 *tion 302(d)(1) of the Employee Retirement*
24 *Income Security Act of 1974 and*
25 *section 412(d)(1).*

1 “(iii) *AMORTIZATION OF REDUCTION*
2 *IN UNFUNDED ACCRUED LIABILITY.*—If this
3 subparagraph and subparagraph (A) both
4 apply for any plan year, the plan shall
5 treat any reduction in unfunded accrued li-
6 ability resulting from the application of
7 this subparagraph as a separate experience
8 amortization base, to be amortized in equal
9 annual installments (until fully amortized)
10 over a period of 30 plan years rather than
11 the period such liability would otherwise be
12 amortized over.

13 “(C) *SOLVENCY TEST.*—The solvency test
14 under this paragraph is met only if the plan ac-
15 tuary certifies that the plan is projected to have
16 sufficient assets to timely pay expected benefits
17 and anticipated expenditures over the amortiza-
18 tion period, taking into account the changes in
19 the funding standard account under this para-
20 graph.

21 “(D) *RESTRICTION ON BENEFIT IN-*
22 *CREASES.*—If subparagraph (A) or (B) apply to
23 a multiemployer plan for any plan year, then,
24 in addition to any other applicable restrictions
25 on benefit increases, a plan amendment increas-

1 *ing benefits may not go into effect during either*
2 *of the 2 plan years immediately following such*
3 *plan year unless—*

4 *“(i) the plan actuary certifies that—*

5 *“(I) any such increase is paid for*
6 *out of additional contributions not al-*
7 *located to the plan immediately before*
8 *the application of this paragraph to*
9 *the plan, and*

10 *“(II) the plan’s funded percentage*
11 *and projected credit balances for such 2*
12 *plan years are reasonably expected to*
13 *be at least as high as such percentage*
14 *and balances would have been if the*
15 *benefit increase had not been adopted,*
16 *or*

17 *“(ii) the amendment is required as a*
18 *condition of qualification under part I of*
19 *subchapter D or to comply with other appli-*
20 *cable law.*

21 *“(E) REPORTING.—A plan sponsor of a*
22 *plan to which this paragraph applies shall—*

23 *“(i) give notice of such application to*
24 *participants and beneficiaries of the plan,*
25 *and*

1 “(ii) inform the Pension Benefit Guar-
2 anty Corporation of such application in
3 such form and manner as the Director of
4 the Pension Benefit Guaranty Corporation
5 may prescribe.”.

6 (b) *EFFECTIVE DATES.*—

7 (1) *IN GENERAL.*—The amendments made by
8 this section shall take effect as of the first day of the
9 first plan year ending after August 31, 2008, except
10 that any election a plan makes pursuant to this sec-
11 tion that affects the plan’s funding standard account
12 for the first plan year beginning after August 31,
13 2008, shall be disregarded for purposes of applying
14 the provisions of section 305 of the Employee Retirement
15 Income Security Act of 1974 and section 432 of
16 the Internal Revenue Code of 1986 to such plan year.

17 (2) *RESTRICTIONS ON BENEFIT INCREASES.*—
18 Notwithstanding paragraph (1), the restrictions on
19 plan amendments increasing benefits in sections
20 304(b)(8)(D) of such Act and 431(b)(8)(D) of such
21 Code, as added by this section, shall take effect on the
22 date of enactment of this Act.

1 **TITLE III—BUDGETARY**
2 **PROVISIONS**

3 **SEC. 301. BUDGETARY PROVISIONS.**

4 *The budgetary effects of this Act, for the purpose of*
5 *complying with the Statutory Pay-As-You-Go-Act of 2010,*
6 *shall be determined by reference to the latest statement titled*
7 *“Budgetary Effects of PAYGO Legislation” for this Act,*
8 *submitted for printing in the Congressional Record by the*
9 *Chairman of the Senate Budget Committee, provided that*
10 *such statement has been submitted prior to the vote on pas-*
11 *sage.*

Amend the title so as to read: “An Act to provide a physician payment update, to provide pension funding relief, and for other purposes.”.

Attest:

Secretary.

11TH CONGRESS
2^D SESSION

H.R. 3962

AMENDMENTS