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(Original Signature of Member)

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To provide economic security for all Americans, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. BOEHNER (for himself, Mr. THOMAS, and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To provide economic security for all Americans, and for  
other purposes.

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

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

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Pension Protection Act of 2006”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act (other than so much of title XIV as follows section  
3 1401) is as follows:

Sec. 1. Short title and table of contents.

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

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

- Sec. 101. Minimum funding standards.  
Sec. 102. Funding rules for single-employer defined benefit pension plans.  
Sec. 103. Benefit limitations under single-employer plans.  
Sec. 104. Special rules for multiple employer plans of certain cooperatives.  
Sec. 105. Temporary relief for certain PBGC settlement plans.  
Sec. 106. Special rules for plans of certain government contractors.  
Sec. 107. Technical and conforming amendments.

Subtitle B—Amendments to Internal Revenue Code of 1986

- Sec. 111. Minimum funding standards.  
Sec. 112. Funding rules for single-employer defined benefit pension plans.  
Sec. 113. Benefit limitations under single-employer plans.  
Sec. 114. Technical and conforming amendments.  
Sec. 115. Modification of transition rule to pension funding requirements.  
Sec. 116. Restrictions on funding of nonqualified deferred compensation plans  
by employers maintaining underfunded or terminated single-  
employer plans.

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

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

- Sec. 201. Funding rules for multiemployer defined benefit plans.  
Sec. 202. Additional funding rules for multiemployer plans in endangered or  
critical status.  
Sec. 203. Measures to forestall insolvency of multiemployer plans.  
Sec. 204. Withdrawal liability reforms.  
Sec. 205. Prohibition on retaliation against employers exercising their rights to  
petition the Federal government.  
Sec. 206. Special rule for certain benefits funded under an agreement approved  
by the Pension Benefit Guaranty Corporation.

Subtitle B—Amendments to Internal Revenue Code of 1986

- Sec. 211. Funding rules for multiemployer defined benefit plans.  
Sec. 212. Additional funding rules for multiemployer plans in endangered or  
critical status.  
Sec. 213. Measures to forestall insolvency of multiemployer plans.  
Sec. 214. Exemption from excise taxes for certain multiemployer pension plans.

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## Subtitle C—Sunset of Additional Funding Rules

Sec. 221. Sunset of additional funding rules.

## TITLE III—INTEREST RATE ASSUMPTIONS

Sec. 301. Extension of replacement of 30-year Treasury rates.

Sec. 302. Interest rate assumption for determination of lump sum distributions.

Sec. 303. Interest rate assumption for applying benefit limitations to lump sum distributions.

## TITLE IV—PBGC GUARANTEE AND RELATED PROVISIONS

Sec. 401. PBGC premiums.

Sec. 402. Special funding rules for certain plans maintained by commercial airlines.

Sec. 403. Limitation on PBGC guarantee of shutdown and other benefits.

Sec. 404. Rules relating to bankruptcy of employer.

Sec. 405. PBGC premiums for small plans.

Sec. 406. Authorization for PBGC to pay interest on premium overpayment refunds.

Sec. 407. Rules for substantial owner benefits in terminated plans.

Sec. 408. Acceleration of PBGC computation of benefits attributable to recoveries from employers.

Sec. 409. Treatment of certain plans where cessation or change in membership of a controlled group.

Sec. 410. Missing participants.

Sec. 411. Director of the Pension Benefit Guaranty Corporation.

Sec. 412. Inclusion of information in the PBGC annual report.

## TITLE V—DISCLOSURE

Sec. 501. Defined benefit plan funding notice.

Sec. 502. Access to multiemployer pension plan information.

Sec. 503. Additional annual reporting requirements.

Sec. 504. Electronic display of annual report information.

Sec. 505. Section 4010 filings with the PBGC.

Sec. 506. Disclosure of termination information to plan participants.

Sec. 507. Notice of freedom to divest employer securities.

Sec. 508. Periodic pension benefit statements.

Sec. 509. Notice to participants or beneficiaries of blackout periods.

TITLE VI—INVESTMENT ADVICE, PROHIBITED TRANSACTIONS,  
AND FIDUCIARY RULES

## Subtitle A—Investment Advice

Sec. 601. Prohibited transaction exemption for provision of investment advice.

## Subtitle B—Prohibited Transactions

Sec. 611. Prohibited transaction rules relating to financial investments.

Sec. 612. Correction period for certain transactions involving securities and commodities.

## Subtitle C—Fiduciary and Other Rules

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- Sec. 621. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.
- Sec. 622. Increase in maximum bond amount.
- Sec. 623. Increase in penalties for coercive interference with exercise of ERISA rights.
- Sec. 624. Treatment of investment of assets by plan where participant fails to exercise investment election.
- Sec. 625. Clarification of fiduciary rules.

## TITLE VII—BENEFIT ACCRUAL STANDARDS

- Sec. 701. Benefit accrual standards.
- Sec. 702. Regulations relating to mergers and acquisitions.

## TITLE VIII—PENSION RELATED REVENUE PROVISIONS

## Subtitle A—Deduction Limitations

- Sec. 801. Increase in deduction limit for single-employer plans.
- Sec. 802. Deduction limits for multiemployer plans.
- Sec. 803. Updating deduction rules for combination of plans.

## Subtitle B—Certain Pension Provisions Made Permanent

- Sec. 811. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.
- Sec. 812. Saver's credit.

## Subtitle C—Improvements in Portability, Distribution, and Contribution Rules

- Sec. 821. Clarifications regarding purchase of permissive service credit.
- Sec. 822. Allow rollover of after-tax amounts in annuity contracts.
- Sec. 823. Clarification of minimum distribution rules for governmental plans.
- Sec. 824. Allow direct rollovers from retirement plans to Roth IRAs.
- Sec. 825. Eligibility for participation in retirement plans.
- Sec. 826. Modifications of rules governing hardships and unforeseen financial emergencies.
- Sec. 827. Penalty-free withdrawals from retirement plans for individuals called to active duty for at least 179 days.
- Sec. 828. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 829. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
- Sec. 830. Direct payment of tax refunds to individual retirement plans.
- Sec. 831. Allowance of additional IRA payments in certain bankruptcy cases.
- Sec. 832. Determination of average compensation for section 415 limits.
- Sec. 833. Inflation indexing of gross income limitations on certain retirement savings incentives.

## Subtitle D—Health and Medical Benefits

- Sec. 841. Use of excess pension assets for future retiree health benefits and collectively bargained retiree health benefits.
- Sec. 842. Transfer of excess pension assets to multiemployer health plan.
- Sec. 843. Allowance of reserve for medical benefits of plans sponsored by bona fide associations.

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- Sec. 844. Treatment of annuity and life insurance contracts with a long-term care insurance feature.
- Sec. 845. Distributions from governmental retirement plans for health and Long-Term care insurance for public safety officers.

## Subtitle E—United States Tax Court Modernization

- Sec. 851. Cost-of-living adjustments for Tax Court judicial survivor annuities.
- Sec. 852. Cost of life insurance coverage for Tax Court judges age 65 or over.
- Sec. 853. Participation of Tax Court judges in the Thrift Savings Plan.
- Sec. 854. Annuities to surviving spouses and dependent children of special trial judges of the Tax Court.
- Sec. 855. Jurisdiction of Tax Court over collection due process cases.
- Sec. 856. Provisions for recall.
- Sec. 857. Authority for special trial judges to hear and decide certain employment status cases.
- Sec. 858. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment.
- Sec. 859. Tax Court filing fee in all cases commenced by filing petition.
- Sec. 860. Expanded use of Tax Court practice fee for pro se taxpayers.

## Subtitle F—Other Provisions

- Sec. 861. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 862. Elimination of aggregate limit for usage of excess funds from black lung disability trusts.
- Sec. 863. Treatment of death benefits from corporate-owned life insurance.
- Sec. 864. Treatment of test room supervisors and proctors who assist in the administration of college entrance and placement exams.
- Sec. 865. Grandfather rule for church plans which self-annuitize.
- Sec. 866. Exemption for income from leveraged real estate held by church plans.
- Sec. 867. Church plan rule.
- Sec. 868. Gratuitous transfer for benefits of employees.

## TITLE IX—INCREASE IN PENSION PLAN DIVERSIFICATION AND PARTICIPATION AND OTHER PENSION PROVISIONS

- Sec. 901. Defined contribution plans required to provide employees with freedom to invest their plan assets.
- Sec. 902. Increasing participation through automatic contribution arrangements.
- Sec. 903. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.
- Sec. 904. Faster vesting of employer nonelective contributions.
- Sec. 905. Distributions during working retirement.
- Sec. 906. Treatment of certain pension plans of Indian tribal governments.

## TITLE X—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

- Sec. 1001. Regulations on time and order of issuance of domestic relations orders.
- Sec. 1002. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.

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- Sec. 1003. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.
- Sec. 1004. Requirement for additional survivor annuity option.

## TITLE XI—ADMINISTRATIVE PROVISIONS

- Sec. 1101. Employee plans compliance resolution system.
- Sec. 1102. Notice and consent period regarding distributions.
- Sec. 1103. Reporting simplification.
- Sec. 1104. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 1105. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 1106. Revocation of election relating to treatment as multiemployer plan.
- Sec. 1107. Provisions relating to plan amendments.

## TITLE XII—PROVISIONS RELATING TO EXEMPT ORGANIZATIONS

## Subtitle A—Charitable Giving Incentives

- Sec. 1201. Tax-free distributions from individual retirement plans for charitable purposes.
- Sec. 1202. Extension of modification of charitable deduction for contributions of food inventory.
- Sec. 1203. Basis adjustment to stock of S corporation contributing property.
- Sec. 1204. Extension of modification of charitable deduction for contributions of book inventory.
- Sec. 1205. Modification of tax treatment of certain payments to controlling exempt organizations.
- Sec. 1206. Encouragement of contributions of capital gain real property made for conservation purposes.
- Sec. 1207. Excise taxes exemption for blood collector organizations.

## Subtitle B—Reforming Exempt Organizations

## PART 1—GENERAL REFORMS

- Sec. 1211. Reporting on certain acquisitions of interests in insurance contracts in which certain exempt organizations hold an interest.
- Sec. 1212. Increase in penalty excise taxes relating to public charities, social welfare organizations, and private foundations.
- Sec. 1213. Reform of charitable contributions of certain easements in registered historic districts and reduced deduction for portion of qualified conservation contribution attributable to rehabilitation credit.
- Sec. 1214. Charitable contributions of taxidermy property.
- Sec. 1215. Recapture of tax benefit for charitable contributions of exempt use property not used for an exempt use.
- Sec. 1216. Limitation of deduction for charitable contributions of clothing and household items.
- Sec. 1217. Modification of recordkeeping requirements for certain charitable contributions.
- Sec. 1218. Contributions of fractional interests in tangible personal property.
- Sec. 1219. Provisions relating to substantial and gross overstatements of valuations.
- Sec. 1220. Additional standards for credit counseling organizations.

- Sec. 1221. Expansion of the base of tax on private foundation net investment income.
- Sec. 1222. Definition of convention or association of churches.
- Sec. 1223. Notification requirement for entities not currently required to file.
- Sec. 1224. Disclosure to State officials relating to exempt organizations.
- Sec. 1225. Public disclosure of information relating to unrelated business income tax returns.
- Sec. 1226. Study on donor advised funds and supporting organizations.

#### PART 2—IMPROVED ACCOUNTABILITY OF DONOR ADVISED FUNDS

- Sec. 1231. Excise taxes relating to donor advised funds.
- Sec. 1232. Excess benefit transactions involving donor advised funds and sponsoring organizations.
- Sec. 1233. Excess business holdings of donor advised funds.
- Sec. 1234. Treatment of charitable contribution deductions to donor advised funds.
- Sec. 1235. Returns of, and applications for recognition by, sponsoring organizations.

#### PART 3—IMPROVED ACCOUNTABILITY OF SUPPORTING ORGANIZATIONS

- Sec. 1241. Requirements for supporting organizations.
- Sec. 1242. Excess benefit transactions involving supporting organizations.
- Sec. 1243. Excess business holdings of supporting organizations.
- Sec. 1244. Treatment of amounts paid to supporting organizations by private foundations.
- Sec. 1245. Returns of supporting organizations.

#### TITLE XIII—OTHER PROVISIONS

- Sec. 1301. Technical corrections relating to mine safety.
- Sec. 1302. Going-to-the-sun road.
- Sec. 1303. Exception to the local furnishing requirement of the tax-exempt bond rules.
- Sec. 1304. Qualified tuition programs.

#### TITLE XIV—TARIFF PROVISIONS

- Sec. 1401. Short title; table of contents.

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

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

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

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

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

17 **“SEC. 302. MINIMUM FUNDING STANDARDS.**

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

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

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



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

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

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

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

22       “(b) LIABILITY FOR CONTRIBUTIONS.—

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

1 under paragraphs (3) and (4) of section 303(j))  
2 shall be paid by the employer responsible for making  
3 contributions to or under the plan.

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

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

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

14 “(A) IN GENERAL.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13               “(A) SECURITY MAY BE REQUIRED.—

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

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

1 of the Corporation, by a contributing spon-  
2 sor (within the meaning of section  
3 4001(a)(13)), or a member of such spon-  
4 sor's controlled group (within the meaning  
5 of section 4001(a)(14)).

6 “(B) CONSULTATION WITH THE PENSION  
7 BENEFIT GUARANTY CORPORATION.—Except as  
8 provided in subparagraph (C), the Secretary of  
9 the Treasury shall, before granting or modi-  
10 fying a waiver under this subsection with re-  
11 spect to a plan described in subparagraph  
12 (A)(i)—

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

15 “(I) notice of the completed ap-  
16 plication for any waiver or modifica-  
17 tion, and

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

21 “(ii) consider—

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

12               “(6) ADVANCE NOTICE.—

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

24               “(B) CONSIDERATION OF RELEVANT IN-  
25               FORMATION.—The Secretary of the Treasury

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

4 “(7) RESTRICTION ON PLAN AMENDMENTS.—

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

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

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

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

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

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

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

13 “(d) MISCELLANEOUS RULES.—

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

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

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

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

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

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

1 under subsection (c) (or, in the case of a multiem-  
2 ployer plan, any extension of the amortization period  
3 under section 304(d)) is unavailable or inadequate.

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

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

“Sec. 302. Minimum funding standards.”.

13 (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to plan years beginning after 2007.

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

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

21 **“SEC. 303. MINIMUM FUNDING STANDARDS FOR SINGLE-**  
22 **EMPLOYER DEFINED BENEFIT PENSION**  
23 **PLANS.**

24 “(a) MINIMUM REQUIRED CONTRIBUTION.—For  
25 purposes of this section and section 302(a)(2)(A), except

1 as provided in subsection (f), the term ‘minimum required  
2 contribution’ means, with respect to any plan year of a  
3 single-employer plan—

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

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

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

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

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

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

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

8 “(c) SHORTFALL AMORTIZATION CHARGE.—

9 “(1) IN GENERAL.—For purposes of this sec-  
10 tion, the shortfall amortization charge for a plan for  
11 any plan year is the aggregate total (not less than  
12 zero) of the shortfall amortization installments for  
13 such plan year with respect to the shortfall amorti-  
14 zation bases for such plan year and each of the 6  
15 preceding plan years.

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

18 “(A) DETERMINATION.—The shortfall am-  
19 ortization installments are the amounts nec-  
20 essary to amortize the shortfall amortization  
21 base of the plan for any plan year in level an-  
22 nual installments over the 7-plan-year period  
23 beginning with such plan year.

24 “(B) SHORTFALL INSTALLMENT.—The  
25 shortfall amortization installment for any plan



1 year in the 7-plan-year period under subpara-  
2 graph (A) with respect to any shortfall amorti-  
3 zation base is the annual installment deter-  
4 mined under subparagraph (A) for that year for  
5 that base.

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

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

16 “(A) the funding shortfall of such plan for  
17 such plan year, minus

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

1           succeeding plan year with respect to the short-  
2           fall amortization bases and waiver amortization  
3           bases of the plan for any plan year preceding  
4           such plan year.

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

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

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

14           “(5) EXEMPTION FROM NEW SHORTFALL AM-  
15           ORTIZATION BASE.—

16                   “(A) IN GENERAL.—In any case in which  
17                   the value of plan assets of the plan (as reduced  
18                   under subsection (f)(4)(A)) is equal to or great-  
19                   er than the funding target of the plan for the  
20                   plan year, the shortfall amortization base of the  
21                   plan for such plan year shall be zero.

22                   “(B) TRANSITION RULE.—

23                           “(i) IN GENERAL.—Except as pro-  
24                           vided in clauses (iii) and (iv), in the case  
25                           of plan years beginning after 2007 and be-

1 fore 2011, only the applicable percentage  
 2 of the funding target shall be taken into  
 3 account under paragraph (3)(A) in deter-  
 4 mining the funding shortfall for the plan  
 5 year for purposes of subparagraph (A).

6 “(ii) APPLICABLE PERCENTAGE.—For  
 7 purposes of subparagraph (A), the applica-  
 8 ble percentage shall be determined in ac-  
 9 cordance with the following table:

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

10 “(iii) LIMITATION.—Clause (i) shall  
 11 not apply with respect to any plan year  
 12 after 2008 unless the shortfall amortiza-  
 13 tion base for each of the preceding years  
 14 beginning after 2007 was zero (determined  
 15 after application of this subparagraph).

16 “(iv) TRANSITION RELIEF NOT AVAIL-  
 17 ABLE FOR NEW OR DEFICIT REDUCTION  
 18 PLANS.—Clause (i) shall not apply to a  
 19 plan—

20 “(I) which was not in effect for a  
 21 plan year beginning in 2007, or

22 “(II) which was in effect for a  
 23 plan year beginning in 2007 and

1                   which was subject to section 302(d)  
2                   (as in effect for plan years beginning  
3                   in 2007), determined after the appli-  
4                   cation of paragraphs (6) and (9)  
5                   thereof.

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

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

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

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

1           “(A) the value of plan assets for the plan  
2           year (as reduced under subsection (f)(4)(B)),  
3           bears to

4           “(B) the funding target of the plan for the  
5           plan year (determined without regard to sub-  
6           section (i)(1)).

7           “(e) WAIVER AMORTIZATION CHARGE.—

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

14          “(2) WAIVER AMORTIZATION INSTALLMENT.—  
15          For purposes of paragraph (1)—

16               “(A) DETERMINATION.—The waiver amor-  
17               tization installments are the amounts necessary  
18               to amortize the waiver amortization base of the  
19               plan for any plan year in level annual install-  
20               ments over a period of 5 plan years beginning  
21               with the succeeding plan year.

22               “(B) WAIVER INSTALLMENT.—The waiver  
23               amortization installment for any plan year in  
24               the 5-year period under subparagraph (A) with  
25               respect to any waiver amortization base is the

1           annual installment determined under subpara-  
2           graph (A) for that year for that base.

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

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

13          “(5) EARLY DEEMED AMORTIZATION UPON AT-  
14          TAINMENT OF FUNDING TARGET.—In any case in  
15          which the funding shortfall of a plan for a plan year  
16          is zero, for purposes of determining the waiver am-  
17          ortization charge for such plan year and succeeding  
18          plan years, the waiver amortization bases for all pre-  
19          ceding plan years (and all waiver amortization in-  
20          stallments determined with respect to such bases)  
21          shall be reduced to zero.

22          “(f) REDUCTION OF MINIMUM REQUIRED CONTRIBU-  
23          TION BY PREFUNDING BALANCE AND FUNDING STAND-  
24          ARD CARRYOVER BALANCE.—

25          “(1) ELECTION TO MAINTAIN BALANCES.—

1           “(A) PREFUNDING BALANCE.—The plan  
2           sponsor of a single-employer plan may elect to  
3           maintain a prefunding balance.

4           “(B) FUNDING STANDARD CARRYOVER  
5           BALANCE.—

6           “(i) IN GENERAL.—In the case of a  
7           single-employer plan described in clause  
8           (ii), the plan sponsor may elect to maintain  
9           a funding standard carryover balance, until  
10          such balance is reduced to zero.

11          “(ii) PLANS MAINTAINING FUNDING  
12          STANDARD ACCOUNT IN 2007.—A plan is  
13          described in this clause if the plan—

14               “(I) was in effect for a plan year  
15               beginning in 2007, and

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

21          “(2) APPLICATION OF BALANCES.—A  
22          prefunding balance and a funding standard carry-  
23          over balance maintained pursuant to this para-  
24          graph—

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

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

8           “(C) may be reduced at any time, pursu-  
9           ant to an election under paragraph (5).

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

12           “(A) IN GENERAL.—Except as provided in  
13           subparagraphs (B) and (C), in the case of any  
14           plan year in which the plan sponsor elects to  
15           credit against the minimum required contribu-  
16           tion for the current plan year all or a portion  
17           of the prefunding balance or the funding stand-  
18           ard carryover balance for the current plan year  
19           (not in excess of such minimum required con-  
20           tribution), the minimum required contribution  
21           for the plan year shall be reduced as of the first  
22           day of the plan year by the amount so credited  
23           by the plan sponsor. For purposes of the pre-  
24           ceding sentence, the minimum required con-



1           tribution shall be determined after taking into  
2           account any waiver under section 302(c).

3           “(B)   COORDINATION   WITH   FUNDING  
4           STANDARD CARRYOVER BALANCE.—To the ex-  
5           tent that any plan has a funding standard car-  
6           ryover balance greater than zero, no amount of  
7           the prefunding balance of such plan may be  
8           credited under this paragraph in reducing the  
9           minimum required contribution.

10          “(C)   LIMITATION   FOR   UNDERFUNDED  
11          PLANS.—The preceding provisions of this para-  
12          graph shall not apply for any plan year if the  
13          ratio (expressed as a percentage) which—

14               “(i) the value of plan assets for the  
15               preceding plan year (as reduced under  
16               paragraph (4)(C)), bears to

17               “(ii) the funding target of the plan for  
18               the preceding plan year (determined with-  
19               out regard to subsection (i)(1)),

20          is less than 80 percent. In the case of plan  
21          years beginning in 2008, the ratio under this  
22          subparagraph may be determined using such  
23          methods of estimation as the Secretary of the  
24          Treasury may prescribe.

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

8                   “(A) APPLICABILITY OF SHORTFALL AM-  
9                   ORTIZATION BASE.—For purposes of subsection  
10                  (c)(5), the value of plan assets is deemed to be  
11                  such amount, reduced by the amount of the  
12                  prefunding balance, but only if an election  
13                  under paragraph (2) applying any portion of  
14                  the prefunding balance in reducing the min-  
15                  imum required contribution is in effect for the  
16                  plan year.

17                  “(B) DETERMINATION OF EXCESS ASSETS,  
18                  FUNDING SHORTFALL, AND FUNDING TARGET  
19                  ATTAINMENT PERCENTAGE.—

20                   “(i) IN GENERAL.—For purposes of  
21                   subsections (a), (c)(4)(B), and (d)(2)(A),  
22                   the value of plan assets is deemed to be  
23                   such amount, reduced by the amount of  
24                   the prefunding balance and the funding  
25                   standard carryover balance.

1                   “(ii) SPECIAL RULE FOR CERTAIN  
2                   BINDING AGREEMENTS WITH PBGC.—For  
3                   purposes of subsection (c)(4)(B), the value  
4                   of plan assets shall not be deemed to be re-  
5                   duced for a plan year by the amount of the  
6                   specified balance if, with respect to such  
7                   balance, there is in effect for a plan year  
8                   a binding written agreement with the Pen-  
9                   sion Benefit Guaranty Corporation which  
10                  provides that such balance is not available  
11                  to reduce the minimum required contribu-  
12                  tion for the plan year. For purposes of the  
13                  preceding sentence, the term ‘specified bal-  
14                  ance’ means the prefunding balance or the  
15                  funding standard carryover balance, as the  
16                  case may be.

17                  “(C) AVAILABILITY OF BALANCES IN PLAN  
18                  YEAR FOR CREDITING AGAINST MINIMUM RE-  
19                  QUIRED CONTRIBUTION.—For purposes of  
20                  paragraph (3)(C)(i) of this subsection, the value  
21                  of plan assets is deemed to be such amount, re-  
22                  duced by the amount of the prefunding balance.

23                  “(5) ELECTION TO REDUCE BALANCE PRIOR TO  
24                  DETERMINATIONS OF VALUE OF PLAN ASSETS AND

1 CREDITING AGAINST MINIMUM REQUIRED CONTRIBU-  
2 TION.—

3 “(A) IN GENERAL.—The plan sponsor may  
4 elect to reduce by any amount the balance of  
5 the prefunding balance and the funding stand-  
6 ard carryover balance for any plan year (but  
7 not below zero). Such reduction shall be effec-  
8 tive prior to any determination of the value of  
9 plan assets for such plan year under this sec-  
10 tion and application of the balance in reducing  
11 the minimum required contribution for such  
12 plan for such plan year pursuant to an election  
13 under paragraph (2).

14 “(B) COORDINATION BETWEEN  
15 PREFUNDING BALANCE AND FUNDING STAND-  
16 ARD CARRYOVER BALANCE.—To the extent that  
17 any plan has a funding standard carryover bal-  
18 ance greater than zero, no election may be  
19 made under subparagraph (A) with respect to  
20 the prefunding balance.

21 “(6) PREFUNDING BALANCE.—

22 “(A) IN GENERAL.—A prefunding balance  
23 maintained by a plan shall consist of a begin-  
24 ning balance of zero, increased and decreased to  
25 the extent provided in subparagraphs (B) and

1 (C), and adjusted further as provided in para-  
2 graph (8).

3 “(B) INCREASES.—

4 “(i) IN GENERAL.—As of the first day  
5 of each plan year beginning after 2008, the  
6 prefunding balance of a plan shall be in-  
7 creased by the amount elected by the plan  
8 sponsor for the plan year. Such amount  
9 shall not exceed the excess (if any) of—

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

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

15 “(ii) ADJUSTMENTS FOR INTEREST.—

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

1                   “(iii) CERTAIN CONTRIBUTIONS NEC-  
2                   CESSARY TO AVOID BENEFIT LIMITATIONS  
3                   DISREGARDED.—The excess described in  
4                   clause (i) with respect to any preceding  
5                   plan year shall be reduced (but not below  
6                   zero) by the amount of contributions an  
7                   employer would be required to make under  
8                   paragraph (1), (2), or (4) of section 206(g)  
9                   to avoid a benefit limitation which would  
10                  otherwise be imposed under such para-  
11                  graph for the preceding plan year. Any  
12                  contribution which may be taken into ac-  
13                  count in satisfying the requirements of  
14                  more than 1 of such paragraphs shall be  
15                  taken into account only once for purposes  
16                  of this clause.

17                  “(C) DECREASE.—The prefunding balance  
18                  of a plan shall be decreased (but not below  
19                  zero) by—

20                  “(i) as of the first day of each plan  
21                  year after 2008, the amount of such bal-  
22                  ance credited under paragraph (2) (if any)  
23                  in reducing the minimum required con-  
24                  tribution of the plan for the preceding plan  
25                  year, and

1 “(ii) as of the time specified in para-  
2 graph (5))(A), any reduction in such bal-  
3 ance elected under paragraph (5).

4 “(7) FUNDING STANDARD CARRYOVER BAL-  
5 ANCE.—

6 “(A) IN GENERAL.—A funding standard  
7 carryover balance maintained by a plan shall  
8 consist of a beginning balance determined  
9 under subparagraph (B), decreased to the ex-  
10 tent provided in subparagraph (C), and ad-  
11 justed further as provided in paragraph (8).

12 “(B) BEGINNING BALANCE.—The begin-  
13 ning balance of the funding standard carryover  
14 balance shall be the positive balance described  
15 in paragraph (1)(B)(ii)(II).

16 “(C) DECREASES.—The funding standard  
17 carryover balance of a plan shall be decreased  
18 (but not below zero) by—

19 “(i) as of the first day of each plan  
20 year after 2008, the amount of such bal-  
21 ance credited under paragraph (2) (if any)  
22 in reducing the minimum required con-  
23 tribution of the plan for the preceding plan  
24 year, and

1 “(ii) as of the time specified in para-  
2 graph (5))(A), any reduction in such bal-  
3 ance elected under paragraph (5).

4 “(8) ADJUSTMENTS FOR INVESTMENT EXPERI-  
5 ENCE.—In determining the prefunding balance or  
6 the funding standard carryover balance of a plan as  
7 of the first day of the plan year, the plan sponsor  
8 shall, in accordance with regulations prescribed by  
9 the Secretary of the Treasury, adjust such balance  
10 to reflect the rate of return on plan assets for the  
11 preceding plan year. Notwithstanding subsection  
12 (g)(3), such rate of return shall be determined on  
13 the basis of fair market value and shall properly  
14 take into account, in accordance with such regula-  
15 tions, all contributions, distributions, and other plan  
16 payments made during such period.

17 “(9) ELECTIONS.—Elections under this sub-  
18 section shall be made at such times, and in such  
19 form and manner, as shall be prescribed in regula-  
20 tions of the Secretary of the Treasury.

21 “(g) VALUATION OF PLAN ASSETS AND LIABIL-  
22 ITIES.—

23 “(1) TIMING OF DETERMINATIONS.—Except as  
24 otherwise provided under this subsection, all deter-  
25 minations under this section for a plan year shall be



1       made as of the valuation date of the plan for such  
2       plan year.

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

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

9           “(B) EXCEPTION FOR SMALL PLANS.—If,  
10       on each day during the preceding plan year, a  
11       plan had 100 or fewer participants, the plan  
12       may designate any day during the plan year as  
13       its valuation date for such plan year and suc-  
14       ceeding plan years. For purposes of this sub-  
15       paragraph, all defined benefit plans which are  
16       single-employer plans and are maintained by  
17       the same employer (or any member of such em-  
18       ployer’s controlled group) shall be treated as 1  
19       plan, but only participants with respect to such  
20       employer or member shall be taken into ac-  
21       count.

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

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

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

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

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

17 “(B) AVERAGING ALLOWED.—A plan may  
18 determine the value of plan assets on the basis  
19 of the averaging of fair market values, but only  
20 if such method—

21 “(i) is permitted under regulations  
22 prescribed by the Secretary of the Treas-  
23 ury,

24 “(ii) does not provide for averaging of  
25 such values over more than the period be-

1           ginning on the last day of the 25th month  
2           preceding the month in which the valuation  
3           date occurs and ending on the valuation  
4           date (or a similar period in the case of a  
5           valuation date which is not the 1st day of  
6           a month), and

7                   “(iii) does not result in a determina-  
8                   tion of the value of plan assets which, at  
9                   any time, is lower than 90 percent or  
10                  greater than 110 percent of the fair mar-  
11                  ket value of such assets at such time.

12           Any such averaging shall be adjusted for con-  
13           tributions and distributions (as provided by the  
14           Secretary of the Treasury).

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

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

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

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

1 the contribution shall be taken into account as  
2 an asset of the plan as of the valuation date,  
3 except that in the case of any plan year begin-  
4 ning after 2008, only the present value (deter-  
5 mined as of the valuation date) of such con-  
6 tribution may be taken into account. For pur-  
7 poses of the preceding sentence, present value  
8 shall be determined using the effective interest  
9 rate for the preceding plan year to which the  
10 contribution is properly allocable.

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

18 “(i) such contributions, and

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

24 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

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

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

11           “(2) INTEREST RATES.—

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

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

1 determining the present value of the benefits of  
2 the plan shall be—

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

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

14 “(iii) in the case of benefits reason-  
15 ably determined to be payable after the pe-  
16 riod described in clause (ii), the third seg-  
17 ment rate with respect to the applicable  
18 month.

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

21 “(i) FIRST SEGMENT RATE.—The  
22 term ‘first segment rate’ means, with re-  
23 spect to any month, the single rate of in-  
24 terest which shall be determined by the  
25 Secretary of the Treasury for such month

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

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

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

1 beginning after the period described in  
2 clause (ii).

3 “(D) CORPORATE BOND YIELD CURVE.—

4 For purposes of this paragraph—

5 “(i) IN GENERAL.—The term ‘cor-  
6 porate bond yield curve’ means, with re-  
7 spect to any month, a yield curve which is  
8 prescribed by the Secretary of the Treas-  
9 ury for such month and which reflects the  
10 average, for the 24-month period ending  
11 with the month preceding such month, of  
12 monthly yields on investment grade cor-  
13 porate bonds with varying maturities and  
14 that are in the top 3 quality levels avail-  
15 able.

16 “(ii) ELECTION TO USE YIELD  
17 CURVE.—Solely for purposes of deter-  
18 mining the minimum required contribution  
19 under this section, the plan sponsor may,  
20 in lieu of the segment rates determined  
21 under subparagraph (C), elect to use inter-  
22 est rates under the corporate bond yield  
23 curve. For purposes of the preceding sen-  
24 tence such curve shall be determined with-  
25 out regard to the 24-month averaging de-



1           scribed in clause (i) . Such election, once  
2           made, may be revoked only with the con-  
3           sent of the Secretary of the Treasury.

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

16          “(F) PUBLICATION REQUIREMENTS.—The  
17          Secretary of the Treasury shall publish for each  
18          month the corporate bond yield curve (and the  
19          corporate bond yield curve reflecting the modi-  
20          fication           described           in           section  
21          205(g)(3)(B)(iii)(I)) for such month and each  
22          of the rates determined under subparagraph  
23          (B) for such month. The Secretary of the  
24          Treasury shall also publish a description of the  
25          methodology used to determine such yield curve

1 and such rates which is sufficiently detailed to  
2 enable plans to make reasonable projections re-  
3 garding the yield curve and such rates for fu-  
4 ture months based on the plan's projection of  
5 future interest rates.

6 “(G) TRANSITION RULE.—

7 “(i) IN GENERAL.—Notwithstanding  
8 the preceding provisions of this paragraph,  
9 for plan years beginning in 2008 or 2009,  
10 the first, second, or third segment rate for  
11 a plan with respect to any month shall be  
12 equal to the sum of—

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

17 “(II) the product of the rate de-  
18 termined under the rules of section  
19 302(b)(5)(B)(ii)(II) (as in effect for  
20 plan years beginning in 2007), multi-  
21 plied by a percentage equal to 100  
22 percent minus the applicable percent-  
23 age.

24 “(ii) APPLICABLE PERCENTAGE.—For  
25 purposes of clause (i), the applicable per-

1                   centage is  $33\frac{1}{3}$  percent for plan years be-  
2                   ginning in 2008 and  $66\frac{2}{3}$  percent for plan  
3                   years beginning in 2009.

4                   “(iii) NEW PLANS INELIGIBLE.—  
5                   Clause (i) shall not apply to any plan if the  
6                   first plan year of the plan begins after De-  
7                   cember 31, 2007.

8                   “(iv) ELECTION.—The plan sponsor  
9                   may elect not to have this subparagraph  
10                  apply. Such election, once made, may be  
11                  revoked only with the consent of the Sec-  
12                  retary of the Treasury.

13               “(3) MORTALITY TABLES.—

14               “(A) IN GENERAL.—Except as provided in  
15               subparagraph (C) or (D), the Secretary of the  
16               Treasury shall by regulation prescribe mortality  
17               tables to be used in determining any present  
18               value or making any computation under this  
19               section. Such tables shall be based on the actual  
20               experience of pension plans and projected  
21               trends in such experience. In prescribing such  
22               tables, the Secretary of the Treasury shall take  
23               into account results of available independent  
24               studies of mortality of individuals covered by  
25               pension plans.

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

7           “(C) SUBSTITUTE MORTALITY TABLE.—

8           “(i) IN GENERAL.—Upon request by  
9 the plan sponsor and approval by the Sec-  
10 retary of the Treasury, a mortality table  
11 which meets the requirements of clause  
12 (iii) shall be used in determining any  
13 present value or making any computation  
14 under this section during the period of  
15 consecutive plan years (not to exceed 10)  
16 specified in the request.

17           “(ii) EARLY TERMINATION OF PE-  
18 RIOD.—Notwithstanding clause (i), a mor-  
19 tality table described in clause (i) shall  
20 cease to be in effect as of the earliest of—

21           “(I) the date on which there is a  
22 significant change in the participants  
23 in the plan by reason of a plan spinoff  
24 or merger or otherwise, or

1 “(II) the date on which the plan  
2 actuary determines that such table  
3 does not meet the requirements of  
4 clause (iii).

5 “(iii) REQUIREMENTS.—A mortality  
6 table meets the requirements of this clause  
7 if—

8 “(I) there is a sufficient number  
9 of plan participants, and the pension  
10 plans have been maintained for a suf-  
11 ficient period of time, to have credible  
12 information necessary for purposes of  
13 subclause (II), and

14 “(II) such table reflects the ac-  
15 tual experience of the pension plans  
16 maintained by the sponsor and pro-  
17 jected trends in general mortality ex-  
18 perience.

19 “(iv) ALL PLANS IN CONTROLLED  
20 GROUP MUST USE SEPARATE TABLE.—Ex-  
21 cept as provided by the Secretary of the  
22 Treasury, a plan sponsor may not use a  
23 mortality table under this subparagraph  
24 for any plan maintained by the plan spon-  
25 sor unless—

1 “(I) a separate mortality table is  
2 established and used under this sub-  
3 paragraph for each other plan main-  
4 tained by the plan sponsor and if the  
5 plan sponsor is a member of a con-  
6 trolled group, each member of the  
7 controlled group, and

8 “(II) the requirements of clause  
9 (iii) are met separately with respect to  
10 the table so established for each such  
11 plan, determined by only taking into  
12 account the participants of such plan,  
13 the time such plan has been in exist-  
14 ence, and the actual experience of  
15 such plan.

16 “(v) DEADLINE FOR SUBMISSION AND  
17 DISPOSITION OF APPLICATION.—

18 “(I) SUBMISSION.—The plan  
19 sponsor shall submit a mortality table  
20 to the Secretary of the Treasury for  
21 approval under this subparagraph at  
22 least 7 months before the 1st day of  
23 the period described in clause (i).

24 “(II) DISPOSITION.—Any mor-  
25 tality table submitted to the Secretary

1 of the Treasury for approval under  
2 this subparagraph shall be treated as  
3 in effect as of the 1st day of the pe-  
4 riod described in clause (i) unless the  
5 Secretary of the Treasury, during the  
6 180-day period beginning on the date  
7 of such submission, disapproves of  
8 such table and provides the reasons  
9 that such table fails to meet the re-  
10 quirements of clause (iii). The 180-  
11 day period shall be extended upon mu-  
12 tual agreement of the Secretary of the  
13 Treasury and the plan sponsor.

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

17 “(i) IN GENERAL.—The Secretary of  
18 the Treasury shall establish mortality ta-  
19 bles which may be used (in lieu of the ta-  
20 bles under subparagraph (A)) under this  
21 subsection for individuals who are entitled  
22 to benefits under the plan on account of  
23 disability. The Secretary of the Treasury  
24 shall establish separate tables for individ-  
25 uals whose disabilities occur in plan years

1 beginning before January 1, 1995, and for  
2 individuals whose disabilities occur in plan  
3 years beginning on or after such date.

4 “(ii) SPECIAL RULE FOR DISABILITIES  
5 OCCURRING AFTER 1994.—In the case of  
6 disabilities occurring in plan years begin-  
7 ning after December 31, 1994, the tables  
8 under clause (i) shall apply only with re-  
9 spect to individuals described in such sub-  
10 clause who are disabled within the meaning  
11 of title II of the Social Security Act and  
12 the regulations thereunder.

13 “(iii) PERIODIC REVISION.—The Sec-  
14 retary of the Treasury shall (at least every  
15 10 years) make revisions in any table in ef-  
16 fect under clause (i) to reflect the actual  
17 experience of pension plans and projected  
18 trends in such experience.

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

24 “(A) the probability that future benefit  
25 payments under the plan will be made in the



1 form of optional forms of benefits provided  
2 under the plan (including lump sum distribu-  
3 tions, determined on the basis of the plan's ex-  
4 perience and other related assumptions), and

5 “(B) any difference in the present value of  
6 such future benefit payments resulting from the  
7 use of actuarial assumptions, in determining  
8 benefit payments in any such optional form of  
9 benefits, which are different from those speci-  
10 fied in this subsection.

11 “(5) APPROVAL OF LARGE CHANGES IN ACTU-  
12 ARIAL ASSUMPTIONS.—

13 “(A) IN GENERAL.—No actuarial assump-  
14 tion used to determine the funding target for a  
15 plan to which this paragraph applies may be  
16 changed without the approval of the Secretary  
17 of the Treasury.

18 “(B) PLANS TO WHICH PARAGRAPH AP-  
19 PLIES.—This paragraph shall apply to a plan  
20 only if—

21 “(i) the plan is a single-employer plan  
22 to which title IV applies,

23 “(ii) the aggregate unfunded vested  
24 benefits as of the close of the preceding  
25 plan year (as determined under section

1 4006(a)(3)(E)(iii)) of such plan and all  
2 other plans maintained by the contributing  
3 sponsors (as defined in section  
4 4001(a)(13)) and members of such spon-  
5 sors' controlled groups (as defined in sec-  
6 tion 4001(a)(14)) which are covered by  
7 title IV (disregarding plans with no un-  
8 funded vested benefits) exceed  
9 \$50,000,000, and

10 “(iii) the change in assumptions (de-  
11 termined after taking into account any  
12 changes in interest rate and mortality  
13 table) results in a decrease in the funding  
14 shortfall of the plan for the current plan  
15 year that exceeds \$50,000,000, or that ex-  
16 ceeds \$5,000,000 and that is 5 percent or  
17 more of the funding target of the plan be-  
18 fore such change.

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

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

22 “(A) IN GENERAL.—In the case of a plan  
23 which is in at-risk status for a plan year, the  
24 funding target of the plan for the plan year  
25 shall be equal to the sum of—

1 “(i) the present value of all benefits  
2 accrued or earned under the plan as of the  
3 beginning of the plan year, as determined  
4 by using the additional actuarial assump-  
5 tions described in subparagraph (B), and

6 “(ii) in the case of a plan which also  
7 has been in at-risk status for at least 2 of  
8 the 4 preceding plan years, a loading fac-  
9 tor determined under subparagraph (C).

10 “(B) ADDITIONAL ACTUARIAL ASSUMP-  
11 TIONS.—The actuarial assumptions described in  
12 this subparagraph are as follows:

13 “(i) All employees who are not other-  
14 wise assumed to retire as of the valuation  
15 date but who will be eligible to elect bene-  
16 fits during the plan year and the 10 suc-  
17 ceeding plan years shall be assumed to re-  
18 tire at the earliest retirement date under  
19 the plan but not before the end of the plan  
20 year for which the at-risk funding target  
21 and at-risk target normal cost are being  
22 determined.

23 “(ii) All employees shall be assumed  
24 to elect the retirement benefit available  
25 under the plan at the assumed retirement

1 age (determined after application of clause  
2 (i)) which would result in the highest  
3 present value of benefits.

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

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

9 “(ii) 4 percent of the funding target  
10 (determined without regard to this para-  
11 graph) of the plan for the plan year.

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

17 “(A) the present value of all benefits which  
18 are expected to accrue or be earned under the  
19 plan during the plan year, determined using the  
20 additional actuarial assumptions described in  
21 paragraph (1)(B), plus

22 “(B) in the case of a plan which also has  
23 been in at-risk status for at least 2 of the 4  
24 preceding plan years, a loading factor equal to  
25 4 percent of the target normal cost (determined

1 without regard to this paragraph) of the plan  
2 for the plan year.

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

4 “(A) the at-risk funding target be less  
5 than the funding target, as determined without  
6 regard to this subsection, or

7 “(B) the at-risk target normal cost be less  
8 than the target normal cost, as determined  
9 without regard to this subsection.

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

11 For purposes of this subsection—

12 “(A) IN GENERAL.—A plan is in at-risk  
13 status for a plan year if—

14 “(i) the funding target attainment  
15 percentage for the preceding plan year (de-  
16 termined under this section without regard  
17 to this subsection) is less than 80 percent,  
18 and

19 “(ii) the funding target attainment  
20 percentage for the preceding plan year (de-  
21 termined under this section by using the  
22 additional actuarial assumptions described  
23 in paragraph (1)(B) in computing the  
24 funding target) is less than 70 percent.

1           “(B) TRANSITION RULE.—In the case of  
2           plan years beginning in 2008, 2009, and 2010,  
3           subparagraph (A)(i) shall be applied by sub-  
4           stituting the following percentages for ‘80 per-  
5           cent’:

6                   “(i) 65 percent in the case of 2008.

7                   “(ii) 70 percent in the case of 2009.

8                   “(iii) 75 percent in the case of 2010.

9           In the case of plan years beginning in 2008, the  
10          funding target attainment percentage for the  
11          preceding plan year under subparagraph (A)(ii)  
12          may be determined using such methods of esti-  
13          mation as the Secretary of the Treasury may  
14          provide.

15          “(C) SPECIAL RULE FOR EMPLOYEES OF-  
16          FERED EARLY RETIREMENT IN 2006.—

17                   “(i) IN GENERAL.—For purposes of  
18                  subparagraph (A)(ii), the additional actu-  
19                  arial assumptions described in paragraph  
20                  (1)(B) shall not be taken into account with  
21                  respect to any employee if—

22                           “(I) such employee is employed  
23                           by a specified automobile manufac-  
24                           turer,

1                   “(II) such employee is offered a  
2                   substantial amount of additional cash  
3                   compensation, substantially enhanced  
4                   retirement benefits under the plan, or  
5                   materially reduced employment duties  
6                   on the condition that by a specified  
7                   date (not later than December 31,  
8                   2010) the employee retires (as defined  
9                   under the terms of the plan),

10                  “(III) such offer is made during  
11                  2006 and pursuant to a bona fide re-  
12                  tirement incentive program and re-  
13                  quires, by the terms of the offer, that  
14                  such offer can be accepted not later  
15                  than a specified date (not later than  
16                  December 31, 2006), and

17                  “(IV) such employee does not  
18                  elect to accept such offer before the  
19                  specified date on which the offer ex-  
20                  pires.

21                  “(ii) SPECIFIED AUTOMOBILE MANU-  
22                  FACTURER.—For purposes of clause (i),  
23                  the term ‘specified automobile manufac-  
24                  turer’ means—

1                   “(I) any manufacturer of auto-  
2                   mobiles, and

3                   “(II) any manufacturer of auto-  
4                   mobile parts which supplies such parts  
5                   directly to a manufacturer of auto-  
6                   mobiles and which, after a transaction  
7                   or series of transactions ending in  
8                   1999, ceased to be a member of a  
9                   controlled group which included such  
10                  manufacturer of automobiles.

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

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

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



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

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

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

11                  “(C) YEARS BEFORE EFFECTIVE DATE.—  
 12                  For purposes of this paragraph, plan years be-  
 13                  ginning before 2008 shall not be taken into ac-  
 14                  count.

15                  “(6) SMALL PLAN EXCEPTION.—If, on each day  
 16                  during the preceding plan year, a plan had 500 or  
 17                  fewer participants, the plan shall not be treated as  
 18                  in at-risk status for the plan year. For purposes of  
 19                  this paragraph, all defined benefit plans (other than  
 20                  multiemployer plans) maintained by the same em-  
 21                  ployer (or any member of such employer’s controlled  
 22                  group) shall be treated as 1 plan, but only partici-

1 pants with respect to such employer or member shall  
2 be taken into account and the rules of subsection  
3 (g)(2)(C) shall apply.

4 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
5 TIONS.—

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

10 “(2) INTEREST.—Any payment required under  
11 paragraph (1) for a plan year that is made on a date  
12 other than the valuation date for such plan year  
13 shall be adjusted for interest accruing for the period  
14 between the valuation date and the payment date, at  
15 the effective rate of interest for the plan for such  
16 plan year.

17 “(3) ACCELERATED QUARTERLY CONTRIBUTION  
18 SCHEDULE FOR UNDERFUNDED PLANS.—

19 “(A) FAILURE TO TIMELY MAKE RE-  
20 QUIRED INSTALLMENT.—In any case in which  
21 the plan has a funding shortfall for the pre-  
22 ceding plan year, the employer maintaining the  
23 plan shall make the required installments under  
24 this paragraph and if the employer fails to pay  
25 the full amount of a required installment for

1 the plan year, then the amount of interest  
2 charged under paragraph (2) on the under-  
3 payment for the period of underpayment shall  
4 be determined by using a rate of interest equal  
5 to the rate otherwise used under paragraph (2)  
6 plus 5 percentage points.

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

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

12 “(I) the required installment,  
13 over

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

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

1                   “(iii) ORDER OF CREDITING CON-  
 2                   TRIBUTIONS.—For purposes of clause  
 3                   (i)(II), contributions shall be credited  
 4                   against unpaid required installments in the  
 5                   order in which such installments are re-  
 6                   quired to be paid.

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

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

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

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

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

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

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

8 “(I) 90 percent of the minimum  
9 required contribution (determined  
10 without regard to this subsection) to  
11 the plan for the plan year under this  
12 section, or

13 “(II) 100 percent of the min-  
14 imum required contribution (deter-  
15 mined without regard to this sub-  
16 section or to any waiver under section  
17 302(c)) to the plan for the preceding  
18 plan year.

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

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

23 “(i) FISCAL YEARS.—In applying this  
24 paragraph to a plan year beginning on any  
25 date other than January 1, there shall be

1 substituted for the months specified in this  
2 paragraph, the months which correspond  
3 thereto.

4 “(ii) SHORT PLAN YEAR.—This sub-  
5 paragraph shall be applied to plan years of  
6 less than 12 months in accordance with  
7 regulations prescribed by the Secretary of  
8 the Treasury.

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

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

20 “(B) PLANS TO WHICH PARAGRAPH AP-  
21 PLIES.—This paragraph shall apply to a plan  
22 (other than a plan described in subsection  
23 (g)(2)(B)) which—

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

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

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

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

19                  “(E) DEFINITIONS.—For purposes of this  
20                  paragraph—

21                  “(i) LIQUIDITY SHORTFALL.—The  
22                  term ‘liquidity shortfall’ means, with re-  
23                  spect to any required installment, an  
24                  amount equal to the excess (as of the last

1 day of the quarter for which such install-  
2 ment is made) of—

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

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

7 “(ii) BASE AMOUNT.—

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

15 “(II) SPECIAL RULE.—If the  
16 amount determined under subclause  
17 (I) exceeds an amount equal to 2  
18 times the sum of the adjusted dis-  
19 bursements from the plan for the 36  
20 months ending on the last day of the  
21 quarter and an enrolled actuary cer-  
22 tifies to the satisfaction of the Sec-  
23 retary of the Treasury that such ex-  
24 cess is the result of nonrecurring cir-  
25 cumstances, the base amount with re-



1                   spect to such quarter shall be deter-  
2                   mined without regard to amounts re-  
3                   lated to those nonrecurring cir-  
4                   cumstances.

5                   “(iii) DISBURSEMENTS FROM THE  
6                   PLAN.—The term ‘disbursements from the  
7                   plan’ means all disbursements from the  
8                   trust, including purchases of annuities,  
9                   payments of single sums and other bene-  
10                  fits, and administrative expenses.

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

15                         “(I) the plan’s funding target at-  
16                         tainment percentage for the plan year,  
17                         and

18                         “(II) the sum of the purchases of  
19                         annuities, payments of single sums,  
20                         and such other disbursements as the  
21                         Secretary of the Treasury shall pro-  
22                         vide in regulations.

23                  “(v) LIQUID ASSETS.—The term ‘liq-  
24                  uid assets’ means cash, marketable securi-  
25                  ties, and such other assets as specified by

1 the Secretary of the Treasury in regula-  
2 tions.

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

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

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

13 “(1) IN GENERAL.—In the case of a plan to  
14 which this subsection applies (as provided under  
15 paragraph (2)), if—

16 “(A) any person fails to make a contribu-  
17 tion payment required by section 302 and this  
18 section before the due date for such payment,  
19 and

20 “(B) the unpaid balance of such payment  
21 (including interest), when added to the aggre-  
22 gate unpaid balance of all preceding such pay-  
23 ments for which payment was not made before  
24 the due date (including interest), exceeds  
25 \$1,000,000,

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

7            “(2) PLANS TO WHICH SUBSECTION APPLIES.—  
8        This subsection shall apply to a single-employer plan  
9        covered under section 4021 for any plan year for  
10       which the funding target attainment percentage (as  
11       defined in subsection (d)(2)) of such plan is less  
12       than 100 percent.

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

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

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

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

10           “(C) CERTAIN RULES TO APPLY.—Any  
11           amount with respect to which a lien is imposed  
12           under paragraph (1) shall be treated as taxes  
13           due and owing the United States and rules  
14           similar to the rules of subsections (c), (d), and  
15           (e) of section 4068 shall apply with respect to  
16           a lien imposed by subsection (a) and the  
17           amount with respect to such lien.

18           “(5) ENFORCEMENT.—Any lien created under  
19           paragraph (1) may be perfected and enforced only  
20           by the Pension Benefit Guaranty Corporation, or at  
21           the direction of the Pension Benefit Guaranty Cor-  
22           poration, by the contributing sponsor (or any mem-  
23           ber of the controlled group of the contributing spon-  
24           sor).

1           “(6) DEFINITIONS.—For purposes of this sub-  
2           section—

3           “(A) CONTRIBUTION PAYMENT.—The term  
4           ‘contribution payment’ means, in connection  
5           with a plan, a contribution payment required to  
6           be made to the plan, including any required in-  
7           stallment under paragraphs (3) and (4) of sub-  
8           section (j).

9           “(B) DUE DATE; REQUIRED INSTALL-  
10          MENT.—The terms ‘due date’ and ‘required in-  
11          stallment’ have the meanings given such terms  
12          by subsection (j), except that in the case of a  
13          payment other than a required installment, the  
14          due date shall be the date such payment is re-  
15          quired to be made under section 303.

16          “(C) CONTROLLED GROUP.—The term  
17          ‘controlled group’ means any group treated as  
18          a single employer under subsections (b), (c),  
19          (m), and (o) of section 414 of the Internal Rev-  
20          enue Code of 1986.

21          “(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT  
22          ACCOUNTS.—In the case of a qualified transfer (as de-  
23          fined in section 420 of the Internal Revenue Code of  
24          1986), any assets so transferred shall not, for purposes  
25          of this section, be treated as assets in the plan.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 in section 1 of such Act (as amended by section 101) is  
3 amended by inserting after the item relating to section  
4 302 the following new item:

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

5 (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply with respect to plan years begin-  
7 ning after 2007.

8 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EM-**  
9 **PLOYER PLANS.**

10 (a) FUNDING-BASED LIMITS ON BENEFITS AND  
11 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER  
12 PLANS.—Section 206 of the Employee Retirement Income  
13 Security Act of 1974 (29 U.S.C. 1056) is amended by  
14 adding at the end the following new subsection:

15 “(g) FUNDING-BASED LIMITS ON BENEFITS AND  
16 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER  
17 PLANS.—

18 “(1) FUNDING-BASED LIMITATION ON SHUT-  
19 DOWN BENEFITS AND OTHER UNPREDICTABLE CON-  
20 TINGENT EVENT BENEFITS UNDER SINGLE-EM-  
21 PLOYER PLANS.—

22 “(A) IN GENERAL.—If a participant of a  
23 defined benefit plan which is a single-employer  
24 plan is entitled to an unpredictable contingent

1 event benefit payable with respect to any event  
2 occurring during any plan year, the plan shall  
3 provide that such benefit may not be provided  
4 if the adjusted funding target attainment per-  
5 centage for such plan year—

6 “(i) is less than 60 percent, or

7 “(ii) would be less than 60 percent  
8 taking into account such occurrence.

9 “(B) EXEMPTION.—Subparagraph (A)  
10 shall cease to apply with respect to any plan  
11 year, effective as of the first day of the plan  
12 year, upon payment by the plan sponsor of a  
13 contribution (in addition to any minimum re-  
14 quired contribution under section 303) equal  
15 to—

16 “(i) in the case of subparagraph  
17 (A)(i), the amount of the increase in the  
18 funding target of the plan (under section  
19 303) for the plan year attributable to the  
20 occurrence referred to in subparagraph  
21 (A), and

22 “(ii) in the case of subparagraph  
23 (A)(ii), the amount sufficient to result in a  
24 funding target attainment percentage of 60  
25 percent.

1                   “(C)     UNPREDICTABLE     CONTINGENT  
2                   EVENT.—For purposes of this paragraph, the  
3                   term ‘unpredictable contingent event benefit’  
4                   means any benefit payable solely by reason of—

5                   “(i) a plant shutdown (or similar  
6                   event, as determined by the Secretary of  
7                   the Treasury), or

8                   “(ii) an event other than the attain-  
9                   ment of any age, performance of any serv-  
10                  ice, receipt or derivation of any compensa-  
11                  tion, or occurrence of death or disability.

12                  “(2) LIMITATIONS ON PLAN AMENDMENTS IN-  
13                  CREASING LIABILITY FOR BENEFITS.—

14                  “(A) IN GENERAL.—No amendment to a  
15                  defined benefit plan which is a single-employer  
16                  plan which has the effect of increasing liabilities  
17                  of the plan by reason of increases in benefits,  
18                  establishment of new benefits, changing the  
19                  rate of benefit accrual, or changing the rate at  
20                  which benefits become nonforfeitable may take  
21                  effect during any plan year if the adjusted  
22                  funding target attainment percentage for such  
23                  plan year is—

24                  “(i) less than 80 percent, or



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

3                   “(B)   EXEMPTION.—Subparagraph   (A)  
4                   shall cease to apply with respect to any plan  
5                   year, effective as of the first day of the plan  
6                   year (or if later, the effective date of the  
7                   amendment), upon payment by the plan sponsor  
8                   of a contribution (in addition to any minimum  
9                   required contribution under section 303) equal  
10                  to—

11                  “(i) in the case of subparagraph  
12                  (A)(i), the amount of the increase in the  
13                  funding target of the plan (under section  
14                  303) for the plan year attributable to the  
15                  amendment, and

16                  “(ii) in the case of subparagraph  
17                  (A)(ii), the amount sufficient to result in  
18                  an adjusted funding target attainment per-  
19                  centage of 80 percent.

20                  “(C) EXCEPTION FOR CERTAIN BENEFIT  
21                  INCREASES.—Subparagraph (A) shall not apply  
22                  to any amendment which provides for an in-  
23                  crease in benefits under a formula which is not  
24                  based on a participant’s compensation, but only  
25                  if the rate of such increase is not in excess of

1 the contemporaneous rate of increase in average  
2 wages of participants covered by the amend-  
3 ment.

4 “(3) LIMITATIONS ON ACCELERATED BENEFIT  
5 DISTRIBUTIONS.—

6 “(A) FUNDING PERCENTAGE LESS THAN  
7 60 PERCENT.—A defined benefit plan which is  
8 a single-employer plan shall provide that, in any  
9 case in which the plan’s adjusted funding target  
10 attainment percentage for a plan year is less  
11 than 60 percent, the plan may not pay any pro-  
12 hibited payment after the valuation date for the  
13 plan year.

14 “(B) BANKRUPTCY.—A defined benefit  
15 plan which is a single-employer plan shall pro-  
16 vide that, during any period in which the plan  
17 sponsor is a debtor in a case under title 11,  
18 United States Code, or similar Federal or State  
19 law, the plan may not pay any prohibited pay-  
20 ment. The preceding sentence shall not apply  
21 on or after the date on which the enrolled actu-  
22 ary of the plan certifies that the adjusted fund-  
23 ing target attainment percentage of such plan  
24 is not less than 100 percent.

1 “(C) LIMITED PAYMENT IF PERCENTAGE  
2 AT LEAST 60 PERCENT BUT LESS THAN 80 PER-  
3 CENT.—

4 “(i) IN GENERAL.—A defined benefit  
5 plan which is a single-employer plan shall  
6 provide that, in any case in which the  
7 plan’s adjusted funding target attainment  
8 percentage for a plan year is 60 percent or  
9 greater but less than 80 percent, the plan  
10 may not pay any prohibited payment after  
11 the valuation date for the plan year to the  
12 extent the amount of the payment exceeds  
13 the lesser of—

14 “(I) 50 percent of the amount of  
15 the payment which could be made  
16 without regard to this subsection, or

17 “(II) the present value (deter-  
18 mined under guidance prescribed by  
19 the Pension Benefit Guaranty Cor-  
20 poration, using the interest and mor-  
21 tality assumptions under section  
22 205(g)) of the maximum guarantee  
23 with respect to the participant under  
24 section 4022.

25 “(ii) ONE-TIME APPLICATION.—

1           “(I) IN GENERAL.—The plan  
2 shall also provide that only 1 prohib-  
3 ited payment meeting the require-  
4 ments of clause (i) may be made with  
5 respect to any participant during any  
6 period of consecutive plan years to  
7 which the limitations under either  
8 subparagraph (A) or (B) or this sub-  
9 paragraph applies.

10           “(II) TREATMENT OF BENE-  
11 FICIARIES.—For purposes of this  
12 clause, a participant and any bene-  
13 ficiary on his behalf (including an al-  
14 ternate payee, as defined in section  
15 206(d)(3)(K)) shall be treated as 1  
16 participant. If the accrued benefit of a  
17 participant is allocated to such an al-  
18 ternate payee and 1 or more other  
19 persons, the amount under clause (i)  
20 shall be allocated among such persons  
21 in the same manner as the accrued  
22 benefit is allocated unless the quali-  
23 fied domestic relations order (as de-  
24 fined in section 206(d)(3)(B)(i)) pro-  
25 vides otherwise.

1           “(D) EXCEPTION.—This paragraph shall  
2 not apply to any plan for any plan year if the  
3 terms of such plan (as in effect for the period  
4 beginning on September 1, 2005, and ending  
5 with such plan year) provide for no benefit ac-  
6 cruals with respect to any participant during  
7 such period.

8           “(E) PROHIBITED PAYMENT.—For pur-  
9 pose of this paragraph, the term ‘prohibited  
10 payment’ means—

11           “(i) any payment, in excess of the  
12 monthly amount paid under a single life  
13 annuity (plus any social security supple-  
14 ments described in the last sentence of sec-  
15 tion 204(b)(1)(G)), to a participant or ben-  
16 eficiary whose annuity starting date (as de-  
17 fined in section 205(h)(2)) occurs during  
18 any period a limitation under subpara-  
19 graph (A) or (B) is in effect,

20           “(ii) any payment for the purchase of  
21 an irrevocable commitment from an insurer  
22 to pay benefits, and

23           “(iii) any other payment specified by  
24 the Secretary of the Treasury by regula-  
25 tions.

1           “(4) LIMITATION ON BENEFIT ACCRUALS FOR  
2           PLANS WITH SEVERE FUNDING SHORTFALLS.—

3           “(A) IN GENERAL.—A defined benefit plan  
4           which is a single-employer plan shall provide  
5           that, in any case in which the plan’s adjusted  
6           funding target attainment percentage for a plan  
7           year is less than 60 percent, benefit accruals  
8           under the plan shall cease as of the valuation  
9           date for the plan year.

10          “(B) EXEMPTION.—Subparagraph (A)  
11          shall cease to apply with respect to any plan  
12          year, effective as of the first day of the plan  
13          year, upon payment by the plan sponsor of a  
14          contribution (in addition to any minimum re-  
15          quired contribution under section 303) equal to  
16          the amount sufficient to result in an adjusted  
17          funding target attainment percentage of 60 per-  
18          cent.

19          “(5) RULES RELATING TO CONTRIBUTIONS RE-  
20          QUIRED TO AVOID BENEFIT LIMITATIONS.—

21          “(A) SECURITY MAY BE PROVIDED.—

22                 “(i) IN GENERAL.—For purposes of  
23                 this subsection, the adjusted funding tar-  
24                 get attainment percentage shall be deter-  
25                 mined by treating as an asset of the plan

1 any security provided by a plan sponsor in  
2 a form meeting the requirements of clause  
3 (ii).

4 “(ii) FORM OF SECURITY.—The secu-  
5 rity required under clause (i) shall consist  
6 of—

7 “(I) a bond issued by a corporate  
8 surety company that is an acceptable  
9 surety for purposes of section 412 of  
10 this Act,

11 “(II) cash, or United States obli-  
12 gations which mature in 3 years or  
13 less, held in escrow by a bank or simi-  
14 lar financial institution, or

15 “(III) such other form of security  
16 as is satisfactory to the Secretary of  
17 the Treasury and the parties involved.

18 “(iii) ENFORCEMENT.—Any security  
19 provided under clause (i) may be perfected  
20 and enforced at any time after the earlier  
21 of—

22 “(I) the date on which the plan  
23 terminates,

24 “(II) if there is a failure to make  
25 a payment of the minimum required

1 contribution for any plan year begin-  
2 ning after the security is provided, the  
3 due date for the payment under sec-  
4 tion 303(j), or

5 “(III) if the adjusted funding  
6 target attainment percentage is less  
7 than 60 percent for a consecutive pe-  
8 riod of 7 years, the valuation date for  
9 the last year in the period.

10 “(iv) RELEASE OF SECURITY.—The  
11 security shall be released (and any  
12 amounts thereunder shall be refunded to-  
13 gether with any interest accrued thereon)  
14 at such time as the Secretary of the Treas-  
15 ury may prescribe in regulations, including  
16 regulations for partial releases of the secu-  
17 rity by reason of increases in the funding  
18 target attainment percentage.

19 “(B) PREFUNDING BALANCE OR FUNDING  
20 STANDARD CARRYOVER BALANCE MAY NOT BE  
21 USED.—No prefunding balance or funding  
22 standard carryover balance under section 303(f)  
23 may be used under paragraph (1), (2), or (4)  
24 to satisfy any payment an employer may make  
25 under any such paragraph to avoid or terminate



1 the application of any limitation under such  
2 paragraph.

3 “(C) DEEMED REDUCTION OF FUNDING  
4 BALANCES.—

5 “(i) IN GENERAL.—Subject to clause  
6 (iii), in any case in which a benefit limita-  
7 tion under paragraph (1), (2), (3), or (4)  
8 would (but for this subparagraph and de-  
9 termined without regard to paragraph  
10 (1)(B), (2)(B), or (4)(B)) apply to such  
11 plan for the plan year, the plan sponsor of  
12 such plan shall be treated for purposes of  
13 this Act as having made an election under  
14 section 303(f) to reduce the prefunding  
15 balance or funding standard carryover bal-  
16 ance by such amount as is necessary for  
17 such benefit limitation to not apply to the  
18 plan for such plan year.

19 “(ii) EXCEPTION FOR INSUFFICIENT  
20 FUNDING BALANCES.—Clause (i) shall not  
21 apply with respect to a benefit limitation  
22 for any plan year if the application of  
23 clause (i) would not result in the benefit  
24 limitation not applying for such plan year.

1                   “(iii) RESTRICTIONS OF CERTAIN  
2                   RULES TO COLLECTIVELY BARGAINED  
3                   PLANS.—With respect to any benefit limi-  
4                   tation under paragraph (1), (2), or (4),  
5                   clause (i) shall only apply in the case of a  
6                   plan maintained pursuant to 1 or more col-  
7                   lective bargaining agreements between em-  
8                   ployee representatives and 1 or more em-  
9                   ployers.

10                  “(6) NEW PLANS.—Paragraphs (1), (2) and (4)  
11                  shall not apply to a plan for the first 5 plan years  
12                  of the plan. For purposes of this paragraph, the ref-  
13                  erence in this paragraph to a plan shall include a  
14                  reference to any predecessor plan.

15                  “(7) PRESUMED UNDERFUNDING FOR PUR-  
16                  POSES OF BENEFIT LIMITATIONS.—

17                         “(A) PRESUMPTION OF CONTINUED  
18                         UNDERFUNDING.—In any case in which a ben-  
19                         efit limitation under paragraph (1), (2), (3), or  
20                         (4) has been applied to a plan with respect to  
21                         the plan year preceding the current plan year,  
22                         the adjusted funding target attainment percent-  
23                         age of the plan for the current plan year shall  
24                         be presumed to be equal to the adjusted fund-  
25                         ing target attainment percentage of the plan for

1 the preceding plan year until the enrolled actu-  
2 ary of the plan certifies the actual adjusted  
3 funding target attainment percentage of the  
4 plan for the current plan year.

5 “(B) PRESUMPTION OF UNDERFUNDING  
6 AFTER 10TH MONTH.—In any case in which no  
7 certification of the adjusted funding target at-  
8 tainment percentage for the current plan year  
9 is made with respect to the plan before the first  
10 day of the 10th month of such year, for pur-  
11 poses of paragraphs (1), (2), (3), and (4), such  
12 first day shall be deemed, for purposes of such  
13 paragraph, to be the valuation date of the plan  
14 for the current plan year and the plan’s ad-  
15 justed funding target attainment percentage  
16 shall be conclusively presumed to be less than  
17 60 percent as of such first day.

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

21 “(i) a benefit limitation under para-  
22 graph (1), (2), (3), or (4) did not apply to  
23 a plan with respect to the plan year pre-  
24 ceding the current plan year, but the ad-  
25 justed funding target attainment percent-

1 age of the plan for such preceding plan  
2 year was not more than 10 percentage  
3 points greater than the percentage which  
4 would have caused such paragraph to  
5 apply to the plan with respect to such pre-  
6 ceding plan year, and

7 “(ii) as of the first day of the 4th  
8 month of the current plan year, the en-  
9 rolled actuary of the plan has not certified  
10 the actual adjusted funding target attain-  
11 ment percentage of the plan for the cur-  
12 rent plan year,

13 until the enrolled actuary so certifies, such first  
14 day shall be deemed, for purposes of such para-  
15 graph, to be the valuation date of the plan for  
16 the current plan year and the adjusted funding  
17 target attainment percentage of the plan as of  
18 such first day shall, for purposes of such para-  
19 graph, be presumed to be equal to 10 percent-  
20 age points less than the adjusted funding target  
21 attainment percentage of the plan for such pre-  
22 ceding plan year.

23 “(8) TREATMENT OF PLAN AS OF CLOSE OF  
24 PROHIBITED OR CESSATION PERIOD.—For purposes  
25 of applying this part—

1           “(A) OPERATION OF PLAN AFTER PE-  
2           RIOD.—Unless the plan provides otherwise, pay-  
3           ments and accruals will resume effective as of  
4           the day following the close of the period for  
5           which any limitation of payment or accrual of  
6           benefits under paragraph (3) or (4) applies.

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

12          “(9) TERMS RELATING TO FUNDING TARGET  
13          ATTAINMENT PERCENTAGE.—For purposes of this  
14          subsection—

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

18               “(B) ADJUSTED FUNDING TARGET AT-  
19               TAINMENT PERCENTAGE.—The term ‘adjusted  
20               funding target attainment percentage’ means  
21               the funding target attainment percentage which  
22               is determined under subparagraph (A) by in-  
23               creasing each of the amounts under subpara-  
24               graphs (A) and (B) of section 303(d)(2) by the  
25               aggregate amount of purchases of annuities for

1 employees other than highly compensated em-  
 2 ployees (as defined in section 414(q) of the In-  
 3 ternal Revenue Code of 1986) which were made  
 4 by the plan during the preceding 2 plan years.

5 “(C) APPLICATION TO PLANS WHICH ARE  
 6 FULLY FUNDED WITHOUT REGARD TO REDUC-  
 7 TIONS FOR FUNDING BALANCES.—

8 “(i) IN GENERAL.—In the case of a  
 9 plan for any plan year, if the funding tar-  
 10 get attainment percentage is 100 percent  
 11 or more (determined without regard to this  
 12 subparagraph and without regard to the  
 13 reduction in the value of assets under sec-  
 14 tion 303(f)(4)), the funding target attain-  
 15 ment percentage for purposes of subpara-  
 16 graphs (A) and (B) shall be determined  
 17 without regard to such reduction.

18 “(ii) TRANSITION RULE.—Clause (i)  
 19 shall be applied to plan years beginning  
 20 after 2007 and before 2011 by substituting  
 21 for ‘100 percent’ the applicable percentage  
 22 determined in accordance with the fol-  
 23 lowing table:

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

1                   “(iii) LIMITATION.—Clause (ii) shall  
2                   not apply with respect to any plan year  
3                   after 2008 unless the funding target at-  
4                   tainment percentage (determined without  
5                   regard to this subparagraph) of the plan  
6                   for each preceding plan year after 2007  
7                   was not less than the applicable percentage  
8                   with respect to such preceding plan year  
9                   determined under clause (ii).

10                  “(10) SPECIAL RULE FOR 2008.—For purposes  
11                  of this subsection, in the case of plan years begin-  
12                  ning in 2008, the funding target attainment percent-  
13                  age for the preceding plan year may be determined  
14                  using such methods of estimation as the Secretary  
15                  of the Treasury may provide.”.

16                  (b) NOTICE REQUIREMENT.—

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

19                   (A) by redesignating subsection (j) as sub-  
20                   section (k); and

21                   (B) by inserting after subsection (i) the  
22                   following new subsection:

23                  “(j) NOTICE OF FUNDING-BASED LIMITATION ON  
24                  CERTAIN FORMS OF DISTRIBUTION.—The plan adminis-  
25                  trator of a single-employer plan shall provide a written no-

1 tice to plan participants and beneficiaries within 30  
2 days—

3 “(1) after the plan has become subject to a re-  
4 striction described in paragraph (1) or (3) of section  
5 206(g)),

6 “(2) in the case of a plan to which section  
7 206(g)(4) applies, after the valuation date for the  
8 plan year described in section 206(g)(4)(B) for  
9 which the plan’s adjusted funding target attainment  
10 percentage for the plan year is less than 60 percent  
11 (or, if earlier, the date such percentage is deemed to  
12 be less than 60 percent under section 206(g)(7)),  
13 and

14 “(3) at such other time as may be determined  
15 by the Secretary of the Treasury.

16 The notice required to be provided under this subsection  
17 shall be in writing, except that such notice may be in elec-  
18 tronic or other form to the extent that such form is rea-  
19 sonably accessible to the recipient.”.

20 (2) ENFORCEMENT.—Section 502(c)(4) of such  
21 Act (29 U.S.C. 1132(c)(4)) is amended by striking  
22 “section 302(b)(7)(F)(iv)” and inserting “section  
23 101(j) or 302(b)(7)(F)(iv)”.

24 (c) EFFECTIVE DATES.—



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

4           (2) COLLECTIVE BARGAINING EXCEPTION.—In  
5           the case of a plan maintained pursuant to 1 or more  
6           collective bargaining agreements between employee  
7           representatives and 1 or more employers ratified be-  
8           fore January 1, 2008, the amendments made by this  
9           section shall not apply to plan years beginning be-  
10          fore the earlier of—

11                 (A) the later of—

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

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

22                 (B) January 1, 2010.

23           For purposes of subparagraph (A)(i), any plan  
24           amendment made pursuant to a collective bargaining  
25           agreement relating to the plan which amends the

1 plan solely to conform to any requirement added by  
2 this section shall not be treated as a termination of  
3 such collective bargaining agreement.

4 **SEC. 104. SPECIAL RULES FOR MULTIPLE EMPLOYER**  
5 **PLANS OF CERTAIN COOPERATIVES.**

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

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

14 (2) January 1, 2017.

15 (b) INTEREST RATE.—In applying section  
16 302(b)(5)(B) of the Employee Retirement Income Secu-  
17 rity Act of 1974 and section 412(b)(5)(B) of the Internal  
18 Revenue Code of 1986 (as in effect before the amendments  
19 made by this subtitle and subtitle B) to an eligible cooper-  
20 ative plan for plan years beginning after December 31,  
21 2007, and before the first plan year to which such amend-  
22 ments apply, the third segment rate determined under sec-  
23 tion 303(h)(2)(C)(iii) of such Act and section  
24 430(h)(2)(C)(iii) of such Code (as added by such amend-

1 ments) shall be used in lieu of the interest rate otherwise  
2 used.

3 (c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For  
4 purposes of this section, a plan shall be treated as an eligi-  
5 ble cooperative plan for a plan year if the plan is main-  
6 tained by more than 1 employer and at least 85 percent  
7 of the employers are—

8 (1) rural cooperatives (as defined in section  
9 401(k)(7)(B) of such Code without regard to clause  
10 (iv) thereof), or

11 (2) organizations which are—

12 (A) cooperative organizations described in  
13 section 1381(a) of such Code which are more  
14 than 50-percent owned by agricultural pro-  
15 ducers or by cooperatives owned by agricultural  
16 producers, or

17 (B) more than 50-percent owned, or con-  
18 trolled by, one or more cooperative organiza-  
19 tions described in subparagraph (A).

20 A plan shall also be treated as an eligible cooperative plan  
21 for any plan year for which it is described in section  
22 210(a) of the Employee Retirement Income Security Act  
23 of 1974 and is maintained by a rural telephone cooperative  
24 association described in section 3(40)(B)(v) of such Act.

1   **SEC. 105. TEMPORARY RELIEF FOR CERTAIN PBGC SETTLE-**  
2                   **MENT PLANS.**

3           (a) GENERAL RULE.—Except as provided in this sec-  
4   tion, if a plan in existence on July 26, 2005, was a PBGC  
5   settlement plan as of such date, the amendments made  
6   by this subtitle and subtitle B shall not apply to plan years  
7   beginning before January 1, 2014.

8           (b) INTEREST RATE.—In applying section  
9   302(b)(5)(B) of the Employee Retirement Income Secu-  
10   rity Act of 1974 and section 412(b)(5)(B) of the Internal  
11   Revenue Code of 1986 (as in effect before the amendments  
12   made by this subtitle and subtitle B), to a PBGC settle-  
13   ment plan for plan years beginning after December 31,  
14   2007, and before January 1, 2014, the third segment rate  
15   determined under section 303(h)(2)(C)(iii) of such Act  
16   and section 430(h)(2)(C)(iii) of such Code (as added by  
17   such amendments) shall be used in lieu of the interest rate  
18   otherwise used.

19          (c) PBGC SETTLEMENT PLAN.—For purposes of  
20   this section, the term “PBGC settlement plan” means a  
21   defined benefit plan (other than a multiemployer plan) to  
22   which section 302 of such Act and section 412 of such  
23   Code apply and—

24           (1) which was sponsored by an employer which  
25           was in bankruptcy, giving rise to a claim by the  
26           Pension Benefit Guaranty Corporation of not great-

1 er than \$150,000,000, and the sponsorship of which  
2 was assumed by another employer that was not a  
3 member of the same controlled group as the bank-  
4 rupt sponsor and the claim of the Pension Benefit  
5 Guaranty Corporation was settled or withdrawn in  
6 connection with the assumption of the sponsorship,  
7 or

8 (2) which, by agreement with the Pension Ben-  
9 efit Guaranty Corporation, was spun off from a plan  
10 subsequently terminated by such Corporation under  
11 section 4042 of the Employee Retirement Income  
12 Security Act of 1974.

13 **SEC. 106. SPECIAL RULES FOR PLANS OF CERTAIN GOV-**  
14 **ERNMENT CONTRACTORS.**

15 (a) GENERAL RULE.—Except as provided in this sec-  
16 tion, if a plan is an eligible government contractor plan,  
17 this subtitle and subtitle B shall not apply to plan years  
18 beginning before the earliest of—

19 (1) the first plan year for which the plan ceases  
20 to be an eligible government contractor plan,

21 (2) the effective date of the Cost Accounting  
22 Standards Pension Harmonization Rule, or

23 (3) January 1, 2011.

24 (b) INTEREST RATE.—In applying section  
25 302(b)(5)(B) of the Employee Retirement Income Secu-

1 rity Act of 1974 and section 412(b)(5)(B) of the Internal  
2 Revenue Code of 1986 (as in effect before the amendments  
3 made by this subtitle and subtitle B) to an eligible govern-  
4 ment contractor plan for plan years beginning after De-  
5 cember 31, 2007, and before the first plan year to which  
6 such amendments apply, the third segment rate deter-  
7 mined under section 303(h)(2)(C)(iii) of such Act and sec-  
8 tion 430(h)(2)(C)(iii) of such Code (as added by such  
9 amendments) shall be used in lieu of the interest rate oth-  
10 erwise used.

11 (c) ELIGIBLE GOVERNMENT CONTRACTOR PLAN DE-  
12 FINED.—For purposes of this section, a plan shall be  
13 treated as an eligible government contractor plan if it is  
14 maintained by a corporation or a member of the same af-  
15 filiated group (as defined by section 1504(a) of the Inter-  
16 nal Revenue Code of 1986), whose primary source of rev-  
17 enue is derived from business performed under contracts  
18 with the United States that are subject to the Federal Ac-  
19 quisition Regulations (Chapter 1 of Title 48, C.F.R.) and  
20 that are also subject to the Defense Federal Acquisition  
21 Regulation Supplement (Chapter 2 of Title 48, C.F.R.),  
22 and whose revenue derived from such business in the pre-  
23 vious fiscal year exceeded \$5,000,000,000, and whose pen-  
24 sion plan costs that are assignable under those contracts

1 are subject to sections 412 and 413 of the Cost Account-  
2 ing Standards (48 C.F.R. 9904.412 and 9904.413).

3 (d) COST ACCOUNTING STANDARDS PENSION HAR-  
4 MONIZATION RULE.—The Cost Accounting Standards  
5 Board shall review and revise sections 412 and 413 of the  
6 Cost Accounting Standards (48 C.F.R. 9904.412 and  
7 9904.413) to harmonize the minimum required contribu-  
8 tion under the Employee Retirement Income Security Act  
9 of 1974 of eligible government contractor plans and gov-  
10 ernment reimbursable pension plan costs not later than  
11 January 1, 2010. Any final rule adopted by the Cost Ac-  
12 counting Standards Board shall be deemed the Cost Ac-  
13 counting Standards Pension Harmonization Rule.

14 **SEC. 107. TECHNICAL AND CONFORMING AMENDMENTS.**

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

18 (1) in section 101(d)(3), by striking “section  
19 302(e)” and inserting “section 303(j)”;

20 (2) in section 103(d)(8)(B), by striking “the re-  
21 quirements of section 302(c)(3)” and inserting “the  
22 applicable requirements of sections 303(h) and  
23 304(c)(3)”;

24 (3) in section 103(d), by striking paragraph  
25 (11) and inserting the following:

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

3                   “(A) in the case of a single-employer plan,  
4                   the funding target (as defined in section  
5                   303(d)(1)) of the plan, or

6                   “(B) in the case of a multiemployer plan,  
7                   the current liability (as defined in section  
8                   304(c)(6)(D)) under the plan,  
9           the percentage which such value is of the amount  
10          described in subparagraph (A) or (B).”;

11           (4) in section 203(a)(3)(C), by striking “section  
12          302(c)(8)” and inserting “section 302(d)(2)”;

13           (5) in section 204(g)(1), by striking “section  
14          302(c)(8)” and inserting “section 302(d)(2)”;

15           (6) in section 204(i)(2)(B), by striking “section  
16          302(c)(8)” and inserting “section 302(d)(2)”;

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

22           (8) in section 204(i)(4), by striking “section  
23          302(c)(11)(A), without regard to section  
24          302(c)(11)(B)” and inserting “section 302(b)(1),  
25          without regard to section 302(b)(2)”;



1 (9) in section 206(e)(1), by striking “section  
2 302(d)” and inserting “section 303(j)(4)”, and by  
3 striking “section 302(e)(5)” and inserting “section  
4 303(j)(4)(E)(i)”;

5 (10) in section 206(e)(3), by striking “section  
6 302(e) by reason of paragraph (5)(A) thereof” and  
7 inserting “section 303(j)(3) by reason of section  
8 303(j)(4)(A)”;

9 (11) in sections 101(e)(3), 403(c)(1), and  
10 408(b)(13), by striking “American Jobs Creation  
11 Act of 2004” and inserting “Pension Protection Act  
12 of 2006”.

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

15 (1) in section 4001(a)(13) (29 U.S.C.  
16 1301(a)(13)), by striking “302(c)(11)(A)” and in-  
17 serting “302(b)(1)”, by striking “412(c)(11)(A)”  
18 and inserting “412(b)(1)”, by striking  
19 “302(c)(11)(B)” and inserting “302(b)(2)”, and by  
20 striking “412(c)(11)(B)” and inserting “412(b)(2)”;

21 (2) in section 4003(e)(1) (29 U.S.C.  
22 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and  
23 inserting “303(k)(1)(A) and (B)”, and by striking  
24 “412(n)(1)(A) and (B)” and inserting  
25 “430(k)(1)(A) and (B)”;

1           (3) in section 4010(b)(2) (29 U.S.C.  
2   1310(b)(2)), by striking “302(f)(1)(A) and (B)” and  
3   inserting “303(k)(1)(A) and (B)”, and by striking  
4   “412(n)(1)(A) and (B)” and inserting  
5   “430(k)(1)(A) and (B)”;

6           (4) in section 4062(c) (29 U.S.C. 1362(c)), by  
7   striking paragraphs (1), (2), and (3) and inserting  
8   the following:

9           “(1) the sum of the shortfall amortization  
10   charge (within the meaning of section 303(c)(1) of  
11   this Act and 430(d)(1) of the Internal Revenue Code  
12   of 1986) with respect to the plan (if any) for the  
13   plan year in which the termination date occurs, plus  
14   the aggregate total of shortfall amortization install-  
15   ments (if any) determined for succeeding plan years  
16   under section 303(c)(2) of this Act and section  
17   430(d)(2) of such Code (which, for purposes of this  
18   subparagraph, shall include any increase in such  
19   sum which would result if all applications for waiv-  
20   ers of the minimum funding standard under section  
21   302(c) of this Act and section 412(c) of such Code  
22   which are pending with respect to such plan were  
23   denied and if no additional contributions (other than  
24   those already made by the termination date) were

1       made for the plan year in which the termination  
2       date occurs or for any previous plan year), and

3           “(2) the sum of the waiver amortization charge  
4       (within the meaning of section 303(e)(1) of this Act  
5       and 430(e)(1) of the Internal Revenue Code of  
6       1986) with respect to the plan (if any) for the plan  
7       year in which the termination date occurs, plus the  
8       aggregate total of waiver amortization installments  
9       (if any) determined for succeeding plan years under  
10      section 303(e)(2) of this Act and section 430(e)(2)  
11      of such Code,”;

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

14           (6) in section 4243(a)(1)(B) (29 U.S.C.  
15      1423(a)(1)(B)), by striking “302(a)” and inserting  
16      “304(a)”, and, in clause (i), by striking “302(a)”  
17      and inserting “304(a)”;

18           (7) in section 4243(f)(1) (29 U.S.C.  
19      1423(f)(1)), by striking “303(a)” and inserting  
20      “302(c)”;

21           (8) in section 4243(f)(2) (29 U.S.C.  
22      1423(f)(2)), by striking “303(c)” and inserting  
23      “302(c)(3)”;

24           (9) in section 4243(g) (29 U.S.C. 1423(g)), by  
25      striking “302(c)(3)” and inserting “304(c)(3)”.

1 (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4  
2 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.  
3 4 of 1978 (ratified and affirmed as law by Public Law  
4 98–532 (98 Stat. 2705)) is amended by striking  
5 “302(c)(8)” and inserting “302(d)(2)”, by striking  
6 “304(a) and (b)(2)(A)” and inserting “304(d)(1), (d)(2),  
7 and (e)(2)(A)”, and by striking “412(c)(8), (e), and  
8 (f)(2)(A)” and inserting “412(c)(2) and 431(d)(1), (d)(2),  
9 and (e)(2)(A)”.

10 (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-  
11 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.  
12 1057) is repealed.

13 (e) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to plan years beginning after 2007.

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

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

18 (a) NEW MINIMUM FUNDING STANDARDS.—Section  
19 412 of the Internal Revenue Code of 1986 (relating to  
20 minimum funding standards) is amended to read as fol-  
21 lows:

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

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

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

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

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

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

20                  “(C) in the case of a multiemployer plan,  
21                  the employers make contributions to or under  
22                  the plan for any plan year which, in the aggre-  
23                  gate, are sufficient to ensure that the plan does  
24                  not have an accumulated funding deficiency

1 under section 431 as of the end of the plan  
2 year.

3 “(b) LIABILITY FOR CONTRIBUTIONS.—

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

10 “(2) JOINT AND SEVERAL LIABILITY WHERE  
11 EMPLOYER MEMBER OF CONTROLLED GROUP.—If  
12 the employer referred to in paragraph (1) is a mem-  
13 ber of a controlled group, each member of such  
14 group shall be jointly and severally liable for pay-  
15 ment of such contributions.

16 “(c) VARIANCE FROM MINIMUM FUNDING STAND-  
17 ARDS.—

18 “(1) WAIVER IN CASE OF BUSINESS HARD-  
19 SHIP.—

20 “(A) IN GENERAL.—If—

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

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

4 “(ii) application of the standard would  
5 be adverse to the interests of plan partici-  
6 pants in the aggregate,

7 the Secretary may, subject to subparagraph  
8 (C), waive the requirements of subsection (a)  
9 for such year with respect to all or any portion  
10 of the minimum funding standard. The Sec-  
11 retary shall not waive the minimum funding  
12 standard with respect to a plan for more than  
13 3 of any 15 (5 of any 15 in the case of a multi-  
14 employer plan) consecutive plan years

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

18 “(i) in the case of a defined benefit  
19 plan which is not a multiemployer plan,  
20 the minimum required contribution under  
21 section 430 for the plan year shall be re-  
22 duced by the amount of the waived funding  
23 deficiency and such amount shall be amor-  
24 tized as required under section 430(e), and

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

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

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

22                         “(A) the employer is operating at an eco-  
23                         nomic loss,



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

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

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

9           “(3) WAIVED FUNDING DEFICIENCY.—For pur-  
10          poses of this section and part III of this subchapter,  
11          the term ‘waived funding deficiency’ means the por-  
12          tion of the minimum funding standard under sub-  
13          section (a) (determined without regard to the waiv-  
14          er) for a plan year waived by the Secretary and not  
15          satisfied by employer contributions.

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

18                 “(A) SECURITY MAY BE REQUIRED.—

19                         “(i) IN GENERAL.—Except as pro-  
20                         vided in subparagraph (C), the Secretary  
21                         may require an employer maintaining a de-  
22                         fined benefit plan which is a single-em-  
23                         ployer plan (within the meaning of section  
24                         4001(a)(15) of the Employee Retirement  
25                         Income Security Act of 1974) to provide

1 security to such plan as a condition for  
2 granting or modifying a waiver under  
3 paragraph (1).

4 “(ii) SPECIAL RULES.—Any security  
5 provided under clause (i) may be perfected  
6 and enforced only by the Pension Benefit  
7 Guaranty Corporation, or at the direction  
8 of the Corporation, by a contributing spon-  
9 sor (within the meaning of section  
10 4001(a)(13) of the Employee Retirement  
11 Income Security Act of 1974), or a mem-  
12 ber of such sponsor’s controlled group  
13 (within the meaning of section 4001(a)(14)  
14 of such Act).

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

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

23 “(I) notice of the completed ap-  
24 plication for any waiver or modifica-  
25 tion, and

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

4 “(ii) consider—

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

7 “(II) any views of any employee  
8 organization (within the meaning of  
9 section 3(4) of the Employee Retire-  
10 ment Income Security Act of 1974)  
11 representing participants in the plan  
12 which are submitted in writing to the  
13 Secretary in connection with such ap-  
14 plication.

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

20 “(C) EXCEPTION FOR CERTAIN WAIV-  
21 ERS.—

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

1                   “(I) the aggregate unpaid min-  
2                   imum required contributions (within  
3                   the meaning of section 4971(c)(4)) for  
4                   the plan year and all preceding plan  
5                   years, and

6                   “(II) the present value of all  
7                   waiver amortization installments de-  
8                   termined for the plan year and suc-  
9                   ceeding plan years under section  
10                  430(e)(2),

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

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

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

22                  “(A) APPLICATION MUST BE SUBMITTED  
23                  BEFORE DATE 2½ MONTHS AFTER CLOSE OF  
24                  YEAR.—In the case of a defined benefit plan  
25                  which is not a multiemployer plan, no waiver

1           may be granted under this subsection with re-  
2           spect to any plan for any plan year unless an  
3           application therefor is submitted to the Sec-  
4           retary not later than the 15th day of the 3rd  
5           month beginning after the close of such plan  
6           year.

7           “(B) SPECIAL RULE IF EMPLOYER IS MEM-  
8           BER OF CONTROLLED GROUP.—In the case of a  
9           defined benefit plan which is not a multiem-  
10          ployer plan, if an employer is a member of a  
11          controlled group, the temporary substantial  
12          business hardship requirements of paragraph  
13          (1) shall be treated as met only if such require-  
14          ments are met—

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

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

21          The Secretary may provide that an analysis of  
22          a trade or business or industry of a member  
23          need not be conducted if the Secretary deter-  
24          mines such analysis is not necessary because  
25          the taking into account of such member would

1 not significantly affect the determination under  
2 this paragraph.

3 “(6) ADVANCE NOTICE.—

4 “(A) IN GENERAL.—The Secretary shall,  
5 before granting a waiver under this subsection,  
6 require each applicant to provide evidence satis-  
7 factory to the Secretary that the applicant has  
8 provided notice of the filing of the application  
9 for such waiver to each affected party (as de-  
10 fined in section 4001(a)(21) of the Employee  
11 Retirement Income Security Act of 1974). Such  
12 notice shall include a description of the extent  
13 to which the plan is funded for benefits which  
14 are guaranteed under title IV of the Employee  
15 Retirement Income Security Act of 1974 and  
16 for benefit liabilities.

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

22 “(7) RESTRICTION ON PLAN AMENDMENTS.—

23 “(A) IN GENERAL.—No amendment of a  
24 plan which increases the liabilities of the plan  
25 by reason of any increase in benefits, any

1 change in the accrual of benefits, or any change  
2 in the rate at which benefits become nonforfeit-  
3 able under the plan shall be adopted if a waiver  
4 under this subsection or an extension of time  
5 under section 431(d) is in effect with respect to  
6 the plan, or if a plan amendment described in  
7 subsection (d)(2) has been made at any time in  
8 the preceding 12 months (24 months in the  
9 case of a multiemployer plan). If a plan is  
10 amended in violation of the preceding sentence,  
11 any such waiver, or extension of time, shall not  
12 apply to any plan year ending on or after the  
13 date on which such amendment is adopted.

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

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

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

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

25 “(d) MISCELLANEOUS RULES.—

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

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

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

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

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

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



1       trator files a notice with the Secretary notifying him  
2       of such amendment and the Secretary has approved  
3       such amendment, or within 90 days after the date  
4       on which such notice was filed, failed to disapprove  
5       such amendment. No amendment described in this  
6       subsection shall be approved by the Secretary unless  
7       the Secretary determines that such amendment is  
8       necessary because of a temporary substantial busi-  
9       ness hardship (as determined under subsection  
10      (c)(2)) or a substantial business hardship (as so de-  
11      termined) in the case of a multiemployer plan and  
12      that a waiver under subsection (c) (or, in the case  
13      of a multiemployer plan, any extension of the amor-  
14      tization period under section 431(d)) is unavailable  
15      or inadequate.

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

20           “(e) PLANS TO WHICH SECTION APPLIES.—

21           “(1) IN GENERAL.—Except as provided in para-  
22      graphs (2) and (4), this section applies to a plan if,  
23      for any plan year beginning on or after the effective  
24      date of this section for such plan under the Em-  
25      ployee Retirement Income Security Act of 1974—

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

4           “(B) such plan satisfied (or was deter-  
5           mined by the Secretary to have satisfied) the  
6           requirements of section 403(a).

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

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

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

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

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

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

22          “(F) any plan established and maintained  
23          by a society, order, or association described in  
24          section 501(c)(8) or (9), if no part of the con-

1           tributions to or under such plan are made by  
2           employers of participants in such plan.

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

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

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

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

20           “(C) benefits provided by the plan are  
21           equal to the benefits provided under each con-  
22           tract at normal retirement age under the plan  
23           and are guaranteed by an insurance carrier (li-  
24           censed under the laws of a State to do business

1 with the plan) to the extent premiums have  
2 been paid,

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

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

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

12 A plan funded exclusively by the purchase of group  
13 insurance contracts which is determined under regu-  
14 lations prescribed by the Secretary to have the same  
15 characteristics as contracts described in the pre-  
16 ceding sentence shall be treated as a plan described  
17 in this paragraph.

18 “(4) CERTAIN TERMINATED MULTIEMPLOYER  
19 PLANS.—This section applies with respect to a ter-  
20 minated multiemployer plan to which section 4021  
21 of the Employee Retirement Income Security Act of  
22 1974 applies until the last day of the plan year in  
23 which the plan terminates (within the meaning of  
24 section 4041A(a)(2) of such Act).”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to plan years beginning after De-  
3 cember 31, 2007.

4 **SEC. 112. FUNDING RULES FOR SINGLE-EMPLOYER DE-**  
5 **FINED BENEFIT PENSION PLANS.**

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

10 **“PART III—MINIMUM FUNDING STANDARDS FOR**  
11 **SINGLE-EMPLOYER DEFINED BENEFIT PEN-**  
12 **SION PLANS**

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

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

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

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

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

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

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

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

1 “(c) SHORTFALL AMORTIZATION CHARGE.—

2 “(1) IN GENERAL.—For purposes of this sec-  
3 tion, the shortfall amortization charge for a plan for  
4 any plan year is the aggregate total (not less than  
5 zero) of the shortfall amortization installments for  
6 such plan year with respect to the shortfall amorti-  
7 zation bases for such plan year and each of the 6  
8 preceding plan years.

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

11 “(A) DETERMINATION.—The shortfall am-  
12 ortization installments are the amounts nec-  
13 essary to amortize the shortfall amortization  
14 base of the plan for any plan year in level an-  
15 nual installments over the 7-plan-year period  
16 beginning with such plan year.

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

24 “(C) SEGMENT RATES.—In determining  
25 any shortfall amortization installment under

1           this paragraph, the plan sponsor shall use the  
2           segment rates determined under subparagraph  
3           (C) of subsection (h)(2), applied under rules  
4           similar to the rules of subparagraph (B) of sub-  
5           section (h)(2).

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

9                   “(A) the funding shortfall of such plan for  
10           such plan year, minus

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

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



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

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

7           “(5) EXEMPTION FROM NEW SHORTFALL AM-  
8           ORTIZATION BASE.—

9           “(A) IN GENERAL.—In any case in which  
10          the value of plan assets of the plan (as reduced  
11          under subsection (f)(4)(A)) is equal to or great-  
12          er than the funding target of the plan for the  
13          plan year, the shortfall amortization base of the  
14          plan for such plan year shall be zero.

15          “(B) TRANSITION RULE.—

16               “(i) IN GENERAL.—Except as pro-  
17               vided in clauses (iii) and (iv), in the case  
18               of plan years beginning after 2007 and be-  
19               fore 2011, only the applicable percentage  
20               of the funding target shall be taken into  
21               account under paragraph (3)(A) in deter-  
22               mining the funding shortfall for the plan  
23               year for purposes of subparagraph (A).

24               “(ii) APPLICABLE PERCENTAGE.—For  
25               purposes of subparagraph (A), the applica-

1                   ble percentage shall be determined in ac-  
 2                   cordance with the following table:

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

3                   “(iii) LIMITATION.—Clause (i) shall  
 4                   not apply with respect to any plan year  
 5                   after 2008 unless the shortfall amortiza-  
 6                   tion base for each of the preceding years  
 7                   beginning after 2007 was zero (determined  
 8                   after application of this subparagraph).

9                   “(iv) TRANSITION RELIEF NOT AVAIL-  
 10                  ABLE FOR NEW OR DEFICIT REDUCTION  
 11                  PLANS.—Clause (i) shall not apply to a  
 12                  plan—

13                   “(I) which was not in effect for a  
 14                   plan year beginning in 2007, or

15                   “(II) which was in effect for a  
 16                   plan year beginning in 2007 and  
 17                   which was subject to section 412(l)  
 18                   (as in effect for plan years beginning  
 19                   in 2007), determined after the appli-  
 20                   cation of paragraphs (6) and (9)  
 21                   thereof.

22                   “(6) EARLY DEEMED AMORTIZATION UPON AT-  
 23                   TAINMENT OF FUNDING TARGET.—In any case in

1       which the funding shortfall of a plan for a plan year  
2       is zero, for purposes of determining the shortfall am-  
3       ortization charge for such plan year and succeeding  
4       plan years, the shortfall amortization bases for all  
5       preceding plan years (and all shortfall amortization  
6       installments determined with respect to such bases)  
7       shall be reduced to zero.

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

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

15           “(2) FUNDING TARGET ATTAINMENT PERCENT-  
16           AGE.—The ‘funding target attainment percentage’ of  
17           a plan for a plan year is the ratio (expressed as a  
18           percentage) which—

19                   “(A) the value of plan assets for the plan  
20                   year (as reduced under subsection (f)(4)(B)),  
21                   bears to

22                   “(B) the funding target of the plan for the  
23                   plan year (determined without regard to sub-  
24                   section (i)(1)).

25       “(e) WAIVER AMORTIZATION CHARGE.—

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

7           “(2) WAIVER AMORTIZATION INSTALLMENT.—  
8           For purposes of paragraph (1)—

9                   “(A) DETERMINATION.—The waiver amor-  
10                  tization installments are the amounts necessary  
11                  to amortize the waiver amortization base of the  
12                  plan for any plan year in level annual install-  
13                  ments over a period of 5 plan years beginning  
14                  with the succeeding plan year.

15                   “(B) WAIVER INSTALLMENT.—The waiver  
16                  amortization installment for any plan year in  
17                  the 5-year period under subparagraph (A) with  
18                  respect to any waiver amortization base is the  
19                  annual installment determined under subpara-  
20                  graph (A) for that year for that base.

21           “(3) INTEREST RATE.—In determining any  
22           waiver amortization installment under this sub-  
23           section, the plan sponsor shall use the segment rates  
24           determined under subparagraph (C) of subsection

1 (h)(2), applied under rules similar to the rules of  
2 subparagraph (B) of subsection (h)(2).

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

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

16 “(f) REDUCTION OF MINIMUM REQUIRED CONTRIBU-  
17 TION BY PREFUNDING BALANCE AND FUNDING STAND-  
18 ARD CARRYOVER BALANCE.—

19 “(1) ELECTION TO MAINTAIN BALANCES.—

20 “(A) PREFUNDING BALANCE.—The plan  
21 sponsor of a defined benefit plan which is not  
22 a multiemployer plan may elect to maintain a  
23 prefunding balance.

24 “(B) FUNDING STANDARD CARRYOVER  
25 BALANCE.—

1 “(i) IN GENERAL.—In the case of a  
2 defined benefit plan (other than a multiem-  
3 ployer plan) described in clause (ii), the  
4 plan sponsor may elect to maintain a fund-  
5 ing standard carryover balance, until such  
6 balance is reduced to zero.

7 “(ii) PLANS MAINTAINING FUNDING  
8 STANDARD ACCOUNT IN 2007.—A plan is  
9 described in this clause if the plan—

10 “(I) was in effect for a plan year  
11 beginning in 2007, and

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

17 “(2) APPLICATION OF BALANCES.—A  
18 prefunding balance and a funding standard carry-  
19 over balance maintained pursuant to this para-  
20 graph—

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

24 “(B) shall be applied as a reduction in the  
25 amount treated as the value of plan assets for

1 purposes of this section, to the extent provided  
2 in paragraph (4), and

3 “(C) may be reduced at any time, pursu-  
4 ant to an election under paragraph (5).

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

7 “(A) IN GENERAL.—Except as provided in  
8 subparagraphs (B) and (C), in the case of any  
9 plan year in which the plan sponsor elects to  
10 credit against the minimum required contribu-  
11 tion for the current plan year all or a portion  
12 of the prefunding balance or the funding stand-  
13 ard carryover balance for the current plan year  
14 (not in excess of such minimum required con-  
15 tribution), the minimum required contribution  
16 for the plan year shall be reduced as of the first  
17 day of the plan year by the amount so credited  
18 by the plan sponsor as of the first day of the  
19 plan year. For purposes of the preceding sen-  
20 tence, the minimum required contribution shall  
21 be determined after taking into account any  
22 waiver under section 412(c).

23 “(B) COORDINATION WITH FUNDING  
24 STANDARD CARRYOVER BALANCE.—To the ex-  
25 tent that any plan has a funding standard car-

1           ryover balance greater than zero, no amount of  
2           the prefunding balance of such plan may be  
3           credited under this paragraph in reducing the  
4           minimum required contribution.

5           “(C) LIMITATION FOR UNDERFUNDED  
6           PLANS.—The preceding provisions of this para-  
7           graph shall not apply for any plan year if the  
8           ratio (expressed as a percentage) which—

9                   “(i) the value of plan assets for the  
10                  preceding plan year (as reduced under  
11                  paragraph (4)(C)), bears to

12                   “(ii) the funding target of the plan for  
13                  the preceding plan year (determined with-  
14                  out regard to subsection (i)(1)),

15           is less than 80 percent. In the case of plan  
16           years beginning in 2008, the ratio under this  
17           subparagraph may be determined using such  
18           methods of estimation as the Secretary may  
19           prescribe.

20           “(4) EFFECT OF BALANCES ON AMOUNTS  
21           TREATED AS VALUE OF PLAN ASSETS.—In the case  
22           of any plan maintaining a prefunding balance or a  
23           funding standard carryover balance pursuant to this  
24           subsection, the amount treated as the value of plan



1 assets shall be deemed to be such amount, reduced  
2 as provided in the following subparagraphs:

3 “(A) APPLICABILITY OF SHORTFALL AM-  
4 ORTIZATION BASE.—For purposes of subsection  
5 (c)(5), the value of plan assets is deemed to be  
6 such amount, reduced by the amount of the  
7 prefunding balance, but only if an election  
8 under paragraph (2) applying any portion of  
9 the prefunding balance in reducing the min-  
10 imum required contribution is in effect for the  
11 plan year.

12 “(B) DETERMINATION OF EXCESS ASSETS,  
13 FUNDING SHORTFALL, AND FUNDING TARGET  
14 ATTAINMENT PERCENTAGE.—

15 “(i) IN GENERAL.—For purposes of  
16 subsections (a), (c)(4)(B), and (d)(2)(A),  
17 the value of plan assets is deemed to be  
18 such amount, reduced by the amount of  
19 the prefunding balance and the funding  
20 standard carryover balance.

21 “(ii) SPECIAL RULE FOR CERTAIN  
22 BINDING AGREEMENTS WITH PBGC.—For  
23 purposes of subsection (c)(4)(B), the value  
24 of plan assets shall not be deemed to be re-  
25 duced for a plan year by the amount of the

1 specified balance if, with respect to such  
2 balance, there is in effect for a plan year  
3 a binding written agreement with the Pen-  
4 sion Benefit Guaranty Corporation which  
5 provides that such balance is not available  
6 to reduce the minimum required contribu-  
7 tion for the plan year. For purposes of the  
8 preceding sentence, the term ‘specified bal-  
9 ance’ means the prefunding balance or the  
10 funding standard carryover balance, as the  
11 case may be.

12 “(C) AVAILABILITY OF BALANCES IN PLAN  
13 YEAR FOR CREDITING AGAINST MINIMUM RE-  
14 QUIRED CONTRIBUTION.—For purposes of  
15 paragraph (3)(C)(i) of this subsection, the value  
16 of plan assets is deemed to be such amount, re-  
17 duced by the amount of the prefunding balance.

18 “(5) ELECTION TO REDUCE BALANCE PRIOR TO  
19 DETERMINATIONS OF VALUE OF PLAN ASSETS AND  
20 CREDITING AGAINST MINIMUM REQUIRED CONTRIBU-  
21 TION.—

22 “(A) IN GENERAL.—The plan sponsor may  
23 elect to reduce by any amount the balance of  
24 the prefunding balance and the funding stand-  
25 ard carryover balance for any plan year (but

not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

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

“(6) PREFUNDING BALANCE.—

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

“(B) INCREASES.—

“(i) IN GENERAL.—As of the first day of each plan year beginning after 2008, the prefunding balance of a plan shall be in-

1           creased by the amount elected by the plan  
2           sponsor for the plan year. Such amount  
3           shall not exceed the excess (if any) of—

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

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

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

20                   “(iii) CERTAIN CONTRIBUTIONS NEC-  
21                   CESSARY TO AVOID BENEFIT LIMITATIONS  
22                   DISREGARDED.—The excess described in  
23           clause (i) with respect to any preceding  
24           plan year shall be reduced (but not below  
25           zero) by the amount of contributions an

1 employer would be required to make under  
2 paragraph (1), (2), or (4) of section 206(g)  
3 to avoid a benefit limitation which would  
4 otherwise be imposed under such para-  
5 graph for the preceding plan year. Any  
6 contribution which may be taken into ac-  
7 count in satisfying the requirements of  
8 more than 1 of such paragraphs shall be  
9 taken into account only once for purposes  
10 of this clause.

11 “(C) DECREASES.—The prefunding bal-  
12 ance of a plan shall be decreased (but not below  
13 zero) by the sum of—

14 “(i) as of the first day of each plan  
15 year after 2008, the amount of such bal-  
16 ance credited under paragraph (2) (if any)  
17 in reducing the minimum required con-  
18 tribution of the plan for the preceding plan  
19 year, and

20 “(ii) as of the time specified in para-  
21 graph (5))(A), any reduction in such bal-  
22 ance elected under paragraph (5).

23 “(7) FUNDING STANDARD CARRYOVER BAL-  
24 ANCE.—

1           “(A) IN GENERAL.—A funding standard  
2           carryover balance maintained by a plan shall  
3           consist of a beginning balance determined  
4           under subparagraph (B), decreased to the ex-  
5           tent provided in subparagraph (C), and ad-  
6           justed further as provided in paragraph (8).

7           “(B) BEGINNING BALANCE.—The begin-  
8           ning balance of the funding standard carryover  
9           balance shall be the positive balance described  
10          in paragraph (1)(B)(ii)(II).

11          “(C) DECREASES.—The funding standard  
12          carryover balance of a plan shall be decreased  
13          (but not below zero) by—

14               “(i) as of the first day of each plan  
15               year after 2008, the amount of such bal-  
16               ance credited under paragraph (2) (if any)  
17               in reducing the minimum required con-  
18               tribution of the plan for the preceding plan  
19               year, and

20               “(ii) as of the time specified in para-  
21               graph (5))(A), any reduction in such bal-  
22               ance elected under paragraph (5).

23          “(8) ADJUSTMENTS FOR INVESTMENT EXPERI-  
24          ENCE.—In determining the prefunding balance or  
25          the funding standard carryover balance of a plan as

1 of the first day of the plan year, the plan sponsor  
2 shall, in accordance with regulations prescribed by  
3 the Secretary of the Treasury, adjust such balance  
4 to reflect the rate of return on plan assets for the  
5 preceding plan year. Notwithstanding subsection  
6 (g)(3), such rate of return shall be determined on  
7 the basis of fair market value and shall properly  
8 take into account, in accordance with such regula-  
9 tions, all contributions, distributions, and other plan  
10 payments made during such period.

11 “(9) ELECTIONS.—Elections under this sub-  
12 section shall be made at such times, and in such  
13 form and manner, as shall be prescribed in regula-  
14 tions of the Secretary.

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

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

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

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

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

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

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

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



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

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

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

10 “(B) AVERAGING ALLOWED.—A plan may  
11 determine the value of plan assets on the basis  
12 of the averaging of fair market values, but only  
13 if such method—

14 “(i) is permitted under regulations  
15 prescribed by the Secretary,

16 “(ii) does not provide for averaging of  
17 such values over more than the period be-  
18 ginning on the last day of the 25th month  
19 preceding the month in which the valuation  
20 date occurs and ending on the valuation  
21 date (or a similar period in the case of a  
22 valuation date which is not the 1st day of  
23 a month), and

24 “(iii) does not result in a determina-  
25 tion of the value of plan assets which, at

1           any time, is lower than 90 percent or  
2           greater than 110 percent of the fair mar-  
3           ket value of such assets at such time.

4           Any such averaging shall be adjusted for con-  
5           tributions and distributions (as provided by the  
6           Secretary).

7           “(4) ACCOUNTING FOR CONTRIBUTION RE-  
8           CEIPTS.—For purposes of determining the value of  
9           assets under paragraph (3)—

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

11           “(i) an employer makes any contribu-  
12           tion to the plan after the valuation date for  
13           the plan year in which the contribution is  
14           made, and

15           “(ii) the contribution is for a pre-  
16           ceding plan year,

17           the contribution shall be taken into account as  
18           an asset of the plan as of the valuation date,  
19           except that in the case of any plan year begin-  
20           ning after 2008, only the present value (deter-  
21           mined as of the valuation date) of such con-  
22           tribution may be taken into account. For pur-  
23           poses of the preceding sentence, present value  
24           shall be determined using the effective interest

1 rate for the preceding plan year to which the  
2 contribution is properly allocable.

3 “(B) SPECIAL RULE FOR CURRENT YEAR  
4 CONTRIBUTIONS MADE BEFORE VALUATION  
5 DATE.—If any contributions for any plan year  
6 are made to or under the plan during the plan  
7 year but before the valuation date for the plan  
8 year, the assets of the plan as of the valuation  
9 date shall not include—

10 “(i) such contributions, and

11 “(ii) interest on such contributions for  
12 the period between the date of the con-  
13 tributions and the valuation date, deter-  
14 mined by using the effective interest rate  
15 for the plan year.

16 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

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

21 “(A) each of which is reasonable (taking  
22 into account the experience of the plan and rea-  
23 sonable expectations), and

1           “(B) which, in combination, offer the actu-  
2           ary’s best estimate of anticipated experience  
3           under the plan.

4           “(2) INTEREST RATES.—

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

14          “(B) INTEREST RATES FOR DETERMINING  
15          FUNDING TARGET.—For purposes of deter-  
16          mining the funding target of a plan for any  
17          plan year, the interest rate used in determining  
18          the present value of the liabilities of the plan  
19          shall be—

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

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

7 “(iii) in the case of benefits reason-  
8 ably determined to be payable after the pe-  
9 riod described in clause (ii), the third seg-  
10 ment rate with respect to the applicable  
11 month.

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

14 “(i) FIRST SEGMENT RATE.—The  
15 term ‘first segment rate’ means, with re-  
16 spect to any month, the single rate of in-  
17 terest which shall be determined by the  
18 Secretary for such month on the basis of  
19 the corporate bond yield curve for such  
20 month, taking into account only that por-  
21 tion of such yield curve which is based on  
22 bonds maturing during the 5-year period  
23 commencing with such month.

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

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

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

20           “(D) CORPORATE BOND YIELD CURVE.—

21           For purposes of this paragraph—

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

1 and which reflects the average, for the 24-  
2 month period ending with the month pre-  
3 ceding such month, of monthly yields on  
4 investment grade corporate bonds with  
5 varying maturities and that are in the top  
6 3 quality levels available.

7 “(ii) ELECTION TO USE YIELD  
8 CURVE.—Solely for purposes of deter-  
9 mining the minimum required contribution  
10 under this section, the plan sponsor may,  
11 in lieu of the segment rates determined  
12 under subparagraph (C), elect to use inter-  
13 est rates under the corporate bond yield  
14 curve. For purposes of the preceding sen-  
15 tence such curve shall be determined with-  
16 out regard to the 24-month averaging de-  
17 scribed in clause (i) . Such election, once  
18 made, may be revoked only with the con-  
19 sent of the Secretary.

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

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

6 “(F) PUBLICATION REQUIREMENTS.—The  
7 Secretary shall publish for each month the cor-  
8 porate bond yield curve (and the corporate bond  
9 yield curve reflecting the modification described  
10 in section 417(e)(3)(D)(i) for such month and  
11 each of the rates determined under subpara-  
12 graph (B) for such month. The Secretary shall  
13 also publish a description of the methodology  
14 used to determine such yield curve and such  
15 rates which is sufficiently detailed to enable  
16 plans to make reasonable projections regarding  
17 the yield curve and such rates for future  
18 months based on the plan’s projection of future  
19 interest rates.

20 “(G) TRANSITION RULE.—

21 “(i) IN GENERAL.—Notwithstanding  
22 the preceding provisions of this paragraph,  
23 for plan years beginning in 2008 or 2009,  
24 the first, second, or third segment rate for



1 a plan with respect to any month shall be  
2 equal to the sum of—

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

7 “(II) the product of the rate de-  
8 termined under the rules of section  
9 412(b)(5)(B)(ii)(II) (as in effect for  
10 plan years beginning in 2007), multi-  
11 plied by a percentage equal to 100  
12 percent minus the applicable percent-  
13 age.

14 “(ii) APPLICABLE PERCENTAGE.—For  
15 purposes of clause (i), the applicable per-  
16 centage is  $33\frac{1}{3}$  percent for plan years be-  
17 ginning in 2008 and  $66\frac{2}{3}$  percent for plan  
18 years beginning in 2009.

19 “(iii) NEW PLANS INELIGIBLE.—  
20 Clause (i) shall not apply to any plan if the  
21 first plan year of the plan begins after De-  
22 cember 31, 2007.

23 “(iv) ELECTION.—The plan sponsor  
24 may elect not to have this subparagraph  
25 apply. Such election, once made, may be

1           revoked only with the consent of the Sec-  
2           retary.

3           “(3) MORTALITY TABLES.—

4           “(A) IN GENERAL.—Except as provided in  
5           subparagraph (C) or (D), the Secretary shall by  
6           regulation prescribe mortality tables to be used  
7           in determining any present value or making any  
8           computation under this section. Such tables  
9           shall be based on the actual experience of pen-  
10          sion plans and projected trends in such experi-  
11          ence. In prescribing such tables, the Secretary  
12          shall take into account results of available inde-  
13          pendent studies of mortality of individuals cov-  
14          ered by pension plans.

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

20          “(C) SUBSTITUTE MORTALITY TABLE.—

21                 “(i) IN GENERAL.—Upon request by  
22                 the plan sponsor and approval by the Sec-  
23                 retary, a mortality table which meets the  
24                 requirements of clause (iii) shall be used in  
25                 determining any present value or making

1 any computation under this section during  
2 the period of consecutive plan years (not to  
3 exceed 10) specified in the request.

4 “(ii) EARLY TERMINATION OF PE-  
5 RIOD.—Notwithstanding clause (i), a mor-  
6 tality table described in clause (i) shall  
7 cease to be in effect as of the earliest of—

8 “(I) the date on which there is a  
9 significant change in the participants  
10 in the plan by reason of a plan spinoff  
11 or merger or otherwise, or

12 “(II) the date on which the plan  
13 actuary determines that such table  
14 does not meet the requirements of  
15 clause (iii).

16 “(iii) REQUIREMENTS.—A mortality  
17 table meets the requirements of this clause  
18 if—

19 “(I) there is a sufficient number  
20 of plan participants, and the pension  
21 plans have been maintained for a suf-  
22 ficient period of time, to have credible  
23 information necessary for purposes of  
24 subclause (II), and

1 “(II) such table reflects the ac-  
2 tual experience of the pension plans  
3 maintained by the sponsor and pro-  
4 jected trends in general mortality ex-  
5 perience.

6 “(iv) ALL PLANS IN CONTROLLED  
7 GROUP MUST USE SEPARATE TABLE.—Ex-  
8 cept as provided by the Secretary, a plan  
9 sponsor may not use a mortality table  
10 under this subparagraph for any plan  
11 maintained by the plan sponsor unless—

12 “(I) a separate mortality table is  
13 established and used under this sub-  
14 paragraph for each other plan main-  
15 tained by the plan sponsor and if the  
16 plan sponsor is a member of a con-  
17 trolled group, each member of the  
18 controlled group, and

19 “(II) the requirements of clause  
20 (iii) are met separately with respect to  
21 the table so established for each such  
22 plan, determined by only taking into  
23 account the participants of such plan,  
24 the time such plan has been in exist-

1                   ence, and the actual experience of  
2                   such plan.

3                   “(v) DEADLINE FOR SUBMISSION AND  
4                   DISPOSITION OF APPLICATION.—

5                   “(I) SUBMISSION.—The plan  
6                   sponsor shall submit a mortality table  
7                   to the Secretary for approval under  
8                   this subparagraph at least 7 months  
9                   before the 1st day of the period de-  
10                  scribed in clause (i).

11                  “(II) DISPOSITION.—Any mor-  
12                  tality table submitted to the Secretary  
13                  for approval under this subparagraph  
14                  shall be treated as in effect as of the  
15                  1st day of the period described in  
16                  clause (i) unless the Secretary, during  
17                  the 180-day period beginning on the  
18                  date of such submission, disapproves  
19                  of such table and provides the reasons  
20                  that such table fails to meet the re-  
21                  quirements of clause (iii). The 180-  
22                  day period shall be extended upon mu-  
23                  tual agreement of the Secretary and  
24                  the plan sponsor.

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

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

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

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

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

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

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

24                  “(5) APPROVAL OF LARGE CHANGES IN ACTU-  
25                  ARIAL ASSUMPTIONS.—

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

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

8                   “(i) the plan is a defined benefit plan  
9                   (other than a multiemployer plan) to which  
10                  title IV of the Employee Retirement In-  
11                  come Security Act of 1974 applies,

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



1 “(iii) the change in assumptions (de-  
2 termined after taking into account any  
3 changes in interest rate and mortality  
4 table) results in a decrease in the funding  
5 shortfall of the plan for the current plan  
6 year that exceeds \$50,000,000, or that ex-  
7 ceeds \$5,000,000 and that is 5 percent or  
8 more of the funding target of the plan be-  
9 fore such change.

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

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

13 “(A) IN GENERAL.—In the case of a plan  
14 which is in at-risk status for a plan year, the  
15 funding target of the plan for the plan year  
16 shall be equal to the sum of—

17 “(i) the present value of all benefits  
18 accrued or earned under the plan as of the  
19 beginning of the plan year, as determined  
20 by using the additional actuarial assump-  
21 tions described in subparagraph (B), and

22 “(ii) in the case of a plan which also  
23 has been in at-risk status for at least 2 of  
24 the 4 preceding plan years, a loading fac-  
25 tor determined under subparagraph (C).

1           “(B) ADDITIONAL ACTUARIAL ASSUMP-  
2           TIONS.—The actuarial assumptions described in  
3           this subparagraph are as follows:

4                   “(i) All employees who are not other-  
5                   wise assumed to retire as of the valuation  
6                   date but who will be eligible to elect bene-  
7                   fits during the plan year and the 10 suc-  
8                   ceeding plan years shall be assumed to re-  
9                   tire at the earliest retirement date under  
10                  the plan but not before the end of the plan  
11                  year for which the at-risk funding target  
12                  and at-risk target normal cost are being  
13                  determined.

14                  “(ii) All employees shall be assumed  
15                  to elect the retirement benefit available  
16                  under the plan at the assumed retirement  
17                  age (determined after application of clause  
18                  (i)) which would result in the highest  
19                  present value of benefits.

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

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

1 “(ii) 4 percent of the funding target  
2 (determined without regard to this para-  
3 graph) of the plan for the plan year.

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

9 “(A) the present value of all benefits which  
10 are expected to accrue or be earned under the  
11 plan during the plan year, determined using the  
12 additional actuarial assumptions described in  
13 paragraph (1)(B), plus

14 “(B) in the case of a plan which also has  
15 been in at-risk status for at least 2 of the 4  
16 preceding plan years, a loading factor equal to  
17 4 percent of the target normal cost (determined  
18 without regard to this paragraph) of the plan  
19 for the plan year.

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

21 “(A) the at-risk funding target be less  
22 than the funding target, as determined without  
23 regard to this subsection, or

1           “(B) the at-risk target normal cost be less  
2           than the target normal cost, as determined  
3           without regard to this subsection.

4           “(4) DETERMINATION OF AT-RISK STATUS.—  
5           For purposes of this subsection—

6           “(A) IN GENERAL.—A plan is in at-risk  
7           status for a plan year if—

8           “(i) the funding target attainment  
9           percentage for the preceding plan year (de-  
10          termined under this section without regard  
11          to this subsection) is less than 80 percent,  
12          and

13          “(ii) the funding target attainment  
14          percentage for the preceding plan year (de-  
15          termined under this section by using the  
16          additional actuarial assumptions described  
17          in paragraph (1)(B) in computing the  
18          funding target) is less than 70 percent.

19          “(B) TRANSITION RULE.—In the case of  
20          plan years beginning in 2008, 2009, and 2010,  
21          subparagraph (A)(i) shall be applied by sub-  
22          stituting the following percentages for ‘80 per-  
23          cent’:

24                  “(i) 65 percent in the case of 2008.

25                  “(ii) 70 percent in the case of 2009.

1 “(iii) 75 percent in the case of 2010.

2 In the case of plan years beginning in 2008, the  
3 funding target attainment percentage for the  
4 preceding plan year under subparagraph (A)(ii)  
5 may be determined using such methods of esti-  
6 mation as the Secretary may provide.

7 “(C) SPECIAL RULE FOR EMPLOYEES OF-  
8 FERED EARLY RETIREMENT IN 2006.—

9 “(i) IN GENERAL.—For purposes of  
10 subparagraph (A)(ii), the additional actu-  
11 arial assumptions described in paragraph  
12 (1)(B) shall not be taken into account with  
13 respect to any employee if—

14 “(I) such employee is employed  
15 by a specified automobile manufac-  
16 turer,

17 “(II) such employee is offered a  
18 substantial amount of additional cash  
19 compensation, substantially enhanced  
20 retirement benefits under the plan, or  
21 materially reduced employment duties  
22 on the condition that by a specified  
23 date (not later than December 31,  
24 2010) the employee retires (as defined  
25 under the terms of the plan),

1 “(III) such offer is made during  
2 2006 and pursuant to a bona fide re-  
3 tirement incentive program and re-  
4 quires, by the terms of the offer, that  
5 such offer can be accepted not later  
6 than a specified date (not later than  
7 December 31, 2006), and

8 “(IV) such employee does not  
9 elect to accept such offer before the  
10 specified date on which the offer ex-  
11 pires.

12 “(ii) SPECIFIED AUTOMOBILE MANU-  
13 FACTURER.—For purposes of clause (i),  
14 the term ‘specified automobile manufac-  
15 turer’ means—

16 “(I) any manufacturer of auto-  
17 mobiles, and

18 “(II) any manufacturer of auto-  
19 mobile parts which supplies such parts  
20 directly to a manufacturer of auto-  
21 mobiles and which, after a transaction  
22 or series of transactions ending in  
23 1999, ceased to be a member of a  
24 controlled group which included such  
25 manufacturer of automobiles.

1           “(5) TRANSITION BETWEEN APPLICABLE FUND-  
2           ING TARGETS AND BETWEEN APPLICABLE TARGET  
3           NORMAL COSTS.—

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

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

15                   “(ii) the transition percentage for  
16          such plan year of the excess of the amount  
17          determined under this subsection (without  
18          regard to this paragraph) over the amount  
19          determined under this section without re-  
20          gard to this subsection.

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

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

1 “(C) YEARS BEFORE EFFECTIVE DATE.—

2 For purposes of this paragraph, plan years be-  
3 ginning before 2008 shall not be taken into ac-  
4 count.

5 “(6) SMALL PLAN EXCEPTION.—If, on each day  
6 during the preceding plan year, a plan had 500 or  
7 fewer participants, the plan shall not be treated as  
8 in at-risk status for the plan year. For purposes of  
9 this paragraph, all defined benefit plans (other than  
10 multiemployer plans) maintained by the same em-  
11 ployer (or any member of such employer’s controlled  
12 group) shall be treated as 1 plan, but only partici-  
13 pants with respect to such employer or member shall  
14 be taken into account and the rules of subsection  
15 (g)(2)(C) shall apply.

16 “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
17 TIONS.—

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



1           “(2) INTEREST.—Any payment required under  
2           paragraph (1) for a plan year that is made on a date  
3           other than the valuation date for such plan year  
4           shall be adjusted for interest accruing for the period  
5           between the valuation date and the payment date, at  
6           the effective rate of interest for the plan for such  
7           plan year.

8           “(3) ACCELERATED QUARTERLY CONTRIBUTION  
9           SCHEDULE FOR UNDERFUNDED PLANS.—

10           “(A) FAILURE TO TIMELY MAKE RE-  
11           QUIRED INSTALLMENT.—In any case in which  
12           the plan has a funding shortfall for the pre-  
13           ceding plan year, the employer maintaining the  
14           plan shall make the required installments under  
15           this paragraph and if the employer fails to pay  
16           the full amount of a required installment for  
17           the plan year, then the amount of interest  
18           charged under paragraph (2) on the under-  
19           payment for the period of underpayment shall  
20           be determined by using a rate of interest equal  
21           to the rate otherwise used under paragraph (2)  
22           plus 5 percentage points.

23           “(B) AMOUNT OF UNDERPAYMENT, PE-  
24           RIOD OF UNDERPAYMENT.—For purposes of  
25           subparagraph (A)—

1                   “(i) AMOUNT.—The amount of the  
2 underpayment shall be the excess of—

3                   “(I) the required installment,  
4 over

5                   “(II) the amount (if any) of the  
6 installment contributed to or under  
7 the plan on or before the due date for  
8 the installment.

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

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

22                   “(C) NUMBER OF REQUIRED INSTALL-  
23 MENTS; DUE DATES.—For purposes of this  
24 paragraph—

1 “(i) PAYABLE IN 4 INSTALLMENTS.—

2 There shall be 4 required installments for  
3 each plan year.

4 “(ii) TIME FOR PAYMENT OF IN-  
5 STALLMENTS.—The due dates for required  
6 installments are set forth in the following  
7 table:

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

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

10 “(i) IN GENERAL.—The amount of  
11 any required installment shall be 25 per-  
12 cent of the required annual payment.

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

17 “(I) 90 percent of the minimum  
18 required contribution (determined  
19 without regard to this subsection) to

1 the plan for the plan year under this  
2 section, or

3 “(II) 100 percent of the min-  
4 imum required contribution (deter-  
5 mined without regard to this sub-  
6 section or to any waiver under section  
7 302(c)) to the plan for the preceding  
8 plan year.

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

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

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

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

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

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

10           “(B) PLANS TO WHICH PARAGRAPH AP-  
11           PLIES.—This paragraph shall apply to a plan  
12           (other than a plan described in subsection  
13           (g)(2)(B)) which—

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

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

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

24           “(D) LIMITATION ON INCREASE.—If the  
25           amount of any required installment is increased

1 by reason of subparagraph (A), in no event  
2 shall such increase exceed the amount which,  
3 when added to prior installments for the plan  
4 year, is necessary to increase the funding target  
5 attainment percentage of the plan for the plan  
6 year (taking into account the expected increase  
7 in funding target due to benefits accruing or  
8 earned during the plan year) to 100 percent.

9 “(E) DEFINITIONS.—For purposes of this  
10 paragraph—

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

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

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

21 “(ii) BASE AMOUNT.—

22 “(I) IN GENERAL.—The term  
23 ‘base amount’ means, with respect to  
24 any quarter, an amount equal to 3  
25 times the sum of the adjusted dis-

1                   bursements from the plan for the 12  
2                   months ending on the last day of such  
3                   quarter.

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

18                  “(iii) DISBURSEMENTS FROM THE  
19                  PLAN.—The term ‘disbursements from the  
20                  plan’ means all disbursements from the  
21                  trust, including purchases of annuities,  
22                  payments of single sums and other bene-  
23                  fits, and administrative expenses.

24                  “(iv) ADJUSTED DISBURSEMENTS.—  
25                  The term ‘adjusted disbursements’ means

1                   disbursements from the plan reduced by  
2                   the product of—

3                   “(I) the plan’s funding target at-  
4                   tainment percentage for the plan year,  
5                   and

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

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

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

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

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

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



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

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

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

17          “(2) PLANS TO WHICH SUBSECTION APPLIES.—  
18          This subsection shall apply to a defined benefit plan  
19          (other than a multiemployer plan) covered under  
20          section 4021 of the Employee Retirement Income  
21          Security Act of 1974 for any plan year for which the  
22          funding target attainment percentage (as defined in  
23          subsection (d)(2)) of such plan is less than 100 per-  
24          cent.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply with respect to plan years begin-  
14 ning after December 31, 2007.

15 **SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EM-**  
16 **PLOYER PLANS.**

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

20 (1) IN GENERAL.—Part III of subchapter D of  
21 chapter 1 of the Internal Revenue Code of 1986 (re-  
22 lating to deferred compensation, etc.) is amended—

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

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

“SUBPART A. MINIMUM FUNDING STANDARDS FOR PENSION PLANS.

“SUBPART B. BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS.

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

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

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

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

“Sec. 436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.

9 **“SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BEN-**  
10 **EFIT ACCRUALS UNDER SINGLE-EMPLOYER**  
11 **PLANS.**

12 “(a) GENERAL RULE.—For purposes of section  
13 401(a)(29), a defined benefit plan which is a single-em-  
14 ployer plan shall be treated as meeting the requirements  
15 of this section if the plan meets the requirements of sub-  
16 sections (b), (c), (d), and (e).

17 “(b) FUNDING-BASED LIMITATION ON SHUTDOWN  
18 BENEFITS AND OTHER UNPREDICTABLE CONTINGENT  
19 EVENT BENEFITS UNDER SINGLE-EMPLOYER PLANS.—

20 “(1) IN GENERAL.—If a participant of a de-  
21 fined benefit plan which is a single-employer plan is

1 entitled to an unpredictable contingent event benefit  
2 payable with respect to any event occurring during  
3 any plan year, the plan shall provide that such ben-  
4 efit may not be provided if the adjusted funding tar-  
5 get attainment percentage for such plan year—

6 “(A) is less than 60 percent, or

7 “(B) would be less than 60 percent taking  
8 into account such occurrence.

9 “(2) EXEMPTION.—Paragraph (1) shall cease  
10 to apply with respect to any plan year, effective as  
11 of the first day of the plan year, upon payment by  
12 the plan sponsor of a contribution (in addition to  
13 any minimum required contribution under section  
14 303) equal to—

15 “(A) in the case of paragraph (1)(A), the  
16 amount of the increase in the funding target of  
17 the plan (under section 430) for the plan year  
18 attributable to the occurrence referred to in  
19 paragraph (1), and

20 “(B) in the case of paragraph (1)(B), the  
21 amount sufficient to result in a funding target  
22 attainment percentage of 60 percent.

23 “(3) UNPREDICTABLE CONTINGENT EVENT.—

24 For purposes of this subsection, the term ‘unpredict-

1       able contingent event benefit’ means any benefit  
2       payable solely by reason of—

3               “(A) a plant shutdown (or similar event, as  
4       determined by the Secretary), or

5               “(B) any event other than the attainment  
6       of any age, performance of any service, receipt  
7       or derivation of any compensation, or occur-  
8       rence of death or disability.

9       “(c) LIMITATIONS ON PLAN AMENDMENTS INCREAS-  
10   ING LIABILITY FOR BENEFITS.—

11           “(1) IN GENERAL.—No amendment to a de-  
12   fined benefit plan which is a single-employer plan  
13   which has the effect of increasing liabilities of the  
14   plan by reason of increases in benefits, establish-  
15   ment of new benefits, changing the rate of benefit  
16   accrual, or changing the rate at which benefits be-  
17   come nonforfeitable may take effect during any plan  
18   year if the adjusted funding target attainment per-  
19   centage for such plan year is—

20               “(A) less than 80 percent, or

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

23           “(2) EXEMPTION.—Paragraph (1) shall cease  
24   to apply with respect to any plan year, effective as  
25   of the first day of the plan year (or if later, the ef-

1        fective date of the amendment), upon payment by  
2        the plan sponsor of a contribution (in addition to  
3        any minimum required contribution under section  
4        430) equal to—

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

9                “(B) in the case of paragraph (1)(B), the  
10               amount sufficient to result in an adjusted fund-  
11               ing target attainment percentage of 80 percent.

12               “(3) EXCEPTION FOR CERTAIN BENEFIT IN-  
13               CREASES.—Paragraph (1) shall not apply to any  
14               amendment which provides for an increase in bene-  
15               fits under a formula which is not based on a partici-  
16               pant’s compensation, but only if the rate of such in-  
17               crease is not in excess of the contemporaneous rate  
18               of increase in average wages of participants covered  
19               by the amendment.

20               “(d) LIMITATIONS ON ACCELERATED BENEFIT DIS-  
21               TRIBUTIONS.—

22               “(1) FUNDING PERCENTAGE LESS THAN 60  
23               PERCENT.—A defined benefit plan which is a single-  
24               employer plan shall provide that, in any case in  
25               which the plan’s adjusted funding target attainment



1 percentage for a plan year is less than 60 percent,  
2 the plan may not pay any prohibited payment after  
3 the valuation date for the plan year.

4 “(2) BANKRUPTCY.—A defined benefit plan  
5 which is a single-employer plan shall provide that,  
6 during any period in which the plan sponsor is a  
7 debtor in a case under title 11, United States Code,  
8 or similar Federal or State law, the plan may not  
9 pay any prohibited payment. The preceding sentence  
10 shall not apply on or after the date on which the en-  
11 rolled actuary of the plan certifies that the adjusted  
12 funding target attainment percentage of such plan is  
13 not less than 100 percent.

14 “(3) LIMITED PAYMENT IF PERCENTAGE AT  
15 LEAST 60 PERCENT BUT LESS THAN 80 PERCENT.—

16 “(A) IN GENERAL.—A defined benefit plan  
17 which is a single-employer plan shall provide  
18 that, in any case in which the plan’s adjusted  
19 funding target attainment percentage for a plan  
20 year is 60 percent or greater but less than 80  
21 percent, the plan may not pay any prohibited  
22 payment after the valuation date for the plan  
23 year to the extent the amount of the payment  
24 exceeds the lesser of—

1 “(i) 50 percent of the amount of the  
2 payment which could be made without re-  
3 gard to this section, or

4 “(ii) the present value (determined  
5 under guidance prescribed by the Pension  
6 Benefit Guaranty Corporation, using the  
7 interest and mortality assumptions under  
8 section 417(e)) of the maximum guarantee  
9 with respect to the participant under sec-  
10 tion 4022 of the Employee Retirement In-  
11 come Security Act of 1974.

12 “(B) ONE-TIME APPLICATION.—

13 “(i) IN GENERAL.—The plan shall  
14 also provide that only 1 prohibited pay-  
15 ment meeting the requirements of subpara-  
16 graph (A) may be made with respect to  
17 any participant during any period of con-  
18 secutive plan years to which the limitations  
19 under either paragraph (1) or (2) or this  
20 paragraph applies.

21 “(ii) TREATMENT OF BENE-  
22 FICIARIES.—For purposes of this subpara-  
23 graph, a participant and any beneficiary  
24 on his behalf (including an alternate payee,  
25 as defined in section 414(p)(8)) shall be

1           treated as 1 participant. If the accrued  
2           benefit of a participant is allocated to such  
3           an alternate payee and 1 or more other  
4           persons, the amount under subparagraph  
5           (A) shall be allocated among such persons  
6           in the same manner as the accrued benefit  
7           is allocated unless the qualified domestic  
8           relations order (as defined in section  
9           414(p)(1)(A)) provides otherwise.

10           “(4) EXCEPTION.—This subsection shall not  
11           apply to any plan for any plan year if the terms of  
12           such plan (as in effect for the period beginning on  
13           September 1, 2005, and ending with such plan year)  
14           provide for no benefit accruals with respect to any  
15           participant during such period.

16           “(5) PROHIBITED PAYMENT.—For purpose of  
17           this subsection, the term ‘prohibited payment’  
18           means—

19           “(A) any payment, in excess of the month-  
20           ly amount paid under a single life annuity (plus  
21           any social security supplements described in the  
22           last sentence of section 411(a)(9)), to a partici-  
23           pant or beneficiary whose annuity starting date  
24           (as defined in section 417(f)(2)) occurs during

1           any period a limitation under paragraph (1) or  
2           (2) is in effect,

3                 “(B) any payment for the purchase of an  
4           irrevocable commitment from an insurer to pay  
5           benefits, and

6                 “(C) any other payment specified by the  
7           Secretary by regulations.

8           “(e) LIMITATION ON BENEFIT ACCRUALS FOR PLANS  
9 WITH SEVERE FUNDING SHORTFALLS.—

10                 “(1) IN GENERAL.—A defined benefit plan  
11           which is a single-employer plan shall provide that, in  
12           any case in which the plan’s adjusted funding target  
13           attainment percentage for a plan year is less than  
14           60 percent, benefit accruals under the plan shall  
15           cease as of the valuation date for the plan year.

16                 “(2) EXEMPTION.—Paragraph (1) shall cease  
17           to apply with respect to any plan year, effective as  
18           of the first day of the plan year, upon payment by  
19           the plan sponsor of a contribution (in addition to  
20           any minimum required contribution under section  
21           430) equal to the amount sufficient to result in an  
22           adjusted funding target attainment percentage of 60  
23           percent.

24           “(f) RULES RELATING TO CONTRIBUTIONS RE-  
25 QUIRED TO AVOID BENEFIT LIMITATIONS.—

1 “(1) SECURITY MAY BE PROVIDED.—

2 “(A) IN GENERAL.—For purposes of this  
3 section, the adjusted funding target attainment  
4 percentage shall be determined by treating as  
5 an asset of the plan any security provided by a  
6 plan sponsor in a form meeting the require-  
7 ments of subparagraph (B).

8 “(B) FORM OF SECURITY.—The security  
9 required under subparagraph (A) shall consist  
10 of—

11 “(i) a bond issued by a corporate sur-  
12 ety company that is an acceptable surety  
13 for purposes of section 412 of the Em-  
14 ployee Retirement Income Security Act of  
15 1974,

16 “(ii) cash, or United States obliga-  
17 tions which mature in 3 years or less, held  
18 in escrow by a bank or similar financial in-  
19 stitution, or

20 “(iii) such other form of security as is  
21 satisfactory to the Secretary and the par-  
22 ties involved.

23 “(C) ENFORCEMENT.—Any security pro-  
24 vided under subparagraph (A) may be perfected  
25 and enforced at any time after the earlier of—

1 “(i) the date on which the plan termi-  
2 nates,

3 “(ii) if there is a failure to make a  
4 payment of the minimum required con-  
5 tribution for any plan year beginning after  
6 the security is provided, the due date for  
7 the payment under section 430(j), or

8 “(iii) if the adjusted funding target  
9 attainment percentage is less than 60 per-  
10 cent for a consecutive period of 7 years,  
11 the valuation date for the last year in the  
12 period.

13 “(D) RELEASE OF SECURITY.—The secu-  
14 rity shall be released (and any amounts there-  
15 under shall be refunded together with any inter-  
16 est accrued thereon) at such time as the Sec-  
17 retary may prescribe in regulations, including  
18 regulations for partial releases of the security  
19 by reason of increases in the funding target at-  
20 tainment percentage.

21 “(2) PREFUNDING BALANCE OR FUNDING  
22 STANDARD CARRYOVER BALANCE MAY NOT BE  
23 USED.—No prefunding balance under section 430(f)  
24 or funding standard carryover balance may be used  
25 under subsection (b), (c), or (e) to satisfy any pay-

1       ment an employer may make under any such sub-  
2       section to avoid or terminate the application of any  
3       limitation under such subsection.

4               “(3) DEEMED REDUCTION OF FUNDING BAL-  
5       ANCES.—

6               “(A) IN GENERAL.—Subject to subpara-  
7       graph (C), in any case in which a benefit limita-  
8       tion under subsection (b), (c), (d), or (e) would  
9       (but for this subparagraph and determined  
10      without regard to subsection (b)(2), (c)(2), or  
11      (e)(2)) apply to such plan for the plan year, the  
12      plan sponsor of such plan shall be treated for  
13      purposes of this title as having made an elec-  
14      tion under section 430(f) to reduce the  
15      prefunding balance or funding standard carry-  
16      over balance by such amount as is necessary for  
17      such benefit limitation to not apply to the plan  
18      for such plan year.

19              “(B) EXCEPTION FOR INSUFFICIENT  
20      FUNDING BALANCES.—Subparagraph (A) shall  
21      not apply with respect to a benefit limitation  
22      for any plan year if the application of subpara-  
23      graph (A) would not result in the benefit limita-  
24      tion not applying for such plan year.

1                   “(C) RESTRICTIONS OF CERTAIN RULES  
2                   TO COLLECTIVELY BARGAINED PLANS.—With  
3                   respect to any benefit limitation under sub-  
4                   section (b), (c), or (e), subparagraph (A) shall  
5                   only apply in the case of a plan maintained pur-  
6                   suant to 1 or more collective bargaining agree-  
7                   ments between employee representatives and 1  
8                   or more employers.

9                   “(g) NEW PLANS.—Subsections (b), (c), and (e) shall  
10                  not apply to a plan for the first 5 plan years of the plan.  
11                  For purposes of this subsection, the reference in this sub-  
12                  section to a plan shall include a reference to any prede-  
13                  cessor plan.

14                  “(h) PRESUMED UNDERFUNDING FOR PURPOSES OF  
15                  BENEFIT LIMITATIONS.—

16                  “(1) PRESUMPTION OF CONTINUED UNDER-  
17                  FUNDING.—In any case in which a benefit limitation  
18                  under subsection (b), (c), (d), or (e) has been ap-  
19                  plied to a plan with respect to the plan year pre-  
20                  ceding the current plan year, the adjusted funding  
21                  target attainment percentage of the plan for the cur-  
22                  rent plan year shall be presumed to be equal to the  
23                  adjusted funding target attainment percentage of  
24                  the plan for the preceding plan year until the en-  
25                  rolled actuary of the plan certifies the actual ad-



1       justed funding target attainment percentage of the  
2       plan for the current plan year.

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

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

18                   “(A) a benefit limitation under subsection  
19                   (b), (c), (d), or (e) did not apply to a plan with  
20                   respect to the plan year preceding the current  
21                   plan year, but the adjusted funding target at-  
22                   tainment percentage of the plan for such pre-  
23                   ceding plan year was not more than 10 percent-  
24                   age points greater than the percentage which  
25                   would have caused such subsection to apply to

1 the plan with respect to such preceding plan  
2 year, and

3 “(B) as of the first day of the 4th month  
4 of the current plan year, the enrolled actuary of  
5 the plan has not certified the actual adjusted  
6 funding target attainment percentage of the  
7 plan for the current plan year,  
8 until the enrolled actuary so certifies, such first day  
9 shall be deemed, for purposes of such subsection, to  
10 be the valuation date of the plan for the current  
11 plan year and the adjusted funding target attain-  
12 ment percentage of the plan as of such first day  
13 shall, for purposes of such subsection, be presumed  
14 to be equal to 10 percentage points less than the ad-  
15 justed funding target attainment percentage of the  
16 plan for such preceding plan year.

17 “(i) TREATMENT OF PLAN AS OF CLOSE OF PROHIB-  
18 ITED OR CESSATION PERIOD.—For purposes of applying  
19 this title—

20 “(1) OPERATION OF PLAN AFTER PERIOD.—  
21 Unless the plan provides otherwise, payments and  
22 accruals will resume effective as of the day following  
23 the close of the period for which any limitation of  
24 payment or accrual of benefits under subsection (d)  
25 or (e) applies.

1 “(2) TREATMENT OF AFFECTED BENEFITS.—

2 Nothing in this subsection shall be construed as af-  
3 fecting the plan’s treatment of benefits which would  
4 have been paid or accrued but for this section.

5 “(j) TERMS RELATING TO FUNDING TARGET AT-  
6 TAINMENT PERCENTAGE.—For purposes of this section—

7 “(1) IN GENERAL.—The term ‘funding target  
8 attainment percentage’ has the same meaning given  
9 such term by section 430(d)(2).

10 “(2) ADJUSTED FUNDING TARGET ATTAINMENT  
11 PERCENTAGE.—The term ‘adjusted funding target  
12 attainment percentage’ means the funding target at-  
13 tainment percentage which is determined under  
14 paragraph (1) by increasing each of the amounts  
15 under subparagraphs (A) and (B) of section  
16 430(d)(2) by the aggregate amount of purchases of  
17 annuities for employees other than highly com-  
18 pensated employees (as defined in section 414(q))  
19 which were made by the plan during the preceding  
20 2 plan years.

21 “(3) APPLICATION TO PLANS WHICH ARE  
22 FULLY FUNDED WITHOUT REGARD TO REDUCTIONS  
23 FOR FUNDING BALANCES.—

24 “(A) IN GENERAL.—In the case of a plan  
25 for any plan year, if the funding target attain-

1           ment percentage is 100 percent or more (deter-  
 2           mined without regard to this paragraph and  
 3           without regard to the reduction in the value of  
 4           assets under section 430(f)(4)(A)), the funding  
 5           target attainment percentage for purposes of  
 6           paragraph (1) shall be determined without re-  
 7           gard to such reduction.

8           “(B) TRANSITION RULE.—Subparagraph  
 9           (A) shall be applied to plan years beginning  
 10          after 2007 and before 2011 by substituting for  
 11          ‘100 percent’ the applicable percentage deter-  
 12          mined in accordance with the following table:

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

13          “(C) LIMITATION.—Subparagraph (B)  
 14          shall not apply with respect to any plan year  
 15          after 2008 unless the funding target attainment  
 16          percentage (determined without regard to this  
 17          paragraph) of the plan for each preceding plan  
 18          year after 2007 was not less than the applicable  
 19          percentage with respect to such preceding plan  
 20          year determined under subparagraph (B).

21          “(k) SPECIAL RULE FOR 2008.—For purposes of this  
 22          section, in the case of plan years beginning in 2008, the  
 23          funding target attainment percentage for the preceding

1 plan year may be determined using such methods of esti-  
2 mation as the Secretary may provide.”.

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

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

7 (b) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by  
9 this section shall apply to plan years beginning after  
10 December 31, 2007.

11 (2) COLLECTIVE BARGAINING EXCEPTION.—In  
12 the case of a plan maintained pursuant to 1 or more  
13 collective bargaining agreements between employee  
14 representatives and 1 or more employers ratified be-  
15 fore January 1, 2008, the amendments made by this  
16 section shall not apply to plan years beginning be-  
17 fore the earlier of—

18 (A) the later of—

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

1 (ii) the first day of the first plan year  
2 to which the amendments made by this  
3 subsection would (but for this subpara-  
4 graph) apply, or  
5 (B) January 1, 2010.

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

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

13 (a) AMENDMENTS RELATED TO QUALIFICATION RE-  
14 QUIREMENTS.—

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

17 “(29) BENEFIT LIMITATIONS ON PLANS IN AT-  
18 RISK STATUS.—In the case of a defined benefit plan  
19 (other than a multiemployer plan) to which the re-  
20 quirements of section 412 apply, the trust of which  
21 the plan is a part shall not constitute a qualified  
22 trust under this subsection unless the plan meets the  
23 requirements of section 436.”.

24 (2) Section 401(a)(32) of such Code is amend-  
25 ed—

1 (A) in subparagraph (A), by striking  
2 “412(m)(5)” each place it appears and insert-  
3 ing “section 430(j)(4)”, and

4 (B) in subparagraph (C), by striking “sec-  
5 tion 412(m)” and inserting “section 430(j)”.

6 (3) Section 401(a)(33) of such Code is amend-  
7 ed—

8 (A) in subparagraph (B)(i), by striking  
9 “funded current liability percentage (within the  
10 meaning of section 412(l)(8))” and inserting  
11 “funding target attainment percentage (as de-  
12 fined in section 430(d)(2))”,

13 (B) in subparagraph (B)(iii), by striking  
14 “subsection 412(c)(8)” and inserting “section  
15 412(c)(2)”, and

16 (C) in subparagraph (D), by striking “sec-  
17 tion 412(c)(11) (without regard to subpara-  
18 graph (B) thereof)” and inserting “section  
19 412(b)(2) (without regard to subparagraph (B)  
20 thereof)”.

21 (b) VESTING RULES.—Section 411 of such Code is  
22 amended—

23 (1) by striking “section 412(c)(8)” in sub-  
24 section (a)(3)(C) and inserting “section 412(c)(2)”,

25 (2) in subsection (b)(1)(F)—

1 (A) by striking “paragraphs (2) and (3) of  
2 section 412(i)” in clause (ii) and inserting  
3 “subparagraphs (B) and (C) of section  
4 412(e)(3)”, and

5 (B) by striking “paragraphs (4), (5), and  
6 (6) of section 412(i)” and inserting “subpara-  
7 graphs (D), (E), and (F) of section 412(e)(3)”,  
8 and

9 (3) by striking “section 412(c)(8)” in sub-  
10 section (d)(6)(A) and inserting “section 412(e)(2)”.

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

14 “(I) the amount determined  
15 under section 431(c)(6)(A)(i) in the  
16 case of a multiemployer plan (and the  
17 sum of the funding shortfall and tar-  
18 get normal cost determined under sec-  
19 tion 430 in the case of any other  
20 plan), over”.

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

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



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

3                   “(A) the lesser of—

4                           “(i) the fair market value of the  
5                           plan’s assets (reduced by the prefunding  
6                           balance and funding standard carryover  
7                           balance determined under section 430(f)),  
8                           or

9                           “(ii) the value of plan assets as deter-  
10                          mined under section 430(g)(3) after reduc-  
11                          tion under section 430(f), over

12                       “(B) 125 percent of the sum of the fund-  
13                       ing shortfall and the target normal cost deter-  
14                       mined under section 430 for such plan year.”.

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

17                   “(4) COORDINATION WITH SECTION 430.—In  
18                   the case of a qualified transfer, any assets so trans-  
19                   ferred shall not, for purposes of this section and sec-  
20                   tion 430, be treated as assets in the plan.”.

21       (e) EXCISE TAXES.—

22                   (1) IN GENERAL.—Subsections (a) and (b) of  
23                   section 4971 of such Code are amended to read as  
24                   follows:

1       “(a) INITIAL TAX.—If at any time during any taxable  
2 year an employer maintains a plan to which section 412  
3 applies, there is hereby imposed for the taxable year a tax  
4 equal to—

5           “(1) in the case of a single-employer plan, 10  
6 percent of the aggregate unpaid minimum required  
7 contributions for all plan years remaining unpaid as  
8 of the end of any plan year ending with or within  
9 the taxable year, and

10          “(2) in the case of a multiemployer plan, 5 per-  
11 cent of the accumulated funding deficiency deter-  
12 mined under section 431 as of the end of any plan  
13 year ending with or within the taxable year.

14       “(b) ADDITIONAL TAX.—If—

15           “(1) a tax is imposed under subsection (a)(1)  
16 on any unpaid required minimum contribution and  
17 such amount remains unpaid as of the close of the  
18 taxable period, or

19           “(2) a tax is imposed under subsection (a)(2)  
20 on any accumulated funding deficiency and the accu-  
21 mulated funding deficiency is not corrected within  
22 the taxable period,

23 there is hereby imposed a tax equal to 100 percent of the  
24 unpaid minimum required contribution or accumulated

1 funding deficiency, whichever is applicable, to the extent  
2 not so paid or corrected.”.

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

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

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

9 “(4) UNPAID MINIMUM REQUIRED CONTRIBU-  
10 TION.—

11 “(A) IN GENERAL.—The term ‘unpaid  
12 minimum required contribution’ means, with re-  
13 spect to any plan year, any minimum required  
14 contribution under section 430 for the plan  
15 year which is not paid on or before the due date  
16 (as determined under section 430(j)(1)) for the  
17 plan year.

18 “(B) ORDERING RULE.—Any payment to  
19 or under a plan for any plan year shall be allo-  
20 cated first to unpaid minimum required con-  
21 tributions for all preceding plan years on a  
22 first-in, first-out basis and then to the min-  
23 imum required contribution under section 430  
24 for the plan year.”.

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

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

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

8                 (B) by striking “section 412(m)” and in-  
9       serting “section 430(j)”.

10          (5) Section 4972(c)(7) of such Code is amended  
11       by striking “except to the extent that such contribu-  
12       tions exceed the full-funding limitation (as defined in  
13       section 412(c)(7), determined without regard to sub-  
14       paragraph (A)(i)(I) thereof)” and inserting “except,  
15       in the case of a multiemployer plan, to the extent  
16       that such contributions exceed the full-funding limi-  
17       tation (as defined in section 431(c)(6))”.

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

20                 (1) by striking “the accumulated funding defi-  
21       ciency (as defined in section 412(a))” in paragraph  
22       (2) and inserting “the minimum required contribu-  
23       tion determined under section 430, or the accumu-  
24       lated funding deficiency determined under section  
25       431,” and

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

2 “(B) the requirements for reasonable actu-  
3 arial assumptions under section 430(h)(1) or  
4 431(c)(3), whichever are applicable, have been  
5 complied with.”.

6 **SEC. 115. MODIFICATION OF TRANSITION RULE TO PEN-**  
7 **SION FUNDING REQUIREMENTS.**

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

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

11 (2) has not, in any plan year beginning after  
12 1995, merged with another plan (other than a plan  
13 sponsored by an employer that was in 1996 within  
14 the controlled group of the plan sponsor); and

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

18 the rules described in subsection (b) shall apply for any  
19 plan year beginning after December 31, 2007.

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

22 (1) For purposes of section 430(j)(3) of the In-  
23 ternal Revenue Code of 1986 and section 303(j)(3)  
24 of the Employee Retirement Income Security Act of

1       1974, the plan shall be treated as not having a fund-  
 2       ing shortfall for any plan year.

3           (2) For purposes of—

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

7               (B) determining any present value or mak-  
 8               ing any computation under section 412 of such  
 9               Code or section 302 of such Act,  
 10       the mortality table shall be the mortality table used  
 11       by the plan.

12           (3) Section 430(c)(5)(B) of such Code and sec-  
 13       tion 303(c)(5)(B) of such Act (relating to phase-in  
 14       of funding target for exemption from new shortfall  
 15       amortization base) shall each be applied by sub-  
 16       stituting “2012” for “2011” therein and by sub-  
 17       stituting for the table therein the following:

<b>In the case of a plan year beginning in calendar year:</b>	<b>The appli- cable per- centage is:</b>
2008 .....	90 percent
2009 .....	92 percent
2010 .....	94 percent
2011 .....	96 percent.

18       (c) DEFINITIONS.—Any term used in this section  
 19       which is also used in section 430 of such Code or section  
 20       303 of such Act shall have the meaning provided such  
 21       term in such section. If the same term has a different

1 meaning in such Code and such Act, such term shall, for  
2 purposes of this section, have the meaning provided by  
3 such Code when applied with respect to such Code and  
4 the meaning provided by such Act when applied with re-  
5 spect to such Act.

6 (d) SPECIAL RULE FOR 2006 AND 2007.—

7 (1) IN GENERAL.—Section 769(c)(3) of the Re-  
8 tirement Protection Act of 1994, as added by section  
9 201 of the Pension Funding Equity Act of 2004, is  
10 amended by striking “and 2005” and inserting “,  
11 2005, 2006, and 2007”.

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

15 (e) CONFORMING AMENDMENT.—

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

18 (2) The amendment made by paragraph (1)  
19 shall take effect on December 31, 2007, and shall  
20 apply to plan years beginning after such date.

1 **SEC. 116. RESTRICTIONS ON FUNDING OF NONQUALIFIED**  
2 **DEFERRED COMPENSATION PLANS BY EM-**  
3 **PLOYERS MAINTAINING UNDERFUNDED OR**  
4 **TERMINATED SINGLE-EMPLOYER PLANS.**

5 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—  
6 Subsection (b) of section 409A of the Internal Revenue  
7 Code of 1986 (providing rules relating to funding) is  
8 amended by redesignating paragraphs (3) and (4) as para-  
9 graphs (4) and (5), respectively, and by inserting after  
10 paragraph (2) the following new paragraph:

11 “(3) TREATMENT OF EMPLOYER’S DEFINED  
12 BENEFIT PLAN DURING RESTRICTED PERIOD.—

13 “(A) IN GENERAL.—If—

14 “(i) during any restricted period with  
15 respect to a single-employer defined benefit  
16 plan, assets are set aside or reserved (di-  
17 rectly or indirectly) in a trust (or other ar-  
18 rangement as determined by the Secretary)  
19 or transferred to such a trust or other ar-  
20 rangement for purposes of paying deferred  
21 compensation of an applicable covered em-  
22 ployee under a nonqualified deferred com-  
23 pensation plan of the plan sponsor or  
24 member of a controlled group which in-  
25 cludes the plan sponsor, or



1                   “(ii) a nonqualified deferred com-  
2                   pensation plan of the plan sponsor or  
3                   member of a controlled group which in-  
4                   cludes the plan sponsor provides that as-  
5                   sets will become restricted to the provision  
6                   of benefits under the plan in connection  
7                   with such restricted period (or other simi-  
8                   lar financial measure determined by the  
9                   Secretary) with respect to the defined ben-  
10                  efit plan, or assets are so restricted,  
11                  such assets shall, for purposes of section 83, be  
12                  treated as property transferred in connection  
13                  with the performance of services whether or not  
14                  such assets are available to satisfy claims of  
15                  general creditors. Clause (i) shall not apply with  
16                  respect to any assets which are so set aside be-  
17                  fore the restricted period with respect to the de-  
18                  fined benefit plan.

19                  “(B) RESTRICTED PERIOD.—For purposes  
20                  of this section, the term ‘restricted period’  
21                  means, with respect to any plan described in  
22                  subparagraph (A)—

23                         “(i) any period during which the plan  
24                         is in at-risk status (as defined in section  
25                         430(i));

1           “(ii) any period the plan sponsor is a  
2           debtor in a case under title 11, United  
3           States Code, or similar Federal or State  
4           law, and

5           “(iii) the 12-month period beginning  
6           on the date which is 6 months before the  
7           termination date of the plan if, as of the  
8           termination date, the plan is not sufficient  
9           for benefit liabilities (within the meaning  
10          of section 4041 of the Employee Retirement  
11          Income Security Act of 1974).

12          “(C) SPECIAL RULE FOR PAYMENT OF  
13          TAXES ON DEFERRED COMPENSATION IN-  
14          CLUDED IN INCOME.—If an employer provides  
15          directly or indirectly for the payment of any  
16          Federal, State, or local income taxes with re-  
17          spect to any compensation required to be in-  
18          cluded in gross income by reason of this para-  
19          graph—

20               “(i) interest shall be imposed under  
21               subsection (a)(1)(B)(i)(I) on the amount of  
22               such payment in the same manner as if  
23               such payment was part of the deferred  
24               compensation to which it relates,

1 “(ii) such payment shall be taken into  
2 account in determining the amount of the  
3 additional tax under subsection  
4 (a)(1)(B)(i)(II) in the same manner as if  
5 such payment was part of the deferred  
6 compensation to which it relates, and

7 “(iii) no deduction shall be allowed  
8 under this title with respect to such pay-  
9 ment.

10 “(D) OTHER DEFINITIONS.—For purposes  
11 of this section—

12 “(i) APPLICABLE COVERED EM-  
13 PLOYEE.—The term ‘applicable covered  
14 employee’ means any—

15 “(I) covered employee of a plan  
16 sponsor,

17 “(II) covered employee of a mem-  
18 ber of a controlled group which in-  
19 cludes the plan sponsor, and

20 “(III) former employee who was  
21 a covered employee at the time of ter-  
22 mination of employment with the plan  
23 sponsor or a member of a controlled  
24 group which includes the plan spon-  
25 sor.

1 “(ii) COVERED EMPLOYEE.—The term  
2 ‘covered employee’ means an individual de-  
3 scribed in section 162(m)(3) or an indi-  
4 vidual subject to the requirements of sec-  
5 tion 16(a) of the Securities Exchange Act  
6 of 1934.”.

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

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to transfers or other reservation  
14 of assets after the date of the enactment of this Act.

15 **TITLE II—FUNDING RULES FOR**  
16 **MULTIEMPLOYER DEFINED**  
17 **BENEFIT PLANS AND RE-**  
18 **LATED PROVISIONS**

19 **Subtitle A—Amendments to Em-**  
20 **ployee Retirement Income Secu-**  
21 **rity Act of 1974**

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

24 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
25 the Employee Retirement Income Security Act of 1974 (as

1 amended by this Act) is amended by inserting after section  
2 303 the following new section:

3 “MINIMUM FUNDING STANDARDS FOR MULTIEMPLOYER  
4 PLANS

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

8 “(1) except as provided in paragraph (2), the  
9 amount, determined as of the end of the plan year,  
10 equal to the excess (if any) of the total charges to  
11 the funding standard account of the plan for all plan  
12 years (beginning with the first plan year for which  
13 this part applies to the plan) over the total credits  
14 to such account for such years, and

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

18 “(b) FUNDING STANDARD ACCOUNT.—

19 “(1) ACCOUNT REQUIRED.—Each multiem-  
20 ployer plan to which this part applies shall establish  
21 and maintain a funding standard account. Such ac-  
22 count shall be credited and charged solely as pro-  
23 vided in this section.

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

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

3           “(B) the amounts necessary to amortize in  
4           equal annual installments (until fully amor-  
5           tized)—

6                   “(i) in the case of a plan which comes  
7                   into existence on or after January 1, 2008,  
8                   the unfunded past service liability under  
9                   the plan on the first day of the first plan  
10                  year to which this section applies, over a  
11                  period of 15 plan years,

12                   “(ii) separately, with respect to each  
13                   plan year, the net increase (if any) in un-  
14                   funded past service liability under the plan  
15                   arising from plan amendments adopted in  
16                   such year, over a period of 15 plan years,

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

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

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

6           “(D) the amount necessary to amortize in  
7           equal annual installments (until fully amor-  
8           tized) over a period of 5 plan years any amount  
9           credited to the funding standard account under  
10          section 302(b)(3)(D) (as in effect on the day  
11          before the date of the enactment of the Pension  
12          Protection Act of 2006), and

13          “(E) the amount necessary to amortize in  
14          equal annual installments (until fully amor-  
15          tized) over a period of 20 years the contribu-  
16          tions which would be required to be made under  
17          the plan but for the provisions of section  
18          302(c)(7)(A)(i)(I) (as in effect on the day be-  
19          fore the date of the enactment of the Pension  
20          Protection Act of 2006).

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

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

4           “(B) the amount necessary to amortize in  
5           equal annual installments (until fully amor-  
6           tized)—

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

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

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

21           “(C) the amount of the waived funding de-  
22           ficiency (within the meaning of section  
23           302(c)(3)) for the plan year, and

24           “(D) in the case of a plan year for which  
25           the accumulated funding deficiency is deter-



1           mined under the funding standard account if  
2           such plan year follows a plan year for which  
3           such deficiency was determined under the alter-  
4           native minimum funding standard under section  
5           305 (as in effect on the day before the date of  
6           the enactment of the Pension Protection Act of  
7           2006), the excess (if any) of any debit balance  
8           in the funding standard account (determined  
9           without regard to this subparagraph) over any  
10          debit balance in the alternative minimum fund-  
11          ing standard account.

12          “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-  
13          ORTIZED IN PLAN YEARS BEFORE 2008.—In the case  
14          of any amount amortized under section 302(b) (as  
15          in effect on the day before the date of the enactment  
16          of the Pension Protection Act of 2006) over any pe-  
17          riod beginning with a plan year beginning before  
18          2008, in lieu of the amortization described in para-  
19          graphs (2)(B) and (3)(B), such amount shall con-  
20          tinue to be amortized under such section as so in ef-  
21          fect.

22          “(5) COMBINING AND OFFSETTING AMOUNTS  
23          TO BE AMORTIZED.—Under regulations prescribed  
24          by the Secretary of the Treasury, amounts required

1 to be amortized under paragraph (2) or paragraph  
2 (3), as the case may be—

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

8 “(B) may be offset against amounts re-  
9 quired to be amortized under the other such  
10 paragraph, with the resulting amount to be am-  
11 ortized over a period determined on the basis of  
12 the remaining amortization periods for all items  
13 entering into whichever of the two amounts  
14 being offset is the greater.

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

21 “(7) SPECIAL RULES RELATING TO CHARGES  
22 AND CREDITS TO FUNDING STANDARD ACCOUNT.—  
23 For purposes of this part—

24 “(A) WITHDRAWAL LIABILITY.—Any  
25 amount received by a multiemployer plan in

1 payment of all or part of an employer's with-  
2 drawal liability under part 1 of subtitle E of  
3 title IV shall be considered an amount contrib-  
4 uted by the employer to or under the plan. The  
5 Secretary of the Treasury may prescribe by reg-  
6 ulation additional charges and credits to a mul-  
7 tiemployer plan's funding standard account to  
8 the extent necessary to prevent withdrawal li-  
9 ability payments from being unduly reflected as  
10 advance funding for plan liabilities.

11 “(B) ADJUSTMENTS WHEN A MULTITEM-  
12 PLOYER PLAN LEAVES REORGANIZATION.—If a  
13 multiemployer plan is not in reorganization in  
14 the plan year but was in reorganization in the  
15 immediately preceding plan year, any balance in  
16 the funding standard account at the close of  
17 such immediately preceding plan year—

18 “(i) shall be eliminated by an offset-  
19 ting credit or charge (as the case may be),  
20 but

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

1           The preceding sentence shall not apply to the  
2           extent of any accumulated funding deficiency  
3           under section 4243(a) as of the end of the last  
4           plan year that the plan was in reorganization.

5           “(C) PLAN PAYMENTS TO SUPPLEMENTAL  
6           PROGRAM OR WITHDRAWAL LIABILITY PAYMENT  
7           FUND.—Any amount paid by a plan during a  
8           plan year to the Pension Benefit Guaranty Cor-  
9           poration pursuant to section 4222 of this Act or  
10          to a fund exempt under section 501(c)(22) of  
11          the Internal Revenue Code of 1986 pursuant to  
12          section 4223 of this Act shall reduce the  
13          amount of contributions considered received by  
14          the plan for the plan year.

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

24          “(E) ELECTION FOR DEFERRAL OF  
25          CHARGE FOR PORTION OF NET EXPERIENCE

1           LOSS.—If an election is in effect under section  
2           302(b)(7)(F) (as in effect on the day before the  
3           date of the enactment of the Pension Protection  
4           Act of 2006) for any plan year, the funding  
5           standard account shall be charged in the plan  
6           year to which the portion of the net experience  
7           loss deferred by such election was deferred with  
8           the amount so deferred (and paragraph  
9           (2)(B)(iii) shall not apply to the amount so  
10          charged).

11           “(F)     FINANCIAL     ASSISTANCE.—Any  
12          amount of any financial assistance from the  
13          Pension Benefit Guaranty Corporation to any  
14          plan, and any repayment of such amount, shall  
15          be taken into account under this section and  
16          section 302 in such manner as is determined by  
17          the Secretary of the Treasury.

18           “(G) SHORT-TERM BENEFITS.—To the ex-  
19          tent that any plan amendment increases the un-  
20          funded past service liability under the plan by  
21          reason of an increase in benefits which are not  
22          payable as a life annuity but are payable under  
23          the terms of the plan for a period that does not  
24          exceed 14 years from the effective date of the  
25          amendment, paragraph (2)(B)(ii) shall be ap-

1           plied separately with respect to such increase in  
2           unfunded past service liability by substituting  
3           the number of years of the period during which  
4           such benefits are payable for ‘15’.

5           “(c) ADDITIONAL RULES.—

6                 “(1) DETERMINATIONS TO BE MADE UNDER  
7           FUNDING METHOD.—For purposes of this part, nor-  
8           mal costs, accrued liability, past service liabilities,  
9           and experience gains and losses shall be determined  
10          under the funding method used to determine costs  
11          under the plan.

12                 “(2) VALUATION OF ASSETS.—

13                         “(A) IN GENERAL.—For purposes of this  
14           part, the value of the plan’s assets shall be de-  
15           termined on the basis of any reasonable actu-  
16           arial method of valuation which takes into ac-  
17           count fair market value and which is permitted  
18           under regulations prescribed by the Secretary of  
19           the Treasury.

20                         “(B) ELECTION WITH RESPECT TO  
21           BONDS.—The value of a bond or other evidence  
22           of indebtedness which is not in default as to  
23           principal or interest may, at the election of the  
24           plan administrator, be determined on an amor-  
25           tized basis running from initial cost at purchase

1 to par value at maturity or earliest call date.  
2 Any election under this subparagraph shall be  
3 made at such time and in such manner as the  
4 Secretary of the Treasury shall by regulations  
5 provide, shall apply to all such evidences of in-  
6 debtedness, and may be revoked only with the  
7 consent of such Secretary.

8 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-  
9 SONABLE.—For purposes of this section, all costs, li-  
10 abilities, rates of interest, and other factors under  
11 the plan shall be determined on the basis of actu-  
12 arial assumptions and methods—

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

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

19 “(4) TREATMENT OF CERTAIN CHANGES AS EX-  
20 PERIENCE GAIN OR LOSS.—For purposes of this sec-  
21 tion, if—

22 “(A) a change in benefits under the Social  
23 Security Act or in other retirement benefits cre-  
24 ated under Federal or State law, or

1           “(B) a change in the definition of the term  
2           ‘wages’ under section 3121 of the Internal Rev-  
3           enue Code of 1986, or a change in the amount  
4           of such wages taken into account under regula-  
5           tions prescribed for purposes of section  
6           401(a)(5) of such Code,

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

10          “(5) FULL FUNDING.—If, as of the close of a  
11          plan year, a plan would (without regard to this para-  
12          graph) have an accumulated funding deficiency in  
13          excess of the full funding limitation—

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

16               “(B) all amounts described in subpara-  
17               graphs (B), (C), and (D) of subsection (b) (2)  
18               and subparagraph (B) of subsection (b)(3)  
19               which are required to be amortized shall be con-  
20               sidered fully amortized for purposes of such  
21               subparagraphs.

22          “(6) FULL-FUNDING LIMITATION.—

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



1 “(i) the accrued liability (including  
2 normal cost) under the plan (determined  
3 under the entry age normal funding meth-  
4 od if such accrued liability cannot be di-  
5 rectly calculated under the funding method  
6 used for the plan), over

7 “(ii) the lesser of—

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

10 “(II) the value of such assets de-  
11 termined under paragraph (2).

12 “(B) MINIMUM AMOUNT.—

13 “(i) IN GENERAL.—In no event shall  
14 the full-funding limitation determined  
15 under subparagraph (A) be less than the  
16 excess (if any) of—

17 “(I) 90 percent of the current li-  
18 ability of the plan (including the ex-  
19 pected increase in current liability due  
20 to benefits accruing during the plan  
21 year), over

22 “(II) the value of the plan’s as-  
23 sets determined under paragraph (2).

24 “(ii) ASSETS.—For purposes of clause  
25 (i), assets shall not be reduced by any

1 credit balance in the funding standard ac-  
2 count.

3 “(C) FULL FUNDING LIMITATION.—For  
4 purposes of this paragraph, unless otherwise  
5 provided by the plan, the accrued liability under  
6 a multiemployer plan shall not include benefits  
7 which are not nonforfeitable under the plan  
8 after the termination of the plan (taking into  
9 consideration section 411(d)(3) of the Internal  
10 Revenue Code of 1986).

11 “(D) CURRENT LIABILITY.—For purposes  
12 of this paragraph—

13 “(i) IN GENERAL.—The term ‘current  
14 liability’ means all liabilities to employees  
15 and their beneficiaries under the plan.

16 “(ii) TREATMENT OF UNPREDICTABLE  
17 CONTINGENT EVENT BENEFITS.—For pur-  
18 poses of clause (i), any benefit contingent  
19 on an event other than—

20 “(I) age, service, compensation,  
21 death, or disability, or

22 “(II) an event which is reason-  
23 ably and reliably predictable (as deter-  
24 mined by the Secretary of the Treas-  
25 ury),

1 shall not be taken into account until the  
2 event on which the benefit is contingent oc-  
3 curs.

4 “(iii) INTEREST RATE USED.—The  
5 rate of interest used to determine current  
6 liability under this paragraph shall be the  
7 rate of interest determined under subpara-  
8 graph (E).

9 “(iv) MORTALITY TABLES.—

10 “(I) COMMISSIONERS’ STANDARD  
11 TABLE.—In the case of plan years be-  
12 ginning before the first plan year to  
13 which the first tables prescribed under  
14 subclause (II) apply, the mortality  
15 table used in determining current li-  
16 ability under this paragraph shall be  
17 the table prescribed by the Secretary  
18 of the Treasury which is based on the  
19 prevailing commissioners’ standard  
20 table (described in section  
21 807(d)(5)(A) of the Internal Revenue  
22 Code of 1986) used to determine re-  
23 serves for group annuity contracts  
24 issued on January 1, 1993.

1                   “(II) SECRETARIAL AUTHOR-  
2                   ITY.—The Secretary of the Treasury  
3                   may by regulation prescribe for plan  
4                   years beginning after December 31,  
5                   1999, mortality tables to be used in  
6                   determining current liability under  
7                   this subsection. Such tables shall be  
8                   based upon the actual experience of  
9                   pension plans and projected trends in  
10                  such experience. In prescribing such  
11                  tables, such Secretary shall take into  
12                  account results of available inde-  
13                  pendent studies of mortality of indi-  
14                  viduals covered by pension plans.

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

18                  “(I) IN GENERAL.—The Sec-  
19                  retary of the Treasury shall establish  
20                  mortality tables which may be used  
21                  (in lieu of the tables under clause (iv))  
22                  to determine current liability under  
23                  this subsection for individuals who are  
24                  entitled to benefits under the plan on  
25                  account of disability. Such Secretary

1 shall establish separate tables for indi-  
2 viduals whose disabilities occur in  
3 plan years beginning before January  
4 1, 1995, and for individuals whose  
5 disabilities occur in plan years begin-  
6 ning on or after such date.

7 “(II) SPECIAL RULE FOR DIS-  
8 ABILITIES OCCURRING AFTER 1994.—  
9 In the case of disabilities occurring in  
10 plan years beginning after December  
11 31, 1994, the tables under subclause  
12 (I) shall apply only with respect to in-  
13 dividuals described in such subclause  
14 who are disabled within the meaning  
15 of title II of the Social Security Act  
16 and the regulations thereunder.

17 “(vi) PERIODIC REVIEW.—The Sec-  
18 retary of the Treasury shall periodically (at  
19 least every 5 years) review any tables in ef-  
20 fect under this subparagraph and shall, to  
21 the extent such Secretary determines nec-  
22 essary, by regulation update the tables to  
23 reflect the actual experience of pension  
24 plans and projected trends in such experi-  
25 ence.

1           “(E) REQUIRED CHANGE OF INTEREST  
2 RATE.—For purposes of determining a plan’s  
3 current liability for purposes of this para-  
4 graph—

5           “(i) IN GENERAL.—If any rate of in-  
6 terest used under the plan under sub-  
7 section (b)(6) to determine cost is not  
8 within the permissible range, the plan shall  
9 establish a new rate of interest within the  
10 permissible range.

11           “(ii) PERMISSIBLE RANGE.—For pur-  
12 poses of this subparagraph—

13           “(I) IN GENERAL.—Except as  
14 provided in subclause (II), the term  
15 ‘permissible range’ means a rate of in-  
16 terest which is not more than 5 per-  
17 cent above, and not more than 10 per-  
18 cent below, the weighted average of  
19 the rates of interest on 30-year Treas-  
20 ury securities during the 4-year period  
21 ending on the last day before the be-  
22 ginning of the plan year.

23           “(II) SECRETARIAL AUTHOR-  
24 ITY.—If the Secretary of the Treasury  
25 finds that the lowest rate of interest

1                   permissible under subclause (I) is un-  
2                   reasonably high, such Secretary may  
3                   prescribe a lower rate of interest, ex-  
4                   cept that such rate may not be less  
5                   than 80 percent of the average rate  
6                   determined under such subclause.

7                   “(iii)           ASSUMPTIONS.—Notwith-  
8                   standing paragraph (3)(A), the interest  
9                   rate used under the plan shall be—

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

13                   “(II) consistent with the assump-  
14                   tions which reflect the purchase rates  
15                   which would be used by insurance  
16                   companies to satisfy the liabilities  
17                   under the plan.

18                   “(7) ANNUAL VALUATION.—

19                   “(A) IN GENERAL.—For purposes of this  
20                   section, a determination of experience gains and  
21                   losses and a valuation of the plan’s liability  
22                   shall be made not less frequently than once  
23                   every year, except that such determination shall  
24                   be made more frequently to the extent required

1 in particular cases under regulations prescribed  
2 by the Secretary of the Treasury.

3 “(B) VALUATION DATE.—

4 “(i) CURRENT YEAR.—Except as pro-  
5 vided in clause (ii), the valuation referred  
6 to in subparagraph (A) shall be made as of  
7 a date within the plan year to which the  
8 valuation refers or within one month prior  
9 to the beginning of such year.

10 “(ii) USE OF PRIOR YEAR VALU-  
11 ATION.—The valuation referred to in sub-  
12 paragraph (A) may be made as of a date  
13 within the plan year prior to the year to  
14 which the valuation refers if, as of such  
15 date, the value of the assets of the plan are  
16 not less than 100 percent of the plan’s cur-  
17 rent liability (as defined in paragraph  
18 (6)(D) without regard to clause (iv) there-  
19 of).

20 “(iii) ADJUSTMENTS.—Information  
21 under clause (ii) shall, in accordance with  
22 regulations, be actuarially adjusted to re-  
23 flect significant differences in participants.

24 “(iv) LIMITATION.—A change in fund-  
25 ing method to use a prior year valuation,



1 as provided in clause (ii), may not be made  
2 unless as of the valuation date within the  
3 prior plan year, the value of the assets of  
4 the plan are not less than 125 percent of  
5 the plan's current liability (as defined in  
6 paragraph (6)(D) without regard to clause  
7 (iv) thereof).

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

18 “(d) EXTENSION OF AMORTIZATION PERIODS FOR  
19 MULTIEMPLOYER PLANS.—

20 “(1) AUTOMATIC EXTENSION UPON APPLICA-  
21 TION BY CERTAIN PLANS.—

22 “(A) IN GENERAL.—If the plan sponsor of  
23 a multiemployer plan—

24 “(i) submits to the Secretary of the  
25 Treasury an application for an extension of

1 the period of years required to amortize  
2 any unfunded liability described in any  
3 clause of subsection (b)(2)(B) or described  
4 in subsection (b)(4), and

5 “(ii) includes with the application a  
6 certification by the plan’s actuary de-  
7 scribed in subparagraph (B),

8 the Secretary of the Treasury shall extend the  
9 amortization period for the period of time (not  
10 in excess of 5 years) specified in the applica-  
11 tion. Such extension shall be in addition to any  
12 extension under paragraph (2).

13 “(B) CRITERIA.—A certification with re-  
14 spect to a multiemployer plan is described in  
15 this subparagraph if the plan’s actuary certifies  
16 that, based on reasonable assumptions—

17 “(i) absent the extension under sub-  
18 paragraph (A), the plan would have an ac-  
19 cumulated funding deficiency in the cur-  
20 rent plan year or any of the 9 succeeding  
21 plan years,

22 “(ii) the plan sponsor has adopted a  
23 plan to improve the plan’s funding status,

24 “(iii) the plan is projected to have suf-  
25 ficient assets to timely pay expected bene-

1           fits and anticipated expenditures over the  
2           amortization period as extended, and

3                   “(iv) the notice required under para-  
4           graph (3)(A) has been provided.

5                   “(C) TERMINATION.—The preceding provi-  
6           sions of this paragraph shall not apply with re-  
7           spect to any application submitted after Decem-  
8           ber 31, 2014.

9                   “(2) ALTERNATIVE EXTENSION.—

10                   “(A) IN GENERAL.—If the plan sponsor of  
11           a multiemployer plan submits to the Secretary  
12           of the Treasury an application for an extension  
13           of the period of years required to amortize any  
14           unfunded liability described in any clause of  
15           subsection (b)(2)(B) or described in subsection  
16           (b)(4), the Secretary of the Treasury may ex-  
17           tend the amortization period for a period of  
18           time (not in excess of 10 years reduced by the  
19           number of years of any extension under para-  
20           graph (1) with respect to such unfunded liabil-  
21           ity) if the Secretary of the Treasury makes the  
22           determination described in subparagraph (B).  
23           Such extension shall be in addition to any ex-  
24           tension under paragraph (1).

1           “(B) DETERMINATION.—The Secretary of  
2           the Treasury may grant an extension under  
3           subparagraph (A) if such Secretary determines  
4           that—

5                   “(i) such extension would carry out  
6                   the purposes of this Act and would provide  
7                   adequate protection for participants under  
8                   the plan and their beneficiaries, and

9                   “(ii) the failure to permit such exten-  
10                  sion would—

11                   “(I) result in a substantial risk  
12                   to the voluntary continuation of the  
13                   plan, or a substantial curtailment of  
14                   pension benefit levels or employee  
15                   compensation, and

16                   “(II) be adverse to the interests  
17                   of plan participants in the aggregate.

18           “(C) ACTION BY SECRETARY OF THE  
19           TREASURY.—The Secretary of the Treasury  
20           shall act upon any application for an extension  
21           under this paragraph within 180 days of the  
22           submission of such application. If such Sec-  
23           retary rejects the application for an extension  
24           under this paragraph, such Secretary shall pro-  
25           vide notice to the plan detailing the specific rea-

1           sons for the rejection, including references to  
2           the criteria set forth above.

3           “(3) ADVANCE NOTICE.—

4                   “(A) IN GENERAL.—The Secretary of the  
5           Treasury shall, before granting an extension  
6           under this subsection, require each applicant to  
7           provide evidence satisfactory to such Secretary  
8           that the applicant has provided notice of the fil-  
9           ing of the application for such extension to each  
10          affected party (as defined in section  
11          4001(a)(21)) with respect to the affected plan.  
12          Such notice shall include a description of the  
13          extent to which the plan is funded for benefits  
14          which are guaranteed under title IV and for  
15          benefit liabilities.

16                   “(B) CONSIDERATION OF RELEVANT IN-  
17          FORMATION.—The Secretary of the Treasury  
18          shall consider any relevant information provided  
19          by a person to whom notice was given under  
20          paragraph (1).”.

21          (b) SHORTFALL FUNDING METHOD.—

22                   (1) IN GENERAL.—A multiemployer plan meet-  
23          ing the criteria of paragraph (2) may adopt, use, or  
24          cease using, the shortfall funding method and such  
25          adoption, use, or cessation of use of such method,

1 shall be deemed approved by the Secretary of the  
2 Treasury under section 302(d)(1) of the Employee  
3 Retirement Income Security Act of 1974 and section  
4 412(d)(1) of the Internal Revenue Code of 1986.

5 (2) CRITERIA.—A multiemployer pension plan  
6 meets the criteria of this clause if—

7 (A) the plan has not used the shortfall  
8 funding method during the 5-year period ending  
9 on the day before the date the plan is to use  
10 the method under paragraph (1); and

11 (B) the plan is not operating under an am-  
12 ortization period extension under section 304(d)  
13 of such Act and did not operate under such an  
14 extension during such 5-year period.

15 (3) SHORTFALL FUNDING METHOD DEFINED.—  
16 For purposes of this subsection, the term “shortfall  
17 funding method” means the shortfall funding meth-  
18 od described in Treasury Regulations section  
19 1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

20 (4) BENEFIT RESTRICTIONS TO APPLY.—The  
21 benefit restrictions under section 302(c)(7) of such  
22 Act and section 412(c)(7) of such Code shall apply  
23 during any period a multiemployer plan is on the  
24 shortfall funding method pursuant to this sub-  
25 section.

1           (5) USE OF SHORTFALL METHOD NOT TO PRE-  
2       CLUE OTHER OPTIONS.—Nothing in this subsection  
3       shall be construed to affect a multiemployer plan’s  
4       ability to adopt the shortfall funding method with  
5       the Secretary’s permission under otherwise applica-  
6       ble regulations or to affect a multiemployer plan’s  
7       right to change funding methods, with or without  
8       the Secretary’s consent, as provided in applicable  
9       rules and regulations.

10       (c) CONFORMING AMENDMENTS.—

11           (1) Section 301 of the Employee Retirement In-  
12       come Security Act of 1974 (29 U.S.C. 1081) is  
13       amended by striking subsection (d).

14           (2) The table of contents in section 1 of such  
15       Act (as amended by this Act) is amended by insert-  
16       ing after the item relating to section 303 the fol-  
17       lowing new item:

“Sec. 304. Minimum funding standards for multiemployer plans.”.

18       (d) EFFECTIVE DATE.—

19           (1) IN GENERAL.—The amendments made by  
20       this section shall apply to plan years beginning after  
21       2007.

22           (2) SPECIAL RULE FOR CERTAIN AMORTIZATION  
23       EXTENSIONS.—If the Secretary of the Treasury  
24       grants an extension under section 304 of the Em-  
25       ployee Retirement Income Security Act of 1974 and

1 section 412(e) of the Internal Revenue Code of 1986  
2 with respect to any application filed with the Sec-  
3 retary of the Treasury on or before June 30, 2005,  
4 the extension (and any modification thereof) shall be  
5 applied and administered under the rules of such  
6 sections as in effect before the enactment of this  
7 Act, including the use of the rate of interest deter-  
8 mined under section 6621(b) of such Code.

9 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
10 **PLOYER PLANS IN ENDANGERED OR CRIT-**  
11 **ICAL STATUS.**

12 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
13 the Employee Retirement Income Security Act of 1974 (as  
14 amended by the preceding provisions of this Act) is  
15 amended by inserting after section 304 the following new  
16 section:

17 “ADDITIONAL FUNDING RULES FOR MULTIEmployer  
18 PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

19 “SEC. 305. (a) GENERAL RULE.—For purposes of  
20 this part, in the case of a multiemployer plan in effect  
21 on July 16, 2006—

22 “(1) if the plan is in endangered status—

23 “(A) the plan sponsor shall adopt and im-  
24 plement a funding improvement plan in accord-  
25 ance with the requirements of subsection (c),  
26 and



1 “(B) the requirements of subsection (d)  
2 shall apply during the funding plan adoption  
3 period and the funding improvement period,  
4 and

5 “(2) if the plan is in critical status—

6 “(A) the plan sponsor shall adopt and im-  
7 plement a rehabilitation plan in accordance with  
8 the requirements of subsection (e), and

9 “(B) the requirements of subsection (f)  
10 shall apply during the rehabilitation plan adop-  
11 tion period and the rehabilitation period.

12 “(b) DETERMINATION OF ENDANGERED AND CRIT-  
13 ICAL STATUS.—For purposes of this section—

14 “(1) ENDANGERED STATUS.—A multiemployer  
15 plan is in endangered status for a plan year if, as  
16 determined by the plan actuary under paragraph  
17 (3), the plan is not in critical status for the plan  
18 year and, as of the beginning of the plan year, ei-  
19 ther—

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

22 “(B) the plan has an accumulated funding  
23 deficiency for such plan year, or is projected to  
24 have such an accumulated funding deficiency  
25 for any of the 6 succeeding plan years, taking

1           into account any extension of amortization peri-  
2           ods under section 304(d).

3       For purposes of this section, a plan shall be treated  
4       as in seriously endangered status for a plan year if  
5       the plan is described in both subparagraphs (A) and  
6       (B).

7           “(2) CRITICAL STATUS.—A multiemployer plan  
8       is in critical status for a plan year if, as determined  
9       by the plan actuary under paragraph (3), the plan  
10      is described in 1 or more of the following subpara-  
11      graphs as of the beginning of the plan year:

12           “(A) A plan is described in this subpara-  
13      graph if—

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

16           “(ii) the sum of—

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

19           “(II) the present value of the  
20      reasonably anticipated employer con-  
21      tributions for the current plan year  
22      and each of the 6 succeeding plan  
23      years, assuming that the terms of all  
24      collective bargaining agreements pur-  
25      suant to which the plan is maintained

1                   for the current plan year continue in  
2                   effect for succeeding plan years,  
3                   is less than the present value of all non-  
4                   forfeitable benefits projected to be payable  
5                   under the plan during the current plan  
6                   year and each of the 6 succeeding plan  
7                   years (plus administrative expenses for  
8                   such plan years).

9                   “(B) A plan is described in this subpara-  
10                  graph if—

11                   “(i) the plan has an accumulated  
12                   funding deficiency for the current plan  
13                   year, not taking into account any extension  
14                   of amortization periods under section  
15                   304(d), or

16                   “(ii) the plan is projected to have an  
17                   accumulated funding deficiency for any of  
18                   the 3 succeeding plan years (4 succeeding  
19                   plan years if the funded percentage of the  
20                   plan is 65 percent or less), not taking into  
21                   account any extension of amortization peri-  
22                   ods under section 304(d).

23                   “(C) A plan is described in this subpara-  
24                  graph if—

1 “(i)(I) the plan’s normal cost for the  
2 current plan year, plus interest (deter-  
3 mined at the rate used for determining  
4 costs under the plan) for the current plan  
5 year on the amount of unfunded benefit li-  
6 abilities under the plan as of the last date  
7 of the preceding plan year, exceeds

8 “(II) the present value of the reason-  
9 ably anticipated employer and employee  
10 contributions for the current plan year,

11 “(ii) the present value, as of the be-  
12 ginning of the current plan year, of non-  
13 forfeitable benefits of inactive participants  
14 is greater than the present value of non-  
15 forfeitable benefits of active participants,  
16 and

17 “(iii) the plan has an accumulated  
18 funding deficiency for the current plan  
19 year, or is projected to have such a defi-  
20 ciency for any of the 4 succeeding plan  
21 years, not taking into account any exten-  
22 sion of amortization periods under section  
23 304(d).

24 “(D) A plan is described in this subpara-  
25 graph if the sum of—

1 “(i) the fair market value of plan as-  
2 sets, plus

3 “(ii) the present value of the reason-  
4 ably anticipated employer contributions for  
5 the current plan year and each of the 4  
6 succeeding plan years, assuming that the  
7 terms of all collective bargaining agree-  
8 ments pursuant to which the plan is main-  
9 tained for the current plan year continue  
10 in effect for succeeding plan years,

11 is less than the present value of all benefits pro-  
12 jected to be payable under the plan during the  
13 current plan year and each of the 4 succeeding  
14 plan years (plus administrative expenses for  
15 such plan years).

16 “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
17 ARY.—

18 “(A) IN GENERAL.—Not later than the  
19 90th day of each plan year of a multiemployer  
20 plan, the plan actuary shall certify to the Sec-  
21 retary of the Treasury and to the plan spon-  
22 sor—

23 “(i) whether or not the plan is in en-  
24 dangered status for such plan year and

1           whether or not the plan is or will be in  
2           critical status for such plan year, and

3           “(ii) in the case of a plan which is in  
4           a funding improvement or rehabilitation  
5           period, whether or not the plan is making  
6           the scheduled progress in meeting the re-  
7           quirements of its funding improvement or  
8           rehabilitation plan.

9           “(B) ACTUARIAL PROJECTIONS OF ASSETS  
10          AND LIABILITIES.—

11           “(i) IN GENERAL.—In making the de-  
12           terminations and projections under this  
13           subsection, the plan actuary shall make  
14           projections required for the current and  
15           succeeding plan years of the current value  
16           of the assets of the plan and the present  
17           value of all liabilities to participants and  
18           beneficiaries under the plan for the current  
19           plan year as of the beginning of such year.  
20           The actuary’s projections shall be based on  
21           reasonable actuarial estimates, assump-  
22           tions, and methods that, except as pro-  
23           vided in clause (iii), offer the actuary’s  
24           best estimate of anticipated experience  
25           under the plan. The projected present

1 value of liabilities as of the beginning of  
2 such year shall be determined based on the  
3 most recent of either—

4 “(I) the actuarial statement re-  
5 quired under section 103(d) with re-  
6 spect to the most recently filed annual  
7 report, or

8 “(II) the actuarial valuation for  
9 the preceding plan year.

10 “(ii) DETERMINATIONS OF FUTURE  
11 CONTRIBUTIONS.—Any actuarial projection  
12 of plan assets shall assume—

13 “(I) reasonably anticipated em-  
14 ployer contributions for the current  
15 and succeeding plan years, assuming  
16 that the terms of the one or more col-  
17 lective bargaining agreements pursu-  
18 ant to which the plan is maintained  
19 for the current plan year continue in  
20 effect for succeeding plan years, or

21 “(II) that employer contributions  
22 for the most recent plan year will con-  
23 tinue indefinitely, but only if the plan  
24 actuary determines there have been no  
25 significant demographic changes that

1 would make such assumption unrea-  
2 sonable.

3 “(iii) PROJECTED INDUSTRY ACTIV-  
4 ITY.—Any projection of activity in the in-  
5 dustry or industries covered by the plan,  
6 including future covered employment and  
7 contribution levels, shall be based on infor-  
8 mation provided by the plan sponsor,  
9 which shall act reasonably and in good  
10 faith.

11 “(C) PENALTY FOR FAILURE TO SECURE  
12 TIMELY ACTUARIAL CERTIFICATION.—Any fail-  
13 ure of the plan’s actuary to certify the plan’s  
14 status under this subsection by the date speci-  
15 fied in subparagraph (A) shall be treated for  
16 purposes of section 502(c)(2) as a failure or re-  
17 fusar by the plan administrator to file the an-  
18 nual report required to be filed with the Sec-  
19 retary under section 101(b)(4).

20 “(D) NOTICE.—

21 “(i) IN GENERAL.—In any case in  
22 which it is certified under subparagraph  
23 (A) that a multiemployer plan is or will be  
24 in endangered or critical status for a plan  
25 year, the plan sponsor shall, not later than



1 30 days after the date of the certification,  
2 provide notification of the endangered or  
3 critical status to the participants and bene-  
4 ficiaries, the bargaining parties, the Pen-  
5 sion Benefit Guaranty Corporation, and  
6 the Secretary.

7 “(ii) PLANS IN CRITICAL STATUS.—If  
8 it is certified under subparagraph (A) that  
9 a multiemployer plan is or will be in crit-  
10 ical status, the plan sponsor shall include  
11 in the notice under clause (i) an expla-  
12 nation of the possibility that—

13 “(I) adjustable benefits (as de-  
14 fined in subsection (e)(8)) may be re-  
15 duced, and

16 “(II) such reductions may apply  
17 to participants and beneficiaries  
18 whose benefit commencement date is  
19 on or after the date such notice is  
20 provided for the first plan year in  
21 which the plan is in critical status.

22 “(iii) MODEL NOTICE.—The Secretary  
23 shall prescribe a model notice that a multi-  
24 employer plan may use to satisfy the re-  
25 quirements under clause (ii).

1       “(c) FUNDING IMPROVEMENT PLAN MUST BE  
2 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED  
3 STATUS.—

4           “(1) IN GENERAL.—In any case in which a  
5 multiemployer plan is in endangered status for a  
6 plan year, the plan sponsor, in accordance with this  
7 subsection—

8           “(A) shall adopt a funding improvement  
9 plan not later than 240 days following the re-  
10 quired date for the actuarial certification of en-  
11 dangered status under subsection (b)(3)(A),  
12 and

13           “(B) within 30 days after the adoption of  
14 the funding improvement plan—

15           “(i) shall provide to the bargaining  
16 parties 1 or more schedules showing re-  
17 vised benefit structures, revised contribu-  
18 tion structures, or both, which, if adopted,  
19 may reasonably be expected to enable the  
20 multiemployer plan to meet the applicable  
21 benchmarks in accordance with the fund-  
22 ing improvement plan, including—

23           “(I) one proposal for reductions  
24 in the amount of future benefit accru-  
25 als necessary to achieve the applicable

1 benchmarks, assuming no amend-  
2 ments increasing contributions under  
3 the plan (other than amendments in-  
4 creasing contributions necessary to  
5 achieve the applicable benchmarks  
6 after amendments have reduced fu-  
7 ture benefit accruals to the maximum  
8 extent permitted by law), and

9 “(II) one proposal for increases  
10 in contributions under the plan nec-  
11 essary to achieve the applicable bench-  
12 marks, assuming no amendments re-  
13 ducing future benefit accruals under  
14 the plan, and

15 “(ii) may, if the plan sponsor deems  
16 appropriate, prepare and provide the bar-  
17 gaining parties with additional information  
18 relating to contribution rates or benefit re-  
19 ductions, alternative schedules, or other in-  
20 formation relevant to achieving the appli-  
21 cable benchmarks in accordance with the  
22 funding improvement plan.

23 For purposes of this section, the term ‘applica-  
24 ble benchmarks’ means the requirements appli-

1 cable to the multiemployer plan under para-  
2 graph (3) (as modified by paragraph (5)).

3 “(2) EXCEPTION FOR YEARS AFTER PROCESS  
4 BEGINS.—Paragraph (1) shall not apply to a plan  
5 year if such year is in a funding plan adoption pe-  
6 riod or funding improvement period by reason of the  
7 plan being in endangered status for a preceding plan  
8 year. For purposes of this section, such preceding  
9 plan year shall be the initial determination year with  
10 respect to the funding improvement plan to which it  
11 relates.

12 “(3) FUNDING IMPROVEMENT PLAN.—For pur-  
13 poses of this section—

14 “(A) IN GENERAL.—A funding improve-  
15 ment plan is a plan which consists of the ac-  
16 tions, including options or a range of options to  
17 be proposed to the bargaining parties, formu-  
18 lated to provide, based on reasonably antici-  
19 pated experience and reasonable actuarial as-  
20 sumptions, for the attainment by the plan dur-  
21 ing the funding improvement period of the fol-  
22 lowing requirements:

23 “(i) INCREASE IN PLAN’S FUNDING  
24 PERCENTAGE.—The plan’s funded percent-  
25 age as of the close of the funding improve-

1                   ment period equals or exceeds a percentage  
2                   equal to the sum of—

3                   “(I) such percentage as of the  
4                   beginning of such period, plus

5                   “(II) 33 percent of the difference  
6                   between 100 percent and the percent-  
7                   age under subclause (I).

8                   “(ii) AVOIDANCE OF ACCUMULATED  
9                   FUNDING DEFICIENCIES.—No accumulated  
10                  funding deficiency for any plan year during  
11                  the funding improvement period (taking  
12                  into account any extension of amortization  
13                  periods under section 304(d)).

14                  “(B) SERIOUSLY ENDANGERED PLANS.—  
15                  In the case of a plan in seriously endangered  
16                  status, except as provided in paragraph (5),  
17                  subparagraph (A)(i)(II) shall be applied by sub-  
18                  stituting ‘20 percent’ for ‘33 percent’.

19                  “(4) FUNDING IMPROVEMENT PERIOD.—For  
20                  purposes of this section—

21                  “(A) IN GENERAL.—The funding improve-  
22                  ment period for any funding improvement plan  
23                  adopted pursuant to this subsection is the 10-  
24                  year period beginning on the first day of the

1 first plan year of the multiemployer plan begin-  
2 ning after the earlier of—

3 “(i) the second anniversary of the  
4 date of the adoption of the funding im-  
5 provement plan, or

6 “(ii) the expiration of the collective  
7 bargaining agreements in effect on the due  
8 date for the actuarial certification of en-  
9 dangered status for the initial determina-  
10 tion year under subsection (b)(3)(A) and  
11 covering, as of such due date, at least 75  
12 percent of the active participants in such  
13 multiemployer plan.

14 “(B) SERIOUSLY ENDANGERED PLANS.—  
15 In the case of a plan in seriously endangered  
16 status, except as provided in paragraph (5),  
17 subparagraph (A) shall be applied by sub-  
18 stituting ‘15-year period’ for ‘10-year period’.

19 “(C) COORDINATION WITH CHANGES IN  
20 STATUS.—

21 “(i) PLANS NO LONGER IN ENDAN-  
22 GERED STATUS.—If the plan’s actuary cer-  
23 tifies under subsection (b)(3)(A) for a plan  
24 year in any funding plan adoption period  
25 or funding improvement period that the

1 plan is no longer in endangered status and  
2 is not in critical status, the funding plan  
3 adoption period or funding improvement  
4 period, whichever is applicable, shall end as  
5 of the close of the preceding plan year.

6 “(ii) PLANS IN CRITICAL STATUS.—If  
7 the plan’s actuary certifies under sub-  
8 section (b)(3)(A) for a plan year in any  
9 funding plan adoption period or funding  
10 improvement period that the plan is in  
11 critical status, the funding plan adoption  
12 period or funding improvement period,  
13 whichever is applicable, shall end as of the  
14 close of the plan year preceding the first  
15 plan year in the rehabilitation period with  
16 respect to such status.

17 “(D) PLANS IN ENDANGERED STATUS AT  
18 END OF PERIOD.—If the plan’s actuary certifies  
19 under subsection (b)(3)(A) for the first plan  
20 year following the close of the period described  
21 in subparagraph (A) that the plan is in endan-  
22 gered status, the provisions of this subsection  
23 and subsection (d) shall be applied as if such  
24 first plan year were an initial determination  
25 year, except that the plan may not be amended

1 in a manner inconsistent with the funding im-  
2 provement plan in effect for the preceding plan  
3 year until a new funding improvement plan is  
4 adopted.

5 “(5) SPECIAL RULES FOR SERIOUSLY ENDAN-  
6 GERED PLANS MORE THAN 70 PERCENT FUNDED.—

7 “(A) IN GENERAL.—If the funded percent-  
8 age of a plan in seriously endangered status  
9 was more than 70 percent as of the beginning  
10 of the initial determination year—

11 “(i) paragraphs (3)(B) and (4)(B)  
12 shall apply only if the plan’s actuary cer-  
13 tifies, within 30 days after the certification  
14 under subsection (b)(3)(A) for the initial  
15 determination year, that, based on the  
16 terms of the plan and the collective bar-  
17 gaining agreements in effect at the time of  
18 such certification, the plan is not projected  
19 to meet the requirements of paragraph  
20 (3)(A) (without regard to paragraphs  
21 (3)(B) and (4)(B)), and

22 “(ii) if there is a certification under  
23 clause (i), the plan may, in formulating its  
24 funding improvement plan, only take into  
25 account the rules of paragraph (3)(B) and



1           (4)(B) for plan years in the funding im-  
2           provement period beginning on or before  
3           the date on which the last of the collective  
4           bargaining agreements described in para-  
5           graph (4)(A)(ii) expires.

6           “(B) SPECIAL RULE AFTER EXPIRATION  
7           OF AGREEMENTS.—Notwithstanding subpara-  
8           graph (A)(ii), if, for any plan year ending after  
9           the date described in subparagraph (A)(ii), the  
10          plan actuary certifies (at the time of the annual  
11          certification under subsection (b)(3)(A) for such  
12          plan year) that, based on the terms of the plan  
13          and collective bargaining agreements in effect  
14          at the time of that annual certification, the plan  
15          is not projected to be able to meet the require-  
16          ments of paragraph (3)(A) (without regard to  
17          paragraphs (3)(B) and (4)(B)), paragraphs  
18          (3)(B) and (4)(B) shall continue to apply for  
19          such year.

20          “(6) UPDATES TO FUNDING IMPROVEMENT  
21          PLAN AND SCHEDULES.—

22                 “(A) FUNDING IMPROVEMENT PLAN.—The  
23          plan sponsor shall annually update the funding  
24          improvement plan and shall file the update with  
25          the plan’s annual report under section 104.

1           “(B) SCHEDULES.—The plan sponsor shall  
2           annually update any schedule of contribution  
3           rates provided under this subsection to reflect  
4           the experience of the plan.

5           “(C) DURATION OF SCHEDULE.—A sched-  
6           ule of contribution rates provided by the plan  
7           sponsor and relied upon by bargaining parties  
8           in negotiating a collective bargaining agreement  
9           shall remain in effect for the duration of that  
10          collective bargaining agreement.

11          “(7) IMPOSITION OF DEFAULT SCHEDULE  
12          WHERE FAILURE TO ADOPT FUNDING IMPROVEMENT  
13          PLAN.—

14               “(A) IN GENERAL.—If—

15                   “(i) a collective bargaining agreement  
16                   providing for contributions under a multi-  
17                   employer plan that was in effect at the  
18                   time the plan entered endangered status  
19                   expires, and

20                   “(ii) after receiving one or more  
21                   schedules from the plan sponsor under  
22                   paragraph (1)(B), the bargaining parties  
23                   with respect to such agreement fail to  
24                   agree on changes to contribution or benefit  
25                   schedules necessary to meet the applicable

1 benchmarks in accordance with the fund-  
2 ing improvement plan,  
3 the plan sponsor shall implement the schedule  
4 described in paragraph (1)(B)(i)(I) beginning  
5 on the date specified in subparagraph (B).

6 “(B) DATE OF IMPLEMENTATION.—The  
7 date specified in this subparagraph is the ear-  
8 lier of the date—

9 “(i) on which the Secretary certifies  
10 that the parties are at an impasse, or

11 “(ii) which is 180 days after the date  
12 on which the collective bargaining agree-  
13 ment described in subparagraph (A) ex-  
14 pires.

15 “(8) FUNDING PLAN ADOPTION PERIOD.—For  
16 purposes of this section, the term ‘funding plan  
17 adoption period’ means the period beginning on the  
18 date of the certification under subsection (b)(3)(A)  
19 for the initial determination year and ending on the  
20 day before the first day of the funding improvement  
21 period.

22 “(d) RULES FOR OPERATION OF PLAN DURING  
23 ADOPTION AND IMPROVEMENT PERIODS.—

24 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-  
25 RIOD.—During the funding plan adoption period—

1           “(A) the plan sponsor may not accept a  
2           collective bargaining agreement or participation  
3           agreement with respect to the multiemployer  
4           plan that provides for—

5                   “(i) a reduction in the level of con-  
6                   tributions for any participants,

7                   “(ii) a suspension of contributions  
8                   with respect to any period of service, or

9                   “(iii) any new direct or indirect exclu-  
10                  sion of younger or newly hired employees  
11                  from plan participation,

12               “(B) no amendment of the plan which in-  
13               creases the liabilities of the plan by reason of  
14               any increase in benefits, any change in the ac-  
15               crual of benefits, or any change in the rate at  
16               which benefits become nonforfeitable under the  
17               plan may be adopted unless the amendment is  
18               required as a condition of qualification under  
19               part I of subchapter D of chapter 1 of the In-  
20               ternal Revenue Code of 1986 or to comply with  
21               other applicable law, and

22               “(C) in the case of a plan in seriously en-  
23               dangered status, the plan sponsor shall take all  
24               reasonable actions which are consistent with the  
25               terms of the plan and applicable law and which

1 are expected, based on reasonable assumptions,  
2 to achieve—

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

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

8 Actions under subparagraph (C) include applications  
9 for extensions of amortization periods under section  
10 304(d), use of the shortfall funding method in mak-  
11 ing funding standard account computations, amend-  
12 ments to the plan’s benefit structure, reductions in  
13 future benefit accruals, and other reasonable actions  
14 consistent with the terms of the plan and applicable  
15 law.

16 “(2) COMPLIANCE WITH FUNDING IMPROVE-  
17 MENT PLAN.—

18 “(A) IN GENERAL.—A plan may not be  
19 amended after the date of the adoption of a  
20 funding improvement plan so as to be incon-  
21 sistent with the funding improvement plan.

22 “(B) NO REDUCTION IN CONTRIBU-  
23 TIONS.—A plan sponsor may not during any  
24 funding improvement period accept a collective  
25 bargaining agreement or participation agree-

1           ment with respect to the multiemployer plan  
2           that provides for—

3                   “(i) a reduction in the level of con-  
4                   tributions for any participants,

5                   “(ii) a suspension of contributions  
6                   with respect to any period of service, or

7                   “(iii) any new direct or indirect exclu-  
8                   sion of younger or newly hired employees  
9                   from plan participation.

10           “(C) SPECIAL RULES FOR BENEFIT IN-  
11           CREASES.—A plan may not be amended after  
12           the date of the adoption of a funding improve-  
13           ment plan so as to increase benefits, including  
14           future benefit accruals, unless the plan actuary  
15           certifies that the benefit increase is consistent  
16           with the funding improvement plan and is paid  
17           for out of contributions not required by the  
18           funding improvement plan to meet the applica-  
19           ble benchmark in accordance with the schedule  
20           contemplated in the funding improvement plan.

21           “(e) REHABILITATION PLAN MUST BE ADOPTED  
22           FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

23                   “(1) IN GENERAL.—In any case in which a  
24                   multiemployer plan is in critical status for a plan

1       year, the plan sponsor, in accordance with this sub-  
2       section—

3               “(A) shall adopt a rehabilitation plan not  
4               later than 240 days following the required date  
5               for the actuarial certification of critical status  
6               under subsection (b)(3)(A), and

7               “(B) within 30 days after the adoption of  
8               the rehabilitation plan—

9                       “(i) shall provide to the bargaining  
10                      parties 1 or more schedules showing re-  
11                      vised benefit structures, revised contribu-  
12                      tion structures, or both, which, if adopted,  
13                      may reasonably be expected to enable the  
14                      multiemployer plan to emerge from critical  
15                      status in accordance with the rehabilitation  
16                      plan, and

17                      “(ii) may, if the plan sponsor deems  
18                      appropriate, prepare and provide the bar-  
19                      gaining parties with additional information  
20                      relating to contribution rates or benefit re-  
21                      ductions, alternative schedules, or other in-  
22                      formation relevant to emerging from crit-  
23                      ical status in accordance with the rehabili-  
24                      tation plan.

1       The schedule or schedules described in subparagraph  
2       (B)(i) shall reflect reductions in future benefit ac-  
3       cruals and adjustable benefits, and increases in con-  
4       tributions, that the plan sponsor determines are rea-  
5       sonably necessary to emerge from critical status.  
6       One schedule shall be designated as the default  
7       schedule and such schedule shall assume that there  
8       are no increases in contributions under the plan  
9       other than the increases necessary to emerge from  
10      critical status after future benefit accruals and other  
11      benefits (other than benefits the reduction or elimi-  
12      nation of which are not permitted under section  
13      204(g)) have been reduced to the maximum extent  
14      permitted by law.

15           “(2) EXCEPTION FOR YEARS AFTER PROCESS  
16      BEGINS.—Paragraph (1) shall not apply to a plan  
17      year if such year is in a rehabilitation plan adoption  
18      period or rehabilitation period by reason of the plan  
19      being in critical status for a preceding plan year.  
20      For purposes of this section, such preceding plan  
21      year shall be the initial critical year with respect to  
22      the rehabilitation plan to which it relates.

23           “(3) REHABILITATION PLAN.—For purposes of  
24      this section—



1           “(A) IN GENERAL.—A rehabilitation plan  
2           is a plan which consists of—

3                   “(i) actions, including options or a  
4                   range of options to be proposed to the bar-  
5                   gaining parties, formulated, based on rea-  
6                   sonably anticipated experience and reason-  
7                   able actuarial assumptions, to enable the  
8                   plan to cease to be in critical status by the  
9                   end of the rehabilitation period and may  
10                  include reductions in plan expenditures (in-  
11                  cluding plan mergers and consolidations),  
12                  reductions in future benefit accruals or in-  
13                  creases in contributions, if agreed to by the  
14                  bargaining parties, or any combination of  
15                  such actions, or

16                   “(ii) if the plan sponsor determines  
17                   that, based on reasonable actuarial as-  
18                   sumptions and upon exhaustion of all rea-  
19                   sonable measures, the plan can not reason-  
20                   ably be expected to emerge from critical  
21                   status by the end of the rehabilitation pe-  
22                   riod, reasonable measures to emerge from  
23                   critical status at a later time or to forestall  
24                   possible insolvency (within the meaning of  
25                   section 4245).

1 A rehabilitation plan must provide annual  
2 standards for meeting the requirements of such  
3 rehabilitation plan. Such plan shall also include  
4 the schedules required to be provided under  
5 paragraph (1)(B)(i) and if clause (ii) applies,  
6 shall set forth the alternatives considered, ex-  
7 plain why the plan is not reasonably expected to  
8 emerge from critical status by the end of the re-  
9 habilitation period, and specify when, if ever,  
10 the plan is expected to emerge from critical sta-  
11 tus in accordance with the rehabilitation plan.

12 “(B) UPDATES TO REHABILITATION PLAN  
13 AND SCHEDULES.—

14 “(i) REHABILITATION PLAN.—The  
15 plan sponsor shall annually update the re-  
16 habilitation plan and shall file the update  
17 with the plan’s annual report under section  
18 104.

19 “(ii) SCHEDULES.—The plan sponsor  
20 shall annually update any schedule of con-  
21 tribution rates provided under this sub-  
22 section to reflect the experience of the  
23 plan.

24 “(iii) DURATION OF SCHEDULE.—A  
25 schedule of contribution rates provided by

1 the plan sponsor and relied upon by bar-  
2 gaining parties in negotiating a collective  
3 bargaining agreement shall remain in ef-  
4 fect for the duration of that collective bar-  
5 gaining agreement.

6 “(C) IMPOSITION OF DEFAULT SCHEDULE  
7 WHERE FAILURE TO ADOPT REHABILITATION  
8 PLAN.—

9 “(i) IN GENERAL.—If—

10 “(I) a collective bargaining agree-  
11 ment providing for contributions  
12 under a multiemployer plan that was  
13 in effect at the time the plan entered  
14 critical status expires, and

15 “(II) after receiving one or more  
16 schedules from the plan sponsor under  
17 paragraph (1)(B), the bargaining par-  
18 ties with respect to such agreement  
19 fail to adopt a contribution or benefit  
20 schedules with terms consistent with  
21 the rehabilitation plan and the sched-  
22 ule from the plan sponsor under para-  
23 graph (1)(B)(i),

24 the plan sponsor shall implement the de-  
25 fault schedule described in the last sen-

1                   tence of paragraph (1) beginning on the  
2                   date specified in clause (ii).

3                   “(ii) DATE OF IMPLEMENTATION.—

4                   The date specified in this clause is the ear-  
5                   lier of the date—

6                   “(I) on which the Secretary cer-  
7                   tifies that the parties are at an im-  
8                   passe, or

9                   “(II) which is 180 days after the  
10                  date on which the collective bar-  
11                  gaining agreement described in clause  
12                  (i) expires.

13                  “(4) REHABILITATION PERIOD.—For purposes  
14                  of this section—

15                  “(A) IN GENERAL.—The rehabilitation pe-  
16                  riod for a plan in critical status is the 10-year  
17                  period beginning on the first day of the first  
18                  plan year of the multiemployer plan following  
19                  the earlier of—

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

23                  “(ii) the expiration of the collective  
24                  bargaining agreements in effect on the  
25                  date of the due date for the actuarial cer-

1           tification of critical status for the initial  
2           critical year under subsection (a)(1) and  
3           covering, as of such date at least 75 per-  
4           cent of the active participants in such mul-  
5           tiemployer plan.

6           If a plan emerges from critical status as pro-  
7           vided under subparagraph (B) before the end of  
8           such 10-year period, the rehabilitation period  
9           shall end with the plan year preceding the plan  
10          year for which the determination under sub-  
11          paragraph (B) is made.

12           “(B) EMERGENCE.—A plan in critical sta-  
13          tus shall remain in such status until a plan  
14          year for which the plan actuary certifies, in ac-  
15          cordance with subsection (b)(3)(A), that the  
16          plan is not projected to have an accumulated  
17          funding deficiency for the plan year or any of  
18          the 9 succeeding plan years, without regard to  
19          the use of the shortfall method and taking into  
20          account any extension of amortization periods  
21          under section 304(d).

22           “(5) REHABILITATION PLAN ADOPTION PE-  
23          RIOD.—For purposes of this section, the term ‘reha-  
24          bilitation plan adoption period’ means the period be-  
25          ginning on the date of the certification under sub-

1 section (b)(3)(A) for the initial critical year and end-  
2 ing on the day before the first day of the rehabilita-  
3 tion period.

4 “(6) LIMITATION ON REDUCTION IN RATES OF  
5 FUTURE ACCRUALS.—Any reduction in the rate of  
6 future accruals under the default schedule described  
7 in paragraph (1)(B)(i) shall not reduce the rate of  
8 future accruals below—

9 “(A) a monthly benefit (payable as a single  
10 life annuity commencing at the participant’s  
11 normal retirement age) equal to 1 percent of  
12 the contributions required to be made with re-  
13 spect to a participant, or the equivalent stand-  
14 ard accrual rate for a participant or group of  
15 participants under the collective bargaining  
16 agreements in effect as of the first day of the  
17 initial critical year, or

18 “(B) if lower, the accrual rate under the  
19 plan on such first day.

20 The equivalent standard accrual rate shall be deter-  
21 mined by the plan sponsor based on the standard or  
22 average contribution base units which the plan spon-  
23 sor determines to be representative for active partici-  
24 pants and such other factors as the plan sponsor de-  
25 termines to be relevant. Nothing in this paragraph

1 shall be construed as limiting the ability of the plan  
2 sponsor to prepare and provide the bargaining par-  
3 ties with alternative schedules to the default sched-  
4 ule that established lower or higher accrual and con-  
5 tribution rates than the rates otherwise described in  
6 this paragraph.

7 “(7) AUTOMATIC EMPLOYER SURCHARGE.—

8 “(A) IMPOSITION OF SURCHARGE.—Each  
9 employer otherwise obligated to make contribu-  
10 tions for the initial critical year shall be obli-  
11 gated to pay to the plan for such year a sur-  
12 charge equal to 5 percent of the contributions  
13 otherwise required under the applicable collec-  
14 tive bargaining agreement (or other agreement  
15 pursuant to which the employer contributes).  
16 For each succeeding plan year in which the  
17 plan is in critical status for a consecutive period  
18 of years beginning with the initial critical year,  
19 the surcharge shall be 10 percent of the con-  
20 tributions otherwise so required.

21 “(B) ENFORCEMENT OF SURCHARGE.—

22 The surcharges under subparagraph (A) shall  
23 be due and payable on the same schedule as the  
24 contributions on which the surcharges are  
25 based. Any failure to make a surcharge pay-

1           ment shall be treated as a delinquent contribu-  
2           tion under section 515 and shall be enforceable  
3           as such.

4                   “(C) SURCHARGE TO TERMINATE UPON  
5           COLLECTIVE BARGAINING AGREEMENT RENEGO-  
6           TIATION.—The surcharge under this paragraph  
7           shall cease to be effective with respect to em-  
8           ployees covered by a collective bargaining agree-  
9           ment (or other agreement pursuant to which  
10          the employer contributes), beginning on the ef-  
11          fective date of a collective bargaining agreement  
12          (or other such agreement) that includes terms  
13          consistent with a schedule presented by the  
14          plan sponsor under paragraph (1)(B)(i), as  
15          modified under subparagraph (B) of paragraph  
16          (3).

17                   “(D) SURCHARGE NOT TO APPLY UNTIL  
18          EMPLOYER RECEIVES NOTICE.—The surcharge  
19          under this paragraph shall not apply to an em-  
20          ployer until 30 days after the employer has  
21          been notified by the plan sponsor that the plan  
22          is in critical status and that the surcharge is in  
23          effect.

24                   “(E) SURCHARGE NOT TO GENERATE IN-  
25          CREASED BENEFIT ACCRUALS.—Notwith-



standing any provision of a plan to the contrary, the amount of any surcharge under this paragraph shall not be the basis for any benefit accrual under the plan.

“(8) BENEFIT ADJUSTMENTS.—

“(A) ADJUSTABLE BENEFITS.—

“(i) IN GENERAL.—Notwithstanding section 204(g), the plan sponsor shall, subject to the notice requirements in subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

“(ii) EXCEPTION FOR RETIREES.—Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

1 “(iii) PLAN SPONSOR FLEXIBILITY.—

2 The plan sponsor shall include in the  
3 schedules provided to the bargaining par-  
4 ties an allowance for funding the benefits  
5 of participants with respect to whom con-  
6 tributions are not currently required to be  
7 made, and shall reduce their benefits to  
8 the extent permitted under this title and  
9 considered appropriate by the plan sponsor  
10 based on the plan’s then current overall  
11 funding status.

12 “(iv) ADJUSTABLE BENEFIT DE-  
13 FINED.—For purposes of this paragraph,  
14 the term ‘adjustable benefit’ means—

15 “(I) benefits, rights, and features  
16 under the plan, including post-retire-  
17 ment death benefits, 60-month guar-  
18 antees, disability benefits not yet in  
19 pay status, and similar benefits,

20 “(II) any early retirement benefit  
21 or retirement-type subsidy (within the  
22 meaning of section 204(g)(2)(A)) and  
23 any benefit payment option (other  
24 than the qualified joint-and survivor  
25 annuity), and

1                   “(III) benefit increases that  
2                   would not be eligible for a guarantee  
3                   under section 4022A on the first day  
4                   of initial critical year because the in-  
5                   creases were adopted (or, if later, took  
6                   effect) less than 60 months before  
7                   such first day.

8                   “(B) NORMAL RETIREMENT BENEFITS  
9                   PROTECTED.—Except as provided in subpara-  
10                  graph (A)(iv)(III), nothing in this paragraph  
11                  shall be construed to permit a plan to reduce  
12                  the level of a participant’s accrued benefit pay-  
13                  able at normal retirement age.

14                  “(C) NOTICE REQUIREMENTS.—

15                         “(i) IN GENERAL.—No reduction may  
16                         be made to adjustable benefits under sub-  
17                         paragraph (A) unless notice of such reduc-  
18                         tion has been given at least 30 days before  
19                         the general effective date of such reduction  
20                         for all participants and beneficiaries to—

21                                 “(I) plan participants and bene-  
22                                 ficiaries,

23                                 “(II) each employer who has an  
24                                 obligation to contribute (within the

1 meaning of section 4212(a)) under the  
2 plan, and

3 “(III) each employee organization  
4 which, for purposes of collective bar-  
5 gaining, represents plan participants  
6 employed by such an employer.

7 “(ii) CONTENT OF NOTICE.—The no-  
8 tice under clause (i) shall contain—

9 “(I) sufficient information to en-  
10 able participants and beneficiaries to  
11 understand the effect of any reduction  
12 on their benefits, including an esti-  
13 mate (on an annual or monthly basis)  
14 of any affected adjustable benefit that  
15 a participant or beneficiary would oth-  
16 erwise have been eligible for as of the  
17 general effective date described in  
18 clause (i), and

19 “(II) information as to the rights  
20 and remedies of plan participants and  
21 beneficiaries as well as how to contact  
22 the Department of Labor for further  
23 information and assistance where ap-  
24 propriate.

1 “(iii) FORM AND MANNER.—Any no-  
2 tice under clause (i)—

3 “(I) shall be provided in a form  
4 and manner prescribed in regulations  
5 of the Secretary,

6 “(II) shall be written in a man-  
7 ner so as to be understood by the av-  
8 erage plan participant, and

9 “(III) may be provided in writ-  
10 ten, electronic, or other appropriate  
11 form to the extent such form is rea-  
12 sonably accessible to persons to whom  
13 the notice is required to be provided.

14 The Secretary shall in the regulations pre-  
15 scribed under subclause (I) establish a  
16 model notice that a plan sponsor may use  
17 to meet the requirements of this subpara-  
18 graph.

19 “(9) ADJUSTMENTS DISREGARDED IN WITH-  
20 DRAWAL LIABILITY DETERMINATION.—

21 “(A) BENEFIT REDUCTIONS.—Any benefit  
22 reductions under this subsection shall be dis-  
23 regarded in determining a plan’s unfunded vest-  
24 ed benefits for purposes of determining an em-  
25 ployer’s withdrawal liability under section 4201.

1           “(B) SURCHARGES.—Any surcharges  
2           under paragraph (7) shall be disregarded in de-  
3           termining an employer’s withdrawal liability  
4           under section 4211, except for purposes of de-  
5           termining the unfunded vested benefits attrib-  
6           utable to an employer under section 4211(c)(4)  
7           or a comparable method approved under section  
8           4211(c)(5).

9           “(C) SIMPLIFIED CALCULATIONS.—The  
10          Pension Benefit Guaranty Corporation shall  
11          prescribe simplified methods for the application  
12          of this paragraph in determining withdrawal li-  
13          ability.

14          “(f) RULES FOR OPERATION OF PLAN DURING  
15          ADOPTION AND REHABILITATION PERIOD.—

16          “(1) COMPLIANCE WITH REHABILITATION  
17          PLAN.—

18                 “(A) IN GENERAL.—A plan may not be  
19                 amended after the date of the adoption of a re-  
20                 habilitation plan under subsection (e) so as to  
21                 be inconsistent with the rehabilitation plan.

22                 “(B) SPECIAL RULES FOR BENEFIT IN-  
23                 CREASES.—A plan may not be amended after  
24                 the date of the adoption of a rehabilitation plan  
25                 under subsection (e) so as to increase benefits,

1 including future benefit accruals, unless the  
2 plan actuary certifies that such increase is paid  
3 for out of additional contributions not con-  
4 templated by the rehabilitation plan, and, after  
5 taking into account the benefit increase, the  
6 multiemployer plan still is reasonably expected  
7 to emerge from critical status by the end of the  
8 rehabilitation period on the schedule con-  
9 templated in the rehabilitation plan.

10 “(2) RESTRICTION ON LUMP SUMS AND SIMI-  
11 LAR BENEFITS.—

12 “(A) IN GENERAL.—Effective on the date  
13 the notice of certification of the plan’s critical  
14 status for the initial critical year under sub-  
15 section (b)(3)(D) is sent, and notwithstanding  
16 section 204(g), the plan shall not pay—

17 “(i) any payment, in excess of the  
18 monthly amount paid under a single life  
19 annuity (plus any social security supple-  
20 ments described in the last sentence of sec-  
21 tion 204(b)(1)(G)),

22 “(ii) any payment for the purchase of  
23 an irrevocable commitment from an insurer  
24 to pay benefits, and

1 “(iii) any other payment specified by  
2 the Secretary of the Treasury by regula-  
3 tions.

4 “(B) EXCEPTION.—Subparagraph (A)  
5 shall not apply to a benefit which under section  
6 203(e) may be immediately distributed without  
7 the consent of the participant or to any makeup  
8 payment in the case of a retroactive annuity  
9 starting date or any similar payment of benefits  
10 owed with respect to a prior period.

11 “(3) ADJUSTMENTS DISREGARDED IN WITH-  
12 DRAWAL LIABILITY DETERMINATION.—Any benefit  
13 reductions under this subsection shall be disregarded  
14 in determining a plan’s unfunded vested benefits for  
15 purposes of determining an employer’s withdrawal li-  
16 ability under section 4201.

17 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-  
18 RIOD.—During the rehabilitation plan adoption pe-  
19 riod—

20 “(A) the plan sponsor may not accept a  
21 collective bargaining agreement or participation  
22 agreement with respect to the multiemployer  
23 plan that provides for—

24 “(i) a reduction in the level of con-  
25 tributions for any participants,



1 “(ii) a suspension of contributions  
2 with respect to any period of service, or

3 “(iii) any new direct or indirect exclu-  
4 sion of younger or newly hired employees  
5 from plan participation, and

6 “(B) no amendment of the plan which in-  
7 creases the liabilities of the plan by reason of  
8 any increase in benefits, any change in the ac-  
9 crual of benefits, or any change in the rate at  
10 which benefits become nonforfeitable under the  
11 plan may be adopted unless the amendment is  
12 required as a condition of qualification under  
13 part I of subchapter D of chapter 1 of the In-  
14 ternal Revenue Code of 1986 or to comply with  
15 other applicable law.

16 “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR  
17 DECISIONS.—If, within 60 days of the due date for adop-  
18 tion of a funding improvement plan or a rehabilitation  
19 plan under subsection (e), the plan sponsor of a plan in  
20 endangered status or a plan in critical status has not  
21 agreed on a funding improvement plan or rehabilitation  
22 plan, then any member of the board or group that con-  
23 stitutes the plan sponsor may require that the plan spon-  
24 sor enter into an expedited dispute resolution procedure

1 for the development and adoption of a funding improve-  
2 ment plan or rehabilitation plan.

3 “(h) NONBARGAINED PARTICIPATION.—

4 “(1) BOTH BARGAINED AND NONBARGAINED  
5 EMPLOYEE-PARTICIPANTS.—In the case of an em-  
6 ployer that contributes to a multiemployer plan with  
7 respect to both employees who are covered by one or  
8 more collective bargaining agreements and employ-  
9 ees who are not so covered, if the plan is in endan-  
10 gered status or in critical status, benefits of and  
11 contributions for the nonbargained employees, in-  
12 cluding surcharges on those contributions, shall be  
13 determined as if those nonbargained employees were  
14 covered under the first to expire of the employer’s  
15 collective bargaining agreements in effect when the  
16 plan entered endangered or critical status.

17 “(2) NONBARGAINED EMPLOYEES ONLY.—In  
18 the case of an employer that contributes to a multi-  
19 employer plan only with respect to employees who  
20 are not covered by a collective bargaining agreement,  
21 this section shall be applied as if the employer were  
22 the bargaining party, and its participation agree-  
23 ment with the plan were a collective bargaining  
24 agreement with a term ending on the first day of the  
25 plan year beginning after the employer is provided

1 the schedule or schedules described in subsections  
2 (c) and (e).

3 “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-  
4 poses of this section—

5 “(1) BARGAINING PARTY.—The term ‘bar-  
6 gaining party’ means—

7 “(A)(i) except as provided in clause (ii), an  
8 employer who has an obligation to contribute  
9 under the plan; or

10 “(ii) in the case of a plan described under  
11 section 404(c) of the Internal Revenue Code of  
12 1986, or a continuation of such a plan, the as-  
13 sociation of employers that is the employer set-  
14 tlor of the plan; and

15 “(B) an employee organization which, for  
16 purposes of collective bargaining, represents  
17 plan participants employed by an employer who  
18 has an obligation to contribute under the plan.

19 “(2) FUNDED PERCENTAGE.—The term ‘fund-  
20 ed percentage’ means the percentage equal to a frac-  
21 tion—

22 “(A) the numerator of which is the value  
23 of the plan’s assets, as determined under sec-  
24 tion 304(c)(2), and

1           “(B) the denominator of which is the ac-  
2           crued liability of the plan, determined using ac-  
3           tuarial assumptions described in section  
4           304(c)(3).

5           “(3) ACCUMULATED FUNDING DEFICIENCY.—  
6           The term ‘accumulated funding deficiency’ has the  
7           meaning given such term in section 304(a).

8           “(4) ACTIVE PARTICIPANT.—The term ‘active  
9           participant’ means, in connection with a multiem-  
10          ployer plan, a participant who is in covered service  
11          under the plan.

12          “(5) INACTIVE PARTICIPANT.—The term ‘inac-  
13          tive participant’ means, in connection with a multi-  
14          employer plan, a participant, or the beneficiary or  
15          alternate payee of a participant, who—

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

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

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

23               “(A) at any time during the current plan  
24               year, such person is a participant or beneficiary  
25               under the plan and is paid an early, late, nor-

1 mal, or disability retirement benefit under the  
2 plan (or a death benefit under the plan related  
3 to a retirement benefit), or

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

7 “(7) OBLIGATION TO CONTRIBUTE.—The term  
8 ‘obligation to contribute’ has the meaning given such  
9 term under section 4212(a).

10 “(8) ACTUARIAL METHOD.—Notwithstanding  
11 any other provision of this section, the actuary’s de-  
12 terminations with respect to a plan’s normal cost,  
13 actuarial accrued liability, and improvements in a  
14 plan’s funded percentage under this section shall be  
15 based upon the unit credit funding method (whether  
16 or not that method is used for the plan’s actuarial  
17 valuation).

18 “(9) PLAN SPONSOR.—In the case of a plan de-  
19 scribed under section 404(c) of the Internal Revenue  
20 Code of 1986, or a continuation of such a plan, the  
21 term ‘plan sponsor’ means the bargaining parties de-  
22 scribed under paragraph (1).

23 “(10) BENEFIT COMMENCEMENT DATE.—The  
24 term ‘benefit commencement date’ means the annu-  
25 ity starting date (or in the case of a retroactive an-

1       nuity starting date, the date on which benefit pay-  
2       ments begin).”.

3       (b) ENFORCEMENT.—Section 502 of the Employee  
4       Retirement Income Security Act of 1974 (29 U.S.C. 1132)  
5       is amended—

6               (1) in subsection (a)(6) by striking “(6), or  
7       (7)” and inserting “(6), (7), or (8)”;

8               (2) by redesignating subsection (c)(8) as sub-  
9       section (c)(9); and

10              (3) by inserting after subsection (c)(7) the fol-  
11       lowing new paragraph:

12              “(8) The Secretary may assess against any plan  
13       sponsor of a multiemployer plan a civil penalty of  
14       not more than \$1,100 per day—

15              “(A) for each violation by such sponsor of  
16       the requirement under section 305 to adopt by  
17       the deadline established in that section a fund-  
18       ing improvement plan or rehabilitation plan  
19       with respect to a multiemployer which is in en-  
20       dangered or critical status, or

21              “(B) in the case of a plan in endangered  
22       status which is not in seriously endangered sta-  
23       tus, for failure by the plan to meet the applica-  
24       ble benchmarks under section 305 by the end of

1           the funding improvement period with respect to  
2           the plan.”.

3           (c) CAUSE OF ACTION TO COMPEL ADOPTION OR IM-  
4 PLEMENTATION OF FUNDING IMPROVEMENT OR REHA-  
5 BILITATION PLAN.—Section 502(a) of the Employee Re-  
6 tirement Income Security Act of 1974 is amended by  
7 striking “or” at the end of paragraph (8), by striking the  
8 period at the end of paragraph (9) and inserting “; or”  
9 and by adding at the end the following:

10           “(10) in the case of a multiemployer plan that  
11       has been certified by the actuary to be in endan-  
12       gered or critical status under section 305, if the plan  
13       sponsor—

14           “(A) has not adopted a funding improve-  
15       ment or rehabilitation plan under that section  
16       by the deadline established in such section, or

17           “(B) fails to update or comply with the  
18       terms of the funding improvement or rehabilita-  
19       tion plan in accordance with the requirements  
20       of such section,

21       by an employer that has an obligation to contribute  
22       with respect to the multiemployer plan or an em-  
23       ployee organization that represents active partici-  
24       pants in the multiemployer plan, for an order com-  
25       pelling the plan sponsor to adopt a funding improve-

1       ment or rehabilitation plan or to update or comply  
2       with the terms of the funding improvement or reha-  
3       bilitation plan in accordance with the requirements  
4       of such section and the funding improvement or re-  
5       habilitation plan.”.

6       (d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—  
7       Section 302(b) of the Employee Retirement Income Secu-  
8       rity Act of 1974, as amended by this Act, is amended by  
9       adding at the end the following new paragraph:

10               “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-  
11       TUS.—Paragraph (1) shall not apply in the case of  
12       a multiemployer plan for any plan year in which the  
13       plan is in critical status pursuant to section 305.  
14       This paragraph shall only apply if the plan adopts  
15       a rehabilitation plan in accordance with section  
16       305(e) and complies with the terms of such rehabili-  
17       tation plan (and any updates or modifications of the  
18       plan).”.

19       (e) CONFORMING AMENDMENT.—The table of con-  
20       tents in section 1 of such Act (as amended by the pre-  
21       ceding provisions of this Act) is amended by inserting  
22       after the item relating to section 304 the following new  
23       item:

      “Sec. 305. Additional funding rules for multiemployer plans in endangered sta-  
          tus or critical status.”.

24       (f) EFFECTIVE DATES.—



1           (1) IN GENERAL.—The amendments made by  
2           this section shall apply with respect to plan years be-  
3           ginning after 2007.

4           (2) SPECIAL RULE FOR CERTAIN NOTICES.—In  
5           any case in which a plan’s actuary certifies that it  
6           is reasonably expected that a multiemployer plan will  
7           be in critical status under section 305(b)(3) of the  
8           Employee Retirement Income Security Act of 1974,  
9           as added by this section, with respect to the first  
10          plan year beginning after 2007, the notice required  
11          under subparagraph (D) of such section may be pro-  
12          vided at any time after the date of enactment, so  
13          long as it is provided on or before the last date for  
14          providing the notice under such subparagraph.

15          (3) SPECIAL RULE FOR CERTAIN RESTORED  
16          BENEFITS.—In the case of a multiemployer plan—

17                (A) with respect to which benefits were re-  
18                duced pursuant to a plan amendment adopted  
19                on or after January 1, 2002, and before June  
20                30, 2005, and

21                (B) which, pursuant to the plan document,  
22                the trust agreement, or a formal written com-  
23                munication from the plan sponsor to partici-  
24                pants provided before June 30, 2005, provided  
25                for the restoration of such benefits,

1 the amendments made by this section shall not apply  
2 to such benefit restorations to the extent that any  
3 restriction on the providing or accrual of such bene-  
4 fits would otherwise apply by reason of such amend-  
5 ments.

6 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**  
7 **TIEMPLOYER PLANS.**

8 (a) **ADVANCE DETERMINATION OF IMPENDING IN-**  
9 **SOLVENCY OVER 5 YEARS.**—Section 4245(d)(1) of the  
10 Employee Retirement Income Security Act of 1974 (29  
11 U.S.C. 1426(d)(1)) is amended—

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

14 (2) by adding at the end the following new sen-  
15 tence: “If the plan sponsor makes such a determina-  
16 tion that the plan will be insolvent in any of the next  
17 5 plan years, the plan sponsor shall make the com-  
18 parison under this paragraph at least annually until  
19 the plan sponsor makes a determination that the  
20 plan will not be insolvent in any of the next 5 plan  
21 years.”.

22 (b) **EFFECTIVE DATE.**—The amendments made by  
23 this section shall apply with respect to determinations  
24 made in plan years beginning after 2007.

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

2 (a) UPDATE OF RULES RELATING TO LIMITATIONS  
3 ON WITHDRAWAL LIABILITY.—

4 (1) INCREASE IN LIMITS.—Section 4225(a)(2)  
5 of such Act (29 U.S.C. 1405(a)(2)) is amended by  
6 striking the table contained therein and inserting the  
7 following new table:

“If the liquidation or distribution value of the employer after the sale or exchange is—	The portion is—
Not more than \$5,000,000 .....	30 percent of the amount.
More than \$5,000,000, but not more than \$10,000,000.	\$1,500,000, plus 35 percent of the amount in excess of \$5,000,000.
More than \$10,000,000, but not more than \$15,000,000.	\$3,250,000, plus 40 percent of the amount in excess of \$10,000,000.
More than \$15,000,000, but not more than \$17,500,000.	\$5,250,000, plus 45 percent of the amount in excess of \$15,000,000.
More than \$17,500,000, but not more than \$20,000,000.	\$6,375,000, plus 50 percent of the amount in excess of \$17,500,000.
More than \$20,000,000, but not more than \$22,500,000.	\$7,625,000, plus 60 percent of the amount in excess of \$20,000,000.
More than \$22,500,000, but not more than \$25,000,000.	\$9,125,000, plus 70 percent of the amount in excess of \$22,500,000.
More than \$25,000,000 .....	\$10,875,000, plus 80 percent of the amount in excess of \$25,000,000.”.

8 (2) PLANS USING ATTRIBUTABLE METHOD.—

9 Section 4225(a)(1)(B) of such Act (29 U.S.C.  
10 1405(a)(1)(B)) is amended to read as follows:

11 “(B) in the case of a plan using the attrib-  
12 utable method of allocating withdrawal liability,

1 the unfunded vested benefits attributable to em-  
2 ployees of the employer.”.

3 (3) EFFECTIVE DATE.—The amendments made  
4 by this subsection shall apply to sales occurring on  
5 or after January 1, 2007.

6 (b) WITHDRAWAL LIABILITY CONTINUES IF WORK  
7 CONTRACTED OUT.—

8 (1) IN GENERAL.—Clause (i) of section  
9 4205(b)(2)(A) of such Act (29 U.S.C.  
10 1385(b)(2)(A)) is amended by inserting “or to an  
11 entity or entities owned or controlled by the em-  
12 ployer” after “to another location”.

13 (2) EFFECTIVE DATE.—The amendment made  
14 by this subsection shall apply with respect to work  
15 transferred on or after the date of the enactment of  
16 this Act.

17 (c) APPLICATION OF RULES TO PLANS PRIMARILY  
18 COVERING EMPLOYEES IN THE BUILDING AND CON-  
19 STRUCTION INDUSTRY.—

20 (1) IN GENERAL.—Section 4210(b) of such Act  
21 (29 U.S.C. 1390(b)) is amended—

22 (A) by striking paragraph (1); and

23 (B) by redesignating paragraphs (2)  
24 through (4) as paragraphs (1) through (3), re-  
25 spectively.

1           (2) FRESH START OPTION.—Section 4211(c)(5)  
2       of such Act (29 U.S.C. 1391(c)(5)) is amended by  
3       adding at the end the following new subparagraph:

4           “(E) FRESH START OPTION.—Notwith-  
5       standing paragraph (1), a plan may be amend-  
6       ed to provide that the withdrawal liability meth-  
7       od described in subsection (b) shall be applied  
8       by substituting the plan year which is specified  
9       in the amendment and for which the plan has  
10      no unfunded vested benefits for the plan year  
11      ending before September 26, 1980.”.

12          (3) EFFECTIVE DATE.—The amendments made  
13      by this subsection shall apply with respect to plan  
14      withdrawals occurring on or after January 1, 2007.

15      (d) PROCEDURES APPLICABLE TO DISPUTES IN-  
16      VOLVING PENSION PLAN WITHDRAWAL LIABILITY.—

17          (1) IN GENERAL.—Section 4221 of Employee  
18      Retirement Income Security Act of 1974 (29 U.S.C.  
19      1401) is amended by adding at the end the fol-  
20      lowing:

21      “(g) PROCEDURES APPLICABLE TO CERTAIN DIS-  
22      PUTES.—

23          “(1) IN GENERAL.—If—

24              “(A) a plan sponsor of a plan determines  
25              that—

1 “(i) a complete or partial withdrawal  
2 of an employer has occurred, or

3 “(ii) an employer is liable for with-  
4 drawal liability payments with respect to  
5 such complete or partial withdrawal, and

6 “(B) such determination is based in whole  
7 or in part on a finding by the plan sponsor  
8 under section 4212(c) that a principal purpose  
9 of any transaction which occurred after Decem-  
10 ber 31, 1998, and at least 5 years (2 years in  
11 the case of a small employer) before the date of  
12 the complete or partial withdrawal was to evade  
13 or avoid withdrawal liability under this subtitle,  
14 then the person against which the withdrawal liabil-  
15 ity is assessed based solely on the application of sec-  
16 tion 4212(c) may elect to use the special rule under  
17 paragraph (2) in applying subsection (d) of this sec-  
18 tion and section 4219(c) to such person.

19 “(2) SPECIAL RULE.—Notwithstanding sub-  
20 section (d) and section 4219(c), if an electing person  
21 contests the plan sponsor’s determination with re-  
22 spect to withdrawal liability payments under para-  
23 graph (1) through an arbitration proceeding pursu-  
24 ant to subsection (a), through an action brought in  
25 a court of competent jurisdiction for review of such

1 an arbitration decision, or as otherwise permitted by  
2 law, the electing person shall not be obligated to  
3 make the withdrawal liability payments until a final  
4 decision in the arbitration proceeding, or in court,  
5 upholds the plan sponsor's determination, but only if  
6 the electing person—

7 “(A) provides notice to the plan sponsor of  
8 its election to apply the special rule in this  
9 paragraph within 90 days after the plan spon-  
10 sor notifies the electing person of its liability by  
11 reason of the application of section 4212(c);  
12 and

13 “(B) if a final decision in the arbitration  
14 proceeding, or in court, of the withdrawal liabil-  
15 ity dispute has not been rendered within 12  
16 months from the date of such notice, the elect-  
17 ing person provides to the plan, effective as of  
18 the first day following the 12-month period, a  
19 bond issued by a corporate surety company that  
20 is an acceptable surety for purposes of section  
21 412 of this Act, or an amount held in escrow  
22 by a bank or similar financial institution satis-  
23 factory to the plan, in an amount equal to the  
24 sum of the withdrawal liability payments that  
25 would otherwise be due under subsection (d)

1 and section 4219(c) for the 12-month period  
2 beginning with the first anniversary of such no-  
3 tice. Such bond or escrow shall remain in effect  
4 until there is a final decision in the arbitration  
5 proceeding, or in court, of the withdrawal liabil-  
6 ity dispute, at which time such bond or escrow  
7 shall be paid to the plan if such final decision  
8 upholds the plan sponsor's determination.

9 “(3) DEFINITION OF SMALL EMPLOYER.—For  
10 purposes of this subsection—

11 “(A) IN GENERAL.—The term ‘small em-  
12 ployer’ means any employer which, for the cal-  
13 endar year in which the transaction referred to  
14 in paragraph (1)(B) occurred and for each of  
15 the 3 preceding years, on average—

16 “(i) employs not more than 500 em-  
17 ployees, and

18 “(ii) is required to make contributions  
19 to the plan for not more than 250 employ-  
20 ees.

21 “(B) CONTROLLED GROUP.—Any group  
22 treated as a single employer under subsection  
23 (b)(1) of section 4001, without regard to any  
24 transaction that was a basis for the plan's find-  
25 ing under section 4212, shall be treated as a



1           single employer for purposes of this subpara-  
2           graph.

3           “(4) ADDITIONAL SECURITY PENDING RESOLU-  
4           TION OF DISPUTE.—If a withdrawal liability dispute  
5           to which this subsection applies is not concluded by  
6           12 months after the electing person posts the bond  
7           or escrow described in paragraph (2), the electing  
8           person shall, at the start of each succeeding 12-  
9           month period, provide an additional bond or amount  
10          held in escrow equal to the sum of the withdrawal  
11          liability payments that would otherwise be payable to  
12          the plan during that period.

13          “(5) The liability of the party furnishing a bond  
14          or escrow under this subsection shall be reduced,  
15          upon the payment of the bond or escrow to the plan,  
16          by the amount thereof.”

17          (2) EFFECTIVE DATE.—The amendments made  
18          by this subsection shall apply to any person that re-  
19          ceives a notification under section 4219(b)(1) of the  
20          Employee Retirement Income Security Act of 1974  
21          on or after the date of enactment of this Act with  
22          respect to a transaction that occurred after Decem-  
23          ber 31, 1998.

1 **SEC. 205. PROHIBITION ON RETALIATION AGAINST EM-**  
2 **LOYERS EXERCISING THEIR RIGHTS TO PE-**  
3 **TITION THE FEDERAL GOVERNMENT.**

4 Section 510 of the Employee Retirement Income Se-  
5 curity Act of 1974 (29 U.S.C. 1140) is amended by insert-  
6 ing before the last sentence thereof the following new sen-  
7 tence:“In the case of a multiemployer plan, it shall be un-  
8 lawful for the plan sponsor or any other person to dis-  
9 criminate against any contributing employer for exercising  
10 rights under this Act or for giving information or testi-  
11 fying in any inquiry or proceeding relating to this Act be-  
12 fore Congress.”

13 **SEC. 206. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED**  
14 **UNDER AN AGREEMENT APPROVED BY THE**  
15 **PENSION BENEFIT GUARANTY CORPORA-**  
16 **TION.**

17 In the case of a multiemployer plan that is a party  
18 to an agreement that was approved by the Pension Benefit  
19 Guaranty Corporation prior to June 30, 2005, and that—

20 (1) increases benefits, and

21 (2) provides for special withdrawal liability  
22 rules under section 4203(f) of the Employee Retire-  
23 ment Income Security Act of 1974 (29 U.S.C.  
24 1383),

25 the amendments made by sections 201, 202, 211, and 212  
26 of this Act shall not apply to the benefit increases under

1 any plan amendment adopted prior to June 30, 2005, that  
2 are funded pursuant to such agreement if the plan is fund-  
3 ed in compliance with such agreement (and any amend-  
4 ments thereto).

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

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

9 (a) IN GENERAL.—Subpart A of part III of sub-  
10 chapter D of chapter 1 of the Internal Revenue Code of  
11 1986 (as added by this Act) is amended by inserting after  
12 section 430 the following new section:

13 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**  
14 **PLOYER PLANS.**

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

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

1           “(2) if the multiemployer plan is in reorganiza-  
2           tion for any plan year, the accumulated funding de-  
3           ficiency of the plan determined under section 4243  
4           of the Employee Retirement Income Security Act of  
5           1974.

6           “(b) FUNDING STANDARD ACCOUNT.—

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

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

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

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

20                   “(i) in the case of a plan which comes  
21                   into existence on or after January 1, 2008,  
22                   the unfunded past service liability under  
23                   the plan on the first day of the first plan  
24                   year to which this section applies, over a  
25                   period of 15 plan years,

1 “(ii) separately, with respect to each  
2 plan year, the net increase (if any) in un-  
3 funded past service liability under the plan  
4 arising from plan amendments adopted in  
5 such year, over a period of 15 plan years,

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

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

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

20 “(D) the amount necessary to amortize in  
21 equal annual installments (until fully amor-  
22 tized) over a period of 5 plan years any amount  
23 credited to the funding standard account under  
24 section 412(b)(3)(D) (as in effect on the day

1 before the date of the enactment of the Pension  
2 Protection Act of 2006), and

3 “(E) the amount necessary to amortize in  
4 equal annual installments (until fully amor-  
5 tized) over a period of 20 years the contribu-  
6 tions which would be required to be made under  
7 the plan but for the provisions of section  
8 412(c)(7)(A)(i)(I) (as in effect on the day be-  
9 fore the date of the enactment of the Pension  
10 Protection Act of 2006).

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

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

17 “(B) the amount necessary to amortize in  
18 equal annual installments (until fully amor-  
19 tized)—

20 “(i) separately, with respect to each  
21 plan year, the net decrease (if any) in un-  
22 funded past service liability under the plan  
23 arising from plan amendments adopted in  
24 such year, over a period of 15 plan years,

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

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

10 “(C) the amount of the waived funding de-  
11 ficiency (within the meaning of section  
12 412(c)(3)) for the plan year, and

13 “(D) in the case of a plan year for which  
14 the accumulated funding deficiency is deter-  
15 mined under the funding standard account if  
16 such plan year follows a plan year for which  
17 such deficiency was determined under the alter-  
18 native minimum funding standard under section  
19 412(g) (as in effect on the day before the date  
20 of the enactment of the Pension Protection Act  
21 of 2006), the excess (if any) of any debit bal-  
22 ance in the funding standard account (deter-  
23 mined without regard to this subparagraph)  
24 over any debit balance in the alternative min-  
25 imum funding standard account.

1           “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-  
2           ORTIZED IN PLAN YEARS BEFORE 2008.—In the case  
3           of any amount amortized under section 412(b) (as  
4           in effect on the day before the date of the enactment  
5           of the Pension Protection Act of 2006) over any pe-  
6           riod beginning with a plan year beginning before  
7           2008 in lieu of the amortization described in para-  
8           graphs (2)(B) and (3)(B), such amount shall con-  
9           tinue to be amortized under such section as so in ef-  
10          fect.

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

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

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



1 entering into whichever of the two amounts  
2 being offset is the greater.

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

9 “(7) SPECIAL RULES RELATING TO CHARGES  
10 AND CREDITS TO FUNDING STANDARD ACCOUNT.—  
11 For purposes of this part—

12 “(A) WITHDRAWAL LIABILITY.—Any  
13 amount received by a multiemployer plan in  
14 payment of all or part of an employer’s with-  
15 drawal liability under part 1 of subtitle E of  
16 title IV of the Employee Retirement Income Se-  
17 curity Act of 1974 shall be considered an  
18 amount contributed by the employer to or  
19 under the plan. The Secretary may prescribe by  
20 regulation additional charges and credits to a  
21 multiemployer plan’s funding standard account  
22 to the extent necessary to prevent withdrawal li-  
23 ability payments from being unduly reflected as  
24 advance funding for plan liabilities.

1           “(B) ADJUSTMENTS WHEN A MULTITEM-  
2           PLOYER PLAN LEAVES REORGANIZATION.—If a  
3           multiemployer plan is not in reorganization in  
4           the plan year but was in reorganization in the  
5           immediately preceding plan year, any balance in  
6           the funding standard account at the close of  
7           such immediately preceding plan year—

8                   “(i) shall be eliminated by an offset-  
9                   ting credit or charge (as the case may be),  
10                  but

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

15           The preceding sentence shall not apply to the  
16           extent of any accumulated funding deficiency  
17           under section 4243(a) of such Act as of the end  
18           of the last plan year that the plan was in reor-  
19           ganization.

20           “(C) PLAN PAYMENTS TO SUPPLEMENTAL  
21           PROGRAM OR WITHDRAWAL LIABILITY PAYMENT  
22           FUND.—Any amount paid by a plan during a  
23           plan year to the Pension Benefit Guaranty Cor-  
24           poration pursuant to section 4222 of such Act  
25           or to a fund exempt under section 501(c)(22)

1           pursuant to section 4223 of such Act shall re-  
2           duce the amount of contributions considered re-  
3           ceived by the plan for the plan year.

4           “(D) INTERIM WITHDRAWAL LIABILITY  
5           PAYMENTS.—Any amount paid by an employer  
6           pending a final determination of the employer’s  
7           withdrawal liability under part 1 of subtitle E  
8           of title IV of such Act and subsequently re-  
9           funded to the employer by the plan shall be  
10          charged to the funding standard account in ac-  
11          cordance with regulations prescribed by the  
12          Secretary.

13          “(E) ELECTION FOR DEFERRAL OF  
14          CHARGE FOR PORTION OF NET EXPERIENCE  
15          LOSS.—If an election is in effect under section  
16          412(b)(7)(F) (as in effect on the day before the  
17          date of the enactment of the Pension Protection  
18          Act of 2006) for any plan year, the funding  
19          standard account shall be charged in the plan  
20          year to which the portion of the net experience  
21          loss deferred by such election was deferred with  
22          the amount so deferred (and paragraph  
23          (2)(B)(iii) shall not apply to the amount so  
24          charged).

1                   “(F) FINANCIAL ASSISTANCE.—Any  
2                   amount of any financial assistance from the  
3                   Pension Benefit Guaranty Corporation to any  
4                   plan, and any repayment of such amount, shall  
5                   be taken into account under this section and  
6                   section 412 in such manner as is determined by  
7                   the Secretary.

8                   “(G) SHORT-TERM BENEFITS.—To the ex-  
9                   tent that any plan amendment increases the un-  
10                  funded past service liability under the plan by  
11                  reason of an increase in benefits which are not  
12                  payable as a life annuity but are payable under  
13                  the terms of the plan for a period that does not  
14                  exceed 14 years from the effective date of the  
15                  amendment, paragraph (2)(B)(ii) shall be ap-  
16                  plied separately with respect to such increase in  
17                  unfunded past service liability by substituting  
18                  the number of years of the period during which  
19                  such benefits are payable for ‘15’.

20                  “(c) ADDITIONAL RULES.—

21                  “(1) DETERMINATIONS TO BE MADE UNDER  
22                  FUNDING METHOD.—For purposes of this part, nor-  
23                  mal costs, accrued liability, past service liabilities,  
24                  and experience gains and losses shall be determined

1 under the funding method used to determine costs  
2 under the plan.

3 “(2) VALUATION OF ASSETS.—

4 “(A) IN GENERAL.—For purposes of this  
5 part, the value of the plan’s assets shall be de-  
6 termined on the basis of any reasonable actu-  
7 arial method of valuation which takes into ac-  
8 count fair market value and which is permitted  
9 under regulations prescribed by the Secretary.

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

23 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-  
24 SONABLE.—For purposes of this section, all costs, li-  
25 abilities, rates of interest, and other factors under

1 the plan shall be determined on the basis of actu-  
2 arial assumptions and methods—

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

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

9 “(4) TREATMENT OF CERTAIN CHANGES AS EX-  
10 PERIENCE GAIN OR LOSS.—For purposes of this sec-  
11 tion, if—

12 “(A) a change in benefits under the Social  
13 Security Act or in other retirement benefits cre-  
14 ated under Federal or State law, or

15 “(B) a change in the definition of the term  
16 ‘wages’ under section 3121, or a change in the  
17 amount of such wages taken into account under  
18 regulations prescribed for purposes of section  
19 401(a)(5),

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

23 “(5) FULL FUNDING.—If, as of the close of a  
24 plan year, a plan would (without regard to this para-

1 graph) have an accumulated funding deficiency in  
2 excess of the full funding limitation—

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

5 “(B) all amounts described in subpara-  
6 graphs (B), (C), and (D) of subsection (b) (2)  
7 and subparagraph (B) of subsection (b)(3)  
8 which are required to be amortized shall be con-  
9 sidered fully amortized for purposes of such  
10 subparagraphs.

11 “(6) FULL-FUNDING LIMITATION.—

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

15 “(i) the accrued liability (including  
16 normal cost) under the plan (determined  
17 under the entry age normal funding meth-  
18 od if such accrued liability cannot be di-  
19 rectly calculated under the funding method  
20 used for the plan), over

21 “(ii) the lesser of—

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

24 “(II) the value of such assets de-  
25 termined under paragraph (2).

1 “(B) MINIMUM AMOUNT.—

2 “(i) IN GENERAL.—In no event shall  
3 the full-funding limitation determined  
4 under subparagraph (A) be less than the  
5 excess (if any) of—

6 “(I) 90 percent of the current li-  
7 ability of the plan (including the ex-  
8 pected increase in current liability due  
9 to benefits accruing during the plan  
10 year), over

11 “(II) the value of the plan’s as-  
12 sets determined under paragraph (2).

13 “(ii) ASSETS.—For purposes of clause  
14 (i), assets shall not be reduced by any  
15 credit balance in the funding standard ac-  
16 count.

17 “(C) FULL FUNDING LIMITATION.—For  
18 purposes of this paragraph, unless otherwise  
19 provided by the plan, the accrued liability under  
20 a multiemployer plan shall not include benefits  
21 which are not nonforfeitable under the plan  
22 after the termination of the plan (taking into  
23 consideration section 411(d)(3)).

24 “(D) CURRENT LIABILITY.—For purposes  
25 of this paragraph—



1                   “(i) IN GENERAL.—The term ‘current  
2                   liability’ means all liabilities to employees  
3                   and their beneficiaries under the plan.

4                   “(ii) TREATMENT OF UNPREDICTABLE  
5                   CONTINGENT EVENT BENEFITS.—For pur-  
6                   poses of clause (i), any benefit contingent  
7                   on an event other than—

8                               “(I) age, service, compensation,  
9                               death, or disability, or

10                              “(II) an event which is reason-  
11                              ably and reliably predictable (as deter-  
12                              mined by the Secretary),

13                   shall not be taken into account until the  
14                   event on which the benefit is contingent oc-  
15                   curs.

16                   “(iii) INTEREST RATE USED.—The  
17                   rate of interest used to determine current  
18                   liability under this paragraph shall be the  
19                   rate of interest determined under subpara-  
20                   graph (E).

21                   “(iv) MORTALITY TABLES.—

22                               “(I) COMMISSIONERS’ STANDARD  
23                               TABLE.—In the case of plan years be-  
24                               ginning before the first plan year to  
25                               which the first tables prescribed under

1 subclause (II) apply, the mortality  
2 table used in determining current li-  
3 ability under this paragraph shall be  
4 the table prescribed by the Secretary  
5 which is based on the prevailing com-  
6 missioners' standard table (described  
7 in section 807(d)(5)(A)) used to de-  
8 termine reserves for group annuity  
9 contracts issued on January 1, 1993.

10 “(II) SECRETARIAL AUTHOR-  
11 ITY.—The Secretary may by regula-  
12 tion prescribe for plan years beginning  
13 after December 31, 1999, mortality  
14 tables to be used in determining cur-  
15 rent liability under this subsection.  
16 Such tables shall be based upon the  
17 actual experience of pension plans and  
18 projected trends in such experience.  
19 In prescribing such tables, the Sec-  
20 retary shall take into account results  
21 of available independent studies of  
22 mortality of individuals covered by  
23 pension plans.

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

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

18 “(II) SPECIAL RULE FOR DIS-  
19 ABILITIES OCCURRING AFTER 1994.—  
20 In the case of disabilities occurring in  
21 plan years beginning after December  
22 31, 1994, the tables under subclause  
23 (I) shall apply only with respect to in-  
24 dividuals described in such subclause  
25 who are disabled within the meaning

1 of title II of the Social Security Act  
2 and the regulations thereunder.

3 “(vi) PERIODIC REVIEW.—The Sec-  
4 retary shall periodically (at least every 5  
5 years) review any tables in effect under  
6 this subparagraph and shall, to the extent  
7 such Secretary determines necessary, by  
8 regulation update the tables to reflect the  
9 actual experience of pension plans and pro-  
10 jected trends in such experience.

11 “(E) REQUIRED CHANGE OF INTEREST  
12 RATE.—For purposes of determining a plan’s  
13 current liability for purposes of this para-  
14 graph—

15 “(i) IN GENERAL.—If any rate of in-  
16 terest used under the plan under sub-  
17 section (b)(6) to determine cost is not  
18 within the permissible range, the plan shall  
19 establish a new rate of interest within the  
20 permissible range.

21 “(ii) PERMISSIBLE RANGE.—For pur-  
22 poses of this subparagraph—

23 “(I) IN GENERAL.—Except as  
24 provided in subclause (II), the term  
25 ‘permissible range’ means a rate of in-

1           terest which is not more than 5 per-  
2           cent above, and not more than 10 per-  
3           cent below, the weighted average of  
4           the rates of interest on 30-year Treas-  
5           ury securities during the 4-year period  
6           ending on the last day before the be-  
7           ginning of the plan year.

8                   “(II)   SECRETARIAL    AUTHOR-  
9           ITY.—If the Secretary finds that the  
10          lowest rate of interest permissible  
11          under subclause (I) is unreasonably  
12          high, the Secretary may prescribe a  
13          lower rate of interest, except that  
14          such rate may not be less than 80  
15          percent of the average rate deter-  
16          mined under such subclause.

17                   “(iii)       ASSUMPTIONS.—Notwith-  
18          standing paragraph (3)(A), the interest  
19          rate used under the plan shall be—

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

23                   “(II) consistent with the assump-  
24                  tions which reflect the purchase rates  
25                  which would be used by insurance

1 companies to satisfy the liabilities  
2 under the plan.

3 “(7) ANNUAL VALUATION.—

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

12 “(B) VALUATION DATE.—

13 “(i) CURRENT YEAR.—Except as pro-  
14 vided in clause (ii), the valuation referred  
15 to in subparagraph (A) shall be made as of  
16 a date within the plan year to which the  
17 valuation refers or within one month prior  
18 to the beginning of such year.

19 “(ii) USE OF PRIOR YEAR VALU-  
20 ATION.—The valuation referred to in sub-  
21 paragraph (A) may be made as of a date  
22 within the plan year prior to the year to  
23 which the valuation refers if, as of such  
24 date, the value of the assets of the plan are  
25 not less than 100 percent of the plan’s cur-

1           rent liability (as defined in paragraph  
2           (6)(D) without regard to clause (iv) there-  
3           of).

4           “(iii) ADJUSTMENTS.—Information  
5           under clause (ii) shall, in accordance with  
6           regulations, be actuarially adjusted to re-  
7           flect significant differences in participants.

8           “(iv) LIMITATION.—A change in fund-  
9           ing method to use a prior year valuation,  
10          as provided in clause (ii), may not be made  
11          unless as of the valuation date within the  
12          prior plan year, the value of the assets of  
13          the plan are not less than 125 percent of  
14          the plan’s current liability (as defined in  
15          paragraph (6)(D) without regard to clause  
16          (iv) thereof).

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

1       than six months under regulations prescribed by the  
2       Secretary.

3       “(d) EXTENSION OF AMORTIZATION PERIODS FOR  
4       MULTIEMPLOYER PLANS.—

5               “(1) AUTOMATIC EXTENSION UPON APPLICA-  
6       TION BY CERTAIN PLANS.—

7               “(A) IN GENERAL.—If the plan sponsor of  
8       a multiemployer plan—

9               “(i) submits to the Secretary an appli-  
10       cation for an extension of the period of  
11       years required to amortize any unfunded  
12       liability described in any clause of sub-  
13       section (b)(2)(B) or described in subsection  
14       (b)(4), and

15              “(ii) includes with the application a  
16       certification by the plan’s actuary de-  
17       scribed in subparagraph (B),

18       the Secretary shall extend the amortization pe-  
19       riod for the period of time (not in excess of 5  
20       years) specified in the application. Such exten-  
21       sion shall be in addition to any extension under  
22       paragraph (2).

23              “(B) CRITERIA.—A certification with re-  
24       spect to a multiemployer plan is described in



1           this subparagraph if the plan’s actuary certifies  
2           that, based on reasonable assumptions—

3                   “(i) absent the extension under sub-  
4                   paragraph (A), the plan would have an ac-  
5                   cumulated funding deficiency in the cur-  
6                   rent plan year or any of the 9 succeeding  
7                   plan years,

8                   “(ii) the plan sponsor has adopted a  
9                   plan to improve the plan’s funding status,

10                   “(iii) the plan is projected to have suf-  
11                   ficient assets to timely pay expected bene-  
12                   fits and anticipated expenditures over the  
13                   amortization period as extended, and

14                   “(iv) the notice required under para-  
15                   graph (3)(A) has been provided.

16                   “(C) TERMINATION.—The preceding provi-  
17                   sions of this paragraph shall not apply with re-  
18                   spect to any application submitted after Decem-  
19                   ber 31, 2014.

20                   “(2) ALTERNATIVE EXTENSION.—

21                   “(A) IN GENERAL.—If the plan sponsor of  
22                   a multiemployer plan submits to the Secretary  
23                   an application for an extension of the period of  
24                   years required to amortize any unfunded liabil-  
25                   ity described in any clause of subsection

1 (b)(2)(B) or described in subsection (b)(4), the  
2 Secretary may extend the amortization period  
3 for a period of time (not in excess of 10 years  
4 reduced by the number of years of any exten-  
5 sion under paragraph (1) with respect to such  
6 unfunded liability) if the Secretary makes the  
7 determination described in subparagraph (B).  
8 Such extension shall be in addition to any ex-  
9 tension under paragraph (1).

10 “(B) DETERMINATION.—The Secretary  
11 may grant an extension under subparagraph  
12 (A) if the Secretary determines that—

13 “(i) such extension would carry out  
14 the purposes of this Act and would provide  
15 adequate protection for participants under  
16 the plan and their beneficiaries, and

17 “(ii) the failure to permit such exten-  
18 sion would—

19 “(I) result in a substantial risk  
20 to the voluntary continuation of the  
21 plan, or a substantial curtailment of  
22 pension benefit levels or employee  
23 compensation, and

24 “(II) be adverse to the interests  
25 of plan participants in the aggregate.

1           “(C) ACTION BY SECRETARY.—The Sec-  
2           retary shall act upon any application for an ex-  
3           tension under this paragraph within 180 days  
4           of the submission of such application. If the  
5           Secretary rejects the application for an exten-  
6           sion under this paragraph, the Secretary shall  
7           provide notice to the plan detailing the specific  
8           reasons for the rejection, including references to  
9           the criteria set forth above.

10          “(3) ADVANCE NOTICE.—

11               “(A) IN GENERAL.—The Secretary shall,  
12           before granting an extension under this sub-  
13           section, require each applicant to provide evi-  
14           dence satisfactory to such Secretary that the  
15           applicant has provided notice of the filing of the  
16           application for such extension to each affected  
17           party (as defined in section 4001(a)(21) of the  
18           Employee Retirement Income Security Act of  
19           1974) with respect to the affected plan. Such  
20           notice shall include a description of the extent  
21           to which the plan is funded for benefits which  
22           are guaranteed under title IV of such Act and  
23           for benefit liabilities.

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

1           relevant information provided by a person to  
2           whom notice was given under paragraph (1).”.

3       (b) EFFECTIVE DATE.—

4           (1) IN GENERAL.—The amendments made by  
5       this section shall apply to plan years beginning after  
6       2007.

7           (2) SPECIAL RULE FOR CERTAIN AMORTIZATION  
8       EXTENSIONS.—If the Secretary of the Treasury  
9       grants an extension under section 304 of the Em-  
10      ployee Retirement Income Security Act of 1974 and  
11      section 412(e) of the Internal Revenue Code of 1986  
12      with respect to any application filed with the Sec-  
13      retary of the Treasury on or before June 30, 2005,  
14      the extension (and any modification thereof) shall be  
15      applied and administered under the rules of such  
16      sections as in effect before the enactment of this  
17      Act, including the use of the rate of interest deter-  
18      mined under section 6621(b) of such Code.

19   **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
20                   **PLOYER PLANS IN ENDANGERED OR CRIT-**  
21                   **ICAL STATUS.**

22       (a) IN GENERAL.—Subpart A of part III of sub-  
23      chapter D of chapter 1 of the Internal Revenue Code of  
24      1986 (as amended by this Act) is amended by inserting  
25      after section 431 the following new section:

1 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
2 **PLOYER PLANS IN ENDANGERED STATUS OR**  
3 **CRITICAL STATUS.**

4 “(a) GENERAL RULE.—For purposes of this part, in  
5 the case of a multiemployer plan in effect on July 16,  
6 2006 —

7 “(1) if the plan is in endangered status—

8 “(A) the plan sponsor shall adopt and im-  
9 plement a funding improvement plan in accord-  
10 ance with the requirements of subsection (c),  
11 and

12 “(B) the requirements of subsection (d)  
13 shall apply during the funding plan adoption  
14 period and the funding improvement period,  
15 and

16 “(2) if the plan is in critical status—

17 “(A) the plan sponsor shall adopt and im-  
18 plement a rehabilitation plan in accordance with  
19 the requirements of subsection (e), and

20 “(B) the requirements of subsection (f)  
21 shall apply during the rehabilitation plan adop-  
22 tion period and the rehabilitation period.

23 “(b) DETERMINATION OF ENDANGERED AND CRIT-  
24 ICAL STATUS.—For purposes of this section—

25 “(1) ENDANGERED STATUS.—A multiemployer  
26 plan is in endangered status for a plan year if, as

1       determined by the plan actuary under paragraph  
2       (3), the plan is not in critical status for the plan  
3       year and, as of the beginning of the plan year, ei-  
4       ther—

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

7               “(B) the plan has an accumulated funding  
8       deficiency for such plan year, or is projected to  
9       have such an accumulated funding deficiency  
10      for any of the 6 succeeding plan years, taking  
11      into account any extension of amortization peri-  
12      ods under section 431(d).

13      For purposes of this section, a plan shall be treated  
14      as in seriously endangered status for a plan year if  
15      the plan is described in both subparagraphs (A) and  
16      (B).

17              “(2) CRITICAL STATUS.—A multiemployer plan  
18      is in critical status for a plan year if, as determined  
19      by the plan actuary under paragraph (3), the plan  
20      is described in 1 or more of the following subpara-  
21      graphs as of the beginning of the plan year:

22              “(A) A plan is described in this subpara-  
23      graph if—

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

1 “(ii) the sum of—

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

4 “(II) the present value of the  
5 reasonably anticipated employer con-  
6 tributions for the current plan year  
7 and each of the 6 succeeding plan  
8 years, assuming that the terms of all  
9 collective bargaining agreements pur-  
10 suant to which the plan is maintained  
11 for the current plan year continue in  
12 effect for succeeding plan years,

13 is less than the present value of all non-  
14 forfeitable benefits projected to be payable  
15 under the plan during the current plan  
16 year and each of the 6 succeeding plan  
17 years (plus administrative expenses for  
18 such plan years).

19 “(B) A plan is described in this subpara-  
20 graph if—

21 “(i) the plan has an accumulated  
22 funding deficiency for the current plan  
23 year, not taking into account any extension  
24 of amortization periods under section  
25 431(d), or

1 “(ii) the plan is projected to have an  
2 accumulated funding deficiency for any of  
3 the 3 succeeding plan years (4 succeeding  
4 plan years if the funded percentage of the  
5 plan is 65 percent or less), not taking into  
6 account any extension of amortization peri-  
7 ods under section 431(d).

8 “(C) A plan is described in this subpara-  
9 graph if—

10 “(i)(I) the plan’s normal cost for the  
11 current plan year, plus interest (deter-  
12 mined at the rate used for determining  
13 costs under the plan) for the current plan  
14 year on the amount of unfunded benefit li-  
15 abilities under the plan as of the last date  
16 of the preceding plan year, exceeds

17 “(II) the present value of the reason-  
18 ably anticipated employer and employee  
19 contributions for the current plan year,

20 “(ii) the present value, as of the be-  
21 ginning of the current plan year, of non-  
22 forfeitable benefits of inactive participants  
23 is greater than the present value of non-  
24 forfeitable benefits of active participants,  
25 and



1           “(iii) the plan has an accumulated  
2           funding deficiency for the current plan  
3           year, or is projected to have such a defi-  
4           ciency for any of the 4 succeeding plan  
5           years, not taking into account any exten-  
6           sion of amortization periods under section  
7           431(d).

8           “(D) A plan is described in this subpara-  
9           graph if the sum of—

10           “(i) the fair market value of plan as-  
11           sets, plus

12           “(ii) the present value of the reason-  
13           ably anticipated employer contributions for  
14           the current plan year and each of the 4  
15           succeeding plan years, assuming that the  
16           terms of all collective bargaining agree-  
17           ments pursuant to which the plan is main-  
18           tained for the current plan year continue  
19           in effect for succeeding plan years,

20           is less than the present value of all benefits pro-  
21           jected to be payable under the plan during the  
22           current plan year and each of the 4 succeeding  
23           plan years (plus administrative expenses for  
24           such plan years).

1           “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
2       ARY.—

3           “(A) IN GENERAL.—Not later than the  
4       90th day of each plan year of a multiemployer  
5       plan, the plan actuary shall certify to the Sec-  
6       retary and to the plan sponsor—

7           “(i) whether or not the plan is in en-  
8       dangered status for such plan year and  
9       whether or not the plan is or will be in  
10      critical status for such plan year, and

11          “(ii) in the case of a plan which is in  
12      a funding improvement or rehabilitation  
13      period, whether or not the plan is making  
14      the scheduled progress in meeting the re-  
15      quirements of its funding improvement or  
16      rehabilitation plan.

17          “(B) ACTUARIAL PROJECTIONS OF ASSETS  
18      AND LIABILITIES.—

19          “(i) IN GENERAL.—In making the de-  
20      terminations and projections under this  
21      subsection, the plan actuary shall make  
22      projections required for the current and  
23      succeeding plan years of the current value  
24      of the assets of the plan and the present  
25      value of all liabilities to participants and

1 beneficiaries under the plan for the current  
2 plan year as of the beginning of such year.  
3 The actuary's projections shall be based on  
4 reasonable actuarial estimates, assump-  
5 tions, and methods that, except as pro-  
6 vided in clause (iii), offer the actuary's  
7 best estimate of anticipated experience  
8 under the plan. The projected present  
9 value of liabilities as of the beginning of  
10 such year shall be determined based on the  
11 most recent of either—

12 “(I) the actuarial statement re-  
13 quired under section 103(d) of the  
14 Employee Retirement Income Security  
15 Act of 1974 with respect to the most  
16 recently filed annual report, or

17 “(II) the actuarial valuation for  
18 the preceding plan year.

19 “(ii) DETERMINATIONS OF FUTURE  
20 CONTRIBUTIONS.—Any actuarial projection  
21 of plan assets shall assume—

22 “(I) reasonably anticipated em-  
23 ployer contributions for the current  
24 and succeeding plan years, assuming  
25 that the terms of the one or more col-

1           lective bargaining agreements pursu-  
2           ant to which the plan is maintained  
3           for the current plan year continue in  
4           effect for succeeding plan years, or

5                   “(II) that employer contributions  
6           for the most recent plan year will con-  
7           tinue indefinitely, but only if the plan  
8           actuary determines there have been no  
9           significant demographic changes that  
10          would make such assumption unrea-  
11          sonable.

12                   “(iii) PROJECTED INDUSTRY ACTIV-  
13          ITY.—Any projection of activity in the in-  
14          dustry or industries covered by the plan,  
15          including future covered employment and  
16          contribution levels, shall be based on infor-  
17          mation provided by the plan sponsor,  
18          which shall act reasonably and in good  
19          faith.

20                   “(C) PENALTY FOR FAILURE TO SECURE  
21          TIMELY ACTUARIAL CERTIFICATION.—Any fail-  
22          ure of the plan’s actuary to certify the plan’s  
23          status under this subsection by the date speci-  
24          fied in subparagraph (A) shall be treated for  
25          purposes of section 502(c)(2) of the Employee

1 Retirement Income Security Act of 1974 as a  
2 failure or refusal by the plan administrator to  
3 file the annual report required to be filed with  
4 the Secretary under section 101(b)(4) of such  
5 Act.

6 “(D) NOTICE.—

7 “(i) IN GENERAL.—In any case in  
8 which it is certified under subparagraph  
9 (A) that a multiemployer plan is or will be  
10 in endangered or critical status for a plan  
11 year, the plan sponsor shall, not later than  
12 30 days after the date of the certification,  
13 provide notification of the endangered or  
14 critical status to the participants and bene-  
15 ficiaries, the bargaining parties, the Pen-  
16 sion Benefit Guaranty Corporation, and  
17 the Secretary of Labor.

18 “(ii) PLANS IN CRITICAL STATUS.—If  
19 it is certified under subparagraph (A) that  
20 a multiemployer plan is or will be in crit-  
21 ical status, the plan sponsor shall include  
22 in the notice under clause (i) an expla-  
23 nation of the possibility that—

1                   “(I) adjustable benefits (as de-  
2                   fined in subsection (e)(8)) may be re-  
3                   duced, and

4                   “(II) such reductions may apply  
5                   to participants and beneficiaries  
6                   whose benefit commencement date is  
7                   on or after the date such notice is  
8                   provided for the first plan year in  
9                   which the plan is in critical status.

10                  “(iii) MODEL NOTICE.—The Secretary  
11                  of Labor shall prescribe a model notice  
12                  that a multiemployer plan may use to sat-  
13                  isfy the requirements under clause (ii).

14                  “(c) FUNDING IMPROVEMENT PLAN MUST BE  
15                  ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED  
16                  STATUS.—

17                  “(1) IN GENERAL.—In any case in which a  
18                  multiemployer plan is in endangered status for a  
19                  plan year, the plan sponsor, in accordance with this  
20                  subsection—

21                  “(A) shall adopt a funding improvement  
22                  plan not later than 240 days following the re-  
23                  quired date for the actuarial certification of en-  
24                  dangered status under subsection (b)(3)(A),  
25                  and

1           “(B) within 30 days after the adoption of  
2           the funding improvement plan—

3           “(i) shall provide to the bargaining  
4           parties 1 or more schedules showing re-  
5           vised benefit structures, revised contribu-  
6           tion structures, or both, which, if adopted,  
7           may reasonably be expected to enable the  
8           multiemployer plan to meet the applicable  
9           benchmarks in accordance with the fund-  
10          ing improvement plan, including—

11           “(I) one proposal for reductions  
12           in the amount of future benefit accru-  
13           als necessary to achieve the applicable  
14           benchmarks, assuming no amend-  
15           ments increasing contributions under  
16           the plan (other than amendments in-  
17           creasing contributions necessary to  
18           achieve the applicable benchmarks  
19           after amendments have reduced fu-  
20           ture benefit accruals to the maximum  
21           extent permitted by law), and

22           “(II) one proposal for increases  
23           in contributions under the plan nec-  
24           essary to achieve the applicable bench-  
25           marks, assuming no amendments re-

1                   ducing future benefit accruals under  
2                   the plan, and

3                   “(ii) may, if the plan sponsor deems  
4                   appropriate, prepare and provide the bar-  
5                   gaining parties with additional information  
6                   relating to contribution rates or benefit re-  
7                   ductions, alternative schedules, or other in-  
8                   formation relevant to achieving the appli-  
9                   cable benchmarks in accordance with the  
10                  funding improvement plan.

11               For purposes of this section, the term ‘applica-  
12               ble benchmarks’ means the requirements appli-  
13               cable to the multiemployer plan under para-  
14               graph (3) (as modified by paragraph (5)).

15               “(2) EXCEPTION FOR YEARS AFTER PROCESS  
16               BEGINS.—Paragraph (1) shall not apply to a plan  
17               year if such year is in a funding plan adoption pe-  
18               riod or funding improvement period by reason of the  
19               plan being in endangered status for a preceding plan  
20               year. For purposes of this section, such preceding  
21               plan year shall be the initial determination year with  
22               respect to the funding improvement plan to which it  
23               relates.

24               “(3) FUNDING IMPROVEMENT PLAN.—For pur-  
25               poses of this section—



1           “(A) IN GENERAL.—A funding improve-  
2           ment plan is a plan which consists of the ac-  
3           tions, including options or a range of options to  
4           be proposed to the bargaining parties, formu-  
5           lated to provide, based on reasonably antici-  
6           pated experience and reasonable actuarial as-  
7           sumptions, for the attainment by the plan dur-  
8           ing the funding improvement period of the fol-  
9           lowing requirements:

10           “(i) INCREASE IN PLAN’S FUNDING  
11           PERCENTAGE.—The plan’s funded percent-  
12           age as of the close of the funding improve-  
13           ment period equals or exceeds a percentage  
14           equal to the sum of—

15           “(I) such percentage as of the  
16           beginning of such period, plus

17           “(II) 33 percent of the difference  
18           between 100 percent and the percent-  
19           age under subclause (I).

20           “(ii) AVOIDANCE OF ACCUMULATED  
21           FUNDING DEFICIENCIES.—No accumulated  
22           funding deficiency for any plan year during  
23           the funding improvement period (taking  
24           into account any extension of amortization  
25           periods under section 304(d)).

1 “(B) SERIOUSLY ENDANGERED PLANS.—

2 In the case of a plan in seriously endangered  
3 status, except as provided in paragraph (5),  
4 subparagraph (A)(i)(II) shall be applied by sub-  
5 stituting ‘20 percent’ for ‘33 percent’.

6 “(4) FUNDING IMPROVEMENT PERIOD.—For  
7 purposes of this section—

8 “(A) IN GENERAL.—The funding improve-  
9 ment period for any funding improvement plan  
10 adopted pursuant to this subsection is the 10-  
11 year period beginning on the first day of the  
12 first plan year of the multiemployer plan begin-  
13 ning after the earlier of—

14 “(i) the second anniversary of the  
15 date of the adoption of the funding im-  
16 provement plan, or

17 “(ii) the expiration of the collective  
18 bargaining agreements in effect on the due  
19 date for the actuarial certification of en-  
20 dangered status for the initial determina-  
21 tion year under subsection (b)(3)(A) and  
22 covering, as of such due date, at least 75  
23 percent of the active participants in such  
24 multiemployer plan.

1 “(B) SERIOUSLY ENDANGERED PLANS.—

2 In the case of a plan in seriously endangered  
3 status, except as provided in paragraph (5),  
4 subparagraph (A) shall be applied by sub-  
5 stituting ‘15-year period’ for ‘10-year period’.

6 “(C) COORDINATION WITH CHANGES IN  
7 STATUS.—

8 “(i) PLANS NO LONGER IN ENDAN-  
9 GERED STATUS.—If the plan’s actuary cer-  
10 tifies under subsection (b)(3)(A) for a plan  
11 year in any funding plan adoption period  
12 or funding improvement period that the  
13 plan is no longer in endangered status and  
14 is not in critical status, the funding plan  
15 adoption period or funding improvement  
16 period, whichever is applicable, shall end as  
17 of the close of the preceding plan year.

18 “(ii) PLANS IN CRITICAL STATUS.—If  
19 the plan’s actuary certifies under sub-  
20 section (b)(3)(A) for a plan year in any  
21 funding plan adoption period or funding  
22 improvement period that the plan is in  
23 critical status, the funding plan adoption  
24 period or funding improvement period,  
25 whichever is applicable, shall end as of the

1 close of the plan year preceding the first  
2 plan year in the rehabilitation period with  
3 respect to such status.

4 “(D) PLANS IN ENDANGERED STATUS AT  
5 END OF PERIOD.—If the plan’s actuary certifies  
6 under subsection (b)(3)(A) for the first plan  
7 year following the close of the period described  
8 in subparagraph (A) that the plan is in endan-  
9 gered status, the provisions of this subsection  
10 and subsection (d) shall be applied as if such  
11 first plan year were an initial determination  
12 year, except that the plan may not be amended  
13 in a manner inconsistent with the funding im-  
14 provement plan in effect for the preceding plan  
15 year until a new funding improvement plan is  
16 adopted.

17 “(5) SPECIAL RULES FOR SERIOUSLY ENDAN-  
18 GERED PLANS MORE THAN 70 PERCENT FUNDED.—

19 “(A) IN GENERAL.—If the funded percent-  
20 age of a plan in seriously endangered status  
21 was more than 70 percent as of the beginning  
22 of the initial determination year—

23 “(i) paragraphs (3)(B) and (4)(B)  
24 shall apply only if the plan’s actuary cer-  
25 tifies, within 30 days after the certification

1 under subsection (b)(3)(A) for the initial  
2 determination year, that, based on the  
3 terms of the plan and the collective bar-  
4 gaining agreements in effect at the time of  
5 such certification, the plan is not projected  
6 to meet the requirements of paragraph  
7 (3)(A) (without regard to paragraphs  
8 (3)(B) and (4)(B)), and

9 “(ii) if there is a certification under  
10 clause (i), the plan may, in formulating its  
11 funding improvement plan, only take into  
12 account the rules of paragraph (3)(B) and  
13 (4)(B) for plan years in the funding im-  
14 provement period beginning on or before  
15 the date on which the last of the collective  
16 bargaining agreements described in para-  
17 graph (4)(A)(ii) expires.

18 “(B) SPECIAL RULE AFTER EXPIRATION  
19 OF AGREEMENTS.—Notwithstanding subpara-  
20 graph (A)(ii), if, for any plan year ending after  
21 the date described in subparagraph (A)(ii), the  
22 plan actuary certifies (at the time of the annual  
23 certification under subsection (b)(3)(A) for such  
24 plan year) that, based on the terms of the plan  
25 and collective bargaining agreements in effect

1 at the time of that annual certification, the plan  
2 is not projected to be able to meet the require-  
3 ments of paragraph (3)(A) (without regard to  
4 paragraphs (3)(B) and (4)(B)), paragraphs  
5 (3)(B) and (4)(B) shall continue to apply for  
6 such year.

7 “(6) UPDATES TO FUNDING IMPROVEMENT  
8 PLANS AND SCHEDULES.—

9 “(A) FUNDING IMPROVEMENT PLAN.—The  
10 plan sponsor shall annually update the funding  
11 improvement plan and shall file the update with  
12 the plan’s annual report under section 104 of  
13 the Employee Retirement Income Security Act  
14 of 1974.

15 “(B) SCHEDULES.—The plan sponsor shall  
16 annually update any schedule of contribution  
17 rates provided under this subsection to reflect  
18 the experience of the plan.

19 “(C) DURATION OF SCHEDULE.—A sched-  
20 ule of contribution rates provided by the plan  
21 sponsor and relied upon by bargaining parties  
22 in negotiating a collective bargaining agreement  
23 shall remain in effect for the duration of that  
24 collective bargaining agreement.

1           “(7) IMPOSITION OF DEFAULT SCHEDULE  
2 WHERE FAILURE TO ADOPT FUNDING IMPROVEMENT  
3 PLAN.—

4           “(A) IN GENERAL.—If—

5               “(i) a collective bargaining agreement  
6 providing for contributions under a multi-  
7 employer plan that was in effect at the  
8 time the plan entered endangered status  
9 expires, and

10              “(ii) after receiving one or more  
11 schedules from the plan sponsor under  
12 paragraph (1)(B), the bargaining parties  
13 with respect to such agreement fail to  
14 agree on changes to contribution or benefit  
15 schedules necessary to meet the applicable  
16 benchmarks in accordance with the fund-  
17 ing improvement plan,

18 the plan sponsor shall implement the schedule  
19 described in paragraph (1)(B)(i)(I) beginning  
20 on the date specified in subparagraph (B).

21           “(B) DATE OF IMPLEMENTATION.—The  
22 date specified in this subparagraph is the ear-  
23 lier of the date—

1 “(i) on which the Secretary of Labor  
2 certifies that the parties are at an impasse,  
3 or

4 “(ii) which is 180 days after the date  
5 on which the collective bargaining agree-  
6 ment described in subparagraph (A) ex-  
7 pires.

8 “(8) FUNDING PLAN ADOPTION PERIOD.—For  
9 purposes of this section, the term ‘funding plan  
10 adoption period’ means the period beginning on the  
11 date of the certification under subsection (b)(3)(A)  
12 for the initial determination year and ending on the  
13 day before the first day of the funding improvement  
14 period.

15 “(d) RULES FOR OPERATION OF PLAN DURING  
16 ADOPTION AND IMPROVEMENT PERIODS.—

17 “(1) SPECIAL RULES FOR PLAN ADOPTION PE-  
18 RIOD.—During the funding plan adoption period—

19 “(A) the plan sponsor may not accept a  
20 collective bargaining agreement or participation  
21 agreement with respect to the multiemployer  
22 plan that provides for—

23 “(i) a reduction in the level of con-  
24 tributions for any participants,



1                   “(ii) a suspension of contributions  
2                   with respect to any period of service, or

3                   “(iii) any new direct or indirect exclu-  
4                   sion of younger or newly hired employees  
5                   from plan participation,

6                   “(B) no amendment of the plan which in-  
7                   creases the liabilities of the plan by reason of  
8                   any increase in benefits, any change in the ac-  
9                   crual of benefits, or any change in the rate at  
10                  which benefits become nonforfeitable under the  
11                  plan may be adopted unless the amendment is  
12                  required as a condition of qualification under  
13                  part I of subchapter D of chapter 1 or to com-  
14                  ply with other applicable law, and

15                  “(C) in the case of a plan in seriously en-  
16                  dangered status, the plan sponsor shall take all  
17                  reasonable actions which are consistent with the  
18                  terms of the plan and applicable law and which  
19                  are expected, based on reasonable assumptions,  
20                  to achieve—

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

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

1       Actions under subparagraph (C) include applications  
2       for extensions of amortization periods under section  
3       431(d), use of the shortfall funding method in mak-  
4       ing funding standard account computations, amend-  
5       ments to the plan’s benefit structure, reductions in  
6       future benefit accruals, and other reasonable actions  
7       consistent with the terms of the plan and applicable  
8       law.

9               “(2) COMPLIANCE WITH FUNDING IMPROVE-  
10       MENT PLAN.—

11               “(A) IN GENERAL.—A plan may not be  
12       amended after the date of the adoption of a  
13       funding improvement plan so as to be incon-  
14       sistent with the funding improvement plan.

15               “(B) NO REDUCTION IN CONTRIBU-  
16       TIONS.—A plan sponsor may not during any  
17       funding improvement period accept a collective  
18       bargaining agreement or participation agree-  
19       ment with respect to the multiemployer plan  
20       that provides for—

21               “(i) a reduction in the level of con-  
22       tributions for any participants,

23               “(ii) a suspension of contributions  
24       with respect to any period of service, or

1 “(iii) any new direct or indirect exclu-  
2 sion of younger or newly hired employees  
3 from plan participation.

4 “(C) SPECIAL RULES FOR BENEFIT IN-  
5 CREASES.—A plan may not be amended after  
6 the date of the adoption of a funding improve-  
7 ment plan so as to increase benefits, including  
8 future benefit accruals, unless the plan actuary  
9 certifies that the benefit increase is consistent  
10 with the funding improvement plan and is paid  
11 for out of contributions not required by the  
12 funding improvement plan to meet the applica-  
13 ble benchmark in accordance with the schedule  
14 contemplated in the funding improvement plan.

15 “(e) REHABILITATION PLAN MUST BE ADOPTED  
16 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

17 “(1) IN GENERAL.—In any case in which a  
18 multiemployer plan is in critical status for a plan  
19 year, the plan sponsor, in accordance with this sub-  
20 section—

21 “(A) shall adopt a rehabilitation plan not  
22 later than 240 days following the required date  
23 for the actuarial certification of critical status  
24 under subsection (b)(3)(A), and

1           “(B) within 30 days after the adoption of  
2           the rehabilitation plan—

3                   “(i) shall provide to the bargaining  
4                   parties 1 or more schedules showing re-  
5                   vised benefit structures, revised contribu-  
6                   tion structures, or both, which, if adopted,  
7                   may reasonably be expected to enable the  
8                   multiemployer plan to emerge from critical  
9                   status in accordance with the rehabilitation  
10                  plan, and

11                   “(ii) may, if the plan sponsor deems  
12                   appropriate, prepare and provide the bar-  
13                   gaining parties with additional information  
14                   relating to contribution rates or benefit re-  
15                   ductions, alternative schedules, or other in-  
16                   formation relevant to emerging from crit-  
17                   ical status in accordance with the rehabili-  
18                  tation plan.

19           The schedule or schedules described in subparagraph  
20           (B)(i) shall reflect reductions in future benefit ac-  
21           cruals and adjustable benefits, and increases in con-  
22           tributions, that the plan sponsor determines are rea-  
23           sonably necessary to emerge from critical status.  
24           One schedule shall be designated as the default  
25           schedule and such schedule shall assume that there

1 are no increases in contributions under the plan  
2 other than the increases necessary to emerge from  
3 critical status after future benefit accruals and other  
4 benefits (other than benefits the reduction or elimi-  
5 nation of which are not permitted under section  
6 411(d)(6)) have been reduced to the maximum ex-  
7 tent permitted by law.

8 “(2) EXCEPTION FOR YEARS AFTER PROCESS  
9 BEGINS.—Paragraph (1) shall not apply to a plan  
10 year if such year is in a rehabilitation plan adoption  
11 period or rehabilitation period by reason of the plan  
12 being in critical status for a preceding plan year.  
13 For purposes of this section, such preceding plan  
14 year shall be the initial critical year with respect to  
15 the rehabilitation plan to which it relates.

16 “(3) REHABILITATION PLAN.—For purposes of  
17 this section—

18 “(A) IN GENERAL.—A rehabilitation plan  
19 is a plan which consists of—

20 “(i) actions, including options or a  
21 range of options to be proposed to the bar-  
22 gaining parties, formulated, based on rea-  
23 sonably anticipated experience and reason-  
24 able actuarial assumptions, to enable the  
25 plan to cease to be in critical status by the

1 end of the rehabilitation period and may  
2 include reductions in plan expenditures (in-  
3 cluding plan mergers and consolidations),  
4 reductions in future benefit accruals or in-  
5 creases in contributions, if agreed to by the  
6 bargaining parties, or any combination of  
7 such actions, or

8 “(ii) if the plan sponsor determines  
9 that, based on reasonable actuarial as-  
10 sumptions and upon exhaustion of all rea-  
11 sonable measures, the plan can not reason-  
12 ably be expected to emerge from critical  
13 status by the end of the rehabilitation pe-  
14 riod, reasonable measures to emerge from  
15 critical status at a later time or to forestall  
16 possible insolvency (within the meaning of  
17 section 4245 of the Employee Retirement  
18 Income Security Act of 1974).

19 A rehabilitation plan must provide annual  
20 standards for meeting the requirements of such  
21 rehabilitation plan. Such plan shall also include  
22 the schedules required to be provided under  
23 paragraph (1)(B)(i) and if clause (ii) applies,  
24 shall set forth the alternatives considered, ex-  
25 plain why the plan is not reasonably expected to

1 emerge from critical status by the end of the re-  
2 habilitation period, and specify when, if ever,  
3 the plan is expected to emerge from critical sta-  
4 tus in accordance with the rehabilitation plan.

5 “(B) UPDATES TO REHABILITATION PLAN  
6 AND SCHEDULES.—

7 “(i) REHABILITATION PLAN.—The  
8 plan sponsor shall annually update the re-  
9 habilitation plan and shall file the update  
10 with the plan’s annual report under section  
11 104 of the Employee Retirement Income  
12 Security Act of 1974.

13 “(ii) SCHEDULES.—The plan sponsor  
14 shall annually update any schedule of con-  
15 tribution rates provided under this sub-  
16 section to reflect the experience of the  
17 plan.

18 “(iii) DURATION OF SCHEDULE.—A  
19 schedule of contribution rates provided by  
20 the plan sponsor and relied upon by bar-  
21 gaining parties in negotiating a collective  
22 bargaining agreement shall remain in ef-  
23 fect for the duration of that collective bar-  
24 gaining agreement.

1 “(C) IMPOSITION OF DEFAULT SCHEDULE  
2 WHERE FAILURE TO ADOPT REHABILITATION  
3 PLAN.—

4 “(i) IN GENERAL.—If—

5 “(I) a collective bargaining agree-  
6 ment providing for contributions  
7 under a multiemployer plan that was  
8 in effect at the time the plan entered  
9 critical status expires, and

10 “(II) after receiving one or more  
11 schedules from the plan sponsor under  
12 paragraph (1)(B), the bargaining par-  
13 ties with respect to such agreement  
14 fail to adopt a contribution or benefit  
15 schedules with terms consistent with  
16 the rehabilitation plan and the sched-  
17 ule from the plan sponsor under para-  
18 graph (1)(B)(i),

19 the plan sponsor shall implement the de-  
20 fault schedule described in the last sen-  
21 tence of paragraph (1) beginning on the  
22 date specified in clause (ii).

23 “(ii) DATE OF IMPLEMENTATION.—

24 The date specified in this clause is the ear-  
25 lier of the date—



1 “(I) on which the Secretary of  
2 Labor certifies that the parties are at  
3 an impasse, or

4 “(II) which is 180 days after the  
5 date on which the collective bar-  
6 gaining agreement described in clause  
7 (i) expires.

8 “(4) REHABILITATION PERIOD.—For purposes  
9 of this section—

10 “(A) IN GENERAL.—The rehabilitation pe-  
11 riod for a plan in critical status is the 10-year  
12 period beginning on the first day of the first  
13 plan year of the multiemployer plan following  
14 the earlier of—

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

18 “(ii) the expiration of the collective  
19 bargaining agreements in effect on the  
20 date of the due date for the actuarial cer-  
21 tification of critical status for the initial  
22 critical year under subsection (a)(1) and  
23 covering, as of such date at least 75 per-  
24 cent of the active participants in such mul-  
25 tiemployer plan.

1           If a plan emerges from critical status as pro-  
2           vided under subparagraph (B) before the end of  
3           such 10-year period, the rehabilitation period  
4           shall end with the plan year preceding the plan  
5           year for which the determination under sub-  
6           paragraph (B) is made.

7                   “(B) EMERGENCE.—A plan in critical sta-  
8           tus shall remain in such status until a plan  
9           year for which the plan actuary certifies, in ac-  
10          cordance with subsection (b)(3)(A), that the  
11          plan is not projected to have an accumulated  
12          funding deficiency for the plan year or any of  
13          the 9 succeeding plan years, without regard to  
14          the use of the shortfall method and taking into  
15          account any extension of amortization periods  
16          under section 431(d).

17                   “(5) REHABILITATION PLAN ADOPTION PE-  
18          RIOD.—For purposes of this section, the term ‘reha-  
19          bilitation plan adoption period’ means the period be-  
20          ginning on the date of the certification under sub-  
21          section (b)(3)(A) for the initial critical year and end-  
22          ing on the day before the first day of the rehabilita-  
23          tion period.

24                   “(6) LIMITATION ON REDUCTION IN RATES OF  
25          FUTURE ACCRUALS.—Any reduction in the rate of

1 future accruals under the default schedule described  
2 in paragraph (1)(B)(i) shall not reduce the rate of  
3 future accruals below—

4 “(A) a monthly benefit (payable as a single  
5 life annuity commencing at the participant’s  
6 normal retirement age) equal to 1 percent of  
7 the contributions required to be made with re-  
8 spect to a participant, or the equivalent stand-  
9 ard accrual rate for a participant or group of  
10 participants under the collective bargaining  
11 agreements in effect as of the first day of the  
12 initial critical year, or

13 “(B) if lower, the accrual rate under the  
14 plan on such first day.

15 The equivalent standard accrual rate shall be deter-  
16 mined by the plan sponsor based on the standard or  
17 average contribution base units which the plan spon-  
18 sor determines to be representative for active partici-  
19 pants and such other factors as the plan sponsor de-  
20 termines to be relevant. Nothing in this paragraph  
21 shall be construed as limiting the ability of the plan  
22 sponsor to prepare and provide the bargaining par-  
23 ties with alternative schedules to the default sched-  
24 ule that established lower or higher accrual and con-

1       tribution rates than the rates otherwise described in  
2       this paragraph.

3           “(7) AUTOMATIC EMPLOYER SURCHARGE.—

4           “(A) IMPOSITION OF SURCHARGE.—Each  
5       employer otherwise obligated to make a con-  
6       tribution for the initial critical year shall be ob-  
7       ligated to pay to the plan for such year a sur-  
8       charge equal to 5 percent of the contribution  
9       otherwise required under the applicable collec-  
10      tive bargaining agreement (or other agreement  
11      pursuant to which the employer contributes).  
12      For each succeeding plan year in which the  
13      plan is in critical status for a consecutive period  
14      of years beginning with the initial critical year,  
15      the surcharge shall be 10 percent of the con-  
16      tribution otherwise so required.

17          “(B) ENFORCEMENT OF SURCHARGE.—

18      The surcharges under subparagraph (A) shall  
19      be due and payable on the same schedule as the  
20      contributions on which the surcharges are  
21      based. Any failure to make a surcharge pay-  
22      ment shall be treated as a delinquent contribu-  
23      tion under section 515 of the Employee Retire-  
24      ment Income Security Act of 1974 and shall be  
25      enforceable as such.

1           “(C) SURCHARGE TO TERMINATE UPON  
2           COLLECTIVE BARGAINING AGREEMENT RENEGO-  
3           TIATION.—The surcharge under this paragraph  
4           shall cease to be effective with respect to em-  
5           ployees covered by a collective bargaining agree-  
6           ment (or other agreement pursuant to which  
7           the employer contributes), beginning on the ef-  
8           fective date of a collective bargaining agreement  
9           (or other such agreement) that includes terms  
10          consistent with a schedule presented by the  
11          plan sponsor under paragraph (1)(B)(i), as  
12          modified under subparagraph (B) of paragraph  
13          (3).

14          “(D) SURCHARGE NOT TO APPLY UNTIL  
15          EMPLOYER RECEIVES NOTICE.—The surcharge  
16          under this paragraph shall not apply to an em-  
17          ployer until 30 days after the employer has  
18          been notified by the plan sponsor that the plan  
19          is in critical status and that the surcharge is in  
20          effect.

21          “(E) SURCHARGE NOT TO GENERATE IN-  
22          CREASED BENEFIT ACCRUALS.—Notwith-  
23          standing any provision of a plan to the con-  
24          trary, the amount of any surcharge under this

1 paragraph shall not be the basis for any benefit  
2 accrual under the plan.

3 “(8) BENEFIT ADJUSTMENTS.—

4 “(A) ADJUSTABLE BENEFITS.—

5 “(i) IN GENERAL.—Notwithstanding  
6 section 204(g), the plan sponsor shall, sub-  
7 ject to the notice requirement under sub-  
8 paragraph (C), make any reductions to ad-  
9 justable benefits which the plan sponsor  
10 deems appropriate, based upon the out-  
11 come of collective bargaining over the  
12 schedule or schedules provided under para-  
13 graph (1)(B)(i).

14 “(ii) EXCEPTION FOR RETIREES.—  
15 Except in the case of adjustable benefits  
16 described in clause (iv)(III), the plan spon-  
17 sor of a plan in critical status shall not re-  
18 duce adjustable benefits of any participant  
19 or beneficiary whose benefit commence-  
20 ment date is before the date on which the  
21 plan provides notice to the participant or  
22 beneficiary under subsection (b)(3)(D) for  
23 the initial critical year .

24 “(iii) PLAN SPONSOR FLEXIBILITY.—

25 The plan sponsor shall include in the

1 schedules provided to the bargaining par-  
2 ties an allowance for funding the benefits  
3 of participants with respect to whom con-  
4 tributions are not currently required to be  
5 made, and shall reduce their benefits to  
6 the extent permitted under this title and  
7 considered appropriate by the plan sponsor  
8 based on the plan's then current overall  
9 funding status.

10 “(iv) ADJUSTABLE BENEFIT DE-  
11 FINED.—For purposes of this paragraph,  
12 the term ‘adjustable benefit’ means—

13 “(I) benefits, rights, and features  
14 under the plan, including post-retire-  
15 ment death benefits, 60-month guar-  
16 antees, disability benefits not yet in  
17 pay status, and similar benefits,

18 “(II) any early retirement benefit  
19 or retirement-type subsidy (within the  
20 meaning of section 411(d)(6)(B)(i))  
21 and any benefit payment option (other  
22 than the qualified joint-and survivor  
23 annuity), and

24 “(III) benefit increases that  
25 would not be eligible for a guarantee

1 under section 4022A of the Employee  
2 Retirement Income Security Act of  
3 1974 on the first day of initial critical  
4 year because the increases were  
5 adopted (or, if later, took effect) less  
6 than 60 months before such first day.

7 “(B) NORMAL RETIREMENT BENEFITS  
8 PROTECTED.—Except as provided in subpara-  
9 graph (A)(iv)(III), nothing in this paragraph  
10 shall be construed to permit a plan to reduce  
11 the level of a participant’s accrued benefit pay-  
12 able at normal retirement age.

13 “(C) NOTICE REQUIREMENTS.—

14 “(i) IN GENERAL.—No reduction may  
15 be made to adjustable benefits under sub-  
16 paragraph (A) unless notice of such reduc-  
17 tion has been given at least 30 days before  
18 the general effective date of such reduction  
19 for all participants and beneficiaries to—

20 “(I) plan participants and bene-  
21 ficiaries,

22 “(II) each employer who has an  
23 obligation to contribute (within the  
24 meaning of section 4212(a)) under the  
25 plan, and



1 “(III) each employee organization  
2 which, for purposes of collective bar-  
3 gaining, represents plan participants  
4 employed by such an employer.

5 “(ii) CONTENT OF NOTICE.—The no-  
6 tice under clause (i) shall contain—

7 “(I) sufficient information to en-  
8 able participants and beneficiaries to  
9 understand the effect of any reduction  
10 on their benefits, including an esti-  
11 mate (on an annual or monthly basis)  
12 of any affected adjustable benefit that  
13 a participant or beneficiary would oth-  
14 erwise have been eligible for as of the  
15 general effective date described in  
16 clause (i), and

17 “(II) information as to the rights  
18 and remedies of plan participants and  
19 beneficiaries as well as how to contact  
20 the Department of Labor for further  
21 information and assistance where ap-  
22 propriate.

23 “(iii) FORM AND MANNER.—Any no-  
24 tice under clause (i)—

1 “(I) shall be provided in a form  
2 and manner prescribed in regulations  
3 of the Secretary of Labor,

4 “(II) shall be written in a man-  
5 ner so as to be understood by the av-  
6 erage plan participant, and

7 “(III) may be provided in writ-  
8 ten, electronic, or other appropriate  
9 form to the extent such form is rea-  
10 sonably accessible to persons to whom  
11 the notice is required to be provided.

12 The Secretary of Labor shall in the regula-  
13 tions prescribed under subclause (I) estab-  
14 lish a model notice that a plan sponsor  
15 may use to meet the requirements of this  
16 subparagraph.

17 “(9) ADJUSTMENTS DISREGARDED IN WITH-  
18 DRAWAL LIABILITY DETERMINATION.—

19 “(A) BENEFIT REDUCTIONS.—Any benefit  
20 reductions under this subsection shall be dis-  
21 regarded in determining a plan’s unfunded vest-  
22 ed benefits for purposes of determining an em-  
23 ployer’s withdrawal liability under section 4201  
24 of the Employee Retirement Income Security  
25 Act of 1974.

1           “(B)    SURCHARGES.—Any    surcharges  
2           under paragraph (7) shall be disregarded in de-  
3           termining an employer’s withdrawal liability  
4           under section 4211 of such Act, except for pur-  
5           poses of determining the unfunded vested bene-  
6           fits attributable to an employer under section  
7           4211(c)(4) of such Act or a comparable method  
8           approved under section 4211(c)(5) of such Act.

9           “(C)    SIMPLIFIED    CALCULATIONS.—The  
10          Pension Benefit Guaranty Corporation shall  
11          prescribe simplified methods for the application  
12          of this paragraph in determining withdrawal li-  
13          ability.

14          “(f)    RULES FOR OPERATION OF PLAN DURING  
15          ADOPTION AND REHABILITATION PERIOD.—

16          “(1)    COMPLIANCE    WITH    REHABILITATION  
17          PLAN.—

18                 “(A)    IN GENERAL.—A plan may not be  
19                 amended after the date of the adoption of a re-  
20                 habilitation plan under subsection (e) so as to  
21                 be inconsistent with the rehabilitation plan.

22                 “(B)    SPECIAL RULES FOR BENEFIT IN-  
23                 CREASES.—A plan may not be amended after  
24                 the date of the adoption of a rehabilitation plan  
25                 under subsection (e) so as to increase benefits,

1 including future benefit accruals, unless the  
2 plan actuary certifies that such increase is paid  
3 for out of additional contributions not con-  
4 templated by the rehabilitation plan, and, after  
5 taking into account the benefit increase, the  
6 multiemployer plan still is reasonably expected  
7 to emerge from critical status by the end of the  
8 rehabilitation period on the schedule con-  
9 templated in the rehabilitation plan.

10 “(2) RESTRICTION ON LUMP SUMS AND SIMI-  
11 LAR BENEFITS.—

12 “(A) IN GENERAL.—Effective on the date  
13 the notice of certification of the plan’s critical  
14 status for the initial critical year under sub-  
15 section (b)(3)(D) is sent, and notwithstanding  
16 section 411(d)(6), the plan shall not pay—

17 “(i) any payment, in excess of the  
18 monthly amount paid under a single life  
19 annuity (plus any social security supple-  
20 ments described in the last sentence of sec-  
21 tion 411(b)(1)(A)),

22 “(ii) any payment for the purchase of  
23 an irrevocable commitment from an insurer  
24 to pay benefits, and

1 “(iii) any other payment specified by  
2 the Secretary by regulations.

3 “(B) EXCEPTION.—Subparagraph (A)  
4 shall not apply to a benefit which under section  
5 411(a)(11) may be immediately distributed  
6 without the consent of the participant or to any  
7 makeup payment in the case of a retroactive  
8 annuity starting date or any similar payment of  
9 benefits owed with respect to a prior period.

10 “(3) ADJUSTMENTS DISREGARDED IN WITH-  
11 DRAWAL LIABILITY DETERMINATION.—Any benefit  
12 reductions under this subsection shall be disregarded  
13 in determining a plan’s unfunded vested benefits for  
14 purposes of determining an employer’s withdrawal li-  
15 ability under section 4201 of the Employee Retirement  
16 Income Security Act of 1974.

17 “(4) SPECIAL RULES FOR PLAN ADOPTION PE-  
18 RIOD.—During the rehabilitation plan adoption pe-  
19 riod—

20 “(A) the plan sponsor may not accept a  
21 collective bargaining agreement or participation  
22 agreement with respect to the multiemployer  
23 plan that provides for—

24 “(i) a reduction in the level of con-  
25 tributions for any participants,

1                   “(ii) a suspension of contributions  
2                   with respect to any period of service, or

3                   “(iii) any new direct or indirect exclu-  
4                   sion of younger or newly hired employees  
5                   from plan participation, and

6                   “(B) no amendment of the plan which in-  
7                   creases the liabilities of the plan by reason of  
8                   any increase in benefits, any change in the ac-  
9                   crual of benefits, or any change in the rate at  
10                  which benefits become nonforfeitable under the  
11                  plan may be adopted unless the amendment is  
12                  required as a condition of qualification under  
13                  part I of subchapter D of chapter 1 or to com-  
14                  ply with other applicable law.

15           “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR  
16 DECISIONS.—If, within 60 days of the due date for adop-  
17 tion of a funding improvement plan or a rehabilitation  
18 plan under subsection (e), the plan sponsor of a plan in  
19 endangered status or a plan in critical status has not  
20 agreed on a funding improvement plan or rehabilitation  
21 plan, then any member of the board or group that con-  
22 stitutes the plan sponsor may require that the plan spon-  
23 sor enter into an expedited dispute resolution procedure  
24 for the development and adoption of a funding improve-  
25 ment plan or rehabilitation plan.

1 “(h) NONBARGAINED PARTICIPATION.—

2 “(1) BOTH BARGAINED AND NONBARGAINED  
3 EMPLOYEE-PARTICIPANTS.—In the case of an em-  
4 ployer that contributes to a multiemployer plan with  
5 respect to both employees who are covered by one or  
6 more collective bargaining agreements and employ-  
7 ees who are not so covered, if the plan is in endan-  
8 gered status or in critical status, benefits of and  
9 contributions for the nonbargained employees, in-  
10 cluding surcharges on those contributions, shall be  
11 determined as if those nonbargained employees were  
12 covered under the first to expire of the employer’s  
13 collective bargaining agreements in effect when the  
14 plan entered endangered or critical status.

15 “(2) NONBARGAINED EMPLOYEES ONLY.—In  
16 the case of an employer that contributes to a multi-  
17 employer plan only with respect to employees who  
18 are not covered by a collective bargaining agreement,  
19 this section shall be applied as if the employer were  
20 the bargaining party, and its participation agree-  
21 ment with the plan were a collective bargaining  
22 agreement with a term ending on the first day of the  
23 plan year beginning after the employer is provided  
24 the schedule or schedules described in subsections  
25 (c) and (e).

1       “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-  
2 poses of this section—

3               “(1) BARGAINING PARTY.—The term ‘bar-  
4 gaining party’ means—

5                       “(A)(i) except as provided in clause (ii), an  
6 employer who has an obligation to contribute  
7 under the plan; or

8                       “(ii) in the case of a plan described under  
9 section 404(c), or a continuation of such a plan,  
10 the association of employers that is the em-  
11 ployer settlor of the plan; and

12                      “(B) an employee organization which, for  
13 purposes of collective bargaining, represents  
14 plan participants employed by an employer who  
15 has an obligation to contribute under the plan.

16               “(2) FUNDED PERCENTAGE.—The term ‘fund-  
17 ed percentage’ means the percentage equal to a frac-  
18 tion—

19                      “(A) the numerator of which is the value  
20 of the plan’s assets, as determined under sec-  
21 tion 431(c)(2), and

22                      “(B) the denominator of which is the ac-  
23 crued liability of the plan, determined using ac-  
24 tuarial assumptions described in section  
25 431(c)(3).



1           “(3) ACCUMULATED FUNDING DEFICIENCY.—

2           The term ‘accumulated funding deficiency’ has the  
3           meaning given such term in section 412(a).

4           “(4) ACTIVE PARTICIPANT.—The term ‘active  
5           participant’ means, in connection with a multiem-  
6           ployer plan, a participant who is in covered service  
7           under the plan.

8           “(5) INACTIVE PARTICIPANT.—The term ‘inac-  
9           tive participant’ means, in connection with a multi-  
10          employer plan, a participant, or the beneficiary or  
11          alternate payee of a participant, who—

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

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

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

19               “(A) at any time during the current plan  
20               year, such person is a participant or beneficiary  
21               under the plan and is paid an early, late, nor-  
22               mal, or disability retirement benefit under the  
23               plan (or a death benefit under the plan related  
24               to a retirement benefit), or

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

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

8           “(8) ACTUARIAL METHOD.—Notwithstanding  
9           any other provision of this section, the actuary’s de-  
10          terminations with respect to a plan’s normal cost,  
11          actuarial accrued liability, and improvements in a  
12          plan’s funded percentage under this section shall be  
13          based upon the unit credit funding method (whether  
14          or not that method is used for the plan’s actuarial  
15          valuation).

16          “(9) PLAN SPONSOR.—In the case of a plan de-  
17          scribed under section 404(c), or a continuation of  
18          such a plan, the term ‘plan sponsor’ means the bar-  
19          gaining parties described under paragraph (1).

20          “(10) BENEFIT COMMENCEMENT DATE.—The  
21          term ‘benefit commencement date’ means the annu-  
22          ity starting date (or in the case of a retroactive an-  
23          nuity starting date, the date on which benefit pay-  
24          ments begin).”

1 (b) EXCISE TAXES ON FAILURES RELATING TO MUL-  
2 TIEMPLOYER PLANS IN ENDANGERED OR CRITICAL STA-  
3 TUS.—

4 (1) IN GENERAL.—Section 4971 of the Internal  
5 Revenue Code of 1986 is amended by redesignating  
6 subsection (g) as subsection (h) and by inserting  
7 after subsection (f) the following:

8 “(g) MULTIEMPLOYER PLANS IN ENDANGERED OR  
9 CRITICAL STATUS.—

10 “(1) IN GENERAL.—Except as provided in this  
11 subsection—

12 “(A) no tax shall be imposed under this  
13 section for a taxable year with respect to a mul-  
14 tiemployer plan if, for the plan years ending  
15 with or within the taxable year, the plan is in  
16 critical status pursuant to section 432, and

17 “(B) any tax imposed under this sub-  
18 section for a taxable year with respect to a mul-  
19 tiemployer plan if, for the plan years ending  
20 with or within the taxable year, the plan is in  
21 endangered status pursuant to section 432 shall  
22 be in addition to any other tax imposed by this  
23 section.

24 “(2) FAILURE TO COMPLY WITH FUNDING IM-  
25 PROVEMENT OR REHABILITATION PLAN.—

1           “(A) IN GENERAL.—If any funding im-  
2           provement plan or rehabilitation plan in effect  
3           under section 432 with respect to a multiem-  
4           ployer plan requires an employer to make a  
5           contribution to the plan, there is hereby im-  
6           posed a tax on each failure of the employer to  
7           make the required contribution within the time  
8           required under such plan.

9           “(B) AMOUNT OF TAX.—The amount of  
10          the tax imposed by subparagraph (A) shall be  
11          equal to the amount of the required contribu-  
12          tion the employer failed to make in a timely  
13          manner.

14          “(C) LIABILITY FOR TAX.—The tax im-  
15          posed by subparagraph (A) shall be paid by the  
16          employer responsible for contributing to or  
17          under the rehabilitation plan which fails to  
18          make the contribution.

19          “(3) FAILURE TO MEET REQUIREMENTS FOR  
20          PLANS IN ENDANGERED OR CRITICAL STATUS.—If—

21                 “(A) a plan which is in seriously endan-  
22                 gered status fails to meet the applicable bench-  
23                 marks by the end of the funding improvement  
24                 period, or

1           “(B) a plan which is in critical status ei-  
2 ther—

3           “(i) fails to meet the requirements of  
4 section 432(e) by the end of the rehabilita-  
5 tion period, or

6           “(ii) has received a certification under  
7 section 432(b)(3)(A)(ii) for 3 consecutive  
8 plan years that the plan is not making the  
9 scheduled progress in meeting its require-  
10 ments under the rehabilitation plan,

11 the plan shall be treated as having an accumu-  
12 lated funding deficiency for purposes of this  
13 section for the last plan year in such funding  
14 improvement, rehabilitation, or 3-consecutive  
15 year period (and each succeeding plan year  
16 until such benchmarks or requirements are  
17 met) in an amount equal to the greater of the  
18 amount of the contributions necessary to meet  
19 such benchmarks or requirements or the  
20 amount of such accumulated funding deficiency  
21 without regard to this paragraph.

22           “(4) FAILURE TO ADOPT REHABILITATION  
23 PLAN.—

24           “(A) IN GENERAL.—In the case of a multi-  
25 employer plan which is in critical status, there

1 is hereby imposed a tax on the failure of such  
2 plan to adopt a rehabilitation plan within the  
3 time prescribed under section 432.

4 “(B) AMOUNT OF TAX.—The amount of  
5 the tax imposed under subparagraph (A) with  
6 respect to any plan sponsor for any taxable year  
7 shall be the greater of—

8 “(i) the amount of tax imposed under  
9 subsection (a) for the taxable year (deter-  
10 mined without regard to this subsection),  
11 or

12 “(ii) the amount equal to \$1,100 mul-  
13 tiplied by the number of days during the  
14 taxable year which are included in the pe-  
15 riod beginning on the first day of the 240-  
16 day period described in section  
17 432(e)(1)(A) and ending on the day on  
18 which the rehabilitation plan is adopted.

19 “(C) LIABILITY FOR TAX.—

20 “(i) IN GENERAL.—The tax imposed  
21 by subparagraph (A) shall be paid by each  
22 plan sponsor.

23 “(ii) PLAN SPONSOR.—For purposes  
24 of clause (i), the term ‘plan sponsor’ in the  
25 case of a multiemployer plan means the as-

1                   sociation, committee, joint board of trust-  
2                   ees, or other similar group of representa-  
3                   tives of the parties who establish or main-  
4                   tain the plan.

5                   “(5) WAIVER.—In the case of a failure de-  
6                   scribed in paragraph (2) or (3) which is due to rea-  
7                   sonable cause and not to willful neglect, the Sec-  
8                   retary may waive part or all of the tax imposed by  
9                   this subsection. For purposes of this paragraph, rea-  
10                  sonable cause includes unanticipated and material  
11                  market fluctuations, the loss of a significant contrib-  
12                  uting employer, or other factors to the extent that  
13                  the payment of tax under this subsection with re-  
14                  spect to the failure would be excessive or otherwise  
15                  inequitable relative to the failure involved.

16                  “(6) TERMS USED IN SECTION 432.—For pur-  
17                  poses of this subsection, any term used in this sub-  
18                  section which is also used in section 432 shall have  
19                  the meaning given such term by section 432.”.

20                  (2) CONTROLLED GROUPS.—Section 4971(c)(2)  
21                  of such Code is amended—

22                         (A) by striking “In the case of a plan  
23                         other than a multiemployer plan, if the” and in-  
24                         serting “If an”, and

1 (B) by striking “or (f)” and inserting “(f),  
2 or (g)”.

3 (c) NO ADDITIONAL CONTRIBUTION REQUIRED.—  
4 Section 412(b) of the Internal Revenue Code of 1986, as  
5 amended by this Act, is amended by adding at the end  
6 the following new paragraph:

7 “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-  
8 TUS.—Paragraph (1) shall not apply in the case of  
9 a multiemployer plan for any plan year in which the  
10 plan is in critical status pursuant to section 432.  
11 This paragraph shall only apply if the plan adopts  
12 a rehabilitation plan in accordance with section  
13 432(e) and complies with such rehabilitation plan  
14 (and any modifications of the plan).”.

15 (d) CLERICAL AMENDMENT.—The table of sections  
16 for subpart A of part III of subchapter D of chapter 1  
17 of such Code is amended by adding at the end the fol-  
18 lowing new item:

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

19 (e) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by  
21 this section shall apply with respect to plan years be-  
22 ginning after 2007.

23 (2) SPECIAL RULE FOR CERTAIN NOTICES.—In  
24 any case in which a plan’s actuary certifies that it



1 is reasonably expected that a multiemployer plan will  
2 be in critical status under section 305(b)(3) of the  
3 Employee Retirement Income Security Act of 1974,  
4 as added by this section, with respect to the first  
5 plan year beginning after 2007, the notice required  
6 under subparagraph (D) of such section may be pro-  
7 vided at any time after the date of enactment, so  
8 long as it is provided on or before the last date for  
9 providing the notice under such subparagraph.

10 (3) SPECIAL RULE FOR CERTAIN RESTORED  
11 BENEFITS.—In the case of a multiemployer plan—

12 (A) with respect to which benefits were re-  
13 duced pursuant to a plan amendment adopted  
14 on or after January 1, 2002, and before June  
15 30, 2005, and

16 (B) which, pursuant to the plan document,  
17 the trust agreement, or a formal written com-  
18 munication from the plan sponsor to partici-  
19 pants provided before June 30, 2005, provided  
20 for the restoration of such benefits,

21 the amendments made by this section shall not apply  
22 to such benefit restorations to the extent that any  
23 restriction on the providing or accrual of such bene-  
24 fits would otherwise apply by reason of such amend-  
25 ments.

1   **SEC. 213. MEASURES TO FORESTALL INSOLVENCY OF MUL-**  
2                   **TIEMPLOYER PLANS.**

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

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

8               (2) by adding at the end the following new sen-  
9           tence: “If the plan sponsor makes such a determina-  
10          tion that the plan will be insolvent in any of the next  
11          5 plan years, the plan sponsor shall make the com-  
12          parison under this paragraph at least annually until  
13          the plan sponsor makes a determination that the  
14          plan will not be insolvent in any of the next 5 plan  
15          years.”.

16          (b) EFFECTIVE DATE.—The amendments made by  
17   this section shall apply with respect to the determinations  
18   made in plan years beginning after 2007.

19   **SEC. 214. EXEMPTION FROM EXCISE TAXES FOR CERTAIN**  
20                   **MULTIEMPLOYER PENSION PLANS.**

21          (a) IN GENERAL.—Notwithstanding any other provi-  
22   sion of law, no tax shall be imposed under subsection (a)  
23   or (b) of section 4971 of the Internal Revenue Code of  
24   1986 with respect to any accumulated funding deficiency  
25   of a plan described in subsection (b) of this section for  
26   any taxable year beginning before the earlier of—

1           (1) the taxable year in which the plan sponsor  
2           adopts a rehabilitation plan under section 305(e) of  
3           the Employee Retirement Income Security Act of  
4           1974 and section 432(e) of such Code (as added by  
5           this Act); or

6           (2) the taxable year that contains January 1,  
7           2009.

8           (b) PLAN DESCRIBED.—A plan described under this  
9           subsection is a multiemployer pension plan—

10           (1) with less than 100 participants;

11           (2) with respect to which the contributing em-  
12           ployers participated in a Federal fishery capacity re-  
13           duction program;

14           (3) with respect to which employers under the  
15           plan participated in the Northeast Fisheries Assist-  
16           ance Program; and

17           (4) with respect to which the annual normal  
18           cost is less than \$100,000 and the plan is experi-  
19           encing a funding deficiency on the date of enactment  
20           of this Act.

## 21           **Subtitle C—Sunset of Additional** 22           **Funding Rules**

### 23           **SEC. 221. SUNSET OF ADDITIONAL FUNDING RULES.**

24           (a) REPORT.—Not later than December 31, 2011,  
25           the Secretary of Labor, the Secretary of the Treasury, and

1 the Executive Director of the Pension Benefit Guaranty  
2 Corporation shall conduct a study of the effect of the  
3 amendments made by this subtitle on the operation and  
4 funding status of multiemployer plans and shall report the  
5 results of such study, including any recommendations for  
6 legislation, to the Congress.

7 (b) MATTERS INCLUDED IN STUDY.—The study re-  
8 quired under subsection (a) shall include—

9 (1) the effect of funding difficulties, funding  
10 rules in effect before the date of the enactment of  
11 this Act, and the amendments made by this subtitle  
12 on small businesses participating in multiemployer  
13 plans,

14 (2) the effect on the financial status of small  
15 employers of—

16 (A) funding targets set in funding im-  
17 provement and rehabilitation plans and associ-  
18 ated contribution increases,

19 (B) funding deficiencies,

20 (C) excise taxes,

21 (D) withdrawal liability,

22 (E) the possibility of alternatives schedules  
23 and procedures for financially-troubled employ-  
24 ers, and

1 (F) other aspects of the multiemployer sys-  
2 tem, and

3 (3) the role of the multiemployer pension plan  
4 system in helping small employers to offer pension  
5 benefits.

6 (c) SUNSET.—

7 (1) IN GENERAL.—Except as provided in this  
8 subsection, notwithstanding any other provision of  
9 this Act, the provisions of, and the amendments  
10 made by, sections 201(b), 202, and 212 shall not  
11 apply to plan years beginning after December 31,  
12 2014.

13 (2) FUNDING IMPROVEMENT AND REHABILITA-  
14 TION PLANS.—If a plan is operating under a fund-  
15 ing improvement or rehabilitation plan under section  
16 305 of such Act or 432 of such Code for its last  
17 year beginning before January 1, 2015, such plan  
18 shall continue to operate under such funding im-  
19 provement or rehabilitation plan during any period  
20 after December 31, 2014, such funding improvement  
21 or rehabilitation plan is in effect and all provisions  
22 of such Act or Code relating to the operation of such  
23 funding improvement or rehabilitation plan shall  
24 continue in effect during such period.

1       **TITLE III—INTEREST RATE**  
2               **ASSUMPTIONS**

3   **SEC. 301. EXTENSION OF REPLACEMENT OF 30-YEAR**  
4               **TREASURY RATES.**

5       (a) AMENDMENTS OF ERISA.—

6               (1) DETERMINATION OF RANGE.—Subclause  
7       (II) of section 302(b)(5)(B)(ii) of the Employee Re-  
8       tirement Income Security Act of 1974 is amended—

9                       (A) by striking “2006” and inserting  
10                      “2008”, and

11                     (B) by striking “**AND 2005**” in the heading  
12                      and inserting “, **2005, 2006, AND 2007**”.

13               (2) DETERMINATION OF CURRENT LIABILITY.—  
14       Subclause (IV) of section 302(d)(7)(C)(i) of such  
15       Act is amended—

16                     (A) by striking “or 2005” and inserting “,  
17                      2005, 2006, or 2007”, and

18                     (B) by striking “**AND 2005**” in the heading  
19                      and inserting “, **2005, 2006, AND 2007**”.

20               (3) PBGC PREMIUM RATE.—Subclause (V) of  
21       section 4006(a)(3)(E)(iii) of such Act is amended by  
22       striking “2006” and inserting “2008”.

23       (b) AMENDMENTS OF INTERNAL REVENUE CODE.—



1       “(3)(A) For purposes of paragraphs (1) and (2), the  
2 present value shall not be less than the present value cal-  
3 culated by using the applicable mortality table and the ap-  
4 plicable interest rate.

5       “(B) For purposes of subparagraph (A)—

6           “(i) The term ‘applicable mortality table’ means  
7 a mortality table, modified as appropriate by the  
8 Secretary of the Treasury, based on the mortality  
9 table specified for the plan year under subparagraph  
10 (A) of section 303(h)(3) (without regard to subpara-  
11 graph (C) or (D) of such section).

12          “(ii) The term ‘applicable interest rate’ means  
13 the adjusted first, second, and third segment rates  
14 applied under rules similar to the rules of section  
15 303(h)(2)(C) for the month before the date of the  
16 distribution or such other time as the Secretary of  
17 the Treasury may by regulations prescribe.

18          “(iii) For purposes of clause (ii), the adjusted  
19 first, second, and third segment rates are the first,  
20 second, and third segment rates which would be de-  
21 termined under section 303(h)(2)(C) if—

22           “(I) section 303(h)(2)(D) were applied by  
23 substituting the average yields for the month  
24 described in clause (ii) for the average yields for  
25 the 24-month period described in such section,



1           “(II) section 303(h)(2)(G)(i)(II) were ap-  
 2           plied           by           substituting           ‘section  
 3           205(g)(3)(B)(iii)(II)’           for           ‘section  
 4           302(b)(5)(B)(ii)(II)’, and  
 5           “(III) the applicable percentage under sec-  
 6           tion 303(h)(2)(G) were determined in accord-  
 7           ance with the following table:

<b>In the case of plan years beginning in:</b>	<b>The applicable percentage is:</b>
2008 .....	20 percent
2009 .....	40 percent
2010 .....	60 percent
2011 .....	80 percent.”.

8           (b) AMENDMENT TO INTERNAL REVENUE CODE OF  
 9 1986.—Paragraph (3) of section 417(e) of the Internal  
 10 Revenue Code of 1986 is amended to read as follows:

11           “(3) DETERMINATION OF PRESENT VALUE.—

12           “(A) IN GENERAL.—For purposes of para-  
 13           graphs (1) and (2), the present value shall not  
 14           be less than the present value calculated by  
 15           using the applicable mortality table and the ap-  
 16           plicable interest rate.

17           “(B) APPLICABLE MORTALITY TABLE.—

18           For purposes of subparagraph (A), the term  
 19           ‘applicable mortality table’ means a mortality  
 20           table, modified as appropriate by the Secretary,  
 21           based on the mortality table specified for the

1 plan year under subparagraph (A) of section  
2 430(h)(3) (without regard to subparagraph (C)  
3 or (D) of such section).

4 “(C) APPLICABLE INTEREST RATE.—For  
5 purposes of subparagraph (A), the term ‘appli-  
6 cable interest rate’ means the adjusted first,  
7 second, and third segment rates applied under  
8 rules similar to the rules of section  
9 430(h)(2)(C) for the month before the date of  
10 the distribution or such other time as the Sec-  
11 retary may by regulations prescribe.

12 “(D) APPLICABLE SEGMENT RATES.—For  
13 purposes of subparagraph (C), the adjusted  
14 first, second, and third segment rates are the  
15 first, second, and third segment rates which  
16 would be determined under section  
17 430(h)(2)(C) if—

18 “(i) section 430(h)(2)(D) were applied  
19 by substituting the average yields for the  
20 month described in clause (ii) for the aver-  
21 age yields for the 24-month period de-  
22 scribed in such section,

23 “(ii) section 430(h)(2)(G)(i)(II) were  
24 applied by substituting ‘section

1                   417(e)(3)(A)(ii)(II)’           for           ‘section  
 2                   412(b)(5)(B)(ii)(II)’, and  
 3                   “(iii) the applicable percentage under  
 4                   section 430(h)(2)(G) were determined in  
 5                   accordance with the following table:

In the case of plan years beginning in:	The applicable percentage is:
2008 .....	20 percent
2009 .....	40 percent
2010 .....	60 percent
2011 .....	80 percent.”.

6           (c) **EFFECTIVE DATE.**—The amendments made by  
 7 this section shall apply with respect to plan years begin-  
 8 ning after December 31, 2007.

9   **SEC. 303. INTEREST RATE ASSUMPTION FOR APPLYING**  
 10                   **BENEFIT LIMITATIONS TO LUMP SUM DIS-**  
 11                   **TRIBUTIONS.**

12           (a) **IN GENERAL.**—Clause (ii) of section  
 13 415(b)(2)(E) of the Internal Revenue Code of 1986 is  
 14 amended to read as follows:

15                   “(ii) For purposes of adjusting any  
 16                   benefit under subparagraph (B) for any  
 17                   form of benefit subject to section  
 18                   417(e)(3), the interest rate assumption  
 19                   shall not be less than the greatest of—

20                                   “(I) 5.5 percent,

1 “(II) the rate that provides a  
2 benefit of not more than 105 percent  
3 of the benefit that would be provided  
4 if the applicable interest rate (as de-  
5 fined in section 417(e)(3)) were the  
6 interest rate assumption, or

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

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

## 12 **TITLE IV—PBGC GUARANTEE** 13 **AND RELATED PROVISIONS**

### 14 **SEC. 401. PBGC PREMIUMS.**

15 (a) VARIABLE-RATE PREMIUMS.—

16 (1) CONFORMING AMENDMENTS RELATED TO  
17 FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—

18 Section 4006(a)(3)(E) of the Employee Retirement  
19 Income and Security Act of 1974 (29 U.S.C.  
20 1306(a)(3)(E)) is amended by striking clauses (iii)  
21 and (iv) and inserting the following:

22 “(iii) For purposes of clause (ii), the term ‘unfunded  
23 vested benefits’ means, for a plan year, the excess (if any)  
24 of—

1           “(I) the funding target of the plan as deter-  
2           mined under section 303(d) for the plan year by  
3           only taking into account vested benefits and by  
4           using the interest rate described in clause (iv), over

5           “(II) the fair market value of plan assets for  
6           the plan year which are held by the plan on the  
7           valuation date.

8           “(iv) The interest rate used in valuing benefits for  
9           purposes of subclause (I) of clause (iii) shall be equal to  
10          the first, second, or third segment rate for the month pre-  
11          ceding the month in which the plan year begins, which  
12          would be determined under section 303(h)(2)(C) if section  
13          303(h)(2)(D) were applied by using the monthly yields for  
14          the month preceding the month in which the plan year  
15          begins on investment grade corporate bonds with varying  
16          maturities and in the top 3 quality levels rather than the  
17          average of such yields for a 24-month period.”.

18           (2) EFFECTIVE DATE.—The amendments made  
19          by paragraph (1) shall apply with respect to plan  
20          years beginning after 2007.

21          (b) TERMINATION PREMIUMS.—

22           (1) REPEAL OF SUNSET PROVISION.—Subpara-  
23          graph (E) of section 4006(a)(7) of such Act is re-  
24          pealed.

25           (2) TECHNICAL CORRECTION.—

1 (A) IN GENERAL.—Section  
2 4006(a)(7)(C)(ii) of such Act is amended by  
3 striking “subparagraph (B)(i)(I)” and inserting  
4 “subparagraph (B)”.

5 (B) EFFECTIVE DATE.—The amendment  
6 made by this paragraph shall take effect as if  
7 included in the provision of the Deficit Reduc-  
8 tion Act of 2005 to which it relates.

9 **SEC. 402. SPECIAL FUNDING RULES FOR CERTAIN PLANS**  
10 **MAINTAINED BY COMMERCIAL AIRLINES.**

11 (a) IN GENERAL.—The plan sponsor of an eligible  
12 plan may elect to either—

13 (1) have the rules of subsection (b) apply, or

14 (2) have section 303 of the Employee Retire-  
15 ment Income Security Act of 1974 and section 430  
16 of the Internal Revenue Code of 1986 applied to its  
17 first taxable year beginning in 2008 by amortizing  
18 the shortfall amortization base for such taxable year  
19 over a period of 10 plan years (rather than 7 plan  
20 years) beginning with such plan year.

21 (b) ALTERNATIVE FUNDING SCHEDULE.—

22 (1) IN GENERAL.—If an election is made under  
23 subsection (a)(1) to have this subsection apply to an  
24 eligible plan and the requirements of paragraphs (2)  
25 and (3) are met with respect to the plan—

1           (A) in the case of any applicable plan year  
2           beginning before January 1, 2008, the plan  
3           shall not have an accumulated funding defi-  
4           ciency for purposes of section 302 of the Em-  
5           ployee Retirement Income Security Act of 1974  
6           and sections 412 and 4971 of the Internal Rev-  
7           enue Code of 1986 if contributions to the plan  
8           for the plan year are not less than the min-  
9           imum required contribution determined under  
10          subsection (e) for the plan for the plan year,  
11          and

12          (B) in the case of any applicable plan year  
13          beginning on or after January 1, 2008, the  
14          minimum required contribution determined  
15          under sections 303 of such Act and 430 of such  
16          Code shall, for purposes of sections 302 and  
17          303 of such Act and sections 412, 430, and  
18          4971 of such Code, be equal to the minimum  
19          required contribution determined under sub-  
20          section (e) for the plan for the plan year.

21          (2) ACCRUAL RESTRICTIONS.—

22                (A) IN GENERAL.—The requirements of  
23                this paragraph are met if, effective as of the  
24                first day of the first applicable plan year and at

1 all times thereafter while an election under this  
2 section is in effect, the plan provides that—

3 (i) the accrued benefit, any death or  
4 disability benefit, and any social security  
5 supplement described in the last sentence  
6 of section 411(a)(9) of such Code and sec-  
7 tion 204(b)(1)(G) of such Act, of each par-  
8 ticipant are frozen at the amount of such  
9 benefit or supplement immediately before  
10 such first day, and

11 (ii) all other benefits under the plan  
12 are eliminated,

13 but only to the extent the freezing or elimi-  
14 nation of such benefits would have been per-  
15 mitted under section 411(d)(6) of such Code  
16 and section 204(g) of such Act if they had been  
17 implemented by a plan amendment adopted im-  
18 mediately before such first day.

19 (B) INCREASES IN SECTION 415 LIMITS.—

20 If a plan provides that an accrued benefit of a  
21 participant which has been subject to any limi-  
22 tation under section 415 of such Code will be  
23 increased if such limitation is increased, the  
24 plan shall not be treated as meeting the re-  
25 quirements of this section unless, effective as of



1           the first day of the first applicable plan year  
2           (or, if later, the date of the enactment of this  
3           Act) and at all times thereafter while an elec-  
4           tion under this section is in effect, the plan pro-  
5           vides that any such increase shall not take ef-  
6           fect. A plan shall not fail to meet the require-  
7           ments of section 411(d)(6) of such Code and  
8           section 204(g) of such Act solely because the  
9           plan is amended to meet the requirements of  
10          this subparagraph.

11          (3) RESTRICTION ON APPLICABLE BENEFIT IN-  
12          CREASES.—

13                (A) IN GENERAL.—The requirements of  
14                this paragraph are met if no applicable benefit  
15                increase takes effect at any time during the pe-  
16                riod beginning on July 26, 2005, and ending on  
17                the day before the first day of the first applica-  
18                ble plan year.

19                (B) APPLICABLE BENEFIT INCREASE.—  
20                For purposes of this paragraph, the term “ap-  
21                plicable benefit increase” means, with respect to  
22                any plan year, any increase in liabilities of the  
23                plan by plan amendment (or otherwise provided  
24                in regulations provided by the Secretary) which,

1 but for this paragraph, would occur during the  
2 plan year by reason of—

3 (i) any increase in benefits,

4 (ii) any change in the accrual of bene-  
5 fits, or

6 (iii) any change in the rate at which  
7 benefits become nonforfeitable under the  
8 plan.

9 (4) EXCEPTION FOR IMPUTED DISABILITY  
10 SERVICE.—Paragraphs (2) and (3) shall not apply  
11 to any accrual or increase with respect to imputed  
12 service provided to a participant during any period  
13 of the participant's disability occurring on or after  
14 the effective date of the plan amendment providing  
15 the restrictions under paragraph (2) (or on or after  
16 July 26, 2005, in the case of the restrictions under  
17 paragraph (3)) if the participant—

18 (A) was receiving disability benefits as of  
19 such date, or

20 (B) was receiving sick pay and subse-  
21 quently determined to be eligible for disability  
22 benefits as of such date.

23 (c) DEFINITIONS.—For purposes of this section—

24 (1) ELIGIBLE PLAN.—The term “eligible plan”  
25 means a defined benefit plan (other than a multiem-

1        employer plan) to which sections 302 of such Act and  
2        412 of such Code applies which is sponsored by an  
3        employer—

4                (A) which is a commercial airline pas-  
5        senger airline, or

6                (B) the principal business of which is pro-  
7        viding catering services to a commercial pas-  
8        senger airline.

9                (2) APPLICABLE PLAN YEAR.—The term “ap-  
10       plicable plan year” means each plan year to which  
11       the election under subsection (a)(1) applies under  
12       subsection (d)(1)(A).

13       (d) ELECTIONS AND RELATED TERMS.—

14                (1) YEARS FOR WHICH ELECTION MADE.—

15                (A) ALTERNATIVE FUNDING SCHEDULE.—

16        If an election under subsection (a)(1) was made  
17        with respect to an eligible plan, the plan spon-  
18        sor may select either a plan year beginning in  
19        2006 or a plan year beginning in 2007 as the  
20        first plan year to which such election applies.  
21        The election shall apply to such plan year and  
22        all subsequent years. The election shall be  
23        made—

1 (i) not later than December 31, 2006,  
2 in the case of an election for a plan year  
3 beginning in 2006, or

4 (ii) not later than December 31,  
5 2007, in the case of an election for a plan  
6 year beginning in 2007.

7 (B) 10 YEAR AMORTIZATION.—An election  
8 under subsection (a)(2) shall be made not later  
9 than December 31, 2007.

10 (C) ELECTION OF NEW PLAN YEAR FOR  
11 ALTERNATIVE FUNDING SCHEDULE.—In the  
12 case of an election under subsection (a)(1), the  
13 plan sponsor may specify a new plan year in  
14 such election and the plan year of the plan may  
15 be changed to such new plan year without the  
16 approval of the Secretary of the Treasury.

17 (2) MANNER OF ELECTION.—A plan sponsor  
18 shall make any election under subsection (a) in such  
19 manner as the Secretary of the Treasury may pre-  
20 scribe. Such election, once made, may be revoked  
21 only with the consent of such Secretary.

22 (e) MINIMUM REQUIRED CONTRIBUTION.—In the  
23 case of an eligible plan with respect to which an election  
24 is made under subsection (a)(1)—

1           (1) IN GENERAL.—In the case of any applicable  
2           plan year during the amortization period, the min-  
3           imum required contribution shall be the amount nec-  
4           essary to amortize the unfunded liability of the plan,  
5           determined as of the first day of the plan year, in  
6           equal annual installments (until fully amortized)  
7           over the remainder of the amortization period. Such  
8           amount shall be separately determined for each ap-  
9           plicable plan year.

10          (2) YEARS AFTER AMORTIZATION PERIOD.—In  
11          the case of any plan year beginning after the end of  
12          the amortization period, section 302(a)(2)(A) of  
13          such Act and section 412(a)(2)(A) of such Code  
14          shall apply to such plan, but the prefunding balance  
15          and funding standard carryover balance as of the  
16          first day of the first of such years under section  
17          303(f) of such Act and section 430(f) of such Code  
18          shall be zero.

19          (3) DEFINITIONS.—For purposes of this sec-  
20          tion—

21                (A) UNFUNDED LIABILITY.—The term  
22                “unfunded liability” means the unfunded ac-  
23                crued liability under the plan, determined under  
24                the unit credit funding method.

1 (B) AMORTIZATION PERIOD.—The term  
2 “amortization period” means the 17-plan year  
3 period beginning with the first applicable plan  
4 year.

5 (4) OTHER RULES.—In determining the min-  
6 imum required contribution and amortization  
7 amount under this subsection—

8 (A) the provisions of section 302(c)(3) of  
9 such Act and section 412(c)(3) of such Code, as  
10 in effect before the date of enactment of this  
11 section, shall apply,

12 (B) a rate of interest of 8.85 percent shall  
13 be used for all calculations requiring an interest  
14 rate, and

15 (C) the value of plan assets shall be equal  
16 to their fair market value.

17 (5) SPECIAL RULE FOR CERTAIN PLAN SPIN-  
18 OFFS.—For purposes of subsection (b), if, with re-  
19 spect to any eligible plan to which this subsection  
20 applies—

21 (A) any applicable plan year includes the  
22 date of the enactment of this Act,

23 (B) a plan was spun off from the eligible  
24 plan during the plan year but before such date  
25 of enactment,

1 the minimum required contribution under paragraph  
2 (1) for the eligible plan for such applicable plan year  
3 shall be an aggregate amount determined as if the  
4 plans were a single plan for that plan year (based  
5 on the full 12-month plan year in effect prior to the  
6 spin-off). The employer shall designate the allocation  
7 of such aggregate amount between such plans for  
8 the applicable plan year.

9 (f) SPECIAL RULES FOR CERTAIN BALANCES AND  
10 WAIVERS.—In the case of an eligible plan with respect to  
11 which an election is made under subsection (a)(1)—

12 (1) FUNDING STANDARD ACCOUNT AND CREDIT  
13 BALANCES.—Any charge or credit in the funding  
14 standard account under section 302 of such Act or  
15 section 412 of such Code, and any prefunding bal-  
16 ance or funding standard carryover balance under  
17 section 303 of such Act or section 430 of such Code,  
18 as of the day before the first day of the first applica-  
19 ble plan year, shall be reduced to zero.

20 (2) WAIVED FUNDING DEFICIENCIES.—Any  
21 waived funding deficiency under sections 302 and  
22 303 of such Act or section 412 of such Code, as in  
23 effect before the date of enactment of this section,  
24 shall be deemed satisfied as of the first day of the  
25 first applicable plan year and the amount of such

1       waived funding deficiency shall be taken into ac-  
2       count in determining the plan's unfunded liability  
3       under subsection (e)(3)(A). In the case of a plan  
4       amendment adopted to satisfy the requirements of  
5       subsection (b)(2), the plan shall not be deemed to  
6       violate section 304(b) of such Act or section 412(f)  
7       of such Code, as so in effect, by reason of such  
8       amendment or any increase in benefits provided to  
9       such plan's participants under a separate plan that  
10      is a defined contribution plan or a multiemployer  
11      plan.

12      (g) OTHER RULES FOR PLANS MAKING ELECTION  
13      UNDER THIS SECTION.—

14           (1) SUCCESSOR PLANS TO CERTAIN PLANS.—

15      If—

16           (A) an election under paragraph (1) or (2)  
17           of subsection (a) is in effect with respect to any  
18           eligible plan, and

19           (B) the eligible plan is maintained by an  
20           employer that establishes or maintains 1 or  
21           more other defined benefit plans (other than  
22           any multiemployer plan), and such other plans  
23           in combination provide benefit accruals to any  
24           substantial number of successor employees,



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1 the Secretary of the Treasury may, in the Sec-  
2 retary's discretion, determine that any trust of  
3 which any other such plan is a part does not con-  
4 stitute a qualified trust under section 401(a) of the  
5 Internal Revenue Code of 1986 unless all benefit ob-  
6 ligations of the eligible plan have been satisfied. For  
7 purposes of this paragraph, the term "successor em-  
8 ployee" means any employee who is or was covered  
9 by the eligible plan and any employees who perform  
10 substantially the same type of work with respect to  
11 the same business operations as an employee covered  
12 by such eligible plan.

13 (2) SPECIAL RULES FOR TERMINATIONS.—

14 (A) PBGC LIABILITY LIMITED.—Section  
15 4022 of the Employee Retirement Income Secu-  
16 rity Act of 1974, as amended by this Act, is  
17 amended by adding at the end the following  
18 new subsection:

19 “(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN  
20 FUNDING REQUIREMENTS.—If any plan makes an elec-  
21 tion under section 402(a)(1) of the Pension Protection Act  
22 of 2006 and is terminated effective before the end of the  
23 10-year period beginning on the first day of the first appli-  
24 cable plan year—

25 “(1) this section shall be applied—

1           “(A) by treating the first day of the first  
2           applicable plan year as the termination date of  
3           the plan, and

4           “(B) by determining the amount of guar-  
5           anteed benefits on the basis of plan assets and  
6           liabilities as of such assumed termination date,  
7           and

8           “(2) notwithstanding section 4044(a), plan as-  
9           sets shall first be allocated to pay the amount, if  
10          any, by which—

11           “(A) the amount of guaranteed benefits  
12           under this section (determined without regard  
13           to paragraph (1) and on the basis of plan as-  
14           sets and liabilities as of the actual date of plan  
15           termination), exceeds

16           “(B) the amount determined under para-  
17           graph (1).”.

18           (B) TERMINATION PREMIUM.—In applying  
19           section 4006(a)(7)(A) of the Employee Retire-  
20           ment Income Security Act of 1974 to an eligible  
21           plan during any period in which an election  
22           under subsection (a)(1) is in effect—

23           (i) “\$2,500” shall be substituted for  
24           “\$1,250” in such section if such plan ter-  
25           minates during the 5-year period beginning

1 on the first day of the first applicable plan  
2 year with respect to such plan, and

3 (ii) such section shall be applied with-  
4 out regard to subparagraph (B) of section  
5 8101(d)(2) of the Deficit Reduction Act of  
6 2005 (relating to special rule for plans ter-  
7 minated in bankruptcy).

8 The substitution described in clause (i) shall  
9 not apply with respect to any plan if the Sec-  
10 retary of Labor determines that such plan ter-  
11 minated as a result of extraordinary cir-  
12 cumstances such as a terrorist attack or other  
13 similar event.

14 (3) LIMITATION ON DEDUCTIONS UNDER CER-  
15 TAIN PLANS.—Section 404(a)(7)(C)(iv) of the Inter-  
16 nal Revenue Code of 1986, as added by this Act,  
17 shall not apply with respect to any taxable year of  
18 a plan sponsor of an eligible plan if any applicable  
19 plan year with respect to such plan ends with or  
20 within such taxable year.

21 (4) NOTICE.—In the case of a plan amendment  
22 adopted in order to comply with this section, any no-  
23 tice required under section 204(h) of such Act or  
24 section 4980F(e) of such Code shall be provided  
25 within 15 days of the effective date of such plan

1 amendment. This subsection shall not apply to any  
2 plan unless such plan is maintained pursuant to one  
3 or more collective bargaining agreements between  
4 employee representatives and 1 or more employers.

5 (h) EXCLUSION OF CERTAIN EMPLOYEES FROM  
6 MINIMUM COVERAGE REQUIREMENTS.—

7 (1) IN GENERAL.—Section 410(b)(3) of such  
8 Code is amended by striking the last sentence and  
9 inserting the following: “For purposes of subpara-  
10 graph (B), management pilots who are not rep-  
11 resented in accordance with title II of the Railway  
12 Labor Act shall be treated as covered by a collective  
13 bargaining agreement described in such subpara-  
14 graph if the management pilots manage the flight  
15 operations of air pilots who are so represented and  
16 the management pilots are, pursuant to the terms of  
17 the agreement, included in the group of employees  
18 benefitting under the trust described in such sub-  
19 paragraph. Subparagraph (B) shall not apply in the  
20 case of a plan which provides contributions or bene-  
21 fits for employees whose principal duties are not cus-  
22 tomarily performed aboard an aircraft in flight  
23 (other than management pilots described in the pre-  
24 ceding sentence).”

1           (2) EFFECTIVE DATE.—The amendment made  
2       by this subsection shall apply to years beginning be-  
3       fore, on, or after the date of the enactment of this  
4       Act.

5       (i) EXTENSION OF SPECIAL RULE FOR ADDITIONAL  
6       FUNDING REQUIREMENTS.—In the case of an employer  
7       which is a commercial passenger airline, section  
8       302(d)(12) of the Employee Retirement Income Security  
9       Act of 1974 and section 412(l)(12) of the Internal Rev-  
10      enue Code of 1986, as in effect before the date of the en-  
11      actment of this Act, shall each be applied—

12           (1) by substituting “December 28, 2007” for  
13      “December 28, 2005” in subparagraph (D)(i) there-  
14      of, and

15           (2) without regard to subparagraph (D)(ii).

16       (j) EFFECTIVE DATE.—Except as otherwise provided  
17      in this section, the provisions of and amendments made  
18      by this section shall apply to plan years ending after the  
19      date of the enactment of this Act.

20      **SEC. 403. LIMITATION ON PBGC GUARANTEE OF SHUT-**  
21                                   **DOWN AND OTHER BENEFITS.**

22       (a) IN GENERAL.—Section 4022(b) of the Employee  
23      Retirement Income Security Act of 1974 (29 U.S.C.  
24      1322(b)) is amended by adding at the end the following:

1           “(8) If an unpredictable contingent event ben-  
2       efit (as defined in section 206(g)(1)) is payable by  
3       reason of the occurrence of any event, this section  
4       shall be applied as if a plan amendment had been  
5       adopted on the date such event occurred.”.

6       (b) EFFECTIVE DATE.—The amendment made by  
7       this section shall apply to benefits that become payable  
8       as a result of an event which occurs after July 26, 2005.

9       **SEC. 404. RULES RELATING TO BANKRUPTCY OF EM-**  
10           **PLOYER.**

11       (a) GUARANTEE.—Section 4022 of the Employee Re-  
12       tirement Income Security Act of 1974 (29 U.S.C. 1322)  
13       is amended by adding at the end the following:

14       “(g) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
15       MINATION DATE.—If a contributing sponsor of a plan has  
16       filed or has had filed against such person a petition seek-  
17       ing liquidation or reorganization in a case under title 11,  
18       United States Code, or under any similar Federal law or  
19       law of a State or political subdivision, and the case has  
20       not been dismissed as of the termination date of the plan,  
21       then this section shall be applied by treating the date such  
22       petition was filed as the termination date of the plan.”.

23       (b) ALLOCATION OF ASSETS AMONG PRIORITY  
24       GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044  
25       of the Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1344) is amended by adding at the end the  
2 following:

3 “(e) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
4 MINATION DATE.—If a contributing sponsor of a plan has  
5 filed or has had filed against such person a petition seek-  
6 ing liquidation or reorganization in a case under title 11,  
7 United States Code, or under any similar Federal law or  
8 law of a State or political subdivision, and the case has  
9 not been dismissed as of the termination date of the plan,  
10 then subsection (a)(3) shall be applied by treating the date  
11 such petition was filed as the termination date of the  
12 plan.”.

13 (c) EFFECTIVE DATE.—The amendments made this  
14 section shall apply with respect to proceedings initiated  
15 under title 11, United States Code, or under any similar  
16 Federal law or law of a State or political subdivision, on  
17 or after the date that is 30 days after the date of enact-  
18 ment of this Act.

19 **SEC. 405. PBGC PREMIUMS FOR SMALL PLANS.**

20 (a) SMALL PLANS.—Paragraph (3) of section  
21 4006(a) of the Employee Retirement Income Security Act  
22 of 1974 (29 U.S.C. 1306(a)) is amended—

23 (1) by striking “The additional” in subpara-  
24 graph (E)(i) and inserting “Except as provided in  
25 subparagraph (H), the additional”, and

1           (2) by inserting after subparagraph (G) the fol-  
2           lowing new subparagraph:

3           “(H)(i) In the case of an employer who has 25 or  
4           fewer employees on the first day of the plan year, the addi-  
5           tional premium determined under subparagraph (E) for  
6           each participant shall not exceed \$5 multiplied by the  
7           number of participants in the plan as of the close of the  
8           preceding plan year.

9           “(ii) For purposes of clause (i), whether an employer  
10          has 25 or fewer employees on the first day of the plan  
11          year is determined by taking into consideration all of the  
12          employees of all members of the contributing sponsor’s  
13          controlled group. In the case of a plan maintained by two  
14          or more contributing sponsors, the employees of all con-  
15          tributing sponsors and their controlled groups shall be ag-  
16          gregated for purposes of determining whether the 25-or-  
17          fewer-employees limitation has been satisfied.”

18          (b) EFFECTIVE DATES.—The amendment made by  
19          this section shall apply to plan years beginning after De-  
20          cember 31, 2006.

21       **SEC. 406. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**  
22                               **PREMIUM OVERPAYMENT REFUNDS.**

23          (a) IN GENERAL.—Section 4007(b) of the Employ-  
24          ment Retirement Income Security Act of 1974 (29 U.S.C.  
25          1307(b)) is amended—



1 (1) by striking “(b)” and inserting “(b)(1)”,  
2 and

(2) by inserting at the end the following new paragraph:

5       “(2) The corporation is authorized to pay, subject to  
6 regulations prescribed by the corporation, interest on the  
7 amount of any overpayment of premium refunded to a des-  
8 ignated payor. Interest under this paragraph shall be cal-  
9 culated at the same rate and in the same manner as inter-  
10 est is calculated for underpayments under paragraph (1).”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

15 SEC. 407. RULES FOR SUBSTANTIAL OWNER BENEFITS IN  
16 TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—  
Section 4022(b)(5) of the Employee Retirement Income  
Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended  
to read as follows:

“(5)(A) For purposes of this paragraph, the term ‘majority owner’ means an individual who, at any time during the 60-month period ending on the date the determination is being made—

1           “(i) owns the entire interest in an unincor-  
2           porated trade or business,

3           “(ii) in the case of a partnership, is a partner  
4           who owns, directly or indirectly, 50 percent or more  
5           of either the capital interest or the profits interest  
6           in such partnership, or

7           “(iii) in the case of a corporation, owns, directly  
8           or indirectly, 50 percent or more in value of either  
9           the voting stock of that corporation or all the stock  
10          of that corporation.

11 For purposes of clause (iii), the constructive ownership  
12 rules of section 1563(e) of the Internal Revenue Code of  
13 1986 (other than paragraph (3)(C) thereof) shall apply,  
14 including the application of such rules under section  
15 414(c) of such Code.

16          “(B) In the case of a participant who is a majority  
17 owner, the amount of benefits guaranteed under this sec-  
18 tion shall equal the product of—

19           “(i) a fraction (not to exceed 1) the numerator  
20           of which is the number of years from the later of the  
21           effective date or the adoption date of the plan to the  
22           termination date, and the denominator of which is  
23           10, and

1           “(ii) the amount of benefits that would be guar-  
2           anteed under this section if the participant were not  
3           a majority owner.”

4           (b) MODIFICATION OF ALLOCATION OF ASSETS.—

5           (1) Section 4044(a)(4)(B) of the Employee Re-  
6           tirement Income Security Act of 1974 (29 U.S.C.  
7           1344(a)(4)(B)) is amended by striking “section  
8           4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

9           (2) Section 4044(b) of such Act (29 U.S.C.  
10          1344(b)) is amended—

11           (A) by striking “(5)” in paragraph (2) and  
12           inserting “(4), (5),” and

13           (B) by redesignating paragraphs (3)  
14           through (6) as paragraphs (4) through (7), re-  
15           spectively, and by inserting after paragraph (2)  
16           the following new paragraph:

17           “(3) If assets available for allocation under  
18           paragraph (4) of subsection (a) are insufficient to  
19           satisfy in full the benefits of all individuals who are  
20           described in that paragraph, the assets shall be allo-  
21           cated first to benefits described in subparagraph (A)  
22           of that paragraph. Any remaining assets shall then  
23           be allocated to benefits described in subparagraph  
24           (B) of that paragraph. If assets allocated to such  
25           subparagraph (B) are insufficient to satisfy in full

1 the benefits described in that subparagraph, the as-  
2 sets shall be allocated pro rata among individuals on  
3 the basis of the present value (as of the termination  
4 date) of their respective benefits described in that  
5 subparagraph.”

6 (c) CONFORMING AMENDMENTS.—

7 (1) Section 4021 of the Employee Retirement  
8 Income Security Act of 1974 (29 U.S.C. 1321) is  
9 amended—

10 (A) in subsection (b)(9), by striking “as  
11 defined in section 4022(b)(6)”, and

12 (B) by adding at the end the following new  
13 subsection:

14 “(d) For purposes of subsection (b)(9), the term ‘sub-  
15 stantial owner’ means an individual who, at any time dur-  
16 ing the 60-month period ending on the date the determina-  
17 tion is being made—

18 “(1) owns the entire interest in an unincor-  
19 porated trade or business,

20 “(2) in the case of a partnership, is a partner  
21 who owns, directly or indirectly, more than 10 per-  
22 cent of either the capital interest or the profits inter-  
23 est in such partnership, or

24 “(3) in the case of a corporation, owns, directly  
25 or indirectly, more than 10 percent in value of either

1 the voting stock of that corporation or all the stock  
2 of that corporation.

3 For purposes of paragraph (3), the constructive ownership  
4 rules of section 1563(e) of the Internal Revenue Code of  
5 1986 (other than paragraph (3)(C) thereof) shall apply,  
6 including the application of such rules under section  
7 414(c) of such Code.”

8 (2) Section 4043(c)(7) of such Act (29 U.S.C.  
9 1343(c)(7)) is amended by striking “section  
10 4022(b)(6)” and inserting “section 4021(d)”.

11 (d) EFFECTIVE DATES.—

12 (1) IN GENERAL.—Except as provided in para-  
13 graph (2), the amendments made by this section  
14 shall apply to plan terminations—

15 (A) under section 4041(c) of the Employee  
16 Retirement Income Security Act of 1974 (29  
17 U.S.C. 1341(c)) with respect to which notices  
18 of intent to terminate are provided under sec-  
19 tion 4041(a)(2) of such Act (29 U.S.C.  
20 1341(a)(2)) after December 31, 2005, and

21 (B) under section 4042 of such Act (29  
22 U.S.C. 1342) with respect to which notices of  
23 determination are provided under such section  
24 after such date.

1           (2) CONFORMING AMENDMENTS.—The amend-  
2       ments made by subsection (c) shall take effect on  
3       January 1, 2006.

4   **SEC. 408. ACCELERATION OF PBGC COMPUTATION OF BEN-**  
5                   **EFITS ATTRIBUTABLE TO RECOVERIES FROM**  
6                   **EMPLOYERS.**

7       (a) MODIFICATION OF AVERAGE RECOVERY PER-  
8       CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-  
9       ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS  
10      AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the  
11      Employee Retirement Income Security Act of 1974 (29  
12      U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

13                   “(ii) notices of intent to terminate  
14                   were provided (or in the case of a termi-  
15                   nation by the corporation, a notice of de-  
16                   termination under section 4042 was  
17                   issued) during the 5-Federal fiscal year pe-  
18                   riod ending with the third fiscal year pre-  
19                   ceding the fiscal year in which occurs the  
20                   date of the notice of intent to terminate  
21                   (or the notice of determination under sec-  
22                   tion 4042) with respect to the plan termi-  
23                   nation for which the recovery ratio is being  
24                   determined.”

1 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR  
2 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
3 PARTICIPANTS AND BENEFICIARIES.—

4 (1) SINGLE-EMPLOYER PLAN BENEFITS GUAR-  
5 ANTEED.—Section 4022(c)(3)(A) of the Employee  
6 Retirement Income Security Act of 1974 (29 U.S.C.  
7 13) is amended to read as follows:

8 “(A) IN GENERAL.—Except as provided in  
9 subparagraph (C), the term ‘recovery ratio’  
10 means the ratio which—

11 “(i) the sum of the values of all recov-  
12 eries under section 4062, 4063, or 4064,  
13 determined by the corporation in connec-  
14 tion with plan terminations described  
15 under subparagraph (B), bears to

16 “(ii) the sum of all unfunded benefit  
17 liabilities under such plans as of the termi-  
18 nation date in connection with any such  
19 prior termination.”.

20 (2) ALLOCATION OF ASSETS.—Section 4044 of  
21 the Employee Retirement Income Security Act of  
22 1974 (29 U.S.C. 1362) is amended by adding at the  
23 end the following new subsection:

1       “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR  
2 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
3 PARTICIPANTS AND BENEFICIARIES.—

4           “(1) IN GENERAL.—In the case of a terminated  
5 plan, the value of the recovery of liability under sec-  
6 tion 4062(c) allocable as a plan asset under this sec-  
7 tion for purposes of determining the amount of ben-  
8 efits payable by the corporation shall be determined  
9 by multiplying—

10           “(A) the amount of liability under section  
11 4062(c) as of the termination date of the plan,  
12 by

13           “(B) the applicable section 4062(c) recov-  
14 ery ratio.

15       “(2) SECTION 4062(c) RECOVERY RATIO.—For  
16 purposes of this subsection—

17           “(A) IN GENERAL.—Except as provided in  
18 subparagraph (C), the term ‘section 4062(c) re-  
19 covery ratio’ means the ratio which—

20           “(i) the sum of the values of all recov-  
21 eries under section 4062(c) determined by  
22 the corporation in connection with plan  
23 terminations described under subparagraph  
24 (B), bears to



1 “(ii) the sum of all the amounts of li-  
2 ability under section 4062(c) with respect  
3 to such plans as of the termination date in  
4 connection with any such prior termi-  
5 nation.

6 “(B) PRIOR TERMINATIONS.—A plan ter-  
7 mination described in this subparagraph is a  
8 termination with respect to which—

9 “(i) the value of recoveries under sec-  
10 tion 4062(c) have been determined by the  
11 corporation, and

12 “(ii) notices of intent to terminate  
13 were provided (or in the case of a termi-  
14 nation by the corporation, a notice of de-  
15 termination under section 4042 was  
16 issued) during the 5-Federal fiscal year pe-  
17 riod ending with the third fiscal year pre-  
18 ceding the fiscal year in which occurs the  
19 date of the notice of intent to terminate  
20 (or the notice of determination under sec-  
21 tion 4042) with respect to the plan termi-  
22 nation for which the recovery ratio is being  
23 determined.

24 “(C) EXCEPTION.—In the case of a termi-  
25 nated plan with respect to which the out-

1 standing amount of benefit liabilities exceeds  
2 \$20,000,000, the term ‘section 4062(c) recovery  
3 ratio’ means, with respect to the termination of  
4 such plan, the ratio of—

5 “(i) the value of the recoveries on be-  
6 half of the plan under section 4062(c), to

7 “(ii) the amount of the liability owed  
8 under section 4062(c) as of the date of  
9 plan termination to the trustee appointed  
10 under section 4042 (b) or (c).

11 “(3) SUBSECTION NOT TO APPLY.—This sub-  
12 section shall not apply with respect to the deter-  
13 mination of—

14 “(A) whether the amount of outstanding  
15 benefit liabilities exceeds \$20,000,000, or

16 “(B) the amount of any liability under sec-  
17 tion 4062 to the corporation or the trustee ap-  
18 pointed under section 4042 (b) or (c).

19 “(4) DETERMINATIONS.—Determinations under  
20 this subsection shall be made by the corporation.  
21 Such determinations shall be binding unless shown  
22 by clear and convincing evidence to be unreason-  
23 able.”

24 (c) EFFECTIVE DATE.—The amendments made by  
25 this section shall apply for any termination for which no-

1 tices of intent to terminate are provided (or in the case  
2 of a termination by the corporation, a notice of determina-  
3 tion under section 4042 under the Employee Retirement  
4 Income Security Act of 1974 is issued) on or after the  
5 date which is 30 days after the date of enactment of this  
6 section.

7 **SEC. 409. TREATMENT OF CERTAIN PLANS WHERE CES-**  
8 **SATION OR CHANGE IN MEMBERSHIP OF A**  
9 **CONTROLLED GROUP.**

10 (a) IN GENERAL.—Section 4041(b) of the Employee  
11 Retirement Income Security Act of 1974 (29 U.S.C.  
12 1341(b)) is amended by adding at the end the following  
13 new paragraph:

14 “(5) SPECIAL RULE FOR CERTAIN PLANS  
15 WHERE CESSATION OR CHANGE IN MEMBERSHIP OF  
16 A CONTROLLED GROUP.—

17 “(A) IN GENERAL.—Except as provided in  
18 subparagraph (B), if—

19 “(i) there is transaction or series of  
20 transactions which result in a person ceas-  
21 ing to be a member of a controlled group,  
22 and

23 “(ii) such person immediately before  
24 the transaction or series of transactions  
25 maintained a single-employer plan which is

1           a defined benefit plan which is fully fund-  
2           ed,  
3           then the interest rate used in determining  
4           whether the plan is sufficient for benefit liabil-  
5           ities or to otherwise assess plan liabilities for  
6           purposes of this subsection or section  
7           4042(a)(4) shall be not less than the interest  
8           rate used in determining whether the plan is  
9           fully funded.

10           “(B) LIMITATIONS.—Subparagraph (A)  
11           shall not apply to any transaction or series of  
12           transactions unless—

13                   “(i) any employer maintaining the  
14                   plan immediately before or after such  
15                   transaction or series of transactions—

16                           “(I) has an outstanding senior  
17                           unsecured debt instrument which is  
18                           rated investment grade by each of the  
19                           nationally recognized statistical rating  
20                           organizations for corporate bonds that  
21                           has issued a credit rating for such in-  
22                           strument, or

23                           “(II) if no such debt instrument  
24                           of such employer has been rated by  
25                           such an organization but 1 or more of

1           such organizations has made an issuer  
2           credit rating for such employer, all  
3           such organizations which have so  
4           rated the employer have rated such  
5           employer investment grade, and

6           “(ii) the employer maintaining the  
7           plan after the transaction or series of  
8           transactions employs at least 20 percent of  
9           the employees located in the United States  
10          who were employed by such employer im-  
11          mediately before the transaction or series  
12          of transactions.

13          “(C) FULLY FUNDED.—For purposes of  
14          subparagraph (A), a plan shall be treated as  
15          fully funded with respect to any transaction or  
16          series of transactions if—

17               “(i) in the case of a transaction or se-  
18               ries of transactions which occur in a plan  
19               year beginning before January 1, 2008,  
20               the funded current liability percentage de-  
21               termined under section 302(d) for the plan  
22               year is at least 100 percent, and

23               “(ii) in the case of a transaction or  
24               series of transactions which occur in a plan  
25               year beginning on or after such date, the

1 funding target attainment percentage de-  
2 termined under section 303 is, as of the  
3 valuation date for such plan year, at least  
4 100 percent.

5 “(D) 2 YEAR LIMITATION.—Subparagraph  
6 (A) shall not apply to any transaction or series  
7 of transaction if the plan referred to in sub-  
8 paragraph (A)(ii) is terminated under section  
9 4041(c) or 4042 after the close of the 2-year  
10 period beginning on the date on which the first  
11 such transaction occurs.”

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to any transaction or series of  
14 transactions occurring on and after the date of the enact-  
15 ment of this Act.

16 **SEC. 410. MISSING PARTICIPANTS.**

17 (a) IN GENERAL.—Section 4050 of the Employee Re-  
18 tirement Income Security Act of 1974 (29 U.S.C. 1350)  
19 is amended by redesignating subsection (c) as subsection  
20 (e) and by inserting after subsection (b) the following new  
21 subsections:

22 “(c) MULTIEMPLOYER PLANS.—The corporation  
23 shall prescribe rules similar to the rules in subsection (a)  
24 for multiemployer plans covered by this title that termi-  
25 nate under section 4041A.

1 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

2 “(1) TRANSFER TO CORPORATION.—The plan  
3 administrator of a plan described in paragraph (4)  
4 may elect to transfer a missing participant’s benefits  
5 to the corporation upon termination of the plan.

6 “(2) INFORMATION TO THE CORPORATION.—To  
7 the extent provided in regulations, the plan adminis-  
8 trator of a plan described in paragraph (4) shall,  
9 upon termination of the plan, provide the corpora-  
10 tion information with respect to benefits of a miss-  
11 ing participant if the plan transfers such benefits—

12 “(A) to the corporation, or

13 “(B) to an entity other than the corpora-  
14 tion or a plan described in paragraph (4)(B)(ii).

15 “(3) PAYMENT BY THE CORPORATION.—If ben-  
16 efits of a missing participant were transferred to the  
17 corporation under paragraph (1), the corporation  
18 shall, upon location of the participant or beneficiary,  
19 pay to the participant or beneficiary the amount  
20 transferred (or the appropriate survivor benefit) ei-  
21 ther—

22 “(A) in a single sum (plus interest), or

23 “(B) in such other form as is specified in  
24 regulations of the corporation.

1           “(4) PLANS DESCRIBED.—A plan is described  
2       in this paragraph if—

3           “(A) the plan is a pension plan (within the  
4       meaning of section 3(2))—

5           “(i) to which the provisions of this  
6       section do not apply (without regard to  
7       this subsection), and

8           “(ii) which is not a plan described in  
9       paragraphs (2) through (11) of section  
10      4021(b), and

11          “(B) at the time the assets are to be dis-  
12      tributed upon termination, the plan—

13          “(i) has missing participants, and

14          “(ii) has not provided for the transfer  
15      of assets to pay the benefits of all missing  
16      participants to another pension plan (with-  
17      in the meaning of section 3(2)).

18          “(5) CERTAIN PROVISIONS NOT TO APPLY.—  
19      Subsections (a)(1) and (a)(3) shall not apply to a  
20      plan described in paragraph (4).”.

21      (b) CONFORMING AMENDMENTS.—Section 206(f) of  
22      such Act (29 U.S.C. 1056(f)) is amended—

23          (1) by striking “title IV” and inserting “section  
24      4050”; and

25          (2) by striking “the plan shall provide that,”.



1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to distributions made after final  
3 regulations implementing subsections (c) and (d) of sec-  
4 tion 4050 of the Employee Retirement Income Security  
5 Act of 1974 (as added by subsection (a)), respectively, are  
6 prescribed.

7       **SEC. 411. DIRECTOR OF THE PENSION BENEFIT GUARANTY**  
8                                   **CORPORATION.**

9       (a) IN GENERAL.—Title IV of the Employee Retire-  
10 ment Income Security Act of 1974 (29 U.S.C. 1301 et  
11 seq.) is amended—

12               (1) by striking the second sentence of section  
13 4002(a) and inserting the following: “In carrying  
14 out its functions under this title, the corporation  
15 shall be administered by a Director, who shall be ap-  
16 pointed by the President, by and with the advice and  
17 consent of the Senate, and who shall act in accord-  
18 ance with the policies established by the board.”;  
19 and

20               (2) in section 4003(b), by—

21                       (A) striking “under this title, any mem-  
22 ber” and inserting “under this title, the Direc-  
23 tor, any member”; and

1 (B) striking “designated by the chairman”  
2 and inserting “designated by the Director or  
3 chairman”.

4 (b) COMPENSATION OF DIRECTOR.—Section 5314 of  
5 title 5, United States Code, is amended by adding at the  
6 end the following new item:

7 “Director, Pension Benefit Guaranty Corporation.”.

8 (c) JURISDICTION OF NOMINATION.—

9 (1) IN GENERAL.—The Committee on Finance  
10 of the Senate and the Committee on Health, Edu-  
11 cation, Labor, and Pensions of the Senate shall have  
12 joint jurisdiction over the nomination of a person  
13 nominated by the President to fill the position of Di-  
14 rector of the Pension Benefit Guaranty Corporation  
15 under section 4002 of the Employee Retirement In-  
16 come Security Act of 1974 (29 U.S.C. 1302) (as  
17 amended by this Act), and if one committee votes to  
18 order reported such a nomination, the other shall re-  
19 port within 30 calendar days, or be automatically  
20 discharged.

21 (2) RULEMAKING OF THE SENATE.—This sub-  
22 section is enacted by Congress—

23 (A) as an exercise of rulemaking power of  
24 the Senate, and as such it is deemed a part of  
25 the rules of the Senate, but applicable only with

1           respect to the procedure to be followed in the  
2           Senate in the case of a nomination described in  
3           such sentence, and it supersedes other rules  
4           only to the extent that it is inconsistent with  
5           such rules; and

6                   (B) with full recognition of the constitu-  
7           tional right of the Senate to change the rules  
8           (so far as relating to the procedure of the Sen-  
9           ate) at any time, in the same manner and to  
10          the same extent as in the case of any other rule  
11          of the Senate.

12          (d) **TRANSITION.**—The term of the individual serving  
13   as Executive Director of the Pension Benefit Guaranty  
14   Corporation on the date of enactment of this Act shall ex-  
15   pire on such date of enactment. Such individual, or any  
16   other individual, may serve as interim Director of such  
17   Corporation until an individual is appointed as Director  
18   of such Corporation under section 4002 of the Employee  
19   Retirement Income Security Act of 1974 (29 U.S.C. 1302)  
20   (as amended by this Act).

21   **SEC. 412. INCLUSION OF INFORMATION IN THE PBGC AN-**  
22                   **NUAL REPORT.**

23          Section 4008 of the Employee Retirement Income Se-  
24   curity Act of 1974 (29 U.S.C. 1308) is amended by—

1 (1) striking “As soon as practicable” and in-  
2 serting “(a) As soon as practicable”; and

3 (2) adding at the end the following:

4 “(b) The report under subsection (a) shall include—

5 “(1) a summary of the Pension Insurance Mod-  
6 eling System microsimulation model, including the  
7 specific simulation parameters, specific initial values,  
8 temporal parameters, and policy parameters used to  
9 calculate the financial statements for the corpora-  
10 tion;

11 “(2) a comparison of—

12 “(A) the average return on investments  
13 earned with respect to assets invested by the  
14 corporation for the year to which the report re-  
15 lates; and

16 “(B) an amount equal to 60 percent of the  
17 average return on investment for such year in  
18 the Standard & Poor’s 500 Index, plus 40 per-  
19 cent of the average return on investment for  
20 such year in the Lehman Aggregate Bond  
21 Index (or in a similar fixed income index); and

22 “(3) a statement regarding the deficit or sur-  
23 plus for such year that the corporation would have  
24 had if the corporation had earned the return de-

1 scribed in paragraph (2)(B) with respect to assets  
2 invested by the corporation.”.

## 3 **TITLE V—DISCLOSURE**

### 4 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.**

5 (a) IN GENERAL.—Section 101(f) of the Employee  
6 Retirement Income Security Act of 1974 (29 U.S.C.  
7 1021(f)) is amended to read as follows:

8 “(f) DEFINED BENEFIT PLAN FUNDING NOTICES.—

9 “(1) IN GENERAL.—The administrator of a de-  
10 fined benefit plan to which title IV applies shall for  
11 each plan year provide a plan funding notice to the  
12 Pension Benefit Guaranty Corporation, to each plan  
13 participant and beneficiary, to each labor organiza-  
14 tion representing such participants or beneficiaries,  
15 and, in the case of a multiemployer plan, to each  
16 employer that has an obligation to contribute to the  
17 plan.

18 “(2) INFORMATION CONTAINED IN NOTICES.—

19 “(A) IDENTIFYING INFORMATION.—Each  
20 notice required under paragraph (1) shall con-  
21 tain identifying information, including the name  
22 of the plan, the address and phone number of  
23 the plan administrator and the plan’s principal  
24 administrative officer, each plan sponsor’s em-

1            employer identification number, and the plan num-  
2            ber of the plan.

3            “(B) SPECIFIC INFORMATION.—A plan  
4            funding notice under paragraph (1) shall in-  
5            clude—

6                    “(i)(I) in the case of a single-employer  
7                    plan, a statement as to whether the plan’s  
8                    funding target attainment percentage (as  
9                    defined in section 303(d)(2)) for the plan  
10                  year to which the notice relates, and for  
11                  the 2 preceding plan years, is at least 100  
12                  percent (and, if not, the actual percent-  
13                  ages), or

14                   “(II) in the case of a multiemployer  
15                   plan, a statement as to whether the plan’s  
16                   funded percentage (as defined in section  
17                   305(i)) for the plan year to which the no-  
18                   tice relates, and for the 2 preceding plan  
19                   years, is at least 100 percent (and, if not,  
20                   the actual percentages),

21                   “(ii)(I) in the case of a single-em-  
22                   ployer plan, a statement of—

23                            “(aa) the total assets (separately  
24                            stating the prefunding balance and  
25                            the funding standard carryover bal-

1                   ance) and liabilities of the plan, deter-  
2                   mined in the same manner as under  
3                   section 303, for the plan year for  
4                   which the latest annual report filed  
5                   under section 104(a) was filed and for  
6                   the 2 preceding plan years, as re-  
7                   ported in the annual report for each  
8                   such plan year, and

9                   “(bb) the value of the plan’s as-  
10                  sets and liabilities for the plan year to  
11                  which the notice relates as of the last  
12                  day of the plan year to which the no-  
13                  tice relates determined using the asset  
14                  valuation under subclause (II) of sec-  
15                  tion 4006(a)(3)(E)(iii) and the inter-  
16                  est           rate           under           section  
17                  4006(a)(3)(E)(iv), and

18                  “(II) in the case of a multiemployer  
19                  plan, a statement of the value of the plan’s  
20                  assets and liabilities for the plan year to  
21                  which the notice relates as the last day of  
22                  such plan year and the preceding 2 plan  
23                  years,

24                  “(iii) a statement of the number of  
25                  participants who are—

1 “(I) retired or separated from  
2 service and are receiving benefits,

3 “(II) retired or separated partici-  
4 pants entitled to future benefits, and

5 “(III) active participants under  
6 the plan,

7 “(iv) a statement setting forth the  
8 funding policy of the plan and the asset al-  
9 location of investments under the plan (ex-  
10 pressed as percentages of total assets) as  
11 of the end of the plan year to which the  
12 notice relates,

13 “(v) in the case of a multiemployer  
14 plan, whether the plan was in critical or  
15 endangered status under section 305 for  
16 such plan year and, if so—

17 “(I) a statement describing how  
18 a person may obtain a copy of the  
19 plan’s funding improvement or reha-  
20 bilitation plan, as appropriate, adopt-  
21 ed under section 305 and the actu-  
22 arial and financial data that dem-  
23 onstrate any action taken by the plan  
24 toward fiscal improvement, and



1                   “(II) a summary of any funding  
2                   improvement plan, rehabilitation plan,  
3                   or modification thereof adopted under  
4                   section 305 during the plan year to  
5                   which the notice relates,

6                   “(vi) in the case of any plan amend-  
7                   ment, scheduled benefit increase or reduc-  
8                   tion, or other known event taking effect in  
9                   the current plan year and having a mate-  
10                  rial effect on plan liabilities or assets for  
11                  the year (as defined in regulations by the  
12                  Secretary), an explanation of the amend-  
13                  ment, schedule increase or reduction, or  
14                  event, and a projection to the end of such  
15                  plan year of the effect of the amendment,  
16                  scheduled increase or reduction, or event  
17                  on plan liabilities,

18                  “(vii)(I) in the case of a single-em-  
19                  ployer plan, a summary of the rules gov-  
20                  erning termination of single-employer plans  
21                  under subtitle C of title IV, or

22                  “(II) in the case of a multiemployer  
23                  plan, a summary of the rules governing re-  
24                  organization or insolvency, including the  
25                  limitations on benefit payments,

1           “(viii) a general description of the  
2           benefits under the plan which are eligible  
3           to be guaranteed by the Pension Benefit  
4           Guaranty Corporation, along with an ex-  
5           planation of the limitations on the guar-  
6           antee and the circumstances under which  
7           such limitations apply,

8           “(ix) a statement that a person may  
9           obtain a copy of the annual report of the  
10          plan filed under section 104(a) upon re-  
11          quest, through the Internet website of the  
12          Department of Labor, or through an  
13          Intranet website maintained by the appli-  
14          cable plan sponsor (or plan administrator  
15          on behalf of the plan sponsor), and

16          “(x) if applicable, a statement that  
17          each contributing sponsor, and each mem-  
18          ber of the contributing sponsor’s controlled  
19          group, of the single-employer plan was re-  
20          quired to provide the information under  
21          section 4010 for the plan year to which the  
22          notice relates.

23          “(C) OTHER INFORMATION.—Each notice  
24          under paragraph (1) shall include—

1 “(i) in the case of a multiemployer  
2 plan, a statement that the plan adminis-  
3 trator shall provide, upon written request,  
4 to any labor organization representing plan  
5 participants and beneficiaries and any em-  
6 ployer that has an obligation to contribute  
7 to the plan, a copy of the annual report  
8 filed with the Secretary under section  
9 104(a), and

10 “(ii) any additional information which  
11 the plan administrator elects to include to  
12 the extent not inconsistent with regulations  
13 prescribed by the Secretary.

14 “(3) TIME FOR PROVIDING NOTICE.—

15 “(A) IN GENERAL.—Any notice under  
16 paragraph (1) shall be provided not later than  
17 120 days after the end of the plan year to  
18 which the notice relates.

19 “(B) EXCEPTION FOR SMALL PLANS.—In  
20 the case of a small plan (as such term is used  
21 under section 303(g)(2)(B)) any notice under  
22 paragraph (1) shall be provided upon filing of  
23 the annual report under section 104(a).

24 “(4) FORM AND MANNER.—Any notice under  
25 paragraph (1)—

1           “(A) shall be provided in a form and man-  
2           ner prescribed in regulations of the Secretary,

3           “(B) shall be written in a manner so as to  
4           be understood by the average plan participant,  
5           and

6           “(C) may be provided in written, elec-  
7           tronic, or other appropriate form to the extent  
8           such form is reasonably accessible to persons to  
9           whom the notice is required to be provided.”.

10       (b) REPEAL OF NOTICE TO PARTICIPANTS OF FUND-  
11       ING STATUS.—

12           (1) IN GENERAL.—Title IV of such Act (29  
13       U.S.C. 1301 et seq.) is amended by striking section  
14       4011.

15           (2) CLERICAL AMENDMENT.—Section 1 of such  
16       Act is amended in the table of contents by striking  
17       the item relating to section 4011.

18       (c) MODEL NOTICE.—Not later than 1 year after the  
19       date of the enactment of this Act, the Secretary of Labor  
20       shall publish a model version of the notice required by sec-  
21       tion 101(f) of the Employee Retirement Income Security  
22       Act of 1974. The Secretary of Labor may promulgate any  
23       interim final rules as the Secretary determines appropriate  
24       to carry out the provisions of this subsection.

25       (d) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendments made by  
2           this section shall apply to plan years beginning after  
3           December 31, 2007, except that the amendment  
4           made by subsection (b) shall apply to plan years be-  
5           ginning after December 31, 2006.

6           (2) TRANSITION RULE.—Any requirement  
7           under section 101(f) of the Employee Retirement In-  
8           come Security Act of 1974 (as amended by this sec-  
9           tion) to report the funding target attainment per-  
10          centage or funded percentage of a plan with respect  
11          to any plan year beginning before January 1, 2008,  
12          shall be treated as met if the plan reports—

13                 (A) in the case of a plan year beginning in  
14                 2006, the funded current liability percentage  
15                 (as defined in section 302(d)(8) of such Act) of  
16                 the plan for such plan year, and

17                 (B) in the case of a plan year beginning in  
18                 2007, the funding target attainment percentage  
19                 or funded percentage as determined using such  
20                 methods of estimation as the Secretary of the  
21                 Treasury may provide.

22   **SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN IN-**  
23                   **FORMATION.**

24           (a) FINANCIAL INFORMATION WITH RESPECT TO  
25   MULTIEMPLOYER PLANS.—

1           (1) IN GENERAL.—Section 101 of the Employee  
2       Retirement Income Security Act of 1974 (29 U.S.C.  
3       1021), as amended by section 103, is amended—

4                   (A) by redesignating subsection (k) as sub-  
5       section (l); and

6                   (B) by inserting after subsection (j) the  
7       following new subsection:

8       “(k) MULTIEMPLOYER PLAN INFORMATION MADE  
9       AVAILABLE ON REQUEST.—

10           “(1) IN GENERAL.—Each administrator of a  
11       multiemployer plan shall, upon written request, fur-  
12       nish to any plan participant or beneficiary, employee  
13       representative, or any employer that has an obliga-  
14       tion to contribute to the plan—

15                   “(A) a copy of any periodic actuarial re-  
16       port (including any sensitivity testing) received  
17       by the plan for any plan year which has been  
18       in the plan’s possession for at least 30 days,

19                   “(B) a copy of any quarterly, semi-annual,  
20       or annual financial report prepared for the plan  
21       by any plan investment manager or advisor or  
22       other fiduciary which has been in the plan’s  
23       possession for at least 30 days, and

24                   “(C) a copy of any application filed with  
25       the Secretary of the Treasury requesting an ex-

1           tension under section 304 of this Act or section  
2           431(d) of the Internal Revenue Code of 1986  
3           and the determination of such Secretary pursu-  
4           ant to such application.

5           “(2) COMPLIANCE.—Information required to be  
6           provided under paragraph (1) —

7                   “(A) shall be provided to the requesting  
8                   participant, beneficiary, or employer within 30  
9                   days after the request in a form and manner  
10                  prescribed in regulations of the Secretary,

11                  “(B) may be provided in written, elec-  
12                  tronic, or other appropriate form to the extent  
13                  such form is reasonably accessible to persons to  
14                  whom the information is required to be pro-  
15                  vided, and

16                  “(C) shall not—

17                    “(i) include any individually identifi-  
18                    able information regarding any plan partic-  
19                    ipant, beneficiary, employee, fiduciary, or  
20                    contributing employer, or

21                    “(ii) reveal any proprietary informa-  
22                    tion regarding the plan, any contributing  
23                    employer, or entity providing services to  
24                    the plan.

1           “(3) LIMITATIONS.—In no case shall a partici-  
2           pant, beneficiary, or employer be entitled under this  
3           subsection to receive more than one copy of any re-  
4           port or application described in paragraph (1) dur-  
5           ing any one 12-month period. The administrator  
6           may make a reasonable charge to cover copying,  
7           mailing, and other costs of furnishing copies of in-  
8           formation pursuant to paragraph (1). The Secretary  
9           may by regulations prescribe the maximum amount  
10          which will constitute a reasonable charge under the  
11          preceding sentence.”.

12           (2) ENFORCEMENT.—Section 502(c)(4) of such  
13          Act (29 U.S.C. 1132(c)(4)) is amended by striking  
14          “section 101(j)” and inserting “subsection (j) or (k)  
15          of section 101”.

16           (3) REGULATIONS.—The Secretary shall pre-  
17          scribe regulations under section 101(k)(2) of the  
18          Employee Retirement Income Security Act of 1974  
19          (as added by paragraph (1)) not later than 1 year  
20          after the date of the enactment of this Act.

21          (b) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY  
22          TO MULTIEMPLOYER PLANS.—

23           (1) IN GENERAL.—Section 101 of such Act (as  
24          amended by subsection (a)) is amended—



1 (A) by redesignating subsection (l) as sub-  
2 section (m); and

3 (B) by inserting after subsection (k) the  
4 following new subsection:

5 “(l) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-  
6 ITY.—

7 “(1) IN GENERAL.—The plan sponsor or ad-  
8 ministrator of a multiemployer plan shall, upon writ-  
9 ten request, furnish to any employer who has an ob-  
10 ligation to contribute to the plan a notice of—

11 “(A) the estimated amount which would be  
12 the amount of such employer’s withdrawal li-  
13 ability under part 1 of subtitle E of title IV if  
14 such employer withdrew on the last day of the  
15 plan year preceding the date of the request, and

16 “(B) an explanation of how such estimated  
17 liability amount was determined, including the  
18 actuarial assumptions and methods used to de-  
19 termine the value of the plan liabilities and as-  
20 sets, the data regarding employer contributions,  
21 unfunded vested benefits, annual changes in the  
22 plan’s unfunded vested benefits, and the appli-  
23 cation of any relevant limitations on the esti-  
24 mated withdrawal liability.

1 For purposes of subparagraph (B), the term ‘em-  
2 ployer contribution’ means, in connection with a par-  
3 ticipant, a contribution made by an employer as an  
4 employer of such participant.

5 “(2) COMPLIANCE.—Any notice required to be  
6 provided under paragraph (1)—

7 “(A) shall be provided in a form and man-  
8 ner prescribed in regulations of the Secretary to  
9 the requesting employer within—

10 “(i) 180 days after the request, or

11 “(ii) subject to regulations of the Sec-  
12 retary, such longer time as may be nec-  
13 essary in the case of a plan that deter-  
14 mines withdrawal liability based on any  
15 method described under paragraph (4) or  
16 (5) of section 4211(c); and

17 “(B) may be provided in written, elec-  
18 tronic, or other appropriate form to the extent  
19 such form is reasonably accessible to employers  
20 to whom the information is required to be pro-  
21 vided.

22 “(3) LIMITATIONS.—In no case shall an em-  
23 ployer be entitled under this subsection to receive  
24 more than one notice described in paragraph (1)  
25 during any one 12-month period. The person re-

1       quired to provide such notice may make a reasonable  
2       charge to cover copying, mailing, and other costs of  
3       furnishing such notice pursuant to paragraph (1).  
4       The Secretary may by regulations prescribe the max-  
5       imum amount which will constitute a reasonable  
6       charge under the preceding sentence.”.

7           (2) ENFORCEMENT.—Section 502(c)(4) of such  
8       Act (29 U.S.C. 1132(c)(4)) is amended by striking  
9       “section 101(j) or (k)” and inserting “subsection (j),  
10      (k), or (l) of section 101”.

11      (c) NOTICE OF AMENDMENT REDUCING FUTURE AC-  
12      CRUALS.—

13           (1) AMENDMENT OF ERISA.—Section 204(h)(1)  
14      of such Act (29 U.S.C. 1054(h)(1)) is amended by  
15      inserting at the end before the period the following:  
16      “and to each employer who has an obligation to con-  
17      tribute to the plan.”.

18           (2) AMENDMENT OF INTERNAL REVENUE  
19      CODE.—Section 4980F(e)(1) of such Code is amend-  
20      ed by adding at the end before the period the fol-  
21      lowing: “and to each employer who has an obligation  
22      to contribute to the plan.”.

23      (d) EFFECTIVE DATE.—The amendments made by  
24      this section shall apply to plan years beginning after De-  
25      cember 31, 2007.

1 **SEC. 503. ADDITIONAL ANNUAL REPORTING REQUIRE-**  
2 **MENTS.**

3 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-  
4 MENTS WITH RESPECT TO DEFINED BENEFIT PLANS.—

5 (1) IN GENERAL.—Section 103 of the Employee  
6 Retirement Income Security Act of 1974 (29 U.S.C.  
7 1023) is amended—

8 (A) in subsection (a)(1)(B), by striking  
9 “subsections (d) and (e)” and inserting “sub-  
10 sections (d), (e), and (f)”; and

11 (B) by adding at the end the following new  
12 subsection:

13 “(f) ADDITIONAL INFORMATION WITH RESPECT TO  
14 DEFINED BENEFIT PLANS.—

15 “(1) LIABILITIES UNDER 2 OR MORE PLANS.—

16 “(A) IN GENERAL.—In any case in which  
17 any liabilities to participants or their bene-  
18 ficiaries under a defined benefit plan as of the  
19 end of a plan year consist (in whole or in part)  
20 of liabilities to such participants and bene-  
21 ficiaries under 2 or more pension plans as of  
22 immediately before such plan year, an annual  
23 report under this section for such plan year  
24 shall include the funded percentage of each of  
25 such 2 or more pension plans as of the last day  
26 of such plan year and the funded percentage of

1 the plan with respect to which the annual re-  
2 port is filed as of the last day of such plan  
3 year.

4 “(B) FUNDED PERCENTAGE.—For pur-  
5 poses of this paragraph, the term ‘funded per-  
6 centage’—

7 “(i) in the case of a single-employer  
8 plan, means the funding target attainment  
9 percentage, as defined in section  
10 303(d)(2), and

11 “(ii) in the case of a multiemployer  
12 plan, has the meaning given such term in  
13 section 305(i)(2).

14 “(2) ADDITIONAL INFORMATION FOR MULTIEM-  
15 PLOYER PLANS.—With respect to any defined ben-  
16 efit plan which is a multiemployer plan, an annual  
17 report under this section for a plan year shall in-  
18 clude, in addition to the information required under  
19 paragraph (1), the following, as of the end of the  
20 plan year to which the report relates:

21 “(A) The number of employers obligated to  
22 contribute to the plan.

23 “(B) A list of the employers that contrib-  
24 uted more than 5 percent of the total contribu-  
25 tions to the plan during such plan year.

1           “(C) The number of participants under the  
2 plan on whose behalf no contributions were  
3 made by an employer as an employer of the  
4 participant for such plan year and for each of  
5 the 2 preceding plan years.

6           “(D) The ratios of—

7               “(i) the number of participants under  
8 the plan on whose behalf no employer had  
9 an obligation to make an employer con-  
10 tribution during the plan year, to

11               “(ii) the number of participants under  
12 the plan on whose behalf no employer had  
13 an obligation to make an employer con-  
14 tribution during each of the 2 preceding  
15 plan years.

16           “(E) Whether the plan received an amorti-  
17 zation extension under section 304(d) of this  
18 Act or section 431(d) of the Internal Revenue  
19 Code of 1986 for such plan year and, if so, the  
20 amount of the difference between the minimum  
21 required contribution for the year and the min-  
22 imum required contribution which would have  
23 been required without regard to the extension,  
24 and the period of such extension.

1           “(F) Whether the plan used the shortfall  
2           funding method (as such term is used in section  
3           305) for such plan year and, if so, the amount  
4           of the difference between the minimum required  
5           contribution for the year and the minimum re-  
6           quired contribution which would have been re-  
7           quired without regard to the use of such meth-  
8           od, and the period of use of such method.

9           “(G) Whether the plan was in critical or  
10          endangered status under section 305 for such  
11          plan year, and if so, a summary of any funding  
12          improvement or rehabilitation plan (or modi-  
13          fication thereto) adopted during the plan year,  
14          and the funded percentage of the plan.

15          “(H) The number of employers that with-  
16          drew from the plan during the preceding plan  
17          year and the aggregate amount of withdrawal  
18          liability assessed, or estimated to be assessed,  
19          against such withdrawn employers.

20          “(I) In the case of a multiemployer plan  
21          that has merged with another plan or to which  
22          assets and liabilities have been transferred, the  
23          actuarial valuation of the assets and liabilities  
24          of each affected plan during the year preceding  
25          the effective date of the merger or transfer,

1           based upon the most recent data available as of  
2           the day before the first day of the plan year, or  
3           other valuation method performed under stand-  
4           ards and procedures as the Secretary may pre-  
5           scribe by regulation.”.

6           (2) GUIDANCE BY SECRETARY OF LABOR.—Not  
7           later than 1 year after the date of enactment of this  
8           Act, the Secretary of Labor shall publish guidance  
9           to assist multiemployer defined benefit plans to—

10                 (A) identify and enumerate plan partici-  
11                 pants for whom there is no employer with an  
12                 obligation to make an employer contribution  
13                 under the plan; and

14                 (B) report such information under section  
15                 103(f)(2)(D) of the Employee Retirement In-  
16                 come Security Act of 1974 (as added by this  
17                 section).

18           (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-  
19           ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-  
20           JECTIONS.—Section 103(d) of such Act (29 U.S.C.  
21           1023(d)) is amended—

22                 (1) by redesignating paragraphs (12) and (13)  
23                 as paragraphs (13) and (14), respectively; and

24                 (2) by inserting after paragraph (11) the fol-  
25                 lowing new paragraph:



1           “(12) A statement explaining the actuarial as-  
2           sumptions and methods used in projecting future re-  
3           tirements and forms of benefit distributions under  
4           the plan.”.

5           (c) REPEAL OF SUMMARY ANNUAL REPORT RE-  
6           QUIREMENT FOR DEFINED BENEFIT PLANS.—

7           (1) IN GENERAL.—Section 104(b)(3) of such  
8           Act (29 U.S.C. 1024(b)(3)) is amended by inserting  
9           “(other than an administrator of a defined benefit  
10          plan to which the requirements of section 103(f) ap-  
11          plies)” after “the administrators”.

12          (2) CONFORMING AMENDMENTS.—Section  
13          101(a)(2) of such Act (29 U.S.C. 1021(a)(2)) is  
14          amended by inserting “subsection (f) and” before  
15          “sections 104(b)(3) and 105(a) and (c)”.

16          (d) FURNISHING SUMMARY PLAN INFORMATION TO  
17          EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF  
18          MULTIEMPLOYER PLANS.—Section 104 of such Act (29  
19          U.S.C. 1024) is amended—

20               (1) in the header, by striking “**PARTICI-**  
21               **PANTS**” and inserting “**PARTICIPANTS AND CER-**  
22               **TAIN EMPLOYERS**”;

23               (2) redesignating subsection (d) as subsection  
24               (e); and

25               (3) inserting after subsection (c) the following:

1       “(d) FURNISHING SUMMARY PLAN INFORMATION TO  
2 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF  
3 MULTIEMPLOYER PLANS.—

4           “(1) IN GENERAL.—With respect to a multiem-  
5 ployer plan subject to this section, within 30 days  
6 after the due date under subsection (a)(1) for the  
7 filing of the annual report for the fiscal year of the  
8 plan, the administrators shall furnish to each em-  
9 ployee organization and to each employer with an  
10 obligation to contribute to the plan a report that  
11 contains—

12           “(A) a description of the contribution  
13 schedules and benefit formulas under the plan,  
14 and any modification to such schedules and for-  
15 mulas, during such plan year;

16           “(B) the number of employers obligated to  
17 contribute to the plan;

18           “(C) a list of the employers that contrib-  
19 uted more than 5 percent of the total contribu-  
20 tions to the plan during such plan year;

21           “(D) the number of participants under the  
22 plan on whose behalf no contributions were  
23 made by an employer as an employer of the  
24 participant for such plan year and for each of  
25 the 2 preceding plan years;

1           “(E) whether the plan was in critical or  
2           endangered status under section 305 for such  
3           plan year and, if so, include—

4                   “(i) a list of the actions taken by the  
5                   plan to improve its funding status; and

6                   “(ii) a statement describing how a  
7                   person may obtain a copy of the plan’s im-  
8                   provement or rehabilitation plan, as appli-  
9                   cable, adopted under section 305 and the  
10                  actuarial and financial data that dem-  
11                  onstrate any action taken by the plan to-  
12                  ward fiscal improvement;

13                  “(F) the number of employers that with-  
14                  drew from the plan during the preceding plan  
15                  year and the aggregate amount of withdrawal  
16                  liability assessed, or estimated to be assessed,  
17                  against such withdrawn employers, as reported  
18                  on the annual report for the plan year to which  
19                  the report under this subsection relates;

20                  “(G) in the case of a multiemployer plan  
21                  that has merged with another plan or to which  
22                  assets and liabilities have been transferred, the  
23                  actuarial valuation of the assets and liabilities  
24                  of each affected plan during the year preceding  
25                  the effective date of the merger or transfer,

1 based upon the most recent data available as of  
2 the day before the first day of the plan year, or  
3 other valuation method performed under stand-  
4 ards and procedures as the Secretary may pre-  
5 scribe by regulation;

6 “(H) a description as to whether the  
7 plan—

8 “(i) sought or received an amortiza-  
9 tion extension under section 304(d) of this  
10 Act or section 431(d) of the Internal Rev-  
11 enue Code of 1986 for such plan year; or

12 “(ii) used the shortfall funding meth-  
13 od (as such term is used in section 305)  
14 for such plan year; and

15 “(I) notification of the right under this  
16 section of the recipient to a copy of the annual  
17 report filed with the Secretary under subsection  
18 (a), summary plan description, summary of any  
19 material modification of the plan, upon written  
20 request, but that—

21 “(i) in no case shall a recipient be en-  
22 titled to receive more than one copy of any  
23 such document described during any one  
24 12-month period; and

1                   “(ii) the administrator may make a  
2                   reasonable charge to cover copying, mail-  
3                   ing, and other costs of furnishing copies of  
4                   information pursuant to this subpara-  
5                   graph.

6                   “(2) EFFECT OF SUBSECTION.—Nothing in this  
7                   subsection waives any other provision under this title  
8                   requiring plan administrators to provide, upon re-  
9                   quest, information to employers that have an obliga-  
10                  tion to contribute under the plan.”.

11               (e) MODEL FORM.—Not later than 1 year after the  
12               date of the enactment of this Act, the Secretary of Labor  
13               shall publish a model form for providing the statements,  
14               schedules, and other material required to be provided  
15               under section 101(f) of the Employee Retirement Income  
16               Security Act of 1974, as amended by this section. The  
17               Secretary of Labor may promulgate any interim final rules  
18               as the Secretary determines appropriate to carry out the  
19               provisions of this subsection.

20               (f) EFFECTIVE DATE.—The amendments made by  
21               this section shall apply to plan years beginning after De-  
22               cember 31, 2007.

1   **SEC. 504. ELECTRONIC DISPLAY OF ANNUAL REPORT IN-**  
2                   **FORMATION.**

3           (a) ELECTRONIC DISPLAY OF INFORMATION.—Sec-  
4   tion 104(b) of such Act (29 U.S.C. 1024(b)) is amended  
5   by adding at the end the following:

6           “(5) Identification and basic plan information and ac-  
7   tuarial information included in the annual report for any  
8   plan year shall be filed with the Secretary in an electronic  
9   format which accommodates display on the Internet, in ac-  
10   cordance with regulations which shall be prescribed by the  
11   Secretary. The Secretary shall provide for display of such  
12   information included in the annual report, within 90 days  
13   after the date of the filing of the annual report, on an  
14   Internet website maintained by the Secretary and other  
15   appropriate media. Such information shall also be dis-  
16   played on any Intranet website maintained by the plan  
17   sponsor (or by the plan administrator on behalf of the plan  
18   sponsor) for the purpose of communicating with employees  
19   and not the public, in accordance with regulations which  
20   shall be prescribed by the Secretary.”.

21          (b) EFFECTIVE DATE.—The amendments made by  
22   this section shall apply to plan years beginning after De-  
23   cember 31, 2007.

24   **SEC. 505. SECTION 4010 FILINGS WITH THE PBGC.**

25          (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED  
26   TO PROVIDE INFORMATION TO PBGC.—Section 4010(b)

1 of the Employee Retirement Income Security Act of 1974  
2 (29 U.S.C. 1310(b)) is amended by striking paragraph (1)  
3 and inserting the following:

4 “(1) the funding target attainment percentage  
5 (as defined in subsection (d)) at the end of the pre-  
6 ceding plan year of a plan maintained by the con-  
7 tributing sponsor or any member of its controlled  
8 group is less than 80 percent;”.

9 (b) ADDITIONAL INFORMATION REQUIRED.—Section  
10 4010 of the Employee Retirement Income Security Act of  
11 1974 (29 U.S.C. 1310) is amended by adding at the end  
12 the following new subsection:

13 “(d) ADDITIONAL INFORMATION REQUIRED.—

14 “(1) IN GENERAL.—The information submitted  
15 to the corporation under subsection (a) shall in-  
16 clude—

17 “(A) the amount of benefit liabilities under  
18 the plan determined using the assumptions used  
19 by the corporation in determining liabilities;

20 “(B) the funding target of the plan deter-  
21 mined as if the plan has been in at-risk status  
22 for at least 5 plan years; and

23 “(C) the funding target attainment per-  
24 centage of the plan.

1           “(2) DEFINITIONS.—For purposes of this sub-  
2       section:

3           “(A) FUNDING TARGET.—The term ‘fund-  
4       ing target’ has the meaning provided under sec-  
5       tion 303(d)(1).

6           “(B) FUNDING TARGET ATTAINMENT PER-  
7       CENTAGE.—The term ‘funding target attain-  
8       ment percentage’ has the meaning provided  
9       under section 302(d)(2).

10          “(C) AT-RISK STATUS.—The term ‘at-risk  
11       status’ has the meaning provided in section  
12       303(i)(4).

13          “(e) NOTICE TO CONGRESS.—The corporation shall,  
14       on an annual basis, submit to the Committee on Health,  
15       Education, Labor, and Pensions and the Committee on Fi-  
16       nance of the Senate and the Committee on Education and  
17       the Workforce and the Committee on Ways and Means  
18       of the House of Representatives, a summary report in the  
19       aggregate of the information submitted to the corporation  
20       under this section.”.

21          “(c) EFFECTIVE DATE.—The amendments made by  
22       this section shall apply with respect to years beginning  
23       after 2007.



1   **SEC. 506. DISCLOSURE OF TERMINATION INFORMATION TO**  
2                   **PLAN PARTICIPANTS.**

3           (a) DISTRESS TERMINATIONS.—

4               (1) IN GENERAL.—Section 4041(c)(2) of the  
5   Employee Retirement Income Security Act of 1974  
6   (29 U.S.C. 1341(c)(2)) is amended by adding at the  
7   end the following:

8                   “(D) DISCLOSURE OF TERMINATION IN-  
9                   FORMATION.—

10                   “(i) IN GENERAL.—A plan adminis-  
11                   trator that has filed a notice of intent to  
12                   terminate under subsection (a)(2) shall  
13                   provide to an affected party any informa-  
14                   tion provided to the corporation under sub-  
15                   section (a)(2) not later than 15 days  
16                   after—

17                           “(I) receipt of a request from the  
18                           affected party for the information; or

19                           “(II) the provision of new infor-  
20                           mation to the corporation relating to  
21                           a previous request.

22                   “(ii) CONFIDENTIALITY.—

23                           “(I) IN GENERAL.—The plan ad-  
24                           ministrator shall not provide informa-  
25                           tion under clause (i) in a form that  
26                           includes any information that may di-

1 rectly or indirectly be associated with,  
2 or otherwise identify, an individual  
3 participant or beneficiary.

4 “(II) LIMITATION.—A court may  
5 limit disclosure under this subpara-  
6 graph of confidential information de-  
7 scribed in section 552(b) of title 5,  
8 United States Code, to any authorized  
9 representative of the participants or  
10 beneficiaries that agrees to ensure the  
11 confidentiality of such information.

12 “(iii) FORM AND MANNER OF INFOR-  
13 MATION; CHARGES.—

14 “(I) FORM AND MANNER.—The  
15 corporation may prescribe the form  
16 and manner of the provision of infor-  
17 mation under this subparagraph,  
18 which shall include delivery in written,  
19 electronic, or other appropriate form  
20 to the extent that such form is rea-  
21 sonably accessible to individuals to  
22 whom the information is required to  
23 be provided.

24 “(II) REASONABLE CHARGES.—A  
25 plan administrator may charge a rea-

1                   sonable fee for any information pro-  
2                   vided under this subparagraph in  
3                   other than electronic form.

4                   “(iv) AUTHORIZED REPRESENTA-  
5                   TIVE.—For purposes of this subparagraph,  
6                   the term ‘authorized representative’ means  
7                   any employee organization representing  
8                   participants in the pension plan.”.

9                   (2) CONFORMING AMENDMENT.—Section  
10                  4041(c)(1) of the Employee Retirement Income Se-  
11                  curity Act of 1974 (29 U.S.C. 1341(c)(1)) is amend-  
12                  ed in subparagraph (C) by striking “subparagraph  
13                  (B)” and inserting “subparagraphs (B) and (D)”.

14                  (b) INVOLUNTARY TERMINATIONS.—

15                  (1) IN GENERAL.—Section 4042(c) of the Em-  
16                  ployee Retirement Income Security Act of 1974 (29  
17                  U.S.C. 1342(c)) is amended by—

18                         (A) striking “(c) If the” and inserting

19                         “(c)(1) If the”;

20                         (B) redesignating paragraph (3) as para-  
21                         graph (2); and

22                         (C) adding at the end the following:

23                         “(3) DISCLOSURE OF TERMINATION INFORMA-  
24                         TION.—

25                         “(A) IN GENERAL.—

1 “(i) INFORMATION FROM PLAN SPON-  
2 SOR OR ADMINISTRATOR.—A plan sponsor  
3 or plan administrator of a single-employer  
4 plan that has received a notice from the  
5 corporation of a determination that the  
6 plan should be terminated under this sec-  
7 tion shall provide to an affected party any  
8 information provided to the corporation in  
9 connection with the plan termination.

10 “(ii) INFORMATION FROM CORPORA-  
11 TION.—The corporation shall provide a  
12 copy of the administrative record, includ-  
13 ing the trusteeship decision record of a ter-  
14 mination of a plan described under clause  
15 (i).

16 “(B) TIMING OF DISCLOSURE.—The plan  
17 sponsor, plan administrator, or the corporation,  
18 as applicable, shall provide the information de-  
19 scribed in subparagraph (A) not later than 15  
20 days after—

21 “(i) receipt of a request from an af-  
22 fected party for such information; or

23 “(ii) in the case of information de-  
24 scribed under subparagraph (A)(i), the  
25 provision of any new information to the

1 corporation relating to a previous request  
2 by an affected party.

3 “(C) CONFIDENTIALITY.—

4 “(i) IN GENERAL.—The plan adminis-  
5 trator and plan sponsor shall not provide  
6 information under subparagraph (A)(i) in  
7 a form which includes any information that  
8 may directly or indirectly be associated  
9 with, or otherwise identify, an individual  
10 participant or beneficiary.

11 “(ii) LIMITATION.—A court may limit  
12 disclosure under this paragraph of con-  
13 fidential information described in section  
14 552(b) of title 5, United States Code, to  
15 authorized representatives (within the  
16 meaning of section 4041(c)(2)(D)(iv)) of  
17 the participants or beneficiaries that agree  
18 to ensure the confidentiality of such infor-  
19 mation.

20 “(D) FORM AND MANNER OF INFORMA-  
21 TION; CHARGES.—

22 “(i) FORM AND MANNER.—The cor-  
23 poration may prescribe the form and man-  
24 ner of the provision of information under  
25 this paragraph, which shall include delivery

1 in written, electronic, or other appropriate  
2 form to the extent that such form is rea-  
3 sonably accessible to individuals to whom  
4 the information is required to be provided.

5 “(ii) REASONABLE CHARGES.—A plan  
6 sponsor may charge a reasonable fee for  
7 any information provided under this para-  
8 graph in other than electronic form.”.

9 (c) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by  
11 this section shall apply to any plan termination  
12 under title IV of the Employee Retirement Income  
13 Security Act of 1974 (29 U.S.C. 1301 et seq.) with  
14 respect to which the notice of intent to terminate (or  
15 in the case of a termination by the Pension Benefit  
16 Guaranty Corporation, a notice of determination  
17 under section 4042 of such Act (29 U.S.C. 1342))  
18 occurs after the date of enactment of this Act.

19 (2) TRANSITION RULE.—If notice under section  
20 4041(c)(2)(D) or 4042(c)(3) of the Employee Re-  
21 tirement Income Security Act of 1974 (as added by  
22 this section) would otherwise be required to be pro-  
23 vided before the 90th day after the date of the en-  
24 actment of this Act, such notice shall not be re-  
25 quired to be provided until such 90th day.

1   **SEC. 507. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**  
2                           **CURITIES.**

3           (a) IN GENERAL.—Section 101 of the Employee Re-  
4   tirement Income Security Act of 1974 (29 U.S.C. 1021),  
5   as amended by this Act, is amended by redesignating sub-  
6   section (m) as subsection (n) and by inserting after sub-  
7   section (l) the following:

8           “(m) NOTICE OF RIGHT TO DIVEST.—Not later than  
9   30 days before the first date on which an applicable indi-  
10   vidual of an applicable individual account plan is eligible  
11   to exercise the right under section 204(j) to direct the pro-  
12   ceeds from the divestment of employer securities with re-  
13   spect to any type of contribution, the administrator shall  
14   provide to such individual a notice—

15                   “(1) setting forth such right under such sec-  
16   tion, and

17                   “(2) describing the importance of diversifying  
18   the investment of retirement account assets.

19   The notice required by this subsection shall be written in  
20   a manner calculated to be understood by the average plan  
21   participant and may be delivered in written, electronic, or  
22   other appropriate form to the extent that such form is rea-  
23   sonably accessible to the recipient.”

24           (b) PENALTIES.—Section 502(c)(7) of the Employee  
25   Retirement Income Security Act of 1974 (29 U.S.C.

1 1132(c)(7)) is amended by striking “section 101(i)” and  
2 inserting “subsection (i) or (m) of section 101”.

3 (c) MODEL NOTICE.—The Secretary of the Treasury  
4 shall, within 180 days after the date of the enactment of  
5 this subsection, prescribe a model notice for purposes of  
6 satisfying the requirements of the amendments made by  
7 this section.

8 (d) EFFECTIVE DATES.—

9 (1) IN GENERAL.—The amendments made by  
10 this section shall apply to plan years beginning after  
11 December 31, 2006.

12 (2) TRANSITION RULE.—If notice under section  
13 101(m) of the Employee Retirement Income Secu-  
14 rity Act of 1974 (as added by this section) would  
15 otherwise be required to be provided before the 90th  
16 day after the date of the enactment of this Act, such  
17 notice shall not be required to be provided until such  
18 90th day.

19 **SEC. 508. PERIODIC PENSION BENEFIT STATEMENTS.**

20 (a) AMENDMENTS OF ERISA.—

21 (1) IN GENERAL.—Section 105(a) of the Em-  
22 ployee Retirement Income Security Act of 1974 (29  
23 U.S.C. 1025(a)) is amended to read as follows:

24 “(a) REQUIREMENTS TO PROVIDE PENSION BEN-  
25 EFIT STATEMENTS.—



1 “(1) REQUIREMENTS.—

2 “(A) INDIVIDUAL ACCOUNT PLAN.—The  
3 administrator of an individual account plan  
4 (other than a one-participant retirement plan  
5 described in section 101(i)(8)(B)) shall furnish  
6 a pension benefit statement—

7 “(i) at least once each calendar quar-  
8 ter to a participant or beneficiary who has  
9 the right to direct the investment of assets  
10 in his or her account under the plan,

11 “(ii) at least once each calendar year  
12 to a participant or beneficiary who has his  
13 or her own account under the plan but  
14 does not have the right to direct the invest-  
15 ment of assets in that account, and

16 “(iii) upon written request to a plan  
17 beneficiary not described in clause (i) or  
18 (ii).

19 “(B) DEFINED BENEFIT PLAN.—The ad-  
20 ministrator of a defined benefit plan (other  
21 than a one-participant retirement plan de-  
22 scribed in section 101(i)(8)(B)) shall furnish a  
23 pension benefit statement—

24 “(i) at least once every 3 years to  
25 each participant with a nonforfeitable ac-

1           crued benefit and who is employed by the  
2           employer maintaining the plan at the time  
3           the statement is to be furnished, and

4                   “(ii) to a participant or beneficiary of  
5           the plan upon written request.

6           Information furnished under clause (i) to a par-  
7           ticipant may be based on reasonable estimates  
8           determined under regulations prescribed by the  
9           Secretary, in consultation with the Pension  
10          Benefit Guaranty Corporation.

11          “(2) STATEMENTS.—

12                   “(A) IN GENERAL.—A pension benefit  
13          statement under paragraph (1)—

14                           “(i) shall indicate, on the basis of the  
15          latest available information—

16                                   “(I) the total benefits accrued,  
17          and

18                                   “(II) the nonforfeitable pension  
19          benefits, if any, which have accrued,  
20          or the earliest date on which benefits  
21          will become nonforfeitable,

22                           “(ii) shall include an explanation of  
23          any permitted disparity under section  
24          401(l) of the Internal Revenue Code of  
25          1986 or any floor-offset arrangement that

1 may be applied in determining any accrued  
2 benefits described in clause (i),

3 “(iii) shall be written in a manner cal-  
4 culated to be understood by the average  
5 plan participant, and

6 “(iv) may be delivered in written, elec-  
7 tronic, or other appropriate form to the ex-  
8 tent such form is reasonably accessible to  
9 the participant or beneficiary.

10 “(B) ADDITIONAL INFORMATION.—In the  
11 case of an individual account plan, any pension  
12 benefit statement under clause (i) or (ii) of  
13 paragraph (1)(A) shall include—

14 “(i) the value of each investment to  
15 which assets in the individual account have  
16 been allocated, determined as of the most  
17 recent valuation date under the plan, in-  
18 cluding the value of any assets held in the  
19 form of employer securities, without regard  
20 to whether such securities were contributed  
21 by the plan sponsor or acquired at the di-  
22 rection of the plan or of the participant or  
23 beneficiary, and

24 “(ii) in the case of a pension benefit  
25 statement under paragraph (1)(A)(i)—

1 “(I) an explanation of any limita-  
2 tions or restrictions on any right of  
3 the participant or beneficiary under  
4 the plan to direct an investment,

5 “(II) an explanation, written in a  
6 manner calculated to be understood  
7 by the average plan participant, of the  
8 importance, for the long-term retire-  
9 ment security of participants and  
10 beneficiaries, of a well-balanced and  
11 diversified investment portfolio, in-  
12 cluding a statement of the risk that  
13 holding more than 20 percent of a  
14 portfolio in the security of one entity  
15 (such as employer securities) may not  
16 be adequately diversified, and

17 “(III) a notice directing the par-  
18 ticipant or beneficiary to the Internet  
19 website of the Department of Labor  
20 for sources of information on indi-  
21 vidual investing and diversification.

22 “(C) ALTERNATIVE NOTICE.—The require-  
23 ments of subparagraph (A)(i)(II) are met if, at  
24 least annually and in accordance with require-  
25 ments of the Secretary, the plan—

1 “(i) updates the information described  
2 in such paragraph which is provided in the  
3 pension benefit statement, or

4 “(ii) provides in a separate statement  
5 such information as is necessary to enable  
6 a participant or beneficiary to determine  
7 their nonforfeitable vested benefits.

8 “(3) DEFINED BENEFIT PLANS.—

9 “(A) ALTERNATIVE NOTICE.—In the case  
10 of a defined benefit plan, the requirements of  
11 paragraph (1)(B)(i) shall be treated as met  
12 with respect to a participant if at least once  
13 each year the administrator provides to the par-  
14 ticipant notice of the availability of the pension  
15 benefit statement and the ways in which the  
16 participant may obtain such statement. Such  
17 notice may be delivered in written, electronic, or  
18 other appropriate form to the extent such form  
19 is reasonably accessible to the participant.

20 “(B) YEARS IN WHICH NO BENEFITS AC-  
21 CRUE.—The Secretary may provide that years  
22 in which no employee or former employee bene-  
23 fits (within the meaning of section 410(b) of  
24 the Internal Revenue Code of 1986) under the  
25 plan need not be taken into account in deter-

1 mining the 3-year period under paragraph  
2 (1)(B)(i).”

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 105 of the Employee Retirement  
5 Income Security Act of 1974 (29 U.S.C.  
6 1025) is amended by striking subsection (d).

7 (B) Section 105(b) of such Act (29 U.S.C.  
8 1025(b)) is amended to read as follows:

9 “(b) LIMITATION ON NUMBER OF STATEMENTS.—In  
10 no case shall a participant or beneficiary of a plan be enti-  
11 tled to more than 1 statement described in subparagraph  
12 (A)(iii) or (B)(ii) of subsection (a)(1), whichever is appli-  
13 cable, in any 12-month period.”

14 (C) Section 502(c)(1) of such Act (29  
15 U.S.C. 1132(c)(1)) is amended by striking “or  
16 section 101(f)” and inserting “section 101(f),  
17 or section 105(a)”.

18 (b) MODEL STATEMENTS.—

19 (1) IN GENERAL.—The Secretary of Labor  
20 shall, within 1 year after the date of the enactment  
21 of this section, develop 1 or more model benefit  
22 statements that are written in a manner calculated  
23 to be understood by the average plan participant and  
24 that may be used by plan administrators in com-

1       plying with the requirements of section 105 of the  
2       Employee Retirement Income Security Act of 1974.

3           (2) INTERIM FINAL RULES.—The Secretary of  
4       Labor may promulgate any interim final rules as the  
5       Secretary determines appropriate to carry out the  
6       provisions of this subsection.

7       (c) EFFECTIVE DATE.—

8           (1) IN GENERAL.—The amendments made by  
9       this section shall apply to plan years beginning after  
10      December 31, 2006.

11          (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
12      GAINED AGREEMENTS.—In the case of a plan main-  
13      tained pursuant to 1 or more collective bargaining  
14      agreements between employee representatives and 1  
15      or more employers ratified on or before the date of  
16      the enactment of this Act, paragraph (1) shall be  
17      applied to benefits pursuant to, and individuals cov-  
18      ered by, any such agreement by substituting for  
19      “December 31, 2006” the earlier of—

20           (A) the later of—

21               (i) December 31, 2007, or

22               (ii) the date on which the last of such  
23      collective bargaining agreements termi-  
24      nates (determined without regard to any

1 extension thereof after such date of enact-  
2 ment), or

3 (B) December 31, 2008.

4 **SEC. 509. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**  
5 **BLACKOUT PERIODS.**

6 (a) IN GENERAL.—Section 101(i)(8)(B) of the Em-  
7 ployee Retirement Income Security Act of 1974 (29  
8 U.S.C. 1021(i)(8)(B)) is amended by striking clauses (i)  
9 through (iv), by redesignating clause (v) as clause (ii), and  
10 by inserting before clause (ii), as so redesignated, the fol-  
11 lowing new clause:

12 “(i) on the first day of the plan  
13 year—

14 “(I) covered only one individual  
15 (or the individual and the individual’s  
16 spouse) and the individual (or the in-  
17 dividual and the individual’s spouse)  
18 owned 100 percent of the plan spon-  
19 sor (whether or not incorporated), or

20 “(II) covered only one or more  
21 partners (or partners and their  
22 spouses) in the plan sponsor, and”.

23 (b) EFFECTIVE DATE.—The amendments made by  
24 this subsection shall take effect as if included in the provi-



1 sions of section 306 of Public Law 107–204 (116 Stat.  
2 745 et seq.).

3 **TITLE VI—INVESTMENT ADVICE,**  
4 **PROHIBITED TRANSACTIONS,**  
5 **AND FIDUCIARY RULES**  
6 **Subtitle A—Investment Advice**

7 **SEC. 601. PROHIBITED TRANSACTION EXEMPTION FOR**  
8 **PROVISION OF INVESTMENT ADVICE.**

9 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
10 INCOME SECURITY ACT OF 1974.—

11 (1) EXEMPTION FROM PROHIBITED TRANS-  
12 ACTIONS.—Section 408(b) of the Employee Retire-  
13 ment Income Security Act of 1974 (29 U.S.C.  
14 1108(b)) is amended by adding at the end the fol-  
15 lowing new paragraph:

16 “(14) Any transaction in connection with the  
17 provision of investment advice described in section  
18 3(21)(A)(ii) to a participant or beneficiary of an in-  
19 dividual account plan that permits such participant  
20 or beneficiary to direct the investment of assets in  
21 their individual account, if—

22 “(A) the transaction is—

23 “(i) the provision of the investment  
24 advice to the participant or beneficiary of  
25 the plan with respect to a security or other

1 property available as an investment under  
2 the plan,

3 “(ii) the acquisition, holding, or sale  
4 of a security or other property available as  
5 an investment under the plan pursuant to  
6 the investment advice, or

7 “(iii) the direct or indirect receipt of  
8 fees or other compensation by the fiduciary  
9 adviser or an affiliate thereof (or any em-  
10 ployee, agent, or registered representative  
11 of the fiduciary adviser or affiliate) in con-  
12 nection with the provision of the advice or  
13 in connection with an acquisition, holding,  
14 or sale of a security or other property  
15 available as an investment under the plan  
16 pursuant to the investment advice; and

17 “(B) the requirements of subsection (g)  
18 are met.”.

19 (2) REQUIREMENTS.—Section 408 of such Act  
20 is amended further by adding at the end the fol-  
21 lowing new subsection:

22 “(g) PROVISION OF INVESTMENT ADVICE TO PARTIC-  
23 IPANT AND BENEFICIARIES.—

24 “(1) IN GENERAL.—The prohibitions provided  
25 in section 406 shall not apply to transactions de-

1 scribed in subsection (b)(14) if the investment advice  
2 provided by a fiduciary adviser is provided under an  
3 eligible investment advice arrangement.

4 “(2) ELIGIBLE INVESTMENT ADVICE ARRANGE-  
5 MENT.—For purposes of this subsection, the term  
6 ‘eligible investment advice arrangement’ means an  
7 arrangement—

8 “(A) which either—

9 “(i) provides that any fees (including  
10 any commission or other compensation) re-  
11 ceived by the fiduciary adviser for invest-  
12 ment advice or with respect to the sale,  
13 holding, or acquisition of any security or  
14 other property for purposes of investment  
15 of plan assets do not vary depending on  
16 the basis of any investment option selected,  
17 or

18 “(ii) uses a computer model under an  
19 investment advice program meeting the re-  
20 quirements of paragraph (3) in connection  
21 with the provision of investment advice by  
22 a fiduciary adviser to a participant or ben-  
23 eficiary, and

1           “(B) with respect to which the require-  
2           ments of paragraph (4), (5), (6), (7), (8), and  
3           (9) are met.

4           “(3) INVESTMENT ADVICE PROGRAM USING  
5           COMPUTER MODEL.—

6           “(A) IN GENERAL.—An investment advice  
7           program meets the requirements of this para-  
8           graph if the requirements of subparagraphs  
9           (B), (C), and (D) are met.

10          “(B) COMPUTER MODEL.—The require-  
11          ments of this subparagraph are met if the in-  
12          vestment advice provided under the investment  
13          advice program is provided pursuant to a com-  
14          puter model that—

15               “(i) applies generally accepted invest-  
16               ment theories that take into account the  
17               historic returns of different asset classes  
18               over defined periods of time,

19               “(ii) utilizes relevant information  
20               about the participant, which may include  
21               age, life expectancy, retirement age, risk  
22               tolerance, other assets or sources of in-  
23               come, and preferences as to certain types  
24               of investments,

1 “(iii) utilizes prescribed objective cri-  
2 teria to provide asset allocation portfolios  
3 comprised of investment options available  
4 under the plan,

5 “(iv) operates in a manner that is not  
6 biased in favor of investments offered by  
7 the fiduciary adviser or a person with a  
8 material affiliation or contractual relation-  
9 ship with the fiduciary adviser, and

10 “(v) takes into account all investment  
11 options under the plan in specifying how a  
12 participant’s account balance should be in-  
13 vested and is not inappropriately weighted  
14 with respect to any investment option.

15 “(C) CERTIFICATION.—

16 “(i) IN GENERAL.—The requirements  
17 of this subparagraph are met with respect  
18 to any investment advice program if an eli-  
19 gible investment expert certifies, prior to  
20 the utilization of the computer model and  
21 in accordance with rules prescribed by the  
22 Secretary, that the computer model meets  
23 the requirements of subparagraph (B).

24 “(ii) RENEWAL OF CERTIFI-  
25 CATIONS.—If, as determined under regula-

1           tions prescribed by the Secretary, there are  
2           material modifications to a computer  
3           model, the requirements of this subpara-  
4           graph are met only if a certification de-  
5           scribed in clause (i) is obtained with re-  
6           spect to the computer model as so modi-  
7           fied.

8           “(iii) ELIGIBLE INVESTMENT EX-  
9           PERT.—The term ‘eligible investment ex-  
10          pert’ means any person—

11                   “(I) which meets such require-  
12                   ments as the Secretary may provide,  
13                   and

14                   “(II) does not bear any material  
15                   affiliation or contractual relationship  
16                   with any investment adviser or a re-  
17                   lated person thereof (or any employee,  
18                   agent, or registered representative of  
19                   the investment adviser or related per-  
20                   son).

21           “(D) EXCLUSIVITY OF RECOMMENDA-  
22           TION.—The requirements of this subparagraph  
23           are met with respect to any investment advice  
24           program if—

1 “(i) the only investment advice pro-  
2 vided under the program is the advice gen-  
3 erated by the computer model described in  
4 subparagraph (B), and

5 “(ii) any transaction described in sub-  
6 section (b)(14)(B)(ii) occurs solely at the  
7 direction of the participant or beneficiary.

8 Nothing in the preceding sentence shall pre-  
9 clude the participant or beneficiary from re-  
10 questing investment advice other than that de-  
11 scribed in subparagraph (A), but only if such  
12 request has not been solicited by any person  
13 connected with carrying out the arrangement.

14 “(4) EXPRESS AUTHORIZATION BY SEPARATE  
15 FIDUCIARY.—The requirements of this paragraph  
16 are met with respect to an arrangement if the ar-  
17 rangement is expressly authorized by a plan fidu-  
18 ciary other than the person offering the investment  
19 advice program, any person providing investment op-  
20 tions under the plan, or any affiliate of either.

21 “(5) ANNUAL AUDIT.—The requirements of this  
22 paragraph are met if an independent auditor, who  
23 has appropriate technical training or experience and  
24 proficiency and so represents in writing—

1           “(A) conducts an annual audit of the ar-  
2           rangement for compliance with the require-  
3           ments of this subsection, and

4           “(B) following completion of the annual  
5           audit, issues a written report to the fiduciary  
6           who authorized use of the arrangement which  
7           presents its specific findings regarding compli-  
8           ance of the arrangement with the requirements  
9           of this subsection.

10          For purposes of this paragraph, an auditor is con-  
11          sidered independent if it is not related to the person  
12          offering the arrangement to the plan and is not re-  
13          lated to any person providing investment options  
14          under the plan.

15          “(6) DISCLOSURE.—The requirements of this  
16          paragraph are met if—

17               “(A) the fiduciary adviser provides to a  
18               participant or a beneficiary before the initial  
19               provision of the investment advice with regard  
20               to any security or other property offered as an  
21               investment option, a written notification (which  
22               may consist of notification by means of elec-  
23               tronic communication)—

24                       “(i) of the role of any party that has  
25                       a material affiliation or contractual rela-



1                   tionship with the financial adviser in the  
2                   development of the investment advice pro-  
3                   gram and in the selection of investment  
4                   options available under the plan,

5                   “(ii) of the past performance and his-  
6                   torical rates of return of the investment  
7                   options available under the plan,

8                   “(iii) of all fees or other compensation  
9                   relating to the advice that the fiduciary ad-  
10                  viser or any affiliate thereof is to receive  
11                  (including compensation provided by any  
12                  third party) in connection with the provi-  
13                  sion of the advice or in connection with the  
14                  sale, acquisition, or holding of the security  
15                  or other property,

16                  “(iv) of any material affiliation or  
17                  contractual relationship of the fiduciary  
18                  adviser or affiliates thereof in the security  
19                  or other property,

20                  “(v) the manner, and under what cir-  
21                  cumstances, any participant or beneficiary  
22                  information provided under the arrange-  
23                  ment will be used or disclosed,

24                  “(vi) of the types of services provided  
25                  by the fiduciary adviser in connection with

1 the provision of investment advice by the  
2 fiduciary adviser,

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

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

12 “(B) at all times during the provision of  
13 advisory services to the participant or bene-  
14 ficiary, the fiduciary adviser—

15 “(i) maintains the information de-  
16 scribed in subparagraph (A) in accurate  
17 form and in the manner described in para-  
18 graph (8),

19 “(ii) provides, without charge, accu-  
20 rate information to the recipient of the ad-  
21 vice no less frequently than annually,

22 “(iii) provides, without charge, accu-  
23 rate information to the recipient of the ad-  
24 vice upon request of the recipient, and

1           “(iv) provides, without charge, accu-  
2           rate information to the recipient of the ad-  
3           vice concerning any material change to the  
4           information required to be provided to the  
5           recipient of the advice at a time reasonably  
6           contemporaneous to the change in informa-  
7           tion.

8           “(7) OTHER CONDITIONS.—The requirements  
9           of this paragraph are met if—

10           “(A) the fiduciary adviser provides appro-  
11           priate disclosure, in connection with the sale,  
12           acquisition, or holding of the security or other  
13           property, in accordance with all applicable secu-  
14           rities laws,

15           “(B) the sale, acquisition, or holding oc-  
16           curs solely at the direction of the recipient of  
17           the advice,

18           “(C) the compensation received by the fi-  
19           duciary adviser and affiliates thereof in connec-  
20           tion with the sale, acquisition, or holding of the  
21           security or other property is reasonable, and

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

1           “(8) STANDARDS FOR PRESENTATION OF IN-  
2       FORMATION.—

3           “(A) IN GENERAL.—The requirements of  
4       this paragraph are met if the notification re-  
5       quired to be provided to participants and bene-  
6       ficiaries under paragraph (6)(A) is written in a  
7       clear and conspicuous manner and in a manner  
8       calculated to be understood by the average plan  
9       participant and is sufficiently accurate and  
10      comprehensive to reasonably apprise such par-  
11      ticipants and beneficiaries of the information  
12      required to be provided in the notification.

13          “(B) MODEL FORM FOR DISCLOSURE OF  
14      FEES AND OTHER COMPENSATION.—The Sec-  
15      retary shall issue a model form for the disclo-  
16      sure of fees and other compensation required in  
17      paragraph (6)(A)(iii) which meets the require-  
18      ments of subparagraph (A).

19          “(9) MAINTENANCE FOR 6 YEARS OF EVIDENCE  
20      OF COMPLIANCE.—The requirements of this para-  
21      graph are met if a fiduciary adviser who has pro-  
22      vided advice referred to in paragraph (1) maintains,  
23      for a period of not less than 6 years after the provi-  
24      sion of the advice, any records necessary for deter-  
25      mining whether the requirements of the preceding

1 provisions of this subsection and of subsection  
2 (b)(14) have been met. A transaction prohibited  
3 under section 406 shall not be considered to have oc-  
4 curred solely because the records are lost or de-  
5 stroyed prior to the end of the 6-year period due to  
6 circumstances beyond the control of the fiduciary  
7 adviser.

8 “(10) EXEMPTION FOR PLAN SPONSOR AND  
9 CERTAIN OTHER FIDUCIARIES.—

10 “(A) IN GENERAL.—Subject to subpara-  
11 graph (B), a plan sponsor or other person who  
12 is a fiduciary (other than a fiduciary adviser)  
13 shall not be treated as failing to meet the re-  
14 quirements of this part solely by reason of the  
15 provision of investment advice referred to in  
16 section 3(21)(A)(ii) (or solely by reason of con-  
17 tracting for or otherwise arranging for the pro-  
18 vision of the advice), if—

19 “(i) the advice is provided by a fidu-  
20 ciary adviser pursuant to an eligible invest-  
21 ment advice arrangement between the plan  
22 sponsor or other fiduciary and the fidu-  
23 ciary adviser for the provision by the fidu-  
24 ciary adviser of investment advice referred  
25 to in such section,

1 “(ii) the terms of the eligible invest-  
2 ment advice arrangement require compli-  
3 ance by the fiduciary adviser with the re-  
4 quirements of this subsection, and

5 “(iii) the terms of the eligible invest-  
6 ment advice arrangement include a written  
7 acknowledgment by the fiduciary adviser  
8 that the fiduciary adviser is a fiduciary of  
9 the plan with respect to the provision of  
10 the advice.

11 “(B) CONTINUED DUTY OF PRUDENT SE-  
12 LECTION OF ADVISER AND PERIODIC REVIEW.—  
13 Nothing in subparagraph (A) shall be construed  
14 to exempt a plan sponsor or other person who  
15 is a fiduciary from any requirement of this part  
16 for the prudent selection and periodic review of  
17 a fiduciary adviser with whom the plan sponsor  
18 or other person enters into an eligible invest-  
19 ment advice arrangement for the provision of  
20 investment advice referred to in section  
21 3(21)(A)(ii). The plan sponsor or other person  
22 who is a fiduciary has no duty under this part  
23 to monitor the specific investment advice given  
24 by the fiduciary adviser to any particular recipi-  
25 ent of the advice.

1           “(C) AVAILABILITY OF PLAN ASSETS FOR  
2           PAYMENT FOR ADVICE.—Nothing in this part  
3           shall be construed to preclude the use of plan  
4           assets to pay for reasonable expenses in pro-  
5           viding investment advice referred to in section  
6           3(21)(A)(ii).

7           “(11) DEFINITIONS.—For purposes of this sub-  
8           section and subsection (b)(14)—

9           “(A) FIDUCIARY ADVISER.—The term ‘fi-  
10          duciary adviser’ means, with respect to a plan,  
11          a person who is a fiduciary of the plan by rea-  
12          son of the provision of investment advice re-  
13          ferred to in section 3(21)(A)(ii) by the person  
14          to the participant or beneficiary of the plan and  
15          who is—

16               “(i) registered as an investment ad-  
17               viser under the Investment Advisers Act of  
18               1940 (15 U.S.C. 80b–1 et seq.) or under  
19               the laws of the State in which the fiduciary  
20               maintains its principal office and place of  
21               business,

22               “(ii) a bank or similar financial insti-  
23               tution referred to in section 408(b)(4) or a  
24               savings association (as defined in section  
25               3(b)(1) of the Federal Deposit Insurance

1 Act (12 U.S.C. 1813(b)(1)), but only if the  
2 advice is provided through a trust depart-  
3 ment of the bank or similar financial insti-  
4 tution or savings association which is sub-  
5 ject to periodic examination and review by  
6 Federal or State banking authorities,

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

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

12 “(v) an affiliate of a person described  
13 in any of clauses (i) through (iv), or

14 “(vi) an employee, agent, or registered  
15 representative of a person described in  
16 clauses (i) through (v) who satisfies the re-  
17 quirements of applicable insurance, bank-  
18 ing, and securities laws relating to the pro-  
19 vision of the advice.

20 For purposes of this part, a person who devel-  
21 ops the computer model described in paragraph  
22 (3)(B) or markets the investment advice pro-  
23 gram or computer model shall be treated as a  
24 person who is a fiduciary of the plan by reason  
25 of the provision of investment advice referred to



1 in section 3(21)(A)(ii) to the participant or ben-  
2 eficiary and shall be treated as a fiduciary ad-  
3 viser for purposes of this subsection and sub-  
4 section (b)(14), except that the Secretary may  
5 prescribe rules under which only 1 fiduciary ad-  
6 viser may elect to be treated as a fiduciary with  
7 respect to the plan.

8 “(B) AFFILIATE.—The term ‘affiliate’ of  
9 another entity means an affiliated person of the  
10 entity (as defined in section 2(a)(3) of the In-  
11 vestment Company Act of 1940 (15 U.S.C.  
12 80a-2(a)(3))).

13 “(C) REGISTERED REPRESENTATIVE.—  
14 The term ‘registered representative’ of another  
15 entity means a person described in section  
16 3(a)(18) of the Securities Exchange Act of  
17 1934 (15 U.S.C. 78c(a)(18)) (substituting the  
18 entity for the broker or dealer referred to in  
19 such section) or a person described in section  
20 202(a)(17) of the Investment Advisers Act of  
21 1940 (15 U.S.C. 80b-2(a)(17)) (substituting  
22 the entity for the investment adviser referred to  
23 in such section).”.

24 (3) EFFECTIVE DATE.—The amendments made  
25 by this subsection shall apply with respect to advice

1 referred to in section 3(21)(A)(ii) of the Employee  
2 Retirement Income Security Act of 1974 provided  
3 after December 31, 2006.

4 (b) AMENDMENTS TO INTERNAL REVENUE CODE OF  
5 1986.—

6 (1) EXEMPTION FROM PROHIBITED TRANS-  
7 ACTIONS.—Subsection (d) of section 4975 of the In-  
8 ternal Revenue Code of 1986 (relating to exemption  
9 from tax on prohibited transactions) is amended—

10 (A) in paragraph (15), by striking “or” at  
11 the end;

12 (B) in paragraph (16), by striking the pe-  
13 riod at the end and inserting “;or”; and

14 (C) by adding at the end the following new  
15 paragraph:

16 “(17) Any transaction in connection with the  
17 provision of investment advice described in sub-  
18 section (e)(3)(B) to a participant or beneficiary in a  
19 plan and that permits such participant or bene-  
20 ficiary to direct the investment of plan assets in an  
21 individual account, if—

22 “(A) the transaction is—

23 “(i) the provision of the investment  
24 advice to the participant or beneficiary of  
25 the plan with respect to a security or other

1 property available as an investment under  
2 the plan,

3 “(ii) the acquisition, holding, or sale  
4 of a security or other property available as  
5 an investment under the plan pursuant to  
6 the investment advice, or

7 “(iii) the direct or indirect receipt of  
8 fees or other compensation by the fiduciary  
9 adviser or an affiliate thereof (or any em-  
10 ployee, agent, or registered representative  
11 of the fiduciary adviser or affiliate) in con-  
12 nection with the provision of the advice or  
13 in connection with an acquisition, holding,  
14 or sale of a security or other property  
15 available as an investment under the plan  
16 pursuant to the investment advice; and

17 “(B) the requirements of subsection (f)(8)  
18 are met.”.

19 (2) REQUIREMENTS.—Subsection (f) of such  
20 section 4975 (relating to other definitions and spe-  
21 cial rules) is amended by adding at the end the fol-  
22 lowing new paragraph:

23 “(8) PROVISION OF INVESTMENT ADVICE TO  
24 PARTICIPANT AND BENEFICIARIES.—

1           “(A) IN GENERAL.—The prohibitions pro-  
2           vided in subsection (c) shall not apply to trans-  
3           actions described in subsection (b)(14) if the in-  
4           vestment advice provided by a fiduciary adviser  
5           is provided under an eligible investment advice  
6           arrangement.

7           “(B) ELIGIBLE INVESTMENT ADVICE AR-  
8           RANGEMENT.—For purposes of this paragraph,  
9           the term ‘eligible investment advice arrange-  
10          ment’ means an arrangement—

11           “(i) which either—

12           “(I) provides that any fees (in-  
13           cluding any commission or other com-  
14           pensation) received by the fiduciary  
15           adviser for investment advice or with  
16           respect to the sale, holding, or acqui-  
17           sition of any security or other prop-  
18           erty for purposes of investment of  
19           plan assets do not vary depending on  
20           the basis of any investment option se-  
21           lected, or

22           “(II) uses a computer model  
23           under an investment advice program  
24           meeting the requirements of subpara-  
25           graph (C) in connection with the pro-

1 vision of investment advice by a fidu-  
2 ciary adviser to a participant or bene-  
3 ficiary, and

4 “(ii) with respect to which the re-  
5 quirements of subparagraphs (D), (E),  
6 (F), (G), (H), and (I) are met.

7 “(C) INVESTMENT ADVICE PROGRAM  
8 USING COMPUTER MODEL.—

9 “(i) IN GENERAL.—An investment ad-  
10 vice program meets the requirements of  
11 this subparagraph if the requirements of  
12 clauses (ii), (iii), and (iv) are met.

13 “(ii) COMPUTER MODEL.—The re-  
14 quirements of this clause are met if the in-  
15 vestment advice provided under the invest-  
16 ment advice program is provided pursuant  
17 to a computer model that—

18 “(I) applies generally accepted  
19 investment theories that take into ac-  
20 count the historic returns of different  
21 asset classes over defined periods of  
22 time,

23 “(II) utilizes relevant information  
24 about the participant, which may in-  
25 clude age, life expectancy, retirement

1 age, risk tolerance, other assets or  
2 sources of income, and preferences as  
3 to certain types of investments,

4 “(III) utilizes prescribed objective  
5 criteria to provide asset allocation  
6 portfolios comprised of investment op-  
7 tions available under the plan,

8 “(IV) operates in a manner that  
9 is not biased in favor of investments  
10 offered by the fiduciary adviser or a  
11 person with a material affiliation or  
12 contractual relationship with the fidu-  
13 ciary adviser, and

14 “(V) takes into account all in-  
15 vestment options under the plan in  
16 specifying how a participant’s account  
17 balance should be invested and is not  
18 inappropriately weighted with respect  
19 to any investment option.

20 “(iii) CERTIFICATION.—

21 “(I) IN GENERAL.—The require-  
22 ments of this clause are met with re-  
23 spect to any investment advice pro-  
24 gram if an eligible investment expert  
25 certifies, prior to the utilization of the

1 computer model and in accordance  
2 with rules prescribed by the Secretary  
3 of Labor, that the computer model  
4 meets the requirements of clause (ii).

5 “(II) RENEWAL OF CERTIFI-  
6 CATIONS.—If, as determined under  
7 regulations prescribed by the Sec-  
8 retary of Labor, there are material  
9 modifications to a computer model,  
10 the requirements of this clause are  
11 met only if a certification described in  
12 subclause (I) is obtained with respect  
13 to the computer model as so modified.

14 “(III) ELIGIBLE INVESTMENT  
15 EXPERT.—The term ‘eligible invest-  
16 ment expert’ means any person which  
17 meets such requirements as the Sec-  
18 retary of Labor may provide and  
19 which does not bear any material af-  
20 filiation or contractual relationship  
21 with any investment adviser or a re-  
22 lated person thereof (or any employee,  
23 agent, or registered representative of  
24 the investment adviser or related per-  
25 son).

1 “(iv) EXCLUSIVITY OF RECOMMENDA-  
2 TION.—The requirements of this clause are  
3 met with respect to any investment advice  
4 program if—

5 “(I) the only investment advice  
6 provided under the program is the ad-  
7 vice generated by the computer model  
8 described in clause (ii), and

9 “(II) any transaction described in  
10 subsection (b)(14)(B)(ii) occurs solely  
11 at the direction of the participant or  
12 beneficiary.

13 Nothing in the preceding sentence shall  
14 preclude the participant or beneficiary  
15 from requesting investment advice other  
16 than that described in clause (i), but only  
17 if such request has not been solicited by  
18 any person connected with carrying out the  
19 arrangement.

20 “(D) EXPRESS AUTHORIZATION BY SEPA-  
21 RATE FIDUCIARY.—The requirements of this  
22 subparagraph are met with respect to an ar-  
23 rangement if the arrangement is expressly au-  
24 thorized by a plan fiduciary other than the per-  
25 son offering the investment advice program, any



1 person providing investment options under the  
2 plan, or any affiliate of either.

3 “(E) AUDITS.—

4 “(i) IN GENERAL.—The requirements  
5 of this subparagraph are met if an inde-  
6 pendent auditor, who has appropriate tech-  
7 nical training or experience and proficiency  
8 and so represents in writing—

9 “(I) conducts an annual audit of  
10 the arrangement for compliance with  
11 the requirements of this paragraph,  
12 and

13 “(II) following completion of the  
14 annual audit, issues a written report  
15 to the fiduciary who authorized use of  
16 the arrangement which presents its  
17 specific findings regarding compliance  
18 of the arrangement with the require-  
19 ments of this paragraph.

20 “(ii) SPECIAL RULE FOR INDIVIDUAL  
21 RETIREMENT AND SIMILAR PLANS.—In the  
22 case of a plan described in subparagraphs  
23 (B) through (F) (and so much of subpara-  
24 graph (G) as relates to such subpara-  
25 graphs) of subsection (e)(1), in lieu of the

1 requirements of clause (i), audits of the ar-  
2 rangement shall be conducted at such  
3 times and in such manner as the Secretary  
4 of Labor may prescribe.

5 “(iii) INDEPENDENT AUDITOR.—For  
6 purposes of this subparagraph, an auditor  
7 is considered independent if it is not re-  
8 lated to the person offering the arrange-  
9 ment to the plan and is not related to any  
10 person providing investment options under  
11 the plan.

12 “(F) DISCLOSURE.—The requirements of  
13 this subparagraph are met if—

14 “(i) the fiduciary adviser provides to a  
15 participant or a beneficiary before the ini-  
16 tial provision of the investment advice with  
17 regard to any security or other property of-  
18 fered as an investment option, a written  
19 notification (which may consist of notifica-  
20 tion by means of electronic communica-  
21 tion)—

22 “(I) of the role of any party that  
23 has a material affiliation or contrac-  
24 tual relationship with the financial ad-  
25 viser in the development of the invest-

1           ment advice program and in the selec-  
2           tion of investment options available  
3           under the plan,

4                   “(II) of the past performance  
5                   and historical rates of return of the  
6                   investment options available under the  
7                   plan,

8                   “(III) of all fees or other com-  
9                   pensation relating to the advice that  
10                  the fiduciary adviser or any affiliate  
11                  thereof is to receive (including com-  
12                  pensation provided by any third  
13                  party) in connection with the provi-  
14                  sion of the advice or in connection  
15                  with the sale, acquisition, or holding  
16                  of the security or other property,

17                  “(IV) of any material affiliation  
18                  or contractual relationship of the fidu-  
19                  ciary adviser or affiliates thereof in  
20                  the security or other property,

21                  “(V) the manner, and under  
22                  what circumstances, any participant  
23                  or beneficiary information provided  
24                  under the arrangement will be used or  
25                  disclosed,

1 “(VI) of the types of services  
2 provided by the fiduciary adviser in  
3 connection with the provision of in-  
4 vestment advice by the fiduciary ad-  
5 viser,

6 “(VII) that the adviser is acting  
7 as a fiduciary of the plan in connec-  
8 tion with the provision of the advice,  
9 and

10 “(VIII) that a recipient of the  
11 advice may separately arrange for the  
12 provision of advice by another adviser,  
13 that could have no material affiliation  
14 with and receive no fees or other com-  
15 pensation in connection with the secu-  
16 rity or other property, and

17 “(ii) at all times during the provision  
18 of advisory services to the participant or  
19 beneficiary, the fiduciary adviser—

20 “(I) maintains the information  
21 described in clause (i) in accurate  
22 form and in the manner described in  
23 subparagraph (H),

24 “(II) provides, without charge,  
25 accurate information to the recipient

1 of the advice no less frequently than  
2 annually,

3 “(III) provides, without charge,  
4 accurate information to the recipient  
5 of the advice upon request of the re-  
6 cipient, and

7 “(IV) provides, without charge,  
8 accurate information to the recipient  
9 of the advice concerning any material  
10 change to the information required to  
11 be provided to the recipient of the ad-  
12 vice at a time reasonably contempora-  
13 neous to the change in information.

14 “(G) OTHER CONDITIONS.—The require-  
15 ments of this subparagraph are met if—

16 “(i) the fiduciary adviser provides ap-  
17 propriate disclosure, in connection with the  
18 sale, acquisition, or holding of the security  
19 or other property, in accordance with all  
20 applicable securities laws,

21 “(ii) the sale, acquisition, or holding  
22 occurs solely at the direction of the recipi-  
23 ent of the advice,

24 “(iii) the compensation received by the  
25 fiduciary adviser and affiliates thereof in

1 connection with the sale, acquisition, or  
2 holding of the security or other property is  
3 reasonable, and

4 “(iv) the terms of the sale, acquisi-  
5 tion, or holding of the security or other  
6 property are at least as favorable to the  
7 plan as an arm’s length transaction would  
8 be.

9 “(H) STANDARDS FOR PRESENTATION OF  
10 INFORMATION.—

11 “(i) IN GENERAL.—The requirements  
12 of this subparagraph are met if the notifi-  
13 cation required to be provided to partici-  
14 pants and beneficiaries under subpara-  
15 graph (F)(i) is written in a clear and con-  
16 spicuous manner and in a manner cal-  
17 culated to be understood by the average  
18 plan participant and is sufficiently accu-  
19 rate and comprehensive to reasonably ap-  
20 prise such participants and beneficiaries of  
21 the information required to be provided in  
22 the notification.

23 “(ii) MODEL FORM FOR DISCLOSURE  
24 OF FEES AND OTHER COMPENSATION.—  
25 The Secretary of Labor shall issue a model

1 form for the disclosure of fees and other  
2 compensation required in subparagraph  
3 (F)(i)(III) which meets the requirements  
4 of clause (i).

5 “(I) MAINTENANCE FOR 6 YEARS OF EVI-  
6 DENCE OF COMPLIANCE.—The requirements of  
7 this subparagraph are met if a fiduciary adviser  
8 who has provided advice referred to in subpara-  
9 graph (A) maintains, for a period of not less  
10 than 6 years after the provision of the advice,  
11 any records necessary for determining whether  
12 the requirements of the preceding provisions of  
13 this paragraph and of subsection (d)(17) have  
14 been met. A transaction prohibited under sec-  
15 tion 406 shall not be considered to have oc-  
16 curred solely because the records are lost or de-  
17 stroyed prior to the end of the 6-year period  
18 due to circumstances beyond the control of the  
19 fiduciary adviser.

20 “(J) DEFINITIONS.—For purposes of this  
21 paragraph and subsection (d)(17)—

22 “(i) FIDUCIARY ADVISER.—The term  
23 ‘fiduciary adviser’ means, with respect to a  
24 plan, a person who is a fiduciary of the  
25 plan by reason of the provision of invest-

1           ment advice by the person to the partici-  
2           pant or beneficiary of the plan and who  
3           is—

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

10                   “(II) a bank or similar financial  
11                   institution referred to in section  
12                   408(b)(4) or a savings association (as  
13                   defined in section 3(b)(1) of the Fed-  
14                   eral Deposit Insurance Act (12 U.S.C.  
15                   1813(b)(1)), but only if the advice is  
16                   provided through a trust department  
17                   of the bank or similar financial insti-  
18                   tution or savings association which is  
19                   subject to periodic examination and  
20                   review by Federal or State banking  
21                   authorities,

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



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

5                   “(V) an affiliate of a person de-  
6                   scribed in any of subclauses (I)  
7                   through (IV), or

8                   “(VI) an employee, agent, or reg-  
9                   istered representative of a person de-  
10                  scribed in subclauses (I) through (V)  
11                  who satisfies the requirements of ap-  
12                  plicable insurance, banking, and secu-  
13                  rities laws relating to the provision of  
14                  the advice.

15                  For purposes of this title, a person who de-  
16                  velops the computer model described in  
17                  subparagraph (C)(ii) or markets the in-  
18                  vestment advice program or computer  
19                  model shall be treated as a person who is  
20                  a fiduciary of the plan by reason of the  
21                  provision of investment advice referred to  
22                  in subsection (e)(3)(B) to the participant  
23                  or beneficiary and shall be treated as a fi-  
24                  duciary adviser for purposes of this para-  
25                  graph and subsection (d)(17), except that

1 the Secretary of Labor may prescribe rules  
2 under which only 1 fiduciary adviser may  
3 elect to be treated as a fiduciary with re-  
4 spect to the plan.

5 “(ii) AFFILIATE.—The term ‘affiliate’  
6 of another entity means an affiliated per-  
7 son of the entity (as defined in section  
8 2(a)(3) of the Investment Company Act of  
9 1940 (15 U.S.C. 80a-2(a)(3))).

10 “(iii) REGISTERED REPRESENTA-  
11 TIVE.—The term ‘registered representa-  
12 tive’ of another entity means a person de-  
13 scribed in section 3(a)(18) of the Securi-  
14 ties Exchange Act of 1934 (15 U.S.C.  
15 78c(a)(18)) (substituting the entity for the  
16 broker or dealer referred to in such sec-  
17 tion) or a person described in section  
18 202(a)(17) of the Investment Advisers Act  
19 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-  
20 stituting the entity for the investment ad-  
21 viser referred to in such section).”.

22 (3) DETERMINATION OF FEASIBILITY OF APPLI-  
23 CATION OF COMPUTER MODEL INVESTMENT ADVICE  
24 PROGRAMS FOR INDIVIDUAL RETIREMENT AND SIMI-  
25 LAR PLANS.—

1 (A) SOLICITATION OF INFORMATION.—As  
2 soon as practicable after the date of the enact-  
3 ment of this Act, the Secretary of Labor, in  
4 consultation with the Secretary of the Treasury,  
5 shall—

6 (i) solicit information as to the feasi-  
7 bility of the application of computer model  
8 investment advice programs for plans de-  
9 scribed in subparagraphs (B) through (F)  
10 (and so much of subparagraph (G) as re-  
11 lates to such subparagraphs) of section  
12 4975(e)(1) of the Internal Revenue Code  
13 of 1986, including soliciting information  
14 from—

15 (I) at least the top 50 trustees of  
16 such plans, determined on the basis of  
17 assets held by such trustees, and

18 (II) other persons offering com-  
19 puter model investment advice pro-  
20 grams based on nonproprietary prod-  
21 ucts, and

22 (ii) shall on the basis of such informa-  
23 tion make the determination under sub-  
24 paragraph (B).

1           The information solicited by the Secretary of  
2           Labor under clause (i) from persons described  
3           in subclauses (I) and (II) of clause (i) shall in-  
4           clude information on computer modeling capa-  
5           bilities of such persons with respect to the cur-  
6           rent year and preceding year, including such ca-  
7           pabilities for investment accounts maintained  
8           by such persons.

9                   (B) DETERMINATION OF FEASIBILITY.—

10          The Secretary of Labor, in consultation with  
11          the Secretary of the Treasury, shall, on the  
12          basis of information received under subpara-  
13          graph (A), determine whether there is any com-  
14          puter model investment advice program which  
15          may be utilized by a plan described in subpara-  
16          graph (A)(i) to provide investment advice to the  
17          account beneficiary of the plan which—

18                   (i) utilizes relevant information about  
19                   the account beneficiary, which may include  
20                   age, life expectancy, retirement age, risk  
21                   tolerance, other assets or sources of in-  
22                   come, and preferences as to certain types  
23                   of investments,

24                   (ii) takes into account the full range  
25                   of investments, including equities and

1 bonds, in determining the options for the  
2 investment portfolio of the account bene-  
3 ficiary, and

4 (iii) allows the account beneficiary, in  
5 directing the investment of assets, suffi-  
6 cient flexibility in obtaining advice to  
7 evaluate and select investment options.

8 The Secretary of Labor shall report the results  
9 of such determination to the committees of  
10 Congress referred to in subparagraph (D)(ii)  
11 not later than December 31, 2007.

12 (C) APPLICATION OF COMPUTER MODEL  
13 INVESTMENT ADVICE PROGRAM.—

14 (i) CERTIFICATION REQUIRED FOR  
15 USE OF COMPUTER MODEL.—

16 (I) RESTRICTION ON USE.—Sub-  
17 clause (II) of section 4975(f)(8)(B)(i)  
18 of the Internal Revenue Code of 1986  
19 shall not apply to a plan described in  
20 subparagraph (A)(i).

21 (II) RESTRICTION LIFTED IF  
22 MODEL CERTIFIED.—If the Secretary  
23 of Labor determines under subpara-  
24 graph (B) or (D) that there is a com-  
25 puter model investment advice pro-

1                   gram described in subparagraph (B),  
2                   subclause (I) shall cease to apply as of  
3                   the date of such determination.

4                   (ii) CLASS EXEMPTION IF NO INITIAL  
5                   CERTIFICATION BY SECRETARY.—If the  
6                   Secretary of Labor determines under sub-  
7                   paragraph (B) that there is no computer  
8                   model investment advice program described  
9                   in subparagraph (B), the Secretary of  
10                  Labor shall grant a class exemption from  
11                  treatment as a prohibited transaction  
12                  under section 4975(c) of the Internal Rev-  
13                  enue Code of 1986 to any transaction de-  
14                  scribed in section 4975(d)(17)(A) of such  
15                  Code with respect to plans described in  
16                  subparagraph (A)(i), subject to such condi-  
17                  tions as set forth in such exemption as are  
18                  in the interests of the plan and its account  
19                  beneficiary and protective of the rights of  
20                  the account beneficiary and as are nec-  
21                  essary to—

22                         (I) ensure the requirements of  
23                         sections 4975(d)(17) and 4975(f)(8)  
24                         (other than subparagraph (C) thereof)

1 of the Internal Revenue Code of 1986  
2 are met, and

3 (II) ensure the investment advice  
4 provided under the investment advice  
5 program utilizes prescribed objective  
6 criteria to provide asset allocation  
7 portfolios comprised of securities or  
8 other property available as invest-  
9 ments under the plan.

10 If the Secretary of Labor solicits any infor-  
11 mation under subparagraph (A) from a  
12 person and such person does not provide  
13 such information within 60 days after the  
14 solicitation, then, unless such failure was  
15 due to reasonable cause and not wilful ne-  
16 glect, such person shall not be entitled to  
17 utilize the class exemption under this  
18 clause.

19 (D) SUBSEQUENT DETERMINATION.—

20 (i) IN GENERAL.—If the Secretary of  
21 Labor initially makes a determination de-  
22 scribed in subparagraph (C)(ii), the Sec-  
23 retary may subsequently determine that  
24 there is a computer model investment ad-  
25 vice program described in subparagraph

1 (B). If the Secretary makes such subse-  
2 quent determination, then the class exemp-  
3 tion described in subparagraph (C)(ii) shall  
4 cease to apply after the later of—

5 (I) the date which is 2 years  
6 after such subsequent determination,  
7 or

8 (II) the date which is 3 years  
9 after the first date on which such ex-  
10 emption took effect.

11 (ii) REQUESTS FOR DETERMINA-  
12 TION.—Any person may request the Sec-  
13 retary of Labor to make a determination  
14 under this subparagraph with respect to  
15 any computer model investment advice pro-  
16 gram, and the Secretary of Labor shall  
17 make a determination with respect to such  
18 request within 90 days. If the Secretary of  
19 Labor makes a determination that such  
20 program is not described in subparagraph  
21 (B), the Secretary shall, within 10 days of  
22 such determination, notify the Committee  
23 on Ways and Means and the Committee on  
24 Education and the Workforce of the House  
25 of Representatives and the Committee on



1 Finance and the Committee on Health,  
2 Education, Labor, and Pensions of the  
3 Senate of such determination and the rea-  
4 sons for such determination.

5 (E) EFFECTIVE DATE.—The provisions of  
6 this paragraph shall take effect on the date of  
7 the enactment of this Act.

8 (4) EFFECTIVE DATE.—Except as provided in  
9 this subsection, the amendments made by this sub-  
10 section shall apply with respect to advice referred to  
11 in section 4975(c)(3)(B) of the Internal Revenue  
12 Code of 1986 provided after December 31, 2006.

13 (c) COORDINATION WITH EXISTING EXEMPTIONS.—  
14 Any exemption under section 408(b) of the Employee Re-  
15 tirement Income Security Act of 1974 and section 4975(d)  
16 of the Internal Revenue Code of 1986 provided by the  
17 amendments made by this section shall not in any manner  
18 alter existing individual or class exemptions, provided by  
19 statute or administrative action.

20 **Subtitle B—Prohibited**  
21 **Transactions**

22 **SEC. 611. PROHIBITED TRANSACTION RULES RELATING TO**  
23 **FINANCIAL INVESTMENTS.**

24 (a) EXEMPTION FOR BLOCK TRADING.—

1           (1) AMENDMENTS TO EMPLOYEE RETIREMENT  
2 INCOME SECURITY ACT OF 1974.—Section 408(b) of  
3 such Act (29 U.S.C. 1108(b)), as amended by sec-  
4 tion 601, is amended by adding at the end the fol-  
5 lowing new paragraph:

6           “(15)(A) Any transaction involving the pur-  
7 chase or sale of securities, or other property (as de-  
8 termined by the Secretary), between a plan and a  
9 party in interest (other than a fiduciary described in  
10 section 3(21)(A)) with respect to a plan if—

11               “(i) the transaction involves a block trade,

12               “(ii) at the time of the transaction, the in-  
13 terest of the plan (together with the interests of  
14 any other plans maintained by the same plan  
15 sponsor), does not exceed 10 percent of the ag-  
16 gregate size of the block trade,

17               “(iii) the terms of the transaction, includ-  
18 ing the price, are at least as favorable to the  
19 plan as an arm’s length transaction, and

20               “(iv) the compensation associated with the  
21 purchase and sale is not greater than the com-  
22 pensation associated with an arm’s length  
23 transaction with an unrelated party.

24           “(B) For purposes of this paragraph, the term  
25 ‘block trade’ means any trade of at least 10,000

1 shares or with a market value of at least \$200,000  
2 which will be allocated across two or more unrelated  
3 client accounts of a fiduciary.”.

4 (2) AMENDMENTS TO INTERNAL REVENUE  
5 CODE OF 1986.—

6 (A) IN GENERAL.—Subsection (d) of sec-  
7 tion 4975 of the Internal Revenue Code of 1986  
8 (relating to exemptions), as amended by section  
9 601, is amended by striking “or” at the end of  
10 paragraph (16), by striking the period at the  
11 end of paragraph (17) and inserting “, or”, and  
12 by adding at the end the following new para-  
13 graph:

14 “(18) any transaction involving the purchase or  
15 sale of securities, or other property (as determined  
16 by the Secretary of Labor), between a plan and a  
17 party in interest (other than a fiduciary described in  
18 subsection (e)(3)(B)) with respect to a plan if—

19 “(A) the transaction involves a block trade,

20 “(B) at the time of the transaction, the in-  
21 terest of the plan (together with the interests of  
22 any other plans maintained by the same plan  
23 sponsor), does not exceed 10 percent of the ag-  
24 gregate size of the block trade,

1           “(C) the terms of the transaction, includ-  
2           ing the price, are at least as favorable to the  
3           plan as an arm’s length transaction, and

4           “(D) the compensation associated with the  
5           purchase and sale is not greater than the com-  
6           pensation associated with an arm’s length  
7           transaction with an unrelated party.”.

8           (B) SPECIAL RULE RELATING TO BLOCK  
9           TRADE.—Subsection (f) of section 4975 of such  
10          Code (relating to other definitions and special  
11          rules), as amended by section 601, is amended  
12          by adding at the end the following new para-  
13          graph:

14          “(9) BLOCK TRADE.—The term ‘block trade’  
15          means any trade of at least 10,000 shares or with  
16          a market value of at least \$200,000 which will be al-  
17          located across two or more unrelated client accounts  
18          of a fiduciary.”.

19          (b) BONDING RELIEF.—Section 412(a) of such Act  
20          (29 U.S.C. 1112(a)) is amended—

21               (1) by redesignating paragraph (2) as para-  
22               graph (3),

23               (2) by striking “and” at the end of paragraph  
24               (1), and

1           (3) by inserting after paragraph (1) the fol-  
2       lowing new paragraph:

3           “(2) no bond shall be required of any entity  
4       which is registered as a broker or a dealer under  
5       section 15(b) of the Securities Exchange Act of  
6       1934 (15 U.S.C. 78o(b)) if the broker or dealer is  
7       subject to the fidelity bond requirements of a self-  
8       regulatory organization (within the meaning of sec-  
9       tion 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)).”.

10       (c) EXEMPTION FOR ELECTRONIC COMMUNICATION  
11       NETWORK.—

12           (1) AMENDMENTS TO EMPLOYEE RETIREMENT  
13       INCOME SECURITY ACT OF 1974.—Section 408(b) of  
14       such Act, as amended by subsection (a), is amended  
15       by adding at the end the following:

16           “(16) Any transaction involving the purchase or  
17       sale of securities, or other property (as determined  
18       by the Secretary), between a plan and a party in in-  
19       terest if—

20           “(A) the transaction is executed through  
21       an electronic communication network, alter-  
22       native trading system, or similar execution sys-  
23       tem or trading venue subject to regulation and  
24       oversight by—

1 “(i) the applicable Federal regulating  
2 entity, or

3 “(ii) such foreign regulatory entity as  
4 the Secretary may determine by regulation,  
5 “(B) either—

6 “(i) the transaction is effected pursu-  
7 ant to rules designed to match purchases  
8 and sales at the best price available  
9 through the execution system in accord-  
10 ance with applicable rules of the Securities  
11 and Exchange Commission or other rel-  
12 evant governmental authority, or

13 “(ii) neither the execution system nor  
14 the parties to the transaction take into ac-  
15 count the identity of the parties in the exe-  
16 cution of trades,

17 “(C) the price and compensation associ-  
18 ated with the purchase and sale are not greater  
19 than the price and compensation associated  
20 with an arm’s length transaction with an unre-  
21 lated party,

22 “(D) if the party in interest has an owner-  
23 ship interest in the system or venue described  
24 in subparagraph (A), the system or venue has  
25 been authorized by the plan sponsor or other

1 independent fiduciary for transactions described  
2 in this paragraph, and

3 “(E) not less than 30 days prior to the ini-  
4 tial transaction described in this paragraph exe-  
5 cuted through any system or venue described in  
6 subparagraph (A), a plan fiduciary is provided  
7 written or electronic notice of the execution of  
8 such transaction through such system or  
9 venue.”.

10 (2) AMENDMENTS TO INTERNAL REVENUE  
11 CODE OF 1986.—Subsection (d) of section 4975 of  
12 the Internal Revenue Code of 1986 (relating to ex-  
13 emptions), as amended by subsection (a), is amend-  
14 ed by striking “or” at the end of paragraph (17), by  
15 striking the period at the end of paragraph (18) and  
16 inserting “, or”, and by adding at the end the fol-  
17 lowing new paragraph:

18 “(19) any transaction involving the purchase or  
19 sale of securities, or other property (as determined  
20 by the Secretary of Labor), between a plan and a  
21 party in interest if—

22 “(A) the transaction is executed through  
23 an electronic communication network, alter-  
24 native trading system, or similar execution sys-

1           tem or trading venue subject to regulation and  
2           oversight by—

3                   “(i) the applicable Federal regulating  
4                   entity, or

5                   “(ii) such foreign regulatory entity as  
6                   the Secretary of Labor may determine by  
7                   regulation,

8                   “(B) either—

9                           “(i) the transaction is effected pursu-  
10                           ant to rules designed to match purchases  
11                           and sales at the best price available  
12                           through the execution system in accord-  
13                           ance with applicable rules of the Securities  
14                           and Exchange Commission or other rel-  
15                           evant governmental authority, or

16                           “(ii) neither the execution system nor  
17                           the parties to the transaction take into ac-  
18                           count the identity of the parties in the exe-  
19                           cution of trades,

20                           “(C) the price and compensation associ-  
21                           ated with the purchase and sale are not greater  
22                           than the price and compensation associated  
23                           with an arm’s length transaction with an unre-  
24                           lated party,



1           “(D) if the party in interest has an owner-  
2           ship interest in the system or venue described  
3           in subparagraph (A), the system or venue has  
4           been authorized by the plan sponsor or other  
5           independent fiduciary for transactions described  
6           in this paragraph, and

7           “(E) not less than 30 days prior to the ini-  
8           tial transaction described in this paragraph exe-  
9           cuted through any system or venue described in  
10          subparagraph (A), a plan fiduciary is provided  
11          written or electronic notice of the execution of  
12          such transaction through such system or  
13          venue.”.

14          (d) EXEMPTION FOR SERVICE PROVIDERS.—

15               (1) AMENDMENTS TO EMPLOYEE RETIREMENT  
16          INCOME SECURITY ACT OF 1974.—Section 408(b) of  
17          such Act (29 U.S.C. 1106), as amended by sub-  
18          section (c), is amended by adding at the end the fol-  
19          lowing new paragraph:

20               “(17)(A) Transactions described in subpara-  
21          graphs (A), (B), and (D) of section 406(a)(1) be-  
22          tween a plan and a person that is a party in interest  
23          other than a fiduciary (or an affiliate) who has or  
24          exercises any discretionary authority or control with  
25          respect to the investment of the plan assets involved

1 in the transaction or renders investment advice  
2 (within the meaning of section 3(21)(A)(ii)) with re-  
3 spect to those assets, solely by reason of providing  
4 services to the plan or solely by reason of a relation-  
5 ship to such a service provider described in subpara-  
6 graph (F), (G), (H), or (I) of section 3(14), or both,  
7 but only if in connection with such transaction the  
8 plan receives no less, nor pays no more, than ade-  
9 quate consideration.

10 “(B) For purposes of this paragraph, the term  
11 ‘adequate consideration’ means—

12 “(i) in the case of a security for which  
13 there is a generally recognized market—

14 “(I) the price of the security pre-  
15 vailing on a national securities ex-  
16 change which is registered under sec-  
17 tion 6 of the Securities Exchange Act  
18 of 1934, taking into account factors  
19 such as the size of the transaction and  
20 marketability of the security, or

21 “(II) if the security is not traded  
22 on such a national securities ex-  
23 change, a price not less favorable to  
24 the plan than the offering price for  
25 the security as established by the cur-

1                   rent bid and asked prices quoted by  
2                   persons independent of the issuer and  
3                   of the party in interest, taking into  
4                   account factors such as the size of the  
5                   transaction and marketability of the  
6                   security, and

7                   “(ii) in the case of an asset other than  
8                   a security for which there is a generally  
9                   recognized market, the fair market value of  
10                  the asset as determined in good faith by a  
11                  fiduciary or fiduciaries in accordance with  
12                  regulations prescribed by the Secretary.”.

13                  (2) AMENDMENT TO INTERNAL REVENUE CODE  
14                  OF 1986.—

15                  (A) IN GENERAL.—Subsection (d) of sec-  
16                  tion 4975 of the Internal Revenue Code of 1986  
17                  (relating to exemptions), as amended by sub-  
18                  section (c), is amended by striking “or” at the  
19                  end of paragraph (18), by striking the period at  
20                  the end of paragraph (19) and inserting “, or”,  
21                  and by adding at the end the following new  
22                  paragraph:

23                  “(20) transactions described in subparagraphs  
24                  (A), (B), and (D) of subsection (c)(1) between a  
25                  plan and a person that is a party in interest other

1       than a fiduciary (or an affiliate) who has or exer-  
2       cises any discretionary authority or control with re-  
3       spect to the investment of the plan assets involved  
4       in the transaction or renders investment advice  
5       (within the meaning of subsection (e)(3)(B)) with  
6       respect to those assets, solely by reason of providing  
7       services to the plan or solely by reason of a relation-  
8       ship to such a service provider described in subpara-  
9       graph (F), (G), (H), or (I) of subsection (e)(2), or  
10      both, but only if in connection with such transaction  
11      the plan receives no less, nor pays no more, than  
12      adequate consideration.”.

13               (B) SPECIAL RULE RELATING TO SERVICE  
14      PROVIDERS.—Subsection (f) of section 4975 of  
15      such Code (relating to other definitions and  
16      special rules), as amended by subsection (a), is  
17      amended by adding at the end the following  
18      new paragraph:

19               “(10) ADEQUATE CONSIDERATION.—The term  
20      ‘adequate consideration’ means—

21               “(A) in the case of a security for which  
22      there is a generally recognized market—

23               “(i) the price of the security pre-  
24      vailing on a national securities exchange  
25      which is registered under section 6 of the

1 Securities Exchange Act of 1934, taking  
2 into account factors such as the size of the  
3 transaction and marketability of the secu-  
4 rity, or

5 “(ii) if the security is not traded on  
6 such a national securities exchange, a price  
7 not less favorable to the plan than the of-  
8 fering price for the security as established  
9 by the current bid and asked prices quoted  
10 by persons independent of the issuer and  
11 of the party in interest, taking into ac-  
12 count factors such as the size of the trans-  
13 action and marketability of the security,  
14 and

15 “(B) in the case of an asset other than a  
16 security for which there is a generally recog-  
17 nized market, the fair market value of the asset  
18 as determined in good faith by a fiduciary or fi-  
19 duciaries in accordance with regulations pre-  
20 scribed by the Secretary of Labor.”.

21 (e) RELIEF FOR FOREIGN EXCHANGE TRANS-  
22 ACTIONS.—

23 (1) AMENDMENTS TO EMPLOYEE RETIREMENT  
24 INCOME SECURITY ACT OF 1974.—Section 408(b) of  
25 such Act (29 U.S.C. 1108(b)), as amended by sub-

1 section (d), is amended by adding at the end the fol-  
2 lowing new paragraph:

3 “(18) FOREIGN EXCHANGE TRANSACTIONS.—  
4 Any foreign exchange transactions, between a bank  
5 or broker-dealer (or any affiliate of either), and a  
6 plan (as defined in section 3(3)) with respect to  
7 which such bank or broker-dealer (or affiliate) is a  
8 trustee, custodian, fiduciary, or other party in inter-  
9 est, if—

10 “(A) the transaction is in connection with  
11 the purchase, holding, or sale of securities or  
12 other investment assets (other than a foreign  
13 exchange transaction unrelated to any other in-  
14 vestment in securities or other investment as-  
15 sets),

16 “(B) at the time the foreign exchange  
17 transaction is entered into, the terms of the  
18 transaction are not less favorable to the plan  
19 than the terms generally available in com-  
20 parable arm’s length foreign exchange trans-  
21 actions between unrelated parties, or the terms  
22 afforded by the bank or broker-dealer (or any  
23 affiliate of either) in comparable arm’s-length  
24 foreign exchange transactions involving unre-  
25 lated parties,

1           “(C) the exchange rate used by such bank  
2           or broker-dealer (or affiliate) for a particular  
3           foreign exchange transaction does not deviate  
4           by more or less than 3 percent from the inter-  
5           bank bid and asked rates for transactions of  
6           comparable size and maturity at the time of the  
7           transaction as displayed on an independent  
8           service that reports rates of exchange in the  
9           foreign currency market for such currency, and

10           “(D) the bank or broker-dealer (or any af-  
11           filiate of either) does not have investment dis-  
12           cretion, or provide investment advice, with re-  
13           spect to the transaction.”.

14           (2) AMENDMENT TO INTERNAL REVENUE CODE  
15           OF 1986.—Subsection (d) of section 4975 of the In-  
16           ternal Revenue Code of 1986 (relating to exemp-  
17           tions), as amended by subsection (d), is amended by  
18           striking “or” at the end of paragraph (19), by strik-  
19           ing the period at the end of paragraph (20) and in-  
20           serting “, or”, and by adding at the end the fol-  
21           lowing new paragraph:

22           “(21) any foreign exchange transactions, be-  
23           tween a bank or broker-dealer (or any affiliate of ei-  
24           ther) and a plan (as defined in this section) with re-  
25           spect to which such bank or broker-dealer (or affil-

1       iate) is a trustee, custodian, fiduciary, or other party  
2       in interest person, if—

3               “(A) the transaction is in connection with  
4               the purchase, holding, or sale of securities or  
5               other investment assets (other than a foreign  
6               exchange transaction unrelated to any other in-  
7               vestment in securities or other investment as-  
8               sets),

9               “(B) at the time the foreign exchange  
10              transaction is entered into, the terms of the  
11              transaction are not less favorable to the plan  
12              than the terms generally available in com-  
13              parable arm’s length foreign exchange trans-  
14              actions between unrelated parties, or the terms  
15              afforded by the bank or broker-dealer (or any  
16              affiliate of either) in comparable arm’s-length  
17              foreign exchange transactions involving unre-  
18              lated parties,

19              “(C) the exchange rate used by such bank  
20              or broker-dealer (or affiliate) for a particular  
21              foreign exchange transaction does not deviate  
22              by more or less than 3 percent from the inter-  
23              bank bid and asked rates for transactions of  
24              comparable size and maturity at the time of the  
25              transaction as displayed on an independent



1 service that reports rates of exchange in the  
2 foreign currency market for such currency, and  
3 “(D) the bank or broker-dealer (or any af-  
4 filiate of either) does not have investment dis-  
5 cretion, or provide investment advice, with re-  
6 spect to the transaction.”.

7 (f) DEFINITION OF PLAN ASSET VEHICLE.—Section  
8 3 of such Act (29 U.S.C. 1002) is amended by adding  
9 at the end the following new paragraph:

10 “(42) the term ‘plan assets’ means plan assets as de-  
11 fined by such regulations as the Secretary may prescribe,  
12 except that under such regulations the assets of any entity  
13 shall not be treated as plan assets if, immediately after  
14 the most recent acquisition of any equity interest in the  
15 entity, less than 25 percent of the total value of each class  
16 of equity interest in the entity is held by benefit plan in-  
17 vestors. For purposes of determinations pursuant to this  
18 paragraph, the value of any equity interest held by a per-  
19 son (other than such a benefit plan investor) who has dis-  
20 cretionary authority or control with respect to the assets  
21 of the entity or any person who provides investment advice  
22 for a fee (direct or indirect) with respect to such assets,  
23 or any affiliate of such a person, shall be disregarded for  
24 purposes of calculating the 25 percent threshold. An entity  
25 shall be considered to hold plan assets only to the extent

1 of the percentage of the equity interest held by benefit  
2 plan investors. For purposes of this paragraph, the term  
3 ‘benefit plan investor’ means an employee benefit plan  
4 subject to part 4, any plan to which section 4975 of the  
5 Internal Revenue Code of 1986 applies, and any entity  
6 whose underlying assets include plan assets by reason of  
7 a plan’s investment in such entity.”.

8 (g) EXEMPTION FOR CROSS TRADING.—

9 (1) AMENDMENTS TO EMPLOYEE RETIREMENT  
10 INCOME SECURITY ACT OF 1974.—Section 408(b) of  
11 such Act (29 U.S.C. 1108(b)), as amended by sub-  
12 section (e), is amended by adding at the end the fol-  
13 lowing new paragraph:

14 “(19) CROSS TRADING.—Any transaction de-  
15 scribed in sections 406(a)(1)(A) and 406(b)(2) in-  
16 volving the purchase and sale of a security between  
17 a plan and any other account managed by the same  
18 investment manager, if—

19 “(A) the transaction is a purchase or sale,  
20 for no consideration other than cash payment  
21 against prompt delivery of a security for which  
22 market quotations are readily available,

23 “(B) the transaction is effected at the  
24 independent current market price of the secu-

1           rity (within the meaning of section 270.17a–  
2           7(b) of title 17, Code of Federal Regulations),  
3           “(C) no brokerage commission, fee (except  
4           for customary transfer fees, the fact of which is  
5           disclosed pursuant to subparagraph (D)), or  
6           other remuneration is paid in connection with  
7           the transaction,

8           “(D) a fiduciary (other than the invest-  
9           ment manager engaging in the cross-trades or  
10          any affiliate) for each plan participating in the  
11          transaction authorizes in advance of any cross-  
12          trades (in a document that is separate from any  
13          other written agreement of the parties) the in-  
14          vestment manager to engage in cross trades at  
15          the investment manager’s discretion, after such  
16          fiduciary has received disclosure regarding the  
17          conditions under which cross trades may take  
18          place (but only if such disclosure is separate  
19          from any other agreement or disclosure involv-  
20          ing the asset management relationship), includ-  
21          ing the written policies and procedures of the  
22          investment manager described in subparagraph  
23          (H),

24          “(E) each plan participating in the trans-  
25          action has assets of at least \$100,000,000, ex-

1           cept that if the assets of a plan are invested in  
2           a master trust containing the assets of plans  
3           maintained by employers in the same controlled  
4           group (as defined in section 407(d)(7)), the  
5           master trust has assets of at least  
6           \$100,000,000,

7           “(F) the investment manager provides to  
8           the plan fiduciary who authorized cross trading  
9           under subparagraph (D) a quarterly report de-  
10          tailing all cross trades executed by the invest-  
11          ment manager in which the plan participated  
12          during such quarter, including the following in-  
13          formation, as applicable: (i) the identity of each  
14          security bought or sold; (ii) the number of  
15          shares or units traded, (iii) the parties involved  
16          in the cross-trade; and (iv) trade price and the  
17          method used to establish the trade price,

18          “(G) the investment manager does not  
19          base its fee schedule on the plan’s consent to  
20          cross trading, and no other service (other than  
21          the investment opportunities and cost savings  
22          available through a cross trade) is conditioned  
23          on the plan’s consent to cross trading,

24          “(H) the investment manager has adopted,  
25          and cross-trades are effected in accordance

1 with, written cross-trading policies and proce-  
2 dures that are fair and equitable to all accounts  
3 participating in the cross-trading program, and  
4 that include a description of the manager's  
5 pricing policies and procedures, and the man-  
6 ager's policies and procedures for allocating  
7 cross trades in an objective manner among ac-  
8 counts participating in the cross-trading pro-  
9 gram, and

10 “(I) the investment manager has des-  
11 ignated an individual responsible for periodi-  
12 cally reviewing such purchases and sales to en-  
13 sure compliance with the written policies and  
14 procedures described in subparagraph (H), and  
15 following such review, the individual shall issue  
16 an annual written report no later than 90 days  
17 following the period to which it relates signed  
18 under penalty of perjury to the plan fiduciary  
19 who authorized cross trading under subpara-  
20 graph (D) describing the steps performed dur-  
21 ing the course of the review, the level of compli-  
22 ance, and any specific instances of non-compli-  
23 ance.

24 The written report under subparagraph (I) shall also  
25 notify the plan fiduciary of the plan's right to termi-

1       nate participation in the investment manager's  
2       cross-trading program at any time."

3           (2) AMENDMENTS OF INTERNAL REVENUE  
4       CODE OF 1986.—Subsection (d) of section 4975 of  
5       the Internal Revenue Code of 1986 (relating to ex-  
6       emptions), as amended by subsection (e), is amended  
7       by striking "or" at the end of paragraph (20), by  
8       striking the period at the end of paragraph (21) and  
9       inserting ", or", and by adding at the end the fol-  
10      lowing new paragraph:

11           “(22) any transaction described in subsection  
12      (c)(1)(A) involving the purchase and sale of a secu-  
13      rity between a plan and any other account managed  
14      by the same investment manager, if—

15           “(A) the transaction is a purchase or sale,  
16      for no consideration other than cash payment  
17      against prompt delivery of a security for which  
18      market quotations are readily available,

19           “(B) the transaction is effected at the  
20      independent current market price of the secu-  
21      rity (within the meaning of section 270.17a-  
22      7(b) of title 17, Code of Federal Regulations),

23           “(C) no brokerage commission, fee (except  
24      for customary transfer fees, the fact of which is  
25      disclosed pursuant to subparagraph (D)), or

1 other remuneration is paid in connection with  
2 the transaction,

3 “(D) a fiduciary (other than the invest-  
4 ment manager engaging in the cross-trades or  
5 any affiliate) for each plan participating in the  
6 transaction authorizes in advance of any cross-  
7 trades (in a document that is separate from any  
8 other written agreement of the parties) the in-  
9 vestment manager to engage in cross trades at  
10 the investment manager’s discretion, after such  
11 fiduciary has received disclosure regarding the  
12 conditions under which cross trades may take  
13 place (but only if such disclosure is separate  
14 from any other agreement or disclosure involv-  
15 ing the asset management relationship), includ-  
16 ing the written policies and procedures of the  
17 investment manager described in subparagraph  
18 (H),

19 “(E) each plan participating in the trans-  
20 action has assets of at least \$100,000,000, ex-  
21 cept that if the assets of a plan are invested in  
22 a master trust containing the assets of plans  
23 maintained by employers in the same controlled  
24 group (as defined in section 407(d)(7) of the  
25 Employee Retirement Income Security Act of

1 1974), the master trust has assets of at least  
2 \$100,000,000,

3 “(F) the investment manager provides to  
4 the plan fiduciary who authorized cross trading  
5 under subparagraph (D) a quarterly report de-  
6 tailing all cross trades executed by the invest-  
7 ment manager in which the plan participated  
8 during such quarter, including the following in-  
9 formation, as applicable: (i) the identity of each  
10 security bought or sold; (ii) the number of  
11 shares or units traded, (iii) the parties involved  
12 in the cross-trade; and (iv) trade price and the  
13 method used to establish the trade price,

14 “(G) the investment manager does not  
15 base its fee schedule on the plan’s consent to  
16 cross trading, and no other service (other than  
17 the investment opportunities and cost savings  
18 available through a cross trade) is conditioned  
19 on the plan’s consent to cross trading,

20 “(H) the investment manager has adopted,  
21 and cross-trades are effected in accordance  
22 with, written cross-trading policies and proce-  
23 dures that are fair and equitable to all accounts  
24 participating in the cross-trading program, and  
25 that include a description of the manager’s



1 pricing policies and procedures, and the man-  
2 ager's policies and procedures for allocating  
3 cross trades in an objective manner among ac-  
4 counts participating in the cross-trading pro-  
5 gram, and

6 “(I) the investment manager has des-  
7 igned an individual responsible for periodi-  
8 cally reviewing such purchases and sales to en-  
9 sure compliance with the written policies and  
10 procedures described in subparagraph (H), and  
11 following such review, the individual shall issue  
12 an annual written report no later than 90 days  
13 following the period to which it relates signed  
14 under penalty of perjury to the plan fiduciary  
15 who authorized cross trading under subpara-  
16 graph (D) describing the steps performed dur-  
17 ing the course of the review, the level of compli-  
18 ance, and any specific instances of non-compli-  
19 ance.

20 The written report shall also notify the plan fidu-  
21 ciary of the plan's right to terminate participation in  
22 the investment manager's cross-trading program at  
23 any time.”.

24 (3) REGULATIONS.—No later than 180 days  
25 after the date of the enactment of this Act, the Sec-

1       retary of Labor, after consultation with the Securi-  
2       ties and Exchange Commission, shall issue regula-  
3       tions regarding the content of policies and proce-  
4       dures required to be adopted by an investment man-  
5       ager under section 408(b)(19) of the Employee Re-  
6       irement Income Security Act of 1974.

7       (h) EFFECTIVE DATES.—

8               (1) IN GENERAL.—Except as provided in para-  
9       graph (2), the amendments made by this section  
10      shall apply to transactions occurring after the date  
11      of the enactment of this Act.

12             (2) BONDING RULE.—The amendments made  
13      by subsection (b) shall apply to plan years beginning  
14      after such date.

15   **SEC. 612. CORRECTION PERIOD FOR CERTAIN TRANS-**  
16                   **ACTIONS INVOLVING SECURITIES AND COM-**  
17                   **MODITIES.**

18       (a) AMENDMENT OF EMPLOYEE RETIREMENT IN-  
19      COME SECURITY ACT OF 1974.—Section 408(b) of the  
20      Employee Retirement Income Security Act of 1974 (29  
21      U.S.C. 1108(b)), as amended by sections 601 and 611,  
22      is further amended by adding at the end the following new  
23      paragraph:

24               “(20)(A) Except as provided in subparagraphs  
25      (B) and (C), a transaction described in section

1       406(a) in connection with the acquisition, holding,  
2       or disposition of any security or commodity, if the  
3       transaction is corrected before the end of the correc-  
4       tion period.

5           “(B) Subparagraph (A) does not apply to any  
6       transaction between a plan and a plan sponsor or its  
7       affiliates that involves the acquisition or sale of an  
8       employer security (as defined in section 407(d)(1))  
9       or the acquisition, sale, or lease of employer real  
10      property (as defined in section 407(d)(2)).

11          “(C) In the case of any fiduciary or other party  
12      in interest (or any other person knowingly partici-  
13      pating in such transaction), subparagraph (A) does  
14      not apply to any transaction if, at the time the  
15      transaction occurs, such fiduciary or party in inter-  
16      est (or other person) knew (or reasonably should  
17      have known) that the transaction would (without re-  
18      gard to this paragraph) constitute a violation of sec-  
19      tion 406(a).

20          “(D) For purposes of this paragraph, the term  
21      ‘correction period’ means, in connection with a fidu-  
22      ciary or party in interest (or other person knowingly  
23      participating in the transaction), the 14-day period  
24      beginning on the date on which such fiduciary or  
25      party in interest (or other person) discovers, or rea-

1 sonably should have discovered, that the transaction  
2 would (without regard to this paragraph) constitute  
3 a violation of section 406(a).

4 “(E) For purposes of this paragraph—

5 “(i) The term ‘security’ has the meaning  
6 given such term by section 475(c)(2) of the In-  
7 ternal Revenue Code of 1986 (without regard to  
8 subparagraph (F)(iii) and the last sentence  
9 thereof).

10 “(ii) The term ‘commodity’ has the mean-  
11 ing given such term by section 475(e)(2) of  
12 such Code (without regard to subparagraph  
13 (D)(iii) thereof).

14 “(iii) The term ‘correct’ means, with re-  
15 spect to a transaction—

16 “(I) to undo the transaction to the ex-  
17 tent possible and in any case to make good  
18 to the plan or affected account any losses  
19 resulting from the transaction, and

20 “(II) to restore to the plan or affected  
21 account any profits made through the use  
22 of assets of the plan.”.

23 (b) AMENDMENT OF INTERNAL REVENUE CODE OF  
24 1986.—

1           (1) IN GENERAL.—Subsection (d) of section  
2       4975 of the Internal Revenue Code of 1986 (relating  
3       to exemptions), as amended by sections 601 and  
4       611, is amended by striking “or” at the end of para-  
5       graph (21), by striking the period at the end of  
6       paragraph (22) and inserting “, or”, and by adding  
7       at the end the following new paragraph:

8           “(23) except as provided in subsection (f)(11),  
9       a transaction described in subparagraph (A), (B),  
10      (C), or (D) of subsection (c)(1) in connection with  
11      the acquisition, holding, or disposition of any secu-  
12      rity or commodity, if the transaction is corrected be-  
13      fore the end of the correction period.”.

14          (2) SPECIAL RULES RELATING TO CORRECTION  
15      PERIOD.—Subsection (f) of section 4975 of such  
16      Code (relating to other definitions and special rules),  
17      as amended by sections 601 and 611, is amended by  
18      adding at the end the following new paragraph:

19          “(11) CORRECTION PERIOD.—

20              “(A) IN GENERAL.—For purposes of sub-  
21              section (d)(23), the term ‘correction period’  
22              means the 14-day period beginning on the date  
23              on which the disqualified person discovers, or  
24              reasonably should have discovered, that the  
25              transaction would (without regard to this para-

1 graph and subsection (d)(23)) constitute a pro-  
2 hibited transaction.

3 “(B) EXCEPTIONS.—

4 “(i) EMPLOYER SECURITIES.—Sub-  
5 section (d)(23) does not apply to any  
6 transaction between a plan and a plan  
7 sponsor or its affiliates that involves the  
8 acquisition or sale of an employer security  
9 (as defined in section 407(d)(1)) or the ac-  
10 quisition, sale, or lease of employer real  
11 property (as defined in section 407(d)(2)).

12 “(ii) KNOWING PROHIBITED TRANS-  
13 ACTION.—In the case of any disqualified  
14 person, subsection (d)(23) does not apply  
15 to a transaction if, at the time the trans-  
16 action is entered into, the disqualified per-  
17 son knew (or reasonably should have  
18 known) that the transaction would (with-  
19 out regard to this paragraph) constitute a  
20 prohibited transaction.

21 “(C) ABATEMENT OF TAX WHERE THERE  
22 IS A CORRECTION.—If a transaction is not  
23 treated as a prohibited transaction by reason of  
24 subsection (d)(23), then no tax under sub-  
25 section (a) and (b) shall be assessed with re-

1           spect to such transaction, and if assessed the  
2           assessment shall be abated, and if collected  
3           shall be credited or refunded as an overpay-  
4           ment.

5           “(D) DEFINITIONS.—For purposes of this  
6           paragraph and subsection (d)(23)—

7           “(i) SECURITY.—The term ‘security’  
8           has the meaning given such term by sec-  
9           tion 475(c)(2) (without regard to subpara-  
10          graph (F)(iii) and the last sentence there-  
11          of).

12          “(ii) COMMODITY.—The term ‘com-  
13          modity’ has the meaning given such term  
14          by section 475(e)(2) (without regard to  
15          subparagraph (D)(iii) thereof).

16          “(iii) CORRECT.—The term ‘correct’  
17          means, with respect to a transaction—

18                 “(I) to undo the transaction to  
19                 the extent possible and in any case to  
20                 make good to the plan or affected ac-  
21                 count any losses resulting from the  
22                 transaction, and

23                 “(II) to restore to the plan or af-  
24                 fected account any profits made

1 through the use of assets of the  
2 plan.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to any transaction which the fidu-  
5 ciary or disqualified person discovers, or reasonably should  
6 have discovered, after the date of the enactment of this  
7 Act constitutes a prohibited transaction.

## 8 **Subtitle C—Fiduciary and Other** 9 **Rules**

### 10 **SEC. 621. INAPPLICABILITY OF RELIEF FROM FIDUCIARY** 11 **LIABILITY DURING SUSPENSION OF ABILITY** 12 **OF PARTICIPANT OR BENEFICIARY TO DI-** 13 **RECT INVESTMENTS.**

14 (a) IN GENERAL.—Section 404(c) of the Employee  
15 Retirement Income Security Act of 1974 (29 U.S.C.  
16 1104(c)) is amended—

17 (1) in paragraph (1)—

18 (A) by redesignating subparagraphs (A)  
19 and (B) as clauses (i) and (ii), respectively, and  
20 by inserting “(A)” after “(c)(1)”,

21 (B) in subparagraph (A)(ii) (as redesign-  
22 nated by paragraph (1)), by inserting before the  
23 period the following: “, except that this clause  
24 shall not apply in connection with such partici-  
25 pant or beneficiary for any blackout period dur-



1 ing which the ability of such participant or ben-  
2 eficiary to direct the investment of the assets in  
3 his or her account is suspended by a plan spon-  
4 sor or fiduciary”, and

5 (C) by adding at the end the following new  
6 subparagraphs:

7 “(B) If a person referred to in subparagraph (A)(ii)  
8 meets the requirements of this title in connection with au-  
9 thorizing and implementing the blackout period, any per-  
10 son who is otherwise a fiduciary shall not be liable under  
11 this title for any loss occurring during such period.

12 “(C) For purposes of this paragraph, the term ‘black-  
13 out period’ has the meaning given such term by section  
14 101(i)(7).”; and

15 (2) by adding at the end the following:

16 “(4)(A) In any case in which a qualified change  
17 in investment options occurs in connection with an  
18 individual account plan, a participant or beneficiary  
19 shall not be treated for purposes of paragraph (1)  
20 as not exercising control over the assets in his ac-  
21 count in connection with such change if the require-  
22 ments of subparagraph (C) are met in connection  
23 with such change.

24 “(B) For purposes of subparagraph (A), the  
25 term ‘qualified change in investment options’ means,

1 in connection with an individual account plan, a  
2 change in the investment options offered to the par-  
3 ticipant or beneficiary under the terms of the plan,  
4 under which—

5 “(i) the account of the participant or bene-  
6 ficiary is reallocated among one or more re-  
7 maining or new investment options which are  
8 offered in lieu of one or more investment op-  
9 tions offered immediately prior to the effective  
10 date of the change, and

11 “(ii) the stated characteristics of the re-  
12 maining or new investment options provided  
13 under clause (i), including characteristics relat-  
14 ing to risk and rate of return, are, as of imme-  
15 diately after the change, reasonably similar to  
16 those of the existing investment options as of  
17 immediately before the change.

18 “(C) The requirements of this subparagraph  
19 are met in connection with a qualified change in in-  
20 vestment options if—

21 “(i) at least 30 days and no more than 60  
22 days prior to the effective date of the change,  
23 the plan administrator furnishes written notice  
24 of the change to the participants and bene-  
25 ficiaries, including information comparing the

1 existing and new investment options and an ex-  
2 planation that, in the absence of affirmative in-  
3 vestment instructions from the participant or  
4 beneficiary to the contrary, the account of the  
5 participant or beneficiary will be invested in the  
6 manner described in subparagraph (B),

7 “(ii) the participant or beneficiary has not  
8 provided to the plan administrator, in advance  
9 of the effective date of the change, affirmative  
10 investment instructions contrary to the change,  
11 and

12 “(iii) the investments under the plan of the  
13 participant or beneficiary as in effect imme-  
14 diately prior to the effective date of the change  
15 were the product of the exercise by such partici-  
16 pant or beneficiary of control over the assets of  
17 the account within the meaning of paragraph  
18 (1).”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by  
21 this section shall apply to plan years beginning after  
22 December 31, 2007.

23 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
24 GAINED AGREEMENTS.—In the case of a plan main-  
25 tained pursuant to 1 or more collective bargaining

1       agreements between employee representatives and 1  
2       or more employers ratified on or before the date of  
3       the enactment of this Act, paragraph (1) shall be  
4       applied to benefits pursuant to, and individuals cov-  
5       ered by, any such agreement by substituting for  
6       “December 31, 2007” the earlier of—

7               (A) the later of—

8                   (i) December 31, 2008, or

9                   (ii) the date on which the last of such  
10       collective bargaining agreements termi-  
11       nates (determined without regard to any  
12       extension thereof after such date of enact-  
13       ment), or

14               (B) December 31, 2009.

15   **SEC. 622. INCREASE IN MAXIMUM BOND AMOUNT.**

16       (a) IN GENERAL.—Section 412(a) of the Employee  
17   Retirement Income Security Act of 1974 (29 U.S.C.  
18   1112), as amended by section 611(b), is amended by add-  
19   ing at the end the following: “In the case of a plan that  
20   holds employer securities (within the meaning of section  
21   407(d)(1)), this subsection shall be applied by substituting  
22   ‘\$1,000,000’ for ‘\$500,000’ each place it appears.”

23       (b) EFFECTIVE DATE.—The amendment made by  
24   this section shall apply to plan years beginning after De-  
25   cember 31, 2007.

1   **SEC. 623. INCREASE IN PENALTIES FOR COERCIVE INTER-**  
2                   **REFERENCE WITH EXERCISE OF ERISA RIGHTS.**

3           (a) IN GENERAL.—Section 511 of the Employment  
4   Retirement Income Security Act of 1974 (29 U.S.C. 1141)  
5   is amended—

6               (1) by striking “\$10,000” and inserting  
7               “\$100,000”, and

8               (2) by striking “one year” and inserting “10  
9               years”.

10          (b) EFFECTIVE DATE.—The amendments made by  
11   this section shall apply to violations occurring on and after  
12   the date of the enactment of this Act.

13   **SEC. 624. TREATMENT OF INVESTMENT OF ASSETS BY PLAN**  
14                   **WHERE PARTICIPANT FAILS TO EXERCISE IN-**  
15                   **VESTMENT ELECTION.**

16          (a) IN GENERAL.—Section 404(c) of the Employee  
17   Retirement Income Security Act of 1974 (29 U.S.C.  
18   1104(c)), as amended by section 622, is amended by add-  
19   ing at the end the following new paragraph:

20               “(5)   DEFAULT   INVESTMENT   ARRANGE-  
21               MENTS.—

22               “(A) IN GENERAL.—For purposes of para-  
23               graph (1), a participant in an individual ac-  
24               count plan meeting the notice requirements of  
25               subparagraph (B) shall be treated as exercising  
26               control over the assets in the account with re-

1           spect to the amount of contributions and earn-  
2           ings which, in the absence of an investment  
3           election by the participant, are invested by the  
4           plan in accordance with regulations prescribed  
5           by the Secretary. The regulations under this  
6           subparagraph shall provide guidance on the ap-  
7           propriateness of designating default investments  
8           that include a mix of asset classes consistent  
9           with capital preservation or long-term capital  
10          appreciation, or a blend of both.

11           “(B) NOTICE REQUIREMENTS.—

12           “(i) IN GENERAL.—The requirements  
13           of this subparagraph are met if each par-  
14           ticipant—

15           “(I) receives, within a reasonable  
16           period of time before each plan year,  
17           a notice explaining the employee’s  
18           right under the plan to designate how  
19           contributions and earnings will be in-  
20           vested and explaining how, in the ab-  
21           sence of any investment election by  
22           the participant, such contributions  
23           and earnings will be invested, and

24           “(II) has a reasonable period of  
25           time after receipt of such notice and

1 before the beginning of the plan year  
2 to make such designation.

3 “(ii) FORM OF NOTICE.—The require-  
4 ments of clauses (i) and (ii) of section  
5 401(k)(12)(D) of the Internal Revenue  
6 Code of 1986 shall apply with respect to  
7 the notices described in this subpara-  
8 graph.”.

9 (b) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by  
11 this section shall apply to plan years beginning after  
12 December 31, 2006.

13 (2) REGULATIONS.—Final regulations under  
14 section 404(c)(5)(A) of the Employee Retirement In-  
15 come Security Act of 1974 (as added by this section)  
16 shall be issued no later than 6 months after the date  
17 of the enactment of this Act.

18 **SEC. 625. CLARIFICATION OF FIDUCIARY RULES.**

19 (a) IN GENERAL.—Not later than 1 year after the  
20 date of the enactment of this Act, the Secretary of Labor  
21 shall issue final regulations clarifying that the selection  
22 of an annuity contract as an optional form of distribution  
23 from an individual account plan to a participant or bene-  
24 ficiary—

1 (1) is not subject to the safest available annuity  
2 standard under Interpretive Bulletin 95–1 (29  
3 C.F.R. 2509.95–1), and

4 (2) is subject to all otherwise applicable fidu-  
5 ciary standards.

6 (b) EFFECTIVE DATE.—This section shall take effect  
7 on the date of enactment of this Act.

## 8 **TITLE VII—BENEFIT ACCRUAL** 9 **STANDARDS**

### 10 **SEC. 701. BENEFIT ACCRUAL STANDARDS.**

11 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
12 INCOME SECURITY ACT OF 1974.—

13 (1) RULES RELATING TO REDUCTION IN RATE  
14 OF BENEFIT ACCRUAL.—Section 204(b) of the Em-  
15 ployee Retirement Income Security Act of 1974 (29  
16 U.S.C. 1054(b)) is amended by adding at the end  
17 the following new paragraph:

18 “(5) SPECIAL RULES RELATING TO AGE.—

19 “(A) COMPARISON TO SIMILARLY SITU-  
20 ATED YOUNGER INDIVIDUAL.—

21 “(i) IN GENERAL.—A plan shall not  
22 be treated as failing to meet the require-  
23 ments of paragraph (1)(H)(i) if a partici-  
24 pant’s accrued benefit, as determined as of  
25 any date under the terms of the plan,



1 would be equal to or greater than that of  
2 any similarly situated, younger individual  
3 who is or could be a participant.

4 “(ii) SIMILARLY SITUATED.—For pur-  
5 poses of this subparagraph, a participant  
6 is similarly situated to any other individual  
7 if such participant is identical to such  
8 other individual in every respect (including  
9 period of service, compensation, position,  
10 date of hire, work history, and any other  
11 respect) except for age.

12 “(iii) DISREGARD OF SUBSIDIZED  
13 EARLY RETIREMENT BENEFITS.—In deter-  
14 mining the accrued benefit as of any date  
15 for purposes of this clause, the subsidized  
16 portion of any early retirement benefit or  
17 retirement-type subsidy shall be dis-  
18 regarded.

19 “(iv) ACCRUED BENEFIT.—For pur-  
20 poses of this subparagraph, the accrued  
21 benefit may, under the terms of the plan,  
22 be expressed as an annuity payable at nor-  
23 mal retirement age, the balance of a hypo-  
24 thetical account, or the current value of

1 the accumulated percentage of the employ-  
2 ee's final average compensation.

3 “(B) APPLICABLE DEFINED BENEFIT  
4 PLANS.—

5 “(i) INTEREST CREDITS.—

6 “(I) IN GENERAL.—An applicable  
7 defined benefit plan shall be treated  
8 as failing to meet the requirements of  
9 paragraph (1)(H) unless the terms of  
10 the plan provide that any interest  
11 credit (or an equivalent amount) for  
12 any plan year shall be at a rate which  
13 is not greater than a market rate of  
14 return. A plan shall not be treated as  
15 failing to meet the requirements of  
16 this subclause merely because the plan  
17 provides for a reasonable minimum  
18 guaranteed rate of return or for a  
19 rate of return that is equal to the  
20 greater of a fixed or variable rate of  
21 return.

22 “(II) PRESERVATION OF CAP-  
23 ITAL.—An interest credit (or an  
24 equivalent amount) of less than zero  
25 shall in no event result in the account

1 balance or similar amount being less  
2 than the aggregate amount of con-  
3 tributions credited to the account.

4 “(III) MARKET RATE OF RE-  
5 TURN.—The Secretary of the Treas-  
6 ury may provide by regulation for  
7 rules governing the calculation of a  
8 market rate of return for purposes of  
9 subclause (I) and for permissible  
10 methods of crediting interest to the  
11 account (including fixed or variable  
12 interest rates) resulting in effective  
13 rates of return meeting the require-  
14 ments of subclause (I).

15 “(ii) SPECIAL RULE FOR PLAN CON-  
16 VERSIONS.—If, after June 29, 2005, an  
17 applicable plan amendment is adopted, the  
18 plan shall be treated as failing to meet the  
19 requirements of paragraph (1)(H) unless  
20 the requirements of clause (iii) are met  
21 with respect to each individual who was a  
22 participant in the plan immediately before  
23 the adoption of the amendment.

24 “(iii) RATE OF BENEFIT ACCRUAL.—  
25 Subject to clause (iv), the requirements of

1           this clause are met with respect to any  
2           participant if the accrued benefit of the  
3           participant under the terms of the plan as  
4           in effect after the amendment is not less  
5           than the sum of—

6                       “(I) the participant’s accrued  
7                       benefit for years of service before the  
8                       effective date of the amendment, de-  
9                       termined under the terms of the plan  
10                      as in effect before the amendment,  
11                      plus

12                     “(II) the participant’s accrued  
13                     benefit for years of service after the  
14                     effective date of the amendment, de-  
15                     termined under the terms of the plan  
16                     as in effect after the amendment.

17                    “(iv) SPECIAL RULES FOR EARLY RE-  
18                    TIREMENT SUBSIDIES.—For purposes of  
19                    clause (iii)(I), the plan shall credit the ac-  
20                    cumulation account or similar amount with  
21                    the amount of any early retirement benefit  
22                    or retirement-type subsidy for the plan  
23                    year in which the participant retires if, as  
24                    of such time, the participant has met the  
25                    age, years of service, and other require-

1           ments under the plan for entitlement to  
2           such benefit or subsidy.

3                   “(v)   APPLICABLE   PLAN   AMEND-  
4           MENT.—For purposes of this subpara-  
5           graph—

6                           “(I)   IN   GENERAL.—The term  
7                           ‘applicable plan amendment’ means  
8                           an amendment to a defined benefit  
9                           plan which has the effect of con-  
10                          verting the plan to an applicable de-  
11                          fined benefit plan.

12                           “(II)   SPECIAL   RULE   FOR   CO-  
13                           ORDINATED BENEFITS.—If the bene-  
14                           fits of 2 or more defined benefit plans  
15                           established or maintained by an em-  
16                           ployer are coordinated in such a man-  
17                           ner as to have the effect of the adop-  
18                           tion of an amendment described in  
19                           subclause (I), the sponsor of the de-  
20                           fined benefit plan or plans providing  
21                           for such coordination shall be treated  
22                           as having adopted such a plan amend-  
23                           ment as of the date such coordination  
24                           begins.

1                   “(III)       MULTIPLE       AMEND-  
2                   MENTS.—The Secretary of the Treas-  
3                   ury shall issue regulations to prevent  
4                   the avoidance of the purposes of this  
5                   subparagraph through the use of 2 or  
6                   more plan amendments rather than a  
7                   single amendment.

8                   “(IV)       APPLICABLE       DEFINED  
9                   BENEFIT PLAN.—For purposes of this  
10                  subparagraph, the term ‘applicable de-  
11                  fined benefit plan’ has the meaning  
12                  given such term by section 203(f)(3).

13                  “(vi)       TERMINATION       REQUIRE-  
14                  MENTS.—An applicable defined benefit  
15                  plan shall not be treated as meeting the re-  
16                  quirements of clause (i) unless the plan  
17                  provides that, upon the termination of the  
18                  plan—

19                       “(I) if the interest credit rate (or  
20                       an equivalent amount) under the plan  
21                       is a variable rate, the rate of interest  
22                       used to determine accrued benefits  
23                       under the plan shall be equal to the  
24                       average of the rates of interest used  
25                       under the plan during the 5-year pe-

1                   riod ending on the termination date,  
2                   and

3                   “(II) the interest rate and mor-  
4                   tality table used to determine the  
5                   amount of any benefit under the plan  
6                   payable in the form of an annuity  
7                   payable at normal retirement age  
8                   shall be the rate and table specified  
9                   under the plan for such purpose as of  
10                  the termination date, except that if  
11                  such interest rate is a variable rate,  
12                  the interest rate shall be determined  
13                  under the rules of subclause (I).

14               “(C) CERTAIN OFFSETS PERMITTED.—A  
15               plan shall not be treated as failing to meet the  
16               requirements of paragraph (1)(H)(i) solely be-  
17               cause the plan provides offsets against benefits  
18               under the plan to the extent such offsets are al-  
19               lowable in applying the requirements of section  
20               401(a) of the Internal Revenue Code of 1986.

21               “(D) PERMITTED DISPARITIES IN PLAN  
22               CONTRIBUTIONS OR BENEFITS.—A plan shall  
23               not be treated as failing to meet the require-  
24               ments of paragraph (1)(H) solely because the  
25               plan provides a disparity in contributions or

1           benefits with respect to which the requirements  
2           of section 401(l) of the Internal Revenue Code  
3           of 1986 are met.

4           “(E) INDEXING PERMITTED.—

5                 “(i) IN GENERAL.—A plan shall not  
6                 be treated as failing to meet the require-  
7                 ments of paragraph (1)(H) solely because  
8                 the plan provides for indexing of accrued  
9                 benefits under the plan.

10                “(ii) PROTECTION AGAINST LOSS.—  
11                Except in the case of any benefit provided  
12                in the form of a variable annuity, clause (i)  
13                shall not apply with respect to any index-  
14                ing which results in an accrued benefit less  
15                than the accrued benefit determined with-  
16                out regard to such indexing.

17                “(iii) INDEXING.—For purposes of  
18                this subparagraph, the term ‘indexing’  
19                means, in connection with an accrued ben-  
20                efit, the periodic adjustment of the accrued  
21                benefit by means of the application of a  
22                recognized investment index or method-  
23                ology.

24                “(F) EARLY RETIREMENT BENEFIT OR RE-  
25                TIREMENT-TYPE SUBSIDY.—For purposes of



1           this paragraph, the terms ‘early retirement ben-  
2           efit’ and ‘retirement-type subsidy’ have the  
3           meaning given such terms in subsection  
4           (g)(2)(A).

5           “(G) BENEFIT ACCRUED TO DATE.—For  
6           purposes of this paragraph, any reference to the  
7           accrued benefit shall be a reference to such ben-  
8           efit accrued to date.”.

9           (2) DETERMINATIONS OF ACCRUED BENEFIT AS  
10          BALANCE OF BENEFIT ACCOUNT OR EQUIVALENT  
11          AMOUNTS.—Section 203 of such Act (29 U.S.C.  
12          1053) is amended by adding at the end the following  
13          new subsection:

14          “(f) SPECIAL RULES FOR PLANS COMPUTING AC-  
15          CRUED BENEFITS BY REFERENCE TO HYPOTHETICAL AC-  
16          COUNT BALANCE OR EQUIVALENT AMOUNTS.—

17                 “(1) IN GENERAL.—An applicable defined ben-  
18                 efit plan shall not be treated as failing to meet—

19                         “(A) subject to paragraph (2), the require-  
20                         ments of subsection (a)(2), or

21                         “(B) the requirements of section 204(c) or  
22                         section 205(g) with respect to contributions  
23                         other than employee contributions,  
24                 solely because the present value of the accrued ben-  
25                 efit (or any portion thereof) of any participant is,

1 under the terms of the plan, equal to the amount ex-  
2 pressed as the balance in the hypothetical account  
3 described in paragraph (3) or as an accumulated  
4 percentage of the participant's final average com-  
5 pensation.

6 “(2) 3-YEAR VESTING.—In the case of an appli-  
7 cable defined benefit plan, such plan shall be treated  
8 as meeting the requirements of subsection (a)(2)  
9 only if an employee who has completed at least 3  
10 years of service has a nonforfeitable right to 100  
11 percent of the employee's accrued benefit derived  
12 from employer contributions.

13 “(3) APPLICABLE DEFINED BENEFIT PLAN AND  
14 RELATED RULES.—For purposes of this sub-  
15 section—

16 “(A) IN GENERAL.—The term ‘applicable  
17 defined benefit plan’ means a defined benefit  
18 plan under which the accrued benefit (or any  
19 portion thereof) is calculated as the balance of  
20 a hypothetical account maintained for the par-  
21 ticipant or as an accumulated percentage of the  
22 participant's final average compensation.

23 “(B) REGULATIONS TO INCLUDE SIMILAR  
24 PLANS.—The Secretary of the Treasury shall  
25 issue regulations which include in the definition

1 of an applicable defined benefit plan any de-  
2 fined benefit plan (or any portion of such a  
3 plan) which has an effect similar to an applica-  
4 ble defined benefit plan.”.

5 (b) AMENDMENTS TO THE INTERNAL REVENUE  
6 CODE OF 1986.—

7 (1) RULES RELATING TO REDUCTION IN RATE  
8 OF BENEFIT ACCRUAL.—Subsection (b) of section  
9 411 of the Internal Revenue Code of 1986 is amend-  
10 ed by adding at the end the following new para-  
11 graph:

12 “(5) SPECIAL RULES RELATING TO AGE.—

13 “(A) COMPARISON TO SIMILARLY SITU-  
14 ATED YOUNGER INDIVIDUAL.—

15 “(i) IN GENERAL.—A plan shall not  
16 be treated as failing to meet the require-  
17 ments of paragraph (1)(H)(i) if a partici-  
18 pant’s accrued benefit, as determined as of  
19 any date under the terms of the plan,  
20 would be equal to or greater than that of  
21 any similarly situated, younger individual  
22 who is or could be a participant.

23 “(ii) SIMILARLY SITUATED.—For pur-  
24 poses of this subparagraph, a participant  
25 is similarly situated to any other individual

1 if such participant is identical to such  
2 other individual in every respect (including  
3 period of service, compensation, position,  
4 date of hire, work history, and any other  
5 respect) except for age.

6 “(iii) DISREGARD OF SUBSIDIZED  
7 EARLY RETIREMENT BENEFITS.—In deter-  
8 mining the accrued benefit as of any date  
9 for purposes of this clause, the subsidized  
10 portion of any early retirement benefit or  
11 retirement-type subsidy shall be dis-  
12 regarded.

13 “(iv) ACCRUED BENEFIT.—For pur-  
14 poses of this subparagraph, the accrued  
15 benefit may, under the terms of the plan,  
16 be expressed as an annuity payable at nor-  
17 mal retirement age, the balance of a hypo-  
18 thetical account, or the current value of  
19 the accumulated percentage of the employ-  
20 ee’s final average compensation.

21 “(B) APPLICABLE DEFINED BENEFIT  
22 PLANS.—

23 “(i) INTEREST CREDITS.—

24 “(I) IN GENERAL.—An applicable  
25 defined benefit plan shall be treated

1 as failing to meet the requirements of  
2 paragraph (1)(H) unless the terms of  
3 the plan provide that any interest  
4 credit (or an equivalent amount) for  
5 any plan year shall be at a rate which  
6 is not greater than a market rate of  
7 return. A plan shall not be treated as  
8 failing to meet the requirements of  
9 this subclause merely because the plan  
10 provides for a reasonable minimum  
11 guaranteed rate of return or for a  
12 rate of return that is equal to the  
13 greater of a fixed or variable rate of  
14 return.

15 “(II) PRESERVATION OF CAP-  
16 ITAL.—An interest credit (or an  
17 equivalent amount) of less than zero  
18 shall in no event result in the account  
19 balance or similar amount being less  
20 than the aggregate amount of con-  
21 tributions credited to the account.

22 “(III) MARKET RATE OF RE-  
23 TURN.—The Secretary may provide by  
24 regulation for rules governing the cal-  
25 culation of a market rate of return for

1 purposes of subclause (I) and for per-  
2 missible methods of crediting interest  
3 to the account (including fixed or  
4 variable interest rates) resulting in ef-  
5 fective rates of return meeting the re-  
6 quirements of subclause (I).

7 “(ii) SPECIAL RULE FOR PLAN CON-  
8 VERSIONS.—If, after June 29, 2005, an  
9 applicable plan amendment is adopted, the  
10 plan shall be treated as failing to meet the  
11 requirements of paragraph (1)(H) unless  
12 the requirements of clause (iii) are met  
13 with respect to each individual who was a  
14 participant in the plan immediately before  
15 the adoption of the amendment.

16 “(iii) RATE OF BENEFIT ACCRUAL.—  
17 Subject to clause (iv), the requirements of  
18 this clause are met with respect to any  
19 participant if the accrued benefit of the  
20 participant under the terms of the plan as  
21 in effect after the amendment is not less  
22 than the sum of—

23 “(I) the participant’s accrued  
24 benefit for years of service before the  
25 effective date of the amendment, de-

1           terminated under the terms of the plan  
2           as in effect before the amendment,  
3           plus

4                   “(II) the participant’s accrued  
5           benefit for years of service after the  
6           effective date of the amendment, de-  
7           termined under the terms of the plan  
8           as in effect after the amendment.

9                   “(iv) SPECIAL RULES FOR EARLY RE-  
10          TIREMENT SUBSIDIES.—For purposes of  
11          clause (iii)(I), the plan shall credit the ac-  
12          cumulation account or similar amount with  
13          the amount of any early retirement benefit  
14          or retirement-type subsidy for the plan  
15          year in which the participant retires if, as  
16          of such time, the participant has met the  
17          age, years of service, and other require-  
18          ments under the plan for entitlement to  
19          such benefit or subsidy.

20                   “(v) APPLICABLE PLAN AMEND-  
21          MENT.—For purposes of this subpara-  
22          graph—

23                           “(I) IN GENERAL.—The term  
24                   ‘applicable plan amendment’ means  
25                   an amendment to a defined benefit

1 plan which has the effect of con-  
2 verting the plan to an applicable de-  
3 fined benefit plan.

4 “(II) SPECIAL RULE FOR CO-  
5 ORDINATED BENEFITS.—If the bene-  
6 fits of 2 or more defined benefit plans  
7 established or maintained by an em-  
8 ployer are coordinated in such a man-  
9 ner as to have the effect of the adop-  
10 tion of an amendment described in  
11 subclause (I), the sponsor of the de-  
12 fined benefit plan or plans providing  
13 for such coordination shall be treated  
14 as having adopted such a plan amend-  
15 ment as of the date such coordination  
16 begins.

17 “(III) MULTIPLE AMEND-  
18 MENTS.—The Secretary shall issue  
19 regulations to prevent the avoidance  
20 of the purposes of this subparagraph  
21 through the use of 2 or more plan  
22 amendments rather than a single  
23 amendment.

24 “(IV) APPLICABLE DEFINED  
25 BENEFIT PLAN.—For purposes of this



1 subparagraph, the term ‘applicable de-  
2 fined benefit plan’ has the meaning  
3 given such term by section  
4 411(a)(13).

5 “(vi) TERMINATION REQUIRE-  
6 MENTS.—An applicable defined benefit  
7 plan shall not be treated as meeting the re-  
8 quirements of clause (i) unless the plan  
9 provides that, upon the termination of the  
10 plan—

11 “(I) if the interest credit rate (or  
12 an equivalent amount) under the plan  
13 is a variable rate, the rate of interest  
14 used to determine accrued benefits  
15 under the plan shall be equal to the  
16 average of the rates of interest used  
17 under the plan during the 5-year pe-  
18 riod ending on the termination date,  
19 and

20 “(II) the interest rate and mor-  
21 tality table used to determine the  
22 amount of any benefit under the plan  
23 payable in the form of an annuity  
24 payable at normal retirement age  
25 shall be the rate and table specified

1 under the plan for such purpose as of  
2 the termination date, except that if  
3 such interest rate is a variable rate,  
4 the interest rate shall be determined  
5 under the rules of subclause (I).

6 “(C) CERTAIN OFFSETS PERMITTED.—A  
7 plan shall not be treated as failing to meet the  
8 requirements of paragraph (1)(H)(i) solely be-  
9 cause the plan provides offsets against benefits  
10 under the plan to the extent such offsets are al-  
11 lowable in applying the requirements of section  
12 401(a).

13 “(D) PERMITTED DISPARITIES IN PLAN  
14 CONTRIBUTIONS OR BENEFITS.—A plan shall  
15 not be treated as failing to meet the require-  
16 ments of paragraph (1)(H) solely because the  
17 plan provides a disparity in contributions or  
18 benefits with respect to which the requirements  
19 of section 401(l) are met.

20 “(E) INDEXING PERMITTED.—

21 “(i) IN GENERAL.—A plan shall not  
22 be treated as failing to meet the require-  
23 ments of paragraph (1)(H) solely because  
24 the plan provides for indexing of accrued  
25 benefits under the plan.

1 “(ii) PROTECTION AGAINST LOSS.—

2 Except in the case of any benefit provided  
3 in the form of a variable annuity, clause (i)  
4 shall not apply with respect to any index-  
5 ing which results in an accrued benefit less  
6 than the accrued benefit determined with-  
7 out regard to such indexing.

8 “(iii) INDEXING.—For purposes of  
9 this subparagraph, the term ‘indexing’  
10 means, in connection with an accrued ben-  
11 efit, the periodic adjustment of the accrued  
12 benefit by means of the application of a  
13 recognized investment index or method-  
14 ology.

15 “(F) EARLY RETIREMENT BENEFIT OR RE-  
16 TIREMENT-TYPE SUBSIDY.—For purposes of  
17 this paragraph, the terms ‘early retirement ben-  
18 efit’ and ‘retirement-type subsidy’ have the  
19 meaning given such terms in subsection  
20 (d)(6)(B)(i).

21 “(G) BENEFIT ACCRUED TO DATE.—For  
22 purposes of this paragraph, any reference to the  
23 accrued benefit shall be a reference to such ben-  
24 efit accrued to date.”.

1           (2) DETERMINATIONS OF ACCRUED BENEFIT AS  
2       BALANCE OF BENEFIT ACCOUNT OR EQUIVALENT  
3       AMOUNTS.—Subsection (a) of section 411 of such  
4       Code is amended by adding at the end the following  
5       new paragraph:

6           “(13) SPECIAL RULES FOR PLANS COMPUTING  
7       ACCRUED BENEFITS BY REFERENCE TO HYPO-  
8       THETICAL ACCOUNT BALANCE OR EQUIVALENT  
9       AMOUNTS.—

10           “(A) IN GENERAL.—An applicable defined  
11       benefit plan shall not be treated as failing to  
12       meet—

13           “(i) subject to paragraph (2), the re-  
14       quirements of subsection (a)(2), or

15           “(ii) the requirements of subsection  
16       (c) or section 417(e) with respect to con-  
17       tributions other than employee contribu-  
18       tions,

19       solely because the present value of the accrued  
20       benefit (or any portion thereof) of any partici-  
21       pant is, under the terms of the plan, equal to  
22       the amount expressed as the balance in the hy-  
23       pothetical account described in paragraph (3)  
24       or as an accumulated percentage of the partici-  
25       pant’s final average compensation.

1           “(B) 3-YEAR VESTING.—In the case of an  
2           applicable defined benefit plan, such plan shall  
3           be treated as meeting the requirements of sub-  
4           section (a)(2) only if an employee who has com-  
5           pleted at least 3 years of service has a non-  
6           forfeitable right to 100 percent of the employ-  
7           ee’s accrued benefit derived from employer con-  
8           tributions.

9           “(C) APPLICABLE DEFINED BENEFIT PLAN  
10          AND RELATED RULES.—For purposes of this  
11          subsection—

12               “(i) IN GENERAL.—The term ‘applica-  
13               ble defined benefit plan’ means a defined  
14               benefit plan under which the accrued ben-  
15               efit (or any portion thereof) is calculated  
16               as the balance of a hypothetical account  
17               maintained for the participant or as an ac-  
18               cumulated percentage of the participant’s  
19               final average compensation.

20               “(ii) REGULATIONS TO INCLUDE SIMI-  
21               LAR PLANS.—The Secretary shall issue  
22               regulations which include in the definition  
23               of an applicable defined benefit plan any  
24               defined benefit plan (or any portion of

1           such a plan) which has an effect similar to  
2           an applicable defined benefit plan.”.

3           (c) AMENDMENTS TO AGE DISCRIMINATION IN EM-  
4 PLOYMENT ACT.—Section 4(i) of the Age Discrimination  
5 in Employment Act of 1967 (29 U.S.C. 623(i)) is amend-  
6 ed by adding at the end the following new paragraph:

7           “(10) SPECIAL RULES RELATING TO AGE.—

8           “(A) COMPARISON TO SIMILARLY SITU-  
9 ATED YOUNGER INDIVIDUAL.—

10           “(i) IN GENERAL.—A plan shall not  
11           be treated as failing to meet the require-  
12           ments of paragraph (1) if a participant’s  
13           accrued benefit, as determined as of any  
14           date under the terms of the plan, would be  
15           equal to or greater than that of any simi-  
16           larly situated, younger individual who is or  
17           could be a participant.

18           “(ii) SIMILARLY SITUATED.—For pur-  
19           poses of this subparagraph, a participant  
20           is similarly situated to any other individual  
21           if such participant is identical to such  
22           other individual in every respect (including  
23           period of service, compensation, position,  
24           date of hire, work history, and any other  
25           respect) except for age.

1                   “(iii) DISREGARD OF SUBSIDIZED  
2 EARLY RETIREMENT BENEFITS.—In deter-  
3 mining the accrued benefit as of any date  
4 for purposes of this clause, the subsidized  
5 portion of any early retirement benefit or  
6 retirement-type subsidy shall be dis-  
7 regarded.

8                   “(iv) ACCRUED BENEFIT.—For pur-  
9 poses of this subparagraph, the accrued  
10 benefit may, under the terms of the plan,  
11 be expressed as an annuity payable at nor-  
12 mal retirement age, the balance of a hypo-  
13 thetical account, or the current value of  
14 the accumulated percentage of the employ-  
15 ee’s final average compensation.

16                   “(B) APPLICABLE DEFINED BENEFIT  
17 PLANS.—

18                   “(i) INTEREST CREDITS.—

19                   “(I) IN GENERAL.—An applicable  
20 defined benefit plan shall be treated  
21 as failing to meet the requirements of  
22 paragraph (1) unless the terms of the  
23 plan provide that any interest credit  
24 (or an equivalent amount) for any  
25 plan year shall be at a rate which is

1 not greater than a market rate of re-  
2 turn. A plan shall not be treated as  
3 failing to meet the requirements of  
4 this subclause merely because the plan  
5 provides for a reasonable minimum  
6 guaranteed rate of return or for a  
7 rate of return that is equal to the  
8 greater of a fixed or variable rate of  
9 return.

10 “(II) PRESERVATION OF CAP-  
11 ITAL.—An interest credit (or an  
12 equivalent amount) of less than zero  
13 shall in no event result in the account  
14 balance or similar amount being less  
15 than the aggregate amount of con-  
16 tributions credited to the account.

17 “(III) MARKET RATE OF RE-  
18 TURN.—The Secretary of the Treas-  
19 ury may provide by regulation for  
20 rules governing the calculation of a  
21 market rate of return for purposes of  
22 subclause (I) and for permissible  
23 methods of crediting interest to the  
24 account (including fixed or variable  
25 interest rates) resulting in effective



1 rates of return meeting the require-  
2 ments of subclause (I).

3 “(ii) SPECIAL RULE FOR PLAN CON-  
4 VERSIONS.—If, after June 29, 2005, an  
5 applicable plan amendment is adopted, the  
6 plan shall be treated as failing to meet the  
7 requirements of paragraph (1)(H) unless  
8 the requirements of clause (iii) are met  
9 with respect to each individual who was a  
10 participant in the plan immediately before  
11 the adoption of the amendment.

12 “(iii) RATE OF BENEFIT ACCRUAL.—  
13 Subject to clause (iv), the requirements of  
14 this clause are met with respect to any  
15 participant if the accrued benefit of the  
16 participant under the terms of the plan as  
17 in effect after the amendment is not less  
18 than the sum of—

19 “(I) the participant’s accrued  
20 benefit for years of service before the  
21 effective date of the amendment, de-  
22 termined under the terms of the plan  
23 as in effect before the amendment,  
24 plus

1 “(II) the participant’s accrued  
2 benefit for years of service after the  
3 effective date of the amendment, de-  
4 termined under the terms of the plan  
5 as in effect after the amendment.

6 “(iv) SPECIAL RULES FOR EARLY RE-  
7 TIREMENT SUBSIDIES.—For purposes of  
8 clause (iii)(I), the plan shall credit the ac-  
9 cumulation account or similar amount with  
10 the amount of any early retirement benefit  
11 or retirement-type subsidy for the plan  
12 year in which the participant retires if, as  
13 of such time, the participant has met the  
14 age, years of service, and other require-  
15 ments under the plan for entitlement to  
16 such benefit or subsidy.

17 “(v) APPLICABLE PLAN AMEND-  
18 MENT.—For purposes of this subpara-  
19 graph—

20 “(I) IN GENERAL.—The term  
21 ‘applicable plan amendment’ means  
22 an amendment to a defined benefit  
23 plan which has the effect of con-  
24 verting the plan to an applicable de-  
25 fined benefit plan.

1 “(II) SPECIAL RULE FOR CO-  
2 ORDINATED BENEFITS.—If the bene-  
3 fits of 2 or more defined benefit plans  
4 established or maintained by an em-  
5 ployer are coordinated in such a man-  
6 ner as to have the effect of the adop-  
7 tion of an amendment described in  
8 subclause (I), the sponsor of the de-  
9 fined benefit plan or plans providing  
10 for such coordination shall be treated  
11 as having adopted such a plan amend-  
12 ment as of the date such coordination  
13 begins.

14 “(III) MULTIPLE AMEND-  
15 MENTS.—The Secretary of the Treas-  
16 ury shall issue regulations to prevent  
17 the avoidance of the purposes of this  
18 subparagraph through the use of 2 or  
19 more plan amendments rather than a  
20 single amendment.

21 “(IV) APPLICABLE DEFINED  
22 BENEFIT PLAN.—For purposes of this  
23 subparagraph, the term ‘applicable de-  
24 fined benefit plan’ has the meaning  
25 given such term by section 203(f)(3)

1 of the Employee Retirement Income  
2 Security Act of 1974.

3 “(vi) TERMINATION REQUIRE-  
4 MENTS.—An applicable defined benefit  
5 plan shall not be treated as meeting the re-  
6 quirements of clause (i) unless the plan  
7 provides that, upon the termination of the  
8 plan—

9 “(I) if the interest credit rate (or  
10 an equivalent amount) under the plan  
11 is a variable rate, the rate of interest  
12 used to determine accrued benefits  
13 under the plan shall be equal to the  
14 average of the rates of interest used  
15 under the plan during the 5-year pe-  
16 riod ending on the termination date,  
17 and

18 “(II) the interest rate and mor-  
19 tality table used to determine the  
20 amount of any benefit under the plan  
21 payable in the form of an annuity  
22 payable at normal retirement age  
23 shall be the rate and table specified  
24 under the plan for such purpose as of  
25 the termination date, except that if

1                   such interest rate is a variable rate,  
2                   the interest rate shall be determined  
3                   under the rules of subclause (I).

4                   “(C) CERTAIN OFFSETS PERMITTED.—A  
5                   plan shall not be treated as failing to meet the  
6                   requirements of paragraph (1) solely because  
7                   the plan provides offsets against benefits under  
8                   the plan to the extent such offsets are allowable  
9                   in applying the requirements of section 401(a)  
10                  of the Internal Revenue Code of 1986.

11                  “(D) PERMITTED DISPARITIES IN PLAN  
12                  CONTRIBUTIONS OR BENEFITS.—A plan shall  
13                  not be treated as failing to meet the require-  
14                  ments of paragraph (1) solely because the plan  
15                  provides a disparity in contributions or benefits  
16                  with respect to which the requirements of sec-  
17                  tion 401(l) of the Internal Revenue Code of  
18                  1986 are met.

19                  “(E) INDEXING PERMITTED.—

20                  “(i) IN GENERAL.—A plan shall not  
21                  be treated as failing to meet the require-  
22                  ments of paragraph (1) solely because the  
23                  plan provides for indexing of accrued bene-  
24                  fits under the plan.

1 “(ii) PROTECTION AGAINST LOSS.—

2 Except in the case of any benefit provided  
3 in the form of a variable annuity, clause (i)  
4 shall not apply with respect to any index-  
5 ing which results in an accrued benefit less  
6 than the accrued benefit determined with-  
7 out regard to such indexing.

8 “(iii) INDEXING.—For purposes of  
9 this subparagraph, the term ‘indexing’  
10 means, in connection with an accrued ben-  
11 efit, the periodic adjustment of the accrued  
12 benefit by means of the application of a  
13 recognized investment index or method-  
14 ology.

15 “(F) EARLY RETIREMENT BENEFIT OR RE-  
16 TIREMENT-TYPE SUBSIDY.—For purposes of  
17 this paragraph, the terms ‘early retirement ben-  
18 efit’ and ‘retirement-type subsidy’ have the  
19 meaning given such terms in section  
20 203(g)(2)(A) of the Employee Retirement In-  
21 come Security Act of 1974.

22 “(G) BENEFIT ACCRUED TO DATE.—For  
23 purposes of this paragraph, any reference to the  
24 accrued benefit shall be a reference to such ben-  
25 efit accrued to date.”.

1 (d) NO INFERENCE.—Nothing in the amendments  
2 made by this section shall be construed to create an infer-  
3 ence with respect to—

4 (1) the treatment of applicable defined benefit  
5 plans or conversions to applicable defined benefit  
6 plans under sections 204(b)(1)(H) of the Employee  
7 Retirement Income Security Act of 1974, 4(i)(1) of  
8 the Age Discrimination in Employment Act of 1967,  
9 and 411(b)(1)(H) of the Internal Revenue Code of  
10 1986, as in effect before such amendments, or

11 (2) the determination of whether an applicable  
12 defined benefit plan fails to meet the requirements  
13 of sections 203(a)(2), 204(c), or 204(g) of the Em-  
14 ployee Retirement Income Security Act of 1974 or  
15 sections 411(a)(2), 411(c), or 417(e) of such Code,  
16 as in effect before such amendments, solely because  
17 the present value of the accrued benefit (or any por-  
18 tion thereof) of any participant is, under the terms  
19 of the plan, equal to the amount expressed as the  
20 balance in a hypothetical account or as an accumu-  
21 lated percentage of the participant’s final average  
22 compensation.

23 For purposes of this subsection, the term “applicable de-  
24 fined benefit plan” has the meaning given such term by  
25 section 203(f)(3) of the Employee Retirement Income Se-

1 curity Act of 1974 and section 411(a)(13)(C) of such  
2 Code, as in effect after such amendments.

3 (e) EFFECTIVE DATE.—

4 (1) IN GENERAL.—The amendments made by  
5 this section shall apply to periods beginning on or  
6 after June 29, 2005.

7 (2) PRESENT VALUE OF ACCRUED BENEFIT.—  
8 The amendments made by subsections (a)(2) and  
9 (b)(2) shall apply to distributions made after the  
10 date of the enactment of this Act.

11 (3) VESTING AND INTEREST CREDIT REQUIRE-  
12 MENTS.—In the case of a plan in existence on June  
13 29, 2005, the requirements of clause (i) of section  
14 411(b)(5)(B) of the Internal Revenue Code of 1986,  
15 clause (i) of section 204(b)(5)(B) of the Employee  
16 Retirement Income Security Act of 1974, and clause  
17 (i) of section 4(i)(10)(B) of the Age Discrimination  
18 in Employment Act of 1967 (as added by this Act)  
19 and the requirements of 203(f)(2) of the Employee  
20 Retirement Income Security Act of 1974 and section  
21 411(a)(13)(B) of the Internal Revenue Code of 1986  
22 (as so added) shall, for purposes of applying the  
23 amendments made by subsections (a) and (b), apply  
24 to years beginning after December 31, 2007, unless  
25 the plan sponsor elects the application of such re-



1        requirements for any period after June 29, 2005, and  
2        before the first year beginning after December 31,  
3        2007.

4            (4) SPECIAL RULE FOR COLLECTIVELY BAR-  
5        GAINED PLANS.—In the case of a plan maintained  
6        pursuant to 1 or more collective bargaining agree-  
7        ments between employee representatives and 1 or  
8        more employers ratified on or before the date of the  
9        enactment of this Act, the requirements described in  
10       paragraph (3) shall, for purposes of applying the  
11       amendments made by subsections (a) and (b), not  
12       apply to plan years beginning before—

13            (A) the earlier of—

14                    (i) the date on which the last of such  
15                    collective bargaining agreements termi-  
16                    nates (determined without regard to any  
17                    extension thereof on or after such date of  
18                    enactment), or

19                    (ii) January 1, 2008, or

20            (B) January 1, 2010.

21            (5) CONVERSIONS.—The requirements of clause  
22        (ii) of section 411(b)(5)(B) of the Internal Revenue  
23        Code of 1986, clause (ii) of section 204(b)(5)(B) of  
24        the Employee Retirement Income Security Act of  
25        1974, and clause (ii) of section 4(i)(10)(B) of the

1 Age Discrimination in Employment Act of 1967 (as  
2 added by this Act), shall apply to plan amendments  
3 adopted after, and taking effect after, June 29,  
4 2005, except that the plan sponsor may elect to have  
5 such amendments apply to plan amendments adopt-  
6 ed before, and taking effect after, such date.

7 **SEC. 702. REGULATIONS RELATING TO MERGERS AND AC-**  
8 **QUISITIONS.**

9 The Secretary of the Treasury or his delegate shall,  
10 not later than 12 months after the date of the enactment  
11 of this Act, prescribe regulations for the application of the  
12 amendments made by, and the provisions of, this title in  
13 cases where the conversion of a plan to an applicable de-  
14 fined benefit plan is made with respect to a group of em-  
15 ployees who become employees by reason of a merger, ac-  
16 quisition, or similar transaction.

17 **TITLE VIII—PENSION RELATED**  
18 **REVENUE PROVISIONS**

19 **Subtitle A—Deduction Limitations**

20 **SEC. 801. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EM-**  
21 **PLOYER PLANS.**

22 (a) IN GENERAL.—Section 404 of the Internal Rev-  
23 enue Code of 1986 (relating to deduction for contributions  
24 of an employer to an employees' trust or annuity plan and

1 compensation under a deferred payment plan) is amend-  
2 ed—

3 (1) in subsection (a)(1)(A), by inserting “in the  
4 case of a defined benefit plan other than a multiem-  
5 ployer plan, in an amount determined under sub-  
6 section (o), and in the case of any other plan” after  
7 “section 501(a),” and

8 (2) by inserting at the end the following new  
9 subsection:

10 “(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER  
11 PLANS.—For purposes of subsection (a)(1)(A)—

12 “(1) IN GENERAL.—In the case of a defined  
13 benefit plan to which subsection (a)(1)(A) applies  
14 (other than a multiemployer plan), the amount de-  
15 termined under this subsection for any taxable year  
16 shall be equal to the greater of—

17 “(A) the sum of the amounts determined  
18 under paragraph (2) with respect to each plan  
19 year ending with or within the taxable year, or

20 “(B) the sum of the minimum required  
21 contributions under section 430 for such plan  
22 years.

23 “(2) DETERMINATION OF AMOUNT.—

1           “(A) IN GENERAL.—The amount deter-  
2 mined under this paragraph for any plan year  
3 shall be equal to the excess (if any) of—

4           “(i) the sum of—

5                 “(I) the funding target for the  
6 plan year,

7                 “(II) the target normal cost for  
8 the plan year, and

9                 “(III) the cushion amount for the  
10 plan year, over

11           “(ii) the value (determined under sec-  
12 tion 430(g)(2)) of the assets of the plan  
13 which are held by the plan as of the valu-  
14 ation date for the plan year.

15           “(B) SPECIAL RULE FOR CERTAIN EM-  
16 PLOYERS.—If section 430(i) does not apply to  
17 a plan for a plan year, the amount determined  
18 under subparagraph (A)(i) for the plan year  
19 shall in no event be less than the sum of—

20                 “(i) the funding target for the plan  
21 year (determined as if section 430(i) ap-  
22 plied to the plan), plus

23                 “(ii) the target normal cost for the  
24 plan year (as so determined).

1           “(3) CUSHION AMOUNT.—For purposes of para-  
2 graph (2)(A)(i)(III)—

3           “(A) IN GENERAL.—The cushion amount  
4 for any plan year is the sum of—

5           “(i) 50 percent of the funding target  
6 for the plan year, and

7           “(ii) the amount by which the funding  
8 target for the plan year would increase if  
9 the plan were to take into account—

10           “(I) increases in compensation  
11 which are expected to occur in suc-  
12 ceeding plan years, or

13           “(II) if the plan does not base  
14 benefits for service to date on com-  
15 pensation, increases in benefits which  
16 are expected to occur in succeeding  
17 plan years (determined on the basis of  
18 the average annual increase in bene-  
19 fits over the 6 immediately preceding  
20 plan years).

21           “(B) LIMITATIONS.—

22           “(i) IN GENERAL.—In making the  
23 computation under subparagraph (A)(ii),  
24 the plan’s actuary shall assume that the

1 limitations under subsection (l) and section  
2 415(b) shall apply.

3 “(ii) EXPECTED INCREASES.—In the  
4 case of a plan year during which a plan is  
5 covered under section 4021 of the Em-  
6 ployee Retirement Income Security Act of  
7 1974, the plan’s actuary may, notwith-  
8 standing subsection (l), take into account  
9 increases in the limitations which are ex-  
10 pected to occur in succeeding plan years.

11 “(4) SPECIAL RULES FOR PLANS WITH 100 OR  
12 FEWER PARTICIPANTS.—

13 “(A) IN GENERAL.—For purposes of deter-  
14 mining the amount under paragraph (3) for any  
15 plan year, in the case of a plan which has 100  
16 or fewer participants for the plan year, the li-  
17 ability of the plan attributable to benefit in-  
18 creases for highly compensated employees (as  
19 defined in section 414(q)) resulting from a plan  
20 amendment which is made or becomes effective,  
21 whichever is later, within the last 2 years shall  
22 not be taken into account in determining the  
23 target liability.

24 “(B) RULE FOR DETERMINING NUMBER  
25 OF PARTICIPANTS.—For purposes of deter-

1            mining the number of plan participants, all de-  
2            fined benefit plans maintained by the same em-  
3            ployer (or any member of such employer's con-  
4            trolled group (within the meaning of section  
5            412(f)(4))) shall be treated as one plan, but  
6            only participants of such member or employer  
7            shall be taken into account.

8            “(5) SPECIAL RULE FOR TERMINATING  
9            PLANS.—In the case of a plan which, subject to sec-  
10          tion 4041 of the Employee Retirement Income Secu-  
11          rity Act of 1974, terminates during the plan year,  
12          the amount determined under paragraph (2) shall in  
13          no event be less than the amount required to make  
14          the plan sufficient for benefit liabilities (within the  
15          meaning of section 4041(d) of such Act).

16          “(6) ACTUARIAL ASSUMPTIONS.—Any computa-  
17          tion under this subsection for any plan year shall  
18          use the same actuarial assumptions which are used  
19          for the plan year under section 430.

20          “(7) DEFINITIONS.—Any term used in this sub-  
21          section which is also used in section 430 shall have  
22          the same meaning given such term by section 430.”.

23          (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
24          WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
25          DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of

1 such Code, as amended by this Act, is amended by adding  
2 at the end the following new clause:

3 “(iv) GUARANTEED PLANS.—In apply-  
4 ing this paragraph, any single-employer  
5 plan covered under section 4021 of the  
6 Employee Retirement Income Security Act  
7 of 1974 shall not be taken into account.”.

8 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

9 (1) The last sentence of section 404(a)(1)(A) of  
10 such Code is amended by striking “section 412”  
11 each place it appears and inserting “section 431”.

12 (2) Section 404(a)(1)(B) of such Code is  
13 amended—

14 (A) by striking “In the case of a plan” and  
15 inserting “In the case of a multiemployer plan”,

16 (B) by striking “section 412(c)(7)” each  
17 place it appears and inserting “section  
18 431(c)(6)”,

19 (C) by striking “section 412(c)(7)(B)” and  
20 inserting “section 431(c)(6)(A)(ii)”,

21 (D) by striking “section 412(c)(7)(A)” and  
22 inserting “section 431(c)(6)(A)(i)”, and

23 (E) by striking “section 412” and insert-  
24 ing “section 431”.



1           (3) Section 404(a)(7) of such Code, as amended  
2       by this Act, is amended—

3           (A) by adding at the end of subparagraph  
4       (A) the following new sentence: “In the case of  
5       a defined benefit plan which is a single em-  
6       ployer plan, the amount necessary to satisfy the  
7       minimum funding standard provided by section  
8       412 shall not be less than the plan’s funding  
9       shortfall determined under section 430.”, and

10          (B) by striking subparagraph (D) and in-  
11       serting:

12           “(D) INSURANCE CONTRACT PLANS.—For  
13       purposes of this paragraph, a plan described in  
14       section 412(e)(3) shall be treated as a defined  
15       benefit plan.”.

16          (4) Section 404A(g)(3)(A) of such Code is  
17       amended by striking “paragraphs (3) and (7) of sec-  
18       tion 412(c)” and inserting “paragraphs (3) and (6)  
19       of section 431(c)”.

20       (d) SPECIAL RULE FOR 2006 AND 2007.—

21          (1) IN GENERAL.—Clause (i) of section  
22       404(a)(1)(D) of the Internal Revenue Code of 1986  
23       (relating to special rule in case of certain plans) is  
24       amended by striking “section 412(l)” and inserting  
25       “section 412(l)(8)(A), except that section

1       412(l)(8)(A) shall be applied for purposes of this  
2       clause by substituting ‘150 percent (140 percent in  
3       the case of a multiemployer plan) of current liability’  
4       for ‘the current liability’ in clause (i).”

5           (2) CONFORMING AMENDMENT.—Section  
6       404(a)(1) of the Internal Revenue Code of 1986 is  
7       amended by striking subparagraph (F).

8       (e) EFFECTIVE DATES.—

9           (1) IN GENERAL.—Except as provided in para-  
10      graph (2), the amendments made by this section  
11      shall apply to years beginning after December 31,  
12      2007.

13          (2) SPECIAL RULES.—The amendments made  
14      by subsection (d) shall apply to years beginning  
15      after December 31, 2005.

16 **SEC. 802. DEDUCTION LIMITS FOR MULTIEMPLOYER**  
17 **PLANS.**

18      (a) INCREASE IN DEDUCTION.—Section  
19      404(a)(1)(D) of the Internal Revenue Code of 1986, as  
20      amended by this Act, is amended to read as follows:

21           “(D) AMOUNT DETERMINED ON BASIS OF  
22      UNFUNDED CURRENT LIABILITY.—In the case  
23      of a defined benefit plan which is a multiem-  
24      ployer plan, except as provided in regulations,  
25      the maximum amount deductible under the lim-

1           itations of this paragraph shall not be less than  
2           the excess (if any) of—

3                   “(i) 140 percent of the current liabil-  
4                   ity of the plan determined under section  
5                   431(c)(6)(C), over

6                   “(ii) the value of the plan’s assets de-  
7                   termined under section 431(c)(2).”.

8           (b) **EFFECTIVE DATE.**—The amendment made by  
9           subsection (a) shall apply to years beginning after Decem-  
10          ber 31, 2007.

11   **SEC. 803. UPDATING DEDUCTION RULES FOR COMBINA-**  
12                   **TION OF PLANS.**

13          (a) **IN GENERAL.**—Subparagraph (C) of section  
14          404(a)(7) of the Internal Revenue Code of 1986 (relating  
15          to limitation on deductions where combination of defined  
16          contribution plan and defined benefit plan) is amended by  
17          adding after clause (ii) the following new clause:

18                   “(iii) **LIMITATION.**—In the case of  
19                   employer contributions to 1 or more de-  
20                   fined contribution plans, this paragraph  
21                   shall only apply to the extent that such  
22                   contributions exceed 6 percent of the com-  
23                   pensation otherwise paid or accrued during  
24                   the taxable year to the beneficiaries under  
25                   such plans. For purposes of this clause,

1 amounts carried over from preceding tax-  
2 able years under subparagraph (B) shall  
3 be treated as employer contributions to 1  
4 or more defined contributions to the extent  
5 attributable to employer contributions to  
6 such plans in such preceding taxable  
7 years.”.

8 (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
9 WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
10 DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of  
11 such Code, as amended by this Act, is amended by adding  
12 at the end the following new clause:

13 “(v) MULTIEMPLOYER PLANS.—In ap-  
14 plying this paragraph, any multiemployer  
15 plan shall not be taken into account.”.

16 (c) CONFORMING AMENDMENT.—Subparagraph (A)  
17 of section 4972(c)(6) of such Code (relating to nondeduct-  
18 ible contributions) is amended to read as follows:

19 “(A) so much of the contributions to 1 or  
20 more defined contribution plans which are not  
21 deductible when contributed solely because of  
22 section 404(a)(7) as does not exceed the  
23 amount of contributions described in section  
24 401(m)(4)(A), or”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to contributions for taxable years  
3 beginning after December 31, 2005.

4 **Subtitle B—Certain Pension**  
5 **Provisions Made Permanent**

6 **SEC. 811. PENSIONS AND INDIVIDUAL RETIREMENT AR-**  
7 **RANGEMENT PROVISIONS OF ECONOMIC**  
8 **GROWTH AND TAX RELIEF RECONCILIATION**  
9 **ACT OF 2001 MADE PERMANENT.**

10 Title IX of the Economic Growth and Tax Relief Rec-  
11 onciliation Act of 2001 shall not apply to the provisions  
12 of, and amendments made by, subtitles A through F of  
13 title VI of such Act (relating to pension and individual  
14 retirement arrangement provisions).

15 **SEC. 812. SAVER'S CREDIT.**

16 Section 25B of the Internal Revenue Code of 1986  
17 (relating to elective deferrals and IRA contributions by  
18 certain individuals) is amended by striking subsection (h).

1 **Subtitle C—Improvements in Port-**  
2 **ability, Distribution, and Con-**  
3 **tribution Rules**

4 **SEC. 821. CLARIFICATIONS REGARDING PURCHASE OF PER-**  
5 **MISSIVE SERVICE CREDIT.**

6 (a) IN GENERAL.—Section 415(n) of the Internal  
7 Revenue Code of 1986 (relating to special rules for the  
8 purchase of permissive service credit) is amended—

9 (1) by striking “an employee” in paragraph (1)  
10 and inserting “a participant”, and

11 (2) by adding at the end of paragraph (3)(A)  
12 the following new flush sentence:

13 “Such term may include service credit for peri-  
14 ods for which there is no performance of serv-  
15 ice, and, notwithstanding clause (ii), may in-  
16 clude service credited in order to provide an in-  
17 creased benefit for service credit which a partic-  
18 ipant is receiving under the plan.”.

19 (b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE  
20 TRANSFERS.—Section 415(n)(3) of such Code is amended  
21 by adding at the end the following new subparagraph:

22 “(D) SPECIAL RULES FOR TRUSTEE-TO-  
23 TRUSTEE TRANSFERS.—In the case of a trust-  
24 ee-to-trustee transfer to which section  
25 403(b)(13)(A) or 457(e)(17)(A) applies (with-

1 out regard to whether the transfer is made be-  
2 tween plans maintained by the same em-  
3 ployer)—

4 “(i) the limitations of subparagraph  
5 (B) shall not apply in determining whether  
6 the transfer is for the purchase of permis-  
7 sive service credit, and

8 “(ii) the distribution rules applicable  
9 under this title to the defined benefit gov-  
10 ernmental plan to which any amounts are  
11 so transferred shall apply to such amounts  
12 and any benefits attributable to such  
13 amounts.”.

14 (c) NONQUALIFIED SERVICE.—Section 415(n)(3) of  
15 such Code is amended—

16 (1) by striking “permissive service credit attrib-  
17 utable to nonqualified service” each place it appears  
18 in subparagraph (B) and inserting “nonqualified  
19 service credit”,

20 (2) by striking so much of subparagraph (C) as  
21 precedes clause (i) and inserting:

22 “(C) NONQUALIFIED SERVICE CREDIT.—  
23 For purposes of subparagraph (B), the term  
24 ‘nonqualified service credit’ means permissive

1 service credit other than that allowed with re-  
2 spect to—”, and

3 (3) by striking “elementary or secondary edu-  
4 cation (through grade 12), as determined under  
5 State law” in subparagraph (C)(ii) and inserting  
6 “elementary or secondary education (through grade  
7 12), or a comparable level of education, as deter-  
8 mined under the applicable law of the jurisdiction in  
9 which the service was performed”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—The amendments made by  
12 subsections (a) and (c) shall take effect as if in-  
13 cluded in the amendments made by section 1526 of  
14 the Taxpayer Relief Act of 1997.

15 (2) SUBSECTION (b).—The amendments made  
16 by subsection (b) shall take effect as if included in  
17 the amendments made by section 647 of the Eco-  
18 nomic Growth and Tax Relief Reconciliation Act of  
19 2001.

20 **SEC. 822. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**  
21 **ANNUITY CONTRACTS.**

22 (a) IN GENERAL.—Subparagraph (A) of section  
23 402(c)(2) (relating to the maximum amount which may  
24 be rolled over) is amended—



1           (1) by striking “which is part of a plan which  
2           is a defined contribution plan and which agrees to  
3           separately account” and inserting “or to an annuity  
4           contract described in section 403(b) and such trust  
5           or contract provides for separate accounting”; and

6           (2) by inserting “(and earnings thereon)” after  
7           “so transferred”.

8           (b) EFFECTIVE DATE.—The amendment made by  
9           subsection (a) shall apply to taxable years beginning after  
10          December 31, 2006.

11   **SEC. 823. CLARIFICATION OF MINIMUM DISTRIBUTION**  
12                           **RULES FOR GOVERNMENTAL PLANS.**

13          The Secretary of the Treasury shall issue regulations  
14          under which a governmental plan (as defined in section  
15          414(d) of the Internal Revenue Code of 1986) shall, for  
16          all years to which section 401(a)(9) of such Code applies  
17          to such plan, be treated as having complied with such sec-  
18          tion 401(a)(9) if such plan complies with a reasonable  
19          good faith interpretation of such section 401(a)(9).

20   **SEC. 824. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
21                           **PLANS TO ROTH IRAS.**

22          (a) IN GENERAL.—Subsection (e) of section 408A of  
23          the Internal Revenue Code of 1986 (defining qualified roll-  
24          over contribution) is amended to read as follows:

1       “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For  
2 purposes of this section, the term ‘qualified rollover con-  
3 tribution’ means a rollover contribution—

4               “(1) to a Roth IRA from another such account,  
5               “(2) from an eligible retirement plan, but only  
6 if—

7                       “(A) in the case of an individual retire-  
8 ment plan, such rollover contribution meets the  
9 requirements of section 408(d)(3), and

10                      “(B) in the case of any eligible retirement  
11 plan (as defined in section 402(c)(8)(B) other  
12 than clauses (i) and (ii) thereof), such rollover  
13 contribution meets the requirements of section  
14 402(c), 403(b)(8), or 457(e)(16), as applicable.

15 For purposes of section 408(d)(3)(B), there shall be dis-  
16 regarded any qualified rollover contribution from an indi-  
17 vidual retirement plan (other than a Roth IRA) to a Roth  
18 IRA.”.

19       (b) CONFORMING AMENDMENTS.—

20               (1) Section 408A(c)(3)(B) of such Code, as in  
21 effect before the Tax Increase Prevention and Rec-  
22 onciliation Act of 2005, is amended—

23                       (A) in the text by striking “individual re-  
24 tirement plan” and inserting “an eligible retire-

1           ment plan (as defined by section  
2           402(c)(8)(B))”, and

3           (B) in the heading by striking “IRA” the  
4           first place it appears and inserting “ELIGIBLE  
5           RETIREMENT PLAN”.

6           (2) Section 408A(d)(3) of such Code is amend-  
7       ed—

8           (A) in subparagraph (A), by striking “sec-  
9           tion 408(d)(3)” inserting “sections 402(c),  
10          403(b)(8), 408(d)(3), and 457(e)(16)”,

11          (B) in subparagraph (B), by striking “in-  
12          dividual retirement plan” and inserting “eligible  
13          retirement plan (as defined by section  
14          402(c)(8)(B))”,

15          (C) in subparagraph (D), by inserting “or  
16          6047” after “408(i)”,

17          (D) in subparagraph (D), by striking “or  
18          both” and inserting “persons subject to section  
19          6047(d)(1), or all of the foregoing persons”,  
20          and

21          (E) in the heading, by striking “IRA” the  
22          first place it appears and inserting “ELIGIBLE  
23          RETIREMENT PLAN”.

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

4       **SEC. 825. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
5                               **MENT PLANS.**

6       An individual shall not be precluded from partici-  
7 pating in an eligible deferred compensation plan by reason  
8 of having received a distribution under section 457(e)(9)  
9 of the Internal Revenue Code of 1986, as in effect prior  
10 to the enactment of the Small Business Job Protection  
11 Act of 1996.

12       **SEC. 826. MODIFICATIONS OF RULES GOVERNING HARD-**  
13                               **SHIPS AND UNFORSEEN FINANCIAL EMER-**  
14                               **GENCIES.**

15       Within 180 days after the date of the enactment of  
16 this Act, the Secretary of the Treasury shall modify the  
17 rules for determining whether a participant has had a  
18 hardship for purposes of section 401(k)(2)(B)(i)(IV) of  
19 the Internal Revenue Code of 1986 to provide that if an  
20 event (including the occurrence of a medical expense)  
21 would constitute a hardship under the plan if it occurred  
22 with respect to the participant's spouse or dependent (as  
23 defined in section 152 of such Code), such event shall, to  
24 the extent permitted under a plan, constitute a hardship  
25 if it occurs with respect to a person who is a beneficiary

1 under the plan with respect to the participant. The Sec-  
2 retary of the Treasury shall issue similar rules for pur-  
3 poses of determining whether a participant has had—

4 (1) a hardship for purposes of section  
5 403(b)(11)(B) of such Code; or

6 (2) an unforeseen financial emergency for pur-  
7 poses of sections 409A(a)(2)(A)(vi),  
8 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such  
9 Code.

10 **SEC. 827. PENALTY-FREE WITHDRAWALS FROM RETIRE-**  
11 **MENT PLANS FOR INDIVIDUALS CALLED TO**  
12 **ACTIVE DUTY FOR AT LEAST 179 DAYS.**

13 (a) IN GENERAL.—Paragraph (2) of section 72(t) of  
14 the Internal Revenue Code of 1986 (relating to 10-percent  
15 additional tax on early distributions from qualified retire-  
16 ment plans) is amended by adding at the end the following  
17 new subparagraph:

18 “(G) DISTRIBUTIONS FROM RETIREMENT  
19 PLANS TO INDIVIDUALS CALLED TO ACTIVE  
20 DUTY.—

21 “(i) IN GENERAL.—Any qualified re-  
22 servist distribution.

23 “(ii) AMOUNT DISTRIBUTED MAY BE  
24 REPAID.—Any individual who receives a  
25 qualified reservist distribution may, at any

1 time during the 2-year period beginning on  
2 the day after the end of the active duty pe-  
3 riod, make one or more contributions to an  
4 individual retirement plan of such indi-  
5 vidual in an aggregate amount not to ex-  
6 ceed the amount of such distribution. The  
7 dollar limitations otherwise applicable to  
8 contributions to individual retirement plans  
9 shall not apply to any contribution made  
10 pursuant to the preceding sentence. No de-  
11 duction shall be allowed for any contribu-  
12 tion pursuant to this clause.

13 “(iii) QUALIFIED RESERVIST DIS-  
14 TRIBUTION.—For purposes of this sub-  
15 paragraph, the term ‘qualified reservist  
16 distribution’ means any distribution to an  
17 individual if—

18 “(I) such distribution is from an  
19 individual retirement plan, or from  
20 amounts attributable to employer con-  
21 tributions made pursuant to elective  
22 deferrals described in subparagraph  
23 (A) or (C) of section 402(g)(3) or sec-  
24 tion 501(c)(18)(D)(iii),

1 “(II) such individual was (by rea-  
2 son of being a member of a reserve  
3 component (as defined in section 101  
4 of title 37, United States Code)) or-  
5 dered or called to active duty for a pe-  
6 riod in excess of 179 days or for an  
7 indefinite period, and

8 “(III) such distribution is made  
9 during the period beginning on the  
10 date of such order or call and ending  
11 at the close of the active duty period.

12 “(iv) APPLICATION OF SUBPARA-  
13 GRAPH.—This subparagraph applies to in-  
14 dividuals ordered or called to active duty  
15 after September 11, 2001, and before De-  
16 cember 31, 2007. In no event shall the 2-  
17 year period referred to in clause (ii) end  
18 before the date which is 2 years after the  
19 date of the enactment of this subpara-  
20 graph.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 401(k)(2)(B)(i) of such Code is  
23 amended by striking “or” at the end of subclause  
24 (III), by striking “and” at the end of subclause (IV)

1 and inserting “or”, and by inserting after subclause  
2 (IV) the following new subclause:

3 “(V) in the case of a qualified re-  
4 servist distribution (as defined in sec-  
5 tion 72(t)(2)(G)(iii)), the date on  
6 which a period referred to in sub-  
7 clause (III) of such section begins,  
8 and”.

9 (2) Section 403(b)(7)(A)(ii) of such Code is  
10 amended by inserting “(unless such amount is a dis-  
11 tribution to which section 72(t)(2)(G) applies)” after  
12 “distributee”.

13 (3) Section 403(b)(11) of such Code is amend-  
14 ed by striking “or” at the end of subparagraph (A),  
15 by striking the period at the end of subparagraph  
16 (B) and inserting “, or”, and by inserting after sub-  
17 paragraph (B) the following new subparagraph:

18 “(C) for distributions to which section  
19 72(t)(2)(G) applies.”.

20 (c) EFFECTIVE DATE; WAIVER OF LIMITATIONS.—

21 (1) EFFECTIVE DATE.—The amendment made  
22 by this section shall apply to distributions after Sep-  
23 tember 11, 2001.

24 (2) WAIVER OF LIMITATIONS.—If refund or  
25 credit of any overpayment of tax resulting from the



1 amendments made by this section is prevented at  
2 any time before the close of the 1-year period begin-  
3 ning on the date of the enactment of this Act by the  
4 operation of any law or rule of law (including res ju-  
5 dicata), such refund or credit may nevertheless be  
6 made or allowed if claim therefor is filed before the  
7 close of such period.

8 **SEC. 828. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**  
9 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**  
10 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**  
11 **PLOYEES.**

12 (a) IN GENERAL.—Section 72(t) of the Internal Rev-  
13 enue Code of 1986 (relating to subsection not to apply  
14 to certain distributions) is amended by adding at the end  
15 the following new paragraph:

16 “(10) DISTRIBUTIONS TO QUALIFIED PUBLIC  
17 SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

18 “(A) IN GENERAL.—In the case of a dis-  
19 tribution to a qualified public safety employee  
20 from a governmental plan (within the meaning  
21 of section 414(d)) which is a defined benefit  
22 plan, paragraph (2)(A)(v) shall be applied by  
23 substituting ‘age 50’ for ‘age 55’.

24 “(B) QUALIFIED PUBLIC SAFETY EM-  
25 PLOYEE.—For purposes of this paragraph, the

1 term ‘qualified public safety employee’ means  
2 any employee of a State or political subdivision  
3 of a State who provides police protection, fire-  
4 fighting services, or emergency medical services  
5 for any area within the jurisdiction of such  
6 State or political subdivision.”

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to distributions after the date of  
9 the enactment of this Act.

10 **SEC. 829. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
11 **FICIARIES OF CERTAIN RETIREMENT PLAN**  
12 **DISTRIBUTIONS.**

13 (a) IN GENERAL.—

14 (1) QUALIFIED PLANS.—Section 402(c) of the  
15 Internal Revenue Code of 1986 (relating to rollovers  
16 from exempt trusts) is amended by adding at the  
17 end the following new paragraph:

18 “(11) DISTRIBUTIONS TO INHERITED INDI-  
19 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-  
20 FICIARY.—

21 “(A) IN GENERAL.—If, with respect to any  
22 portion of a distribution from an eligible retire-  
23 ment plan of a deceased employee, a direct  
24 trustee-to-trustee transfer is made to an indi-  
25 vidual retirement plan described in clause (i) or

(ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

“(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

“(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

“(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

“(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.”.

1           (2) SECTION 403(a) PLANS.—Subparagraph  
2           (B) of section 403(a)(4) of such Code (relating to  
3           rollover amounts) is amended by inserting “and  
4           (11)” after “(7)”.

5           (3) SECTION 403(b) PLANS.—Subparagraph  
6           (B) of section 403(b)(8) of such Code (relating to  
7           rollover amounts) is amended by striking “and (9)”  
8           and inserting “, (9), and (11)”.

9           (4) SECTION 457 PLANS.—Subparagraph (B)  
10          of section 457(e)(16) of such Code (relating to roll-  
11          over amounts) is amended by striking “and (9)” and  
12          inserting “, (9), and (11)”.

13          (b) EFFECTIVE DATE.—The amendments made by  
14          this section shall apply to distributions after December 31,  
15          2006.

16      **SEC. 830. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

18          (a) IN GENERAL.—The Secretary of the Treasury (or  
19          the Secretary’s delegate) shall make available a form (or  
20          modify existing forms) for use by individuals to direct that  
21          a portion of any refund of overpayment of tax imposed  
22          by chapter 1 of the Internal Revenue Code of 1986 be  
23          paid directly to an individual retirement plan (as defined  
24          in section 7701(a)(37) of such Code) of such individual.

1 (b) EFFECTIVE DATE.—The form required by sub-  
2 section (a) shall be made available for taxable years begin-  
3 ning after December 31, 2006.

4 **SEC. 831. ALLOWANCE OF ADDITIONAL IRA PAYMENTS IN**  
5 **CERTAIN BANKRUPTCY CASES.**

6 (a) ALLOWANCE OF CONTRIBUTIONS.—Section  
7 219(b)(5) of the Internal Revenue Code of 1986 (relating  
8 to deductible amount) is amended by redesignating sub-  
9 paragraph (C) as subparagraph (D) and by inserting after  
10 subparagraph (B) the following new subparagraph:

11 “(C) CATCHUP CONTRIBUTIONS FOR CER-  
12 TAIN INDIVIDUALS.—

13 “(i) IN GENERAL.—In the case of an  
14 applicable individual who elects to make a  
15 qualified retirement contribution in addi-  
16 tion to the deductible amount determined  
17 under subparagraph (A)—

18 “(I) the deductible amount for  
19 any taxable year shall be increased by  
20 an amount equal to 3 times the appli-  
21 cable amount determined under sub-  
22 paragraph (B) for such taxable year,  
23 and

24 “(II) subparagraph (B) shall not  
25 apply.

1           “(ii) APPLICABLE INDIVIDUAL.—For  
2 purposes of this subparagraph, the term  
3 ‘applicable individual’ means, with respect  
4 to any taxable year, any individual who  
5 was a qualified participant in a qualified  
6 cash or deferred arrangement (as defined  
7 in section 401(k)) of an employer described  
8 in clause (iii) under which the employer  
9 matched at least 50 percent of the employ-  
10 ee’s contributions to such arrangement  
11 with stock of such employer.

12           “(iii) EMPLOYER DESCRIBED.—An  
13 employer is described in this clause if, in  
14 any taxable year preceding the taxable year  
15 described in clause (ii)—

16           “(I) such employer (or any con-  
17 trolling corporation of such employer)  
18 was a debtor in a case under title 11  
19 of the United States Code, or similar  
20 Federal or State law, and

21           “(II) such employer (or any other  
22 person) was subject to an indictment  
23 or conviction resulting from business  
24 transactions related to such case.

1 “(iv) QUALIFIED PARTICIPANT.—For  
2 purposes of clause (ii), the term ‘qualified  
3 participant’ means any applicable indi-  
4 vidual who was a participant in the cash or  
5 deferred arrangement described in such  
6 clause on the date that is 6 months before  
7 the filing of the case described in clause  
8 (iii).

9 “(v) TERMINATION.—This subpara-  
10 graph shall not apply to taxable years be-  
11 ginning after December 31, 2009.”

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

15 **SEC. 832. DETERMINATION OF AVERAGE COMPENSATION**  
16 **FOR SECTION 415 LIMITS.**

17 (a) IN GENERAL.—Section 415(b)(3) of the Internal  
18 Revenue Code of 1986 is amended by striking “both was  
19 an active participant in the plan and”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to years beginning after December  
22 31, 2005.

1   **SEC. 833. INFLATION INDEXING OF GROSS INCOME LIMITA-**  
2                   **TIONS ON CERTAIN RETIREMENT SAVINGS**  
3                   **INCENTIVES.**

4           (a) SAVER'S CREDIT.—Subsection (b) of section 25B  
5 of the Internal Revenue Code of 1986 is amended to read  
6 as follows:

7           “(b) APPLICABLE PERCENTAGE.—For purposes of  
8 this section—

9                   “(1) JOINT RETURNS.—In the case of a joint  
10 return, the applicable percentage is—

11                           “(A) if the adjusted gross income of the  
12 taxpayer is not over \$30,000, 50 percent,

13                           “(B) if the adjusted gross income of the  
14 taxpayer is over \$30,000 but not over \$32,500,  
15 20 percent,

16                           “(C) if the adjusted gross income of the  
17 taxpayer is over \$32,500 but not over \$50,000,  
18 10 percent, and

19                           “(D) if the adjusted gross income of the  
20 taxpayer is over \$50,000, zero percent.

21           “(2) OTHER RETURNS.—In the case of—

22                           “(A) a head of household, the applicable  
23 percentage shall be determined under para-  
24 graph (1) except that such paragraph shall be  
25 applied by substituting for each dollar amount  
26 therein (as adjusted under paragraph (3)) a



1           dollar amount equal to 75 percent of such dol-  
2           lar amount, and

3           “(B) any taxpayer not described in para-  
4           graph (1) or subparagraph (A), the applicable  
5           percentage shall be determined under para-  
6           graph (1) except that such paragraph shall be  
7           applied by substituting for each dollar amount  
8           therein (as adjusted under paragraph (3)) a  
9           dollar amount equal to 50 percent of such dol-  
10          lar amount.

11          “(3) INFLATION ADJUSTMENT.—In the case of  
12          any taxable year beginning in a calendar year after  
13          2006, each of the dollar amount in paragraph (1)  
14          shall be increased by an amount equal to—

15               “(A) such dollar amount, multiplied by

16               “(B) the cost-of-living adjustment deter-  
17               mined under section 1(f)(3) for the calendar  
18               year in which the taxable year begins, deter-  
19               mined by substituting ‘calendar year 2005’ for  
20               ‘calendar year 1992’ in subparagraph (B)  
21               thereof.

22          Any increase determined under the preceding sen-  
23          tence shall be rounded to the nearest multiple of  
24          \$500.”.

1 (b) DEDUCTION OF RETIREMENT CONTRIBUTIONS  
2 FOR ACTIVE PARTICIPANTS.—Section 219(g) of such  
3 Code is amended by adding at the end the following new  
4 paragraph:

5 “(8) INFLATION ADJUSTMENT.—In the case of  
6 any taxable year beginning in a calendar year after  
7 2006, the dollar amount in the last row of the table  
8 contained in paragraph (3)(B)(i), the dollar amount  
9 in the last row of the table contained in paragraph  
10 (3)(B)(ii), and the dollar amount contained in para-  
11 graph (7)(A), shall each be increased by an amount  
12 equal to—

13 “(A) such dollar amount, multiplied by

14 “(B) the cost-of-living adjustment deter-  
15 mined under section 1(f)(3) for the calendar  
16 year in which the taxable year begins, deter-  
17 mined by substituting ‘calendar year 2005’ for  
18 ‘calendar year 1992’ in subparagraph (B)  
19 thereof.

20 Any increase determined under the preceding sen-  
21 tence shall be rounded to the nearest multiple of  
22 \$1,000.”.

23 (c) CONTRIBUTION LIMITATION FOR ROTH IRAS.—  
24 Section 408A(c)(3) of such Code is amended by adding  
25 at the end the following new subparagraph:

1           “(C) INFLATION ADJUSTMENT.—In the  
2 case of any taxable year beginning in a calendar  
3 year after 2006, the dollar amounts in sub-  
4 clauses (I) and (II) of subparagraph (C)(ii)  
5 shall each be increased by an amount equal  
6 to—

7                   “(i) such dollar amount, multiplied by

8                   “(ii) the cost-of-living adjustment de-  
9 termined under section 1(f)(3) for the cal-  
10 endar year in which the taxable year be-  
11 gins, determined by substituting ‘calendar  
12 year 2005’ for ‘calendar year 1992’ in sub-  
13 paragraph (B) thereof.

14 Any increase determined under the preceding  
15 sentence shall be rounded to the nearest mul-  
16 tiple of \$1,000.”.

17       (d) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 2006.

1       **Subtitle D—Health and Medical**  
2                   **Benefits**

3       **SEC. 841. USE OF EXCESS PENSION ASSETS FOR FUTURE**  
4                   **RETIREE HEALTH BENEFITS AND COLLEC-**  
5                   **TIVELY BARGAINED RETIREE HEALTH BENE-**  
6                   **FITS.**

7           (a) IN GENERAL.—Section 420 of the Internal Rev-  
8       enue Code of 1986 (relating to transfers of excess pension  
9       assets to retiree health accounts) is amended by adding  
10      at the end the following new subsection:

11           “(f) QUALIFIED TRANSFERS TO COVER FUTURE RE-  
12      TIREE HEALTH COSTS AND COLLECTIVELY BARGAINED  
13      RETIREE HEALTH BENEFITS.—

14           “(1) IN GENERAL.—An employer maintaining a  
15      defined benefit plan (other than a multiemployer  
16      plan) may, in lieu of a qualified transfer, elect for  
17      any taxable year to have the plan make—

18                   “(A) a qualified future transfer, or

19                   “(B) a collectively bargained transfer.

20      Except as provided in this subsection, a qualified fu-  
21      ture transfer and a collectively bargained transfer  
22      shall be treated for purposes of this title and the  
23      Employee Retirement Income Security Act of 1974  
24      as if it were a qualified transfer.

1           “(2) QUALIFIED FUTURE AND COLLECTIVELY  
2           BARGAINED TRANSFERS.—For purposes of this sub-  
3           section—

4                   “(A) IN GENERAL.—The terms ‘qualified  
5           future transfer’ and ‘collectively bargained  
6           transfer’ mean a transfer which meets all of the  
7           requirements for a qualified transfer, except  
8           that—

9                           “(i) the determination of excess pen-  
10           sion assets shall be made under subpara-  
11           graph (B),

12                          “(ii) the limitation on the amount  
13           transferred shall be determined under sub-  
14           paragraph (C),

15                          “(iii) the minimum cost requirements  
16           of subsection (c)(3) shall be modified as  
17           provided under subparagraph (D), and

18                          “(iv) in the case of a collectively bar-  
19           gained transfer, the requirements of sub-  
20           paragraph (E) shall be met with respect to  
21           the transfer.

22           “(B) EXCESS PENSION ASSETS.—

23                          “(i) IN GENERAL.—In determining ex-  
24           cess pension assets for purposes of this  
25           subsection, subsection (e)(2) shall be ap-

1           plied by substituting ‘120 percent’ for ‘125  
2           percent’.

3                   “(ii) REQUIREMENT TO MAINTAIN  
4           FUNDED STATUS.—If, as of any valuation  
5           date of any plan year in the transfer pe-  
6           riod, the amount determined under sub-  
7           section (e)(2)(B) (after application of  
8           clause (i)) exceeds the amount determined  
9           under subsection (e)(2)(A), either—

10                   “(I) the employer maintaining  
11           the plan shall make contributions to  
12           the plan in an amount not less than  
13           the amount required to reduce such  
14           excess to zero as of such date, or

15                   “(II) there is transferred from  
16           the health benefits account to the plan  
17           an amount not less than the amount  
18           required to reduce such excess to zero  
19           as of such date.

20                   “(C) LIMITATION ON AMOUNT TRANS-  
21           FERRED.—Notwithstanding subsection (b)(3),  
22           the amount of the excess pension assets which  
23           may be transferred—

24                   “(i) in the case of a qualified future  
25           transfer shall be equal to the sum of—

1                   “(I) if the transfer period in-  
2                   cludes the taxable year of the trans-  
3                   fer, the amount determined under  
4                   subsection (b)(3) for such taxable  
5                   year, plus

6                   “(II) in the case of all other tax-  
7                   able years in the transfer period, the  
8                   sum of the qualified current retiree  
9                   health liabilities which the plan rea-  
10                  sonably estimates, in accordance with  
11                  guidance issued by the Secretary, will  
12                  be incurred for each of such years,  
13                  and

14                  “(ii) in the case of a collectively bar-  
15                  gained transfer, shall not exceed the  
16                  amount which is reasonably estimated, in  
17                  accordance with the provisions of the col-  
18                  lective bargaining agreement and generally  
19                  accepted accounting principles, to be the  
20                  amount the employer maintaining the plan  
21                  will pay (whether directly or through reim-  
22                  bursement) out of such account during the  
23                  collectively bargained cost maintenance pe-  
24                  riod for collectively bargained retiree  
25                  health liabilities.

1 “(D) MINIMUM COST REQUIREMENTS.—

2 “(i) IN GENERAL.—The requirements  
3 of subsection (c)(3) shall be treated as met  
4 if—

5 “(I) in the case of a qualified fu-  
6 ture transfer, each group health plan  
7 or arrangement under which applica-  
8 ble health benefits are provided pro-  
9 vides applicable health benefits during  
10 the period beginning with the first  
11 year of the transfer period and ending  
12 with the last day of the 4th year fol-  
13 lowing the transfer period such that  
14 the annual average amount of such  
15 the applicable employer cost during  
16 such period is not less than the appli-  
17 cable employer cost determined under  
18 subsection (c)(3)(A) with respect to  
19 the transfer, and

20 “(II) in the case of a collectively  
21 bargained transfer, each collectively  
22 bargained group health plan under  
23 which collectively bargained health  
24 benefits are provided provides that the  
25 collectively bargained employer cost



1                   for each taxable year during the col-  
2                   lectively bargained cost maintenance  
3                   period shall not be less than the  
4                   amount specified by the collective bar-  
5                   gaining agreement.

6                   “(ii) ELECTION TO MAINTAIN BENE-  
7                   FITS FOR FUTURE TRANSFERS.—An em-  
8                   ployer may elect, in lieu of the require-  
9                   ments of clause (i)(I), to meet the require-  
10                  ments of subsection (c)(3) by meeting the  
11                  requirements of such subsection (as in ef-  
12                  fect before the amendments made by sec-  
13                  tion 535 of the Tax Relief Extension Act  
14                  of 1999) for each of the years described in  
15                  the period under clause (i)(I).

16                  “(iii) COLLECTIVELY BARGAINED EM-  
17                  PLOYER COST.—For purposes of this sub-  
18                  paragraph, the term ‘collectively bargained  
19                  employer cost’ means the average cost per  
20                  covered individual of providing collectively  
21                  bargained retiree health benefits as deter-  
22                  mined in accordance with the applicable  
23                  collective bargaining agreement. Such  
24                  agreement may provide for an appropriate  
25                  reduction in the collectively bargained em-

1           ployer cost to take into account any por-  
2           tion of the collectively bargained retiree  
3           health benefits that is provided or financed  
4           by a government program or other source.

5           “(E) SPECIAL RULES FOR COLLECTIVELY  
6           BARGAINED TRANSFERS.—

7                   “(i) IN GENERAL.—A collectively bar-  
8           gained transfer shall only include a trans-  
9           fer which—

10                   “(I) is made in accordance with a  
11           collective bargaining agreement,

12                   “(II) before the transfer, the em-  
13           ployer designates, in a written notice  
14           delivered to each employee organiza-  
15           tion that is a party to the collective  
16           bargaining agreement, as a collectively  
17           bargained transfer in accordance with  
18           this section, and

19                   “(III) involves a plan maintained  
20           by an employer which, in its taxable  
21           year ending in 2005, provided health  
22           benefits or coverage to retirees and  
23           their spouses and dependents under  
24           all of the benefit plans maintained by  
25           the employer, but only if the aggre-

1           gate cost (including administrative ex-  
2           penses) of such benefits or coverage  
3           which would have been allowable as a  
4           deduction to the employer (if such  
5           benefits or coverage had been pro-  
6           vided directly by the employer and the  
7           employer used the cash receipts and  
8           disbursements method of accounting)  
9           is at least 5 percent of the gross re-  
10          ceipts of the employer (determined in  
11          accordance with the last sentence of  
12          subsection (c)(2)(E)(ii)(II)) for such  
13          taxable year, or a plan maintained by  
14          a successor to such employer.

15          “(ii) USE OF ASSETS.—Any assets  
16          transferred to a health benefits account in  
17          a collectively bargained transfer (and any  
18          income allocable thereto) shall be used only  
19          to pay collectively bargained retiree health  
20          liabilities (other than liabilities of key em-  
21          ployees not taken into account under para-  
22          graph (6)(B)(iii)) for the taxable year of  
23          the transfer or for any subsequent taxable  
24          year during the collectively bargained cost

1 maintenance period (whether directly or  
2 through reimbursement).

3 “(3) COORDINATION WITH OTHER TRANS-  
4 FERS.—In applying subsection (b)(3) to any subse-  
5 quent transfer during a taxable year in a transfer  
6 period or collectively bargained cost maintenance pe-  
7 riod, qualified current retiree health liabilities shall  
8 be reduced by any such liabilities taken into account  
9 with respect to the qualified future transfer or col-  
10 lectively bargained transfer to which such period re-  
11 lates.

12 “(4) SPECIAL DEDUCTION RULES FOR COLLEC-  
13 TIVELY BARGAINED TRANSFERS.—In the case of a  
14 collectively bargained transfer—

15 “(A) the limitation under subsection  
16 (d)(1)(C) shall not apply, and

17 “(B) notwithstanding subsection (d)(2), an  
18 employer may contribute an amount to a health  
19 benefits account or welfare benefit fund (as de-  
20 fined in section 419(e)(1)) with respect to col-  
21 lectively bargained retiree health liabilities for  
22 which transferred assets are required to be used  
23 under subsection (c)(1)(B), and the deduct-  
24 ibility of any such contribution shall be gov-  
25 erned by the limits applicable to the deduct-

1           ibility of contributions to a welfare benefit fund  
2           under a collective bargaining agreement (as de-  
3           termined under section 419A(f)(5)(A)) without  
4           regard to whether such contributions are made  
5           to a health benefits account or welfare benefit  
6           fund and without regard to the provisions of  
7           section 404 or the other provisions of this sec-  
8           tion.

9           The Secretary shall provide rules to ensure that the  
10          application of this paragraph does not result in a de-  
11          duction being allowed more than once for the same  
12          contribution or for 2 or more contributions or ex-  
13          penditures relating to the same collectively bar-  
14          gained retiree health liabilities.

15               “(5) TRANSFER PERIOD.—For purposes of this  
16          subsection, the term ‘transfer period’ means, with  
17          respect to any transfer, a period of consecutive tax-  
18          able years (not less than 2) specified in the election  
19          under paragraph (1) which begins and ends during  
20          the 10-taxable-year period beginning with the tax-  
21          able year of the transfer.

22               “(6) TERMS RELATING TO COLLECTIVELY BAR-  
23          GAINED TRANSFERS.—For purposes of this sub-  
24          section—

1           “(A) COLLECTIVELY BARGAINED COST  
2 MAINTENANCE PERIOD.—The term ‘collectively  
3 bargained cost maintenance period’ means, with  
4 respect to each covered retiree and his covered  
5 spouse and dependents, the shorter of—

6                   “(i) the remaining lifetime of such  
7 covered retiree and his covered spouse and  
8 dependents, or

9                   “(ii) the period of coverage provided  
10 by the collectively bargained health plan  
11 (determined as of the date of the collec-  
12 tively bargained transfer) with respect to  
13 such covered retiree and his covered spouse  
14 and dependents.

15           “(B) COLLECTIVELY BARGAINED RETIREE  
16 HEALTH LIABILITIES.—

17                   “(i) IN GENERAL.—The term ‘collec-  
18 tively bargained retiree health liabilities’  
19 means the present value, as of the begin-  
20 ning of a taxable year and determined in  
21 accordance with the applicable collective  
22 bargaining agreement, of all collectively  
23 bargained health benefits (including ad-  
24 ministrative expenses) for such taxable  
25 year and all subsequent taxable years dur-

1 ing the collectively bargained cost mainte-  
2 nance period.

3 “(ii) REDUCTION FOR AMOUNTS PRE-  
4 VIOUSLY SET ASIDE.—The amount deter-  
5 mined under clause (i) shall be reduced by  
6 the value (as of the close of the plan year  
7 preceding the year of the collectively bar-  
8 gained transfer) of the assets in all health  
9 benefits accounts or welfare benefit funds  
10 (as defined in section 419(e)(1)) set aside  
11 to pay for the collectively bargained retiree  
12 health liabilities.

13 “(iii) KEY EMPLOYEES EXCLUDED.—  
14 If an employee is a key employee (within  
15 the meaning of section 416(I)(1)) with re-  
16 spect to any plan year ending in a taxable  
17 year, such employee shall not be taken into  
18 account in computing collectively bargained  
19 retiree health liabilities for such taxable  
20 year or in calculating collectively bargained  
21 employer cost under subsection (c)(3)(C).

22 “(C) COLLECTIVELY BARGAINED HEALTH  
23 BENEFITS.—The term ‘collectively bargained  
24 health benefits’ means health benefits or cov-  
25 erage which are provided to—

1 “(i) retired employees who, imme-  
2 diately before the collectively bargained  
3 transfer, are entitled to receive such bene-  
4 fits upon retirement and who are entitled  
5 to pension benefits under the plan, and  
6 their spouses and dependents, and

7 “(ii) if specified by the provisions of  
8 the collective bargaining agreement gov-  
9 erning the collectively bargained transfer,  
10 active employees who, following their re-  
11 tirement, are entitled to receive such bene-  
12 fits and who are entitled to pension bene-  
13 fits under the plan, and their spouses and  
14 dependents.

15 “(D) COLLECTIVELY BARGAINED HEALTH  
16 PLAN.—The term ‘collectively bargained health  
17 plan’ means a group health plan or arrange-  
18 ment for retired employees and their spouses  
19 and dependents that is maintained pursuant to  
20 1 or more collective bargaining agreements.”.

21 (b) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to transfers after the date of the  
23 enactment of this Act.



1 **SEC. 842. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**  
2 **TIEMPLOYER HEALTH PLAN.**

3 (a) IN GENERAL.—Section 420 of the Internal Rev-  
4 enue Code of 1986 is amended—

5 (1) by striking “(other than a multiemployer  
6 plan)” in subsection (a), and

7 (2) by adding at the end of subsection (e) the  
8 following new paragraph:

9 “(5) APPLICATION TO MULTIEMPLOYER  
10 PLANS.—In the case of a multiemployer plan, this  
11 section shall be applied to any such plan—

12 “(A) by treating any reference in this sec-  
13 tion to an employer as a reference to all em-  
14 ployers maintaining the plan (or, if appropriate,  
15 the plan sponsor), and

16 “(B) in accordance with such modifications  
17 of this section (and the provisions of this title  
18 relating to this section) as the Secretary deter-  
19 mines appropriate to reflect the fact the plan is  
20 not maintained by a single employer.”

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to transfers made in taxable years  
23 beginning after December 31, 2006.

1 **SEC. 843. ALLOWANCE OF RESERVE FOR MEDICAL BENE-**  
2 **FITS OF PLANS SPONSORED BY BONA FIDE**  
3 **ASSOCIATIONS.**

4 (a) IN GENERAL.—Section 419A(c) of the Internal  
5 Revenue Code of 1986 (relating to account limit) is  
6 amended by adding at the end the following new para-  
7 graph:

8 “(6) ADDITIONAL RESERVE FOR MEDICAL BEN-  
9 EFITS OF BONA FIDE ASSOCIATION PLANS.—

10 “(A) IN GENERAL.—An applicable account  
11 limit for any taxable year may include a reserve  
12 in an amount not to exceed 35 percent of the  
13 sum of—

14 “(i) the qualified direct costs, and  
15 “(ii) the change in claims incurred  
16 but unpaid,  
17 for such taxable year with respect to medical  
18 benefits (other than post-retirement medical  
19 benefits).

20 “(B) APPLICABLE ACCOUNT LIMIT.—For  
21 purposes of this subsection, the term ‘applicable  
22 account limit’ means an account limit for a  
23 qualified asset account with respect to medical  
24 benefits provided through a plan maintained by  
25 a bona fide association (as defined in section

1           2791(d)(3) of the Public Health Service Act  
2           (42 U.S.C. 300gg–91(d)(3))”.

3           (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2006.

6 **SEC. 844. TREATMENT OF ANNUITY AND LIFE INSURANCE**  
7                   **CONTRACTS WITH A LONG-TERM CARE IN-**  
8                   **SURANCE FEATURE.**

9           (a) EXCLUSION FROM GROSS INCOME.—Subsection  
10 (e) of section 72 of the Internal Revenue Code of 1986  
11 (relating to amounts not received as annuities) is amended  
12 by redesignating paragraph (11) as paragraph (12) and  
13 by inserting after paragraph (10) the following new para-  
14 graph:

15                   “(11) SPECIAL RULES FOR CERTAIN COMBINA-  
16           TION CONTRACTS PROVIDING LONG-TERM CARE IN-  
17           SURANCE.—Notwithstanding paragraphs (2), (5)(C),  
18           and (10), in the case of any charge against the cash  
19           value of an annuity contract or the cash surrender  
20           value of a life insurance contract made as payment  
21           for coverage under a qualified long-term care insur-  
22           ance contract which is part of or a rider on such an-  
23           nuity or life insurance contract—

1                   “(A) the investment in the contract shall  
2                   be reduced (but not below zero) by such charge,  
3                   and

4                   “(B) such charge shall not be includible in  
5                   gross income.”.

6           (b) TAX-FREE EXCHANGES AMONG CERTAIN INSUR-  
7   ANCE POLICIES.—

8                   (1) ANNUITY CONTRACTS CAN INCLUDE QUALI-  
9                   FIED LONG-TERM CARE INSURANCE RIDERS.—Para-  
10                  graph (2) of section 1035(b) of such Code is amend-  
11                  ed by adding at the end the following new sentence:  
12                  “For purposes of the preceding sentence, a contract  
13                  shall not fail to be treated as an annuity contract  
14                  solely because a qualified long-term care insurance  
15                  contract is a part of or a rider on such contract.”.

16                  (2) LIFE INSURANCE CONTRACTS CAN INCLUDE  
17                  QUALIFIED LONG-TERM CARE INSURANCE RIDERS.—  
18                  Paragraph (3) of section 1035(b) of such Code is  
19                  amended by adding at the end the following new  
20                  sentence: “For purposes of the preceding sentence,  
21                  a contract shall not fail to be treated as a life insur-  
22                  ance contract solely because a qualified long-term  
23                  care insurance contract is a part of or a rider on  
24                  such contract.”.

1           (3) EXPANSION OF TAX-FREE EXCHANGES OF  
2       LIFE INSURANCE, ENDOWMENT, AND ANNUITY CON-  
3       TRACTS FOR LONG-TERM CARE CONTRACTS.—Sub-  
4       section (a) of section 1035 of such Code (relating to  
5       certain exchanges of insurance policies) is amend-  
6       ed—

7           (A) in paragraph (1) by inserting “or for  
8       a qualified long-term care insurance contract”  
9       before the semicolon at the end,

10          (B) in paragraph (2) by inserting “, or (C)  
11       for a qualified long-term care insurance con-  
12       tract” before the semicolon at the end, and

13          (C) in paragraph (3) by inserting “or for  
14       a qualified long-term care insurance contract”  
15       before the period at the end.

16       (4) TAX-FREE EXCHANGES OF QUALIFIED  
17       LONG-TERM CARE INSURANCE CONTRACT.—Sub-  
18       section (a) of section 1035 of such Code (relating to  
19       certain exchanges of insurance policies) is amended  
20       by striking “or” at the end of paragraph (2), by  
21       striking the period at the end of paragraph (3) and  
22       inserting “; or”, and by inserting after paragraph  
23       (3) the following new paragraph:

1           “(4) a qualified long-term care insurance con-  
2           tract for a qualified long-term care insurance con-  
3           tract.”.

4           (c) TREATMENT OF COVERAGE PROVIDED AS PART  
5 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Sub-  
6 section (e) of section 7702B of such Code (relating to  
7 treatment of qualified long-term care insurance) is amend-  
8 ed to read as follows:

9           “(e) TREATMENT OF COVERAGE PROVIDED AS PART  
10 OF A LIFE INSURANCE OR ANNUITY CONTRACT.—Except  
11 as otherwise provided in regulations prescribed by the Sec-  
12 retary, in the case of any long-term care insurance cov-  
13 erage (whether or not qualified) provided by a rider on  
14 or as part of a life insurance contract or an annuity con-  
15 tract—

16           “(1) IN GENERAL.—This title shall apply as if  
17           the portion of the contract providing such coverage  
18           is a separate contract.

19           “(2) DENIAL OF DEDUCTION UNDER SECTION  
20 213.—No deduction shall be allowed under section  
21 213(a) for any payment made for coverage under a  
22 qualified long-term care insurance contract if such  
23 payment is made as a charge against the cash sur-  
24 render value of a life insurance contract or the cash  
25 value of an annuity contract.

1           “(3) PORTION DEFINED.—For purposes of this  
2           subsection, the term ‘portion’ means only the terms  
3           and benefits under a life insurance contract or annu-  
4           ity contract that are in addition to the terms and  
5           benefits under the contract without regard to long-  
6           term care insurance coverage.

7           “(4) ANNUITY CONTRACTS TO WHICH PARA-  
8           GRAPH (1) DOES NOT APPLY.—For purposes of this  
9           subsection, none of the following shall be treated as  
10          an annuity contract:

11               “(A) A trust described in section 401(a)  
12               which is exempt from tax under section 501(a).

13               “(B) A contract—

14                       “(i) purchased by a trust described in  
15                       subparagraph (A),

16                       “(ii) purchased as part of a plan de-  
17                       scribed in section 403(a),

18                       “(iii) described in section 403(b),

19                       “(iv) provided for employees of a life  
20                       insurance company under a plan described  
21                       in section 818(a)(3), or

22                       “(v) from an individual retirement ac-  
23                       count or an individual retirement annuity.

1           “(C) A contract purchased by an employer  
2           for the benefit of the employee (or the employ-  
3           ee’s spouse).

4           Any dividend described in section 404(k) which is  
5           received by a participant or beneficiary shall, for  
6           purposes of this paragraph, be treated as paid under  
7           a separate contract to which subparagraph (B)(i)  
8           applies.”.

9           (d) INFORMATION REPORTING.—

10           (1) Subpart B of part III of subchapter A of  
11           chapter 61 of such Code (relating to information  
12           concerning transactions with other persons) is  
13           amended by adding at the end the following new sec-  
14           tion:

15           **“SEC. 6050U. CHARGES OR PAYMENTS FOR QUALIFIED**  
16                           **LONG-TERM CARE INSURANCE CONTRACTS**  
17                           **UNDER COMBINED ARRANGEMENTS.**

18           “(a) REQUIREMENT OF REPORTING.—Any person  
19           who makes a charge against the cash value of an annuity  
20           contract, or the cash surrender value of a life insurance  
21           contract, which is excludible from gross income under sec-  
22           tion 72(e)(11) shall make a return, according to the forms  
23           or regulations prescribed by the Secretary, setting forth—



1           “(1) the amount of the aggregate of such  
2           charges against each such contract for the calendar  
3           year,

4           “(2) the amount of the reduction in the invest-  
5           ment in each such contract by reason of such  
6           charges, and

7           “(3) the name, address, and TIN of the indi-  
8           vidual who is the holder of each such contract.

9           “(b) STATEMENTS TO BE FURNISHED TO PERSONS  
10          WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—  
11          Every person required to make a return under subsection  
12          (a) shall furnish to each individual whose name is required  
13          to be set forth in such return a written statement show-  
14          ing—

15               “(1) the name, address, and phone number of  
16               the information contact of the person making the  
17               payments, and

18               “(2) the information required to be shown on  
19               the return with respect to such individual.

20          The written statement required under the preceding sen-  
21          tence shall be furnished to the individual on or before Jan-  
22          uary 31 of the year following the calendar year for which  
23          the return under subsection (a) was required to be made.”.

24               (2) PENALTY FOR FAILURE TO FILE.—

1 (A) RETURN.—Subparagraph (B) of sec-  
2 tion 6724(d)(1) of such Code is amended by  
3 striking “or” at the end of clause (xvii), by  
4 striking “and” at the end of clause (xviii) and  
5 inserting “or”, and by adding at the end the  
6 following new clause:

7 “(xix) section 6050U (relating to  
8 charges or payments for qualified long-  
9 term care insurance contracts under com-  
10 bined arrangements), and”.

11 (B) STATEMENT.—Paragraph (2) of sec-  
12 tion 6724(d) of such Code is amended by strik-  
13 ing “or” at the end of subparagraph (AA), by  
14 striking the period at the end of subparagraph  
15 (BB), and by inserting after subparagraph  
16 (BB) the following new subparagraph:

17 “(CC) section 6050U (relating to charges  
18 or payments for qualified long-term care insur-  
19 ance contracts under combined arrange-  
20 ments).”.

21 (3) CLERICAL AMENDMENT.—The table of sec-  
22 tions for subpart B of part III of subchapter A of  
23 such chapter 61 of such Code is amended by adding  
24 at the end the following new item:

“Sec. 6050U. Charges or payments for qualified long-term care insurance con-  
tracts under combined arrangements.”.

1 (e) TREATMENT OF POLICY ACQUISITION EX-  
2 PENSES.—Subsection (e) of section 848 of such Code (re-  
3 lating to classification of contracts) is amended by adding  
4 at the end the following new paragraph:

5 “(6) TREATMENT OF CERTAIN QUALIFIED  
6 LONG-TERM CARE INSURANCE CONTRACT ARRANGE-  
7 MENTS.—An annuity or life insurance contract  
8 which includes a qualified long-term care insurance  
9 contract as a part of or a rider on such annuity or  
10 life insurance contract shall be treated as a specified  
11 insurance contract not described in subparagraph  
12 (A) or (B) of subsection (c)(1).”.

13 (f) TECHNICAL AMENDMENT.—Paragraph (1) of sec-  
14 tion 7702B(e) of such Code (as in effect before amend-  
15 ment by subsection (c)) is amended by striking “section”  
16 and inserting “title”.

17 (g) EFFECTIVE DATES.—

18 (1) IN GENERAL.—Except as otherwise pro-  
19 vided in this subsection, the amendments made by  
20 this section shall apply to contracts issued after De-  
21 cember 31, 1996, but only with respect to taxable  
22 years beginning after December 31, 2009.

23 (2) TAX-FREE EXCHANGES.—The amendments  
24 made by subsection (b) shall apply with respect to  
25 exchanges occurring after December 31, 2009.

1           (3) INFORMATION REPORTING.—The amend-  
2           ments made by subsection (d) shall apply to charges  
3           made after December 31, 2009.

4           (4) POLICY ACQUISITION EXPENSES.—The  
5           amendment made by subsection (e) shall apply to  
6           specified policy acquisition expenses determined for  
7           taxable years beginning after December 31, 2009.

8           (5) TECHNICAL AMENDMENT.—The amendment  
9           made by subsection (f) shall take effect as if in-  
10          cluded in section 321(a) of the Health Insurance  
11          Portability and Accountability Act of 1996.

12 **SEC. 845. DISTRIBUTIONS FROM GOVERNMENTAL RETIRE-**  
13 **MENT PLANS FOR HEALTH AND LONG-TERM**  
14 **CARE INSURANCE FOR PUBLIC SAFETY OFFI-**  
15 **CERS.**

16          (a) IN GENERAL.—Section 402 of the Internal Rev-  
17          enue Code of 1986 (relating to taxability of beneficiary  
18          of employees' trust) is amended by adding at the end the  
19          following new subsection:

20          “(1) DISTRIBUTIONS FROM GOVERNMENTAL PLANS  
21          FOR HEALTH AND LONG-TERM CARE INSURANCE.—

22                 “(1) IN GENERAL.—In the case of an employee  
23          who is an eligible retired public safety officer who  
24          makes the election described in paragraph (6) with  
25          respect to any taxable year of such employee, gross

1 income of such employee for such taxable year does  
2 not include any distribution from an eligible retire-  
3 ment plan to the extent that the aggregate amount  
4 of such distributions does not exceed the amount  
5 paid by such employee for qualified health insurance  
6 premiums of the employee, his spouse, or dependents  
7 (as defined in section 152) for such taxable year.

8 “(2) LIMITATION.—The amount which may be  
9 excluded from gross income for the taxable year by  
10 reason of paragraph (1) shall not exceed \$3,000.

11 “(3) DISTRIBUTIONS MUST OTHERWISE BE IN-  
12 CLUDIBLE.—

13 “(A) IN GENERAL.—An amount shall be  
14 treated as a distribution for purposes of para-  
15 graph (1) only to the extent that such amount  
16 would be includible in gross income without re-  
17 gard to paragraph (1).

18 “(B) APPLICATION OF SECTION 72.—Not-  
19 withstanding section 72, in determining the ex-  
20 tent to which an amount is treated as a dis-  
21 tribution for purposes of subparagraph (A), the  
22 aggregate amounts distributed from an eligible  
23 retirement plan in a taxable year (up to the  
24 amount excluded under paragraph (1)) shall be  
25 treated as includible in gross income (without

1           regard to subparagraph (A)) to the extent that  
2           such amount does not exceed the aggregate  
3           amount which would have been so includible if  
4           all amounts distributed from all eligible retire-  
5           ment plans were treated as 1 contract for pur-  
6           poses of determining the inclusion of such dis-  
7           tribution under section 72. Proper adjustments  
8           shall be made in applying section 72 to other  
9           distributions in such taxable year and subse-  
10          quent taxable years.

11          “(4) DEFINITIONS.—For purposes of this sub-  
12          section—

13               “(A) ELIGIBLE RETIREMENT PLAN.—For  
14               purposes of paragraph (1), the term ‘eligible re-  
15               tirement plan’ means a governmental plan  
16               (within the meaning of section 414(d)) which is  
17               described in clause (iii), (iv), (v), or (vi) of sub-  
18               section (c)(8)(B).

19               “(B) ELIGIBLE RETIRED PUBLIC SAFETY  
20               OFFICER.—The term ‘eligible retired public  
21               safety officer’ means an individual who, by rea-  
22               son of disability or attainment of normal retire-  
23               ment age, is separated from service as a public  
24               safety officer with the employer who maintains

1 the eligible retirement plan from which distribu-  
2 tions subject to paragraph (1) are made.

3 “(C) PUBLIC SAFETY OFFICER.—The term  
4 ‘public safety officer’ shall have the same mean-  
5 ing given such term by section 1204(9)(A) of  
6 the Omnibus Crime Control and Safe Streets  
7 Act of 1968 (42 U.S.C. 3796b(9)(A)).

8 “(D) QUALIFIED HEALTH INSURANCE  
9 PREMIUMS.—The term ‘qualified health insur-  
10 ance premiums’ means premiums for coverage  
11 for the eligible retired public safety officer, his  
12 spouse, and dependents, by an accident or  
13 health insurance plan or qualified long-term  
14 care insurance contract (as defined in section  
15 7702B(b)).

16 “(5) SPECIAL RULES.—For purposes of this  
17 subsection—

18 “(A) DIRECT PAYMENT TO INSURER RE-  
19 QUIRED.—Paragraph (1) shall only apply to a  
20 distribution if payment of the premiums is  
21 made directly to the provider of the accident or  
22 health insurance plan or qualified long-term  
23 care insurance contract by deduction from a  
24 distribution from the eligible retirement plan.

1           “(B) RELATED PLANS TREATED AS 1.—All  
2           eligible retirement plans of an employer shall be  
3           treated as a single plan.

4           “(6) ELECTION DESCRIBED.—

5           “(A) IN GENERAL.—For purposes of para-  
6           graph (1), an election is described in this para-  
7           graph if the election is made by an employee  
8           after separation from service with respect to  
9           amounts not distributed from an eligible retire-  
10          ment plan to have amounts from such plan dis-  
11          tributed in order to pay for qualified health in-  
12          surance premiums.

13          “(B) SPECIAL RULE.—A plan shall not be  
14          treated as violating the requirements of section  
15          401, or as engaging in a prohibited transaction  
16          for purposes of section 503(b), merely because  
17          it provides for an election with respect to  
18          amounts that are otherwise distributable under  
19          the plan or merely because of a distribution  
20          made pursuant to an election described in sub-  
21          paragraph (A).

22          “(7) COORDINATION WITH MEDICAL EXPENSE  
23          DEDUCTION.—The amounts excluded from gross in-  
24          come under paragraph (1) shall not be taken into  
25          account under section 213.



1           “(8) COORDINATION WITH DEDUCTION FOR  
2       HEALTH INSURANCE COSTS OF SELF-EMPLOYED IN-  
3       DIVIDUALS.—The amounts excluded from gross in-  
4       come under paragraph (1) shall not be taken into  
5       account under section 162(l).”.

6       (b) CONFORMING AMENDMENTS.—

7           (1) Section 403(a) of such Code (relating to  
8       taxability of beneficiary under a qualified annuity  
9       plan) is amended by inserting after paragraph (1)  
10      the following new paragraph:

11          “(2) SPECIAL RULE FOR HEALTH AND LONG-  
12      TERM CARE INSURANCE.—To the extent provided in  
13      section 402(l), paragraph (1) shall not apply to the  
14      amount distributed under the contract which is oth-  
15      erwise includible in gross income under this sub-  
16      section.”.

17          (2) Section 403(b) of such Code (relating to  
18      taxability of beneficiary under annuity purchased by  
19      section 501(c)(3) organization or public school) is  
20      amended by inserting after paragraph (1) the fol-  
21      lowing new paragraph:

22          “(2) SPECIAL RULE FOR HEALTH AND LONG-  
23      TERM CARE INSURANCE.—To the extent provided in  
24      section 402(l), paragraph (1) shall not apply to the  
25      amount distributed under the contract which is oth-

1       erwise includible in gross income under this sub-  
2       section.”.

3           (3) Section 457(a) of such Code (relating to  
4       year of inclusion in gross income) is amended by  
5       adding at the end the following new paragraph:

6           “(3) SPECIAL RULE FOR HEALTH AND LONG-  
7       TERM CARE INSURANCE.—In the case of a plan of  
8       an eligible employer described in subsection  
9       (e)(1)(A), to the extent provided in section 402(l),  
10      paragraph (1) shall not apply to amounts otherwise  
11      includible in gross income under this subsection.”.

12      (c) EFFECTIVE DATE.—The amendments made by  
13      this section shall apply to distributions in taxable years  
14      beginning after December 31, 2006.

15           **Subtitle E—United States Tax**  
16           **Court Modernization**

17      **SEC. 851. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
18           **JUDICIAL SURVIVOR ANNUITIES.**

19      (a) IN GENERAL.—Subsection (s) of section 7448 of  
20      the Internal Revenue Code of 1986 (relating to annuities  
21      to surviving spouses and dependent children of judges) is  
22      amended to read as follows:

23      “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
24      time that an increase is made under section 8340(b) of  
25      title 5, United States Code, in annuities payable under

1 subchapter III of chapter 83 of that title, each annuity  
2 payable from the survivors annuity fund under this section  
3 shall be increased at the same time by the same percent-  
4 age by which annuities are increased under such section  
5 8340(b).”.

6 (b) EFFECTIVE DATE.—The amendment made by  
7 this section shall apply with respect to increases made  
8 under section 8340(b) of title 5, United States Code, in  
9 annuities payable under subchapter III of chapter 83 of  
10 that title, taking effect after the date of the enactment  
11 of this Act.

12 **SEC. 852. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
13 **COURT JUDGES AGE 65 OR OVER.**

14 Section 7472 of the Internal Revenue Code of 1986  
15 (relating to expenditures) is amended by inserting after  
16 the first sentence the following new sentence: “Notwith-  
17 standing any other provision of law, the Tax Court is au-  
18 thorized to pay on behalf of its judges, age 65 or over,  
19 any increase in the cost of Federal Employees’ Group Life  
20 Insurance imposed after the date of the enactment of the  
21 Pension Protection Act of 2006, including any expenses  
22 generated by such payments, as authorized by the chief  
23 judge in a manner consistent with such payments author-  
24 ized by the Judicial Conference of the United States pur-

1 suant to section 604(a)(5) of title 28, United States  
2 Code.”

3 **SEC. 853. PARTICIPATION OF TAX COURT JUDGES IN THE**  
4 **THRIFT SAVINGS PLAN.**

5 (a) IN GENERAL.—Section 7447 of the Internal Rev-  
6 enue Code of 1986 (relating to retirement of judges) is  
7 amended by adding at the end the following new sub-  
8 section:

9 “(j) THRIFT SAVINGS PLAN.—

10 “(1) ELECTION TO CONTRIBUTE.—

11 “(A) IN GENERAL.—A judge of the Tax  
12 Court may elect to contribute to the Thrift Sav-  
13 ings Fund established by section 8437 of title  
14 5, United States Code.

15 “(B) PERIOD OF ELECTION.—An election  
16 may be made under this paragraph only during  
17 a period provided under section 8432(b) of title  
18 5, United States Code, for individuals subject to  
19 chapter 84 of such title.

20 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

21 Except as otherwise provided in this subsection, the  
22 provisions of subchapters III and VII of chapter 84  
23 of title 5, United States Code, shall apply with re-  
24 spect to a judge who makes an election under para-  
25 graph (1).

1 “(3) SPECIAL RULES.—

2 “(A) AMOUNT CONTRIBUTED.—The  
3 amount contributed by a judge to the Thrift  
4 Savings Fund in any pay period shall not ex-  
5 ceed the maximum percentage of such judge’s  
6 basic pay for such period as allowable under  
7 section 8440f of title 5, United States Code.  
8 Basic pay does not include any retired pay paid  
9 pursuant to this section.

10 “(B) CONTRIBUTIONS FOR BENEFIT OF  
11 JUDGE.—No contributions may be made for the  
12 benefit of a judge under section 8432(c) of title  
13 5, United States Code.

14 “(C) APPLICABILITY OF SECTION 8433(b)  
15 OF TITLE 5 WHETHER OR NOT JUDGE RE-  
16 TIRES.—Section 8433(b) of title 5, United  
17 States Code, applies with respect to a judge  
18 who makes an election under paragraph (1) and  
19 who either—

20 “(i) retires under subsection (b), or

21 “(ii) ceases to serve as a judge of the  
22 Tax Court but does not retire under sub-  
23 section (b).

1 Retirement under subsection (b) is a separation  
2 from service for purposes of subchapters III  
3 and VII of chapter 84 of that title.

4 “(D) APPLICABILITY OF SECTION  
5 8351(b)(5) OF TITLE 5.—The provisions of sec-  
6 tion 8351(b)(5) of title 5, United States Code,  
7 shall apply with respect to a judge who makes  
8 an election under paragraph (1).

9 “(E) EXCEPTION.—Notwithstanding sub-  
10 paragraph (C), if any judge retires under this  
11 section, or resigns without having met the age  
12 and service requirements set forth under sub-  
13 section (b)(2), and such judge’s nonforfeitable  
14 account balance is less than an amount that the  
15 Executive Director of the Federal Retirement  
16 Thrift Investment Board prescribes by regula-  
17 tion, the Executive Director shall pay the non-  
18 forfeitable account balance to the participant in  
19 a single payment.”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall take effect on the date of the enactment  
22 of this Act, except that United States Tax Court judges  
23 may only begin to participate in the Thrift Savings Plan  
24 at the next open season beginning after such date.

1 **SEC. 854. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
2 **PENDENT CHILDREN OF SPECIAL TRIAL**  
3 **JUDGES OF THE TAX COURT.**

4 (a) DEFINITIONS.—Section 7448(a) of the Internal  
5 Revenue Code of 1986 (relating to definitions), as amend-  
6 ed by this Act, is amended by redesignating paragraphs  
7 (5), (6), (7), and (8) as paragraphs (7), (8), (9), and (10),  
8 respectively, and by inserting after paragraph (4) the fol-  
9 lowing new paragraphs:

10 “(5) The term ‘special trial judge’ means a ju-  
11 dicial officer appointed pursuant to section 7443A,  
12 including any individual receiving an annuity under  
13 chapters 83 or 84 of title 5, United States Code,  
14 whether or not performing judicial duties under sec-  
15 tion 7443B.

16 “(6) The term ‘special trial judge’s salary’  
17 means the salary of a special trial judge received  
18 under section 7443A(d), any amount received as an  
19 annuity under chapters 83 or 84 of title 5, United  
20 States Code, and compensation received under sec-  
21 tion 7443B.”.

22 (b) ELECTION.—Subsection (b) of section 7448 of  
23 such Code (relating to annuities to surviving spouses and  
24 dependent children of judges) is amended—

25 (1) by striking the subsection heading and in-  
26 serting the following:

1 “(b) ELECTION.—

2 “(1) JUDGES.—”,

3 (2) by moving the text 2 ems to the right, and

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

6 “(2) SPECIAL TRIAL JUDGES.—Any special trial  
7 judge may by written election filed with the chief  
8 judge bring himself or herself within the purview of  
9 this section. Such election shall be filed not later  
10 than the later of 6 months after—

11 “(A) 6 months after the date of the enact-  
12 ment of this paragraph,

13 “(B) the date the judge takes office, or

14 “(C) the date the judge marries.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) The heading of section 7448 of such Code  
17 is amended by inserting “**AND SPECIAL TRIAL**  
18 **JUDGES**” after “**JUDGES**”.

19 (2) The item relating to section 7448 in the  
20 table of sections for part I of subchapter C of chap-  
21 ter 76 of such Code is amended by inserting “and  
22 special trial judges” after “judges”.

23 (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
24 (m), (n), and (u) of section 7448 of such Code, as  
25 amended by this Act, are each amended—



1 (A) by inserting “or special trial judge”  
2 after “judge” each place it appears other than  
3 in the phrase “chief judge”, and

4 (B) by inserting “or special trial judge’s”  
5 after “judge’s” each place it appears.

6 (4) Section 7448(c) of such Code is amended—

7 (A) in paragraph (1), by striking “Tax  
8 Court judges” and inserting “Tax Court judi-  
9 cial officers”,

10 (B) in paragraph (2)—

11 (i) in subparagraph (A), by inserting  
12 “and section 7443A(d)” after “(a)(4)”,  
13 and

14 (ii) in subparagraph (B), by striking  
15 “subsection (a)(4)” and inserting “sub-  
16 sections (a)(4) and (a)(6)”.

17 (5) Section 7448(j)(1) of such Code is amend-  
18 ed—

19 (A) in subparagraph (A), by striking  
20 “service or retired” and inserting “service, re-  
21 tired”, and by inserting “, or receiving any an-  
22 nuity under chapters 83 or 84 of title 5, United  
23 States Code,” after “section 7447”, and

1 (B) in the last sentence, by striking “sub-  
2 sections (a) (6) and (7)” and inserting “para-  
3 graphs (8) and (9) of subsection (a)”.

4 (6) Section 7448(m)(1) of such Code, as  
5 amended by this Act, is amended by inserting “or  
6 any annuity under chapters 83 or 84 of title 5,  
7 United States Code” after “7447(d)”.

8 (7) Section 7448(n) of such Code is amended  
9 by inserting “his years of service pursuant to any  
10 appointment under section 7443A,” after “of the  
11 Tax Court,”.

12 (8) Section 3121(b)(5)(E) of such Code is  
13 amended by inserting “or special trial judge” before  
14 “of the United States Tax Court”.

15 (9) Section 210(a)(5)(E) of the Social Security  
16 Act is amended by inserting “or special trial judge”  
17 before “of the United States Tax Court”.

18 **SEC. 855. JURISDICTION OF TAX COURT OVER COLLECTION**

19 **DUE PROCESS CASES.**

20 (a) IN GENERAL.—Paragraph (1) of section 6330(d)  
21 of the Internal Revenue Code of 1986 (relating to pro-  
22 ceeding after hearing) is amended to read as follows:

23 “(1) JUDICIAL REVIEW OF DETERMINATION.—  
24 The person may, within 30 days of a determination  
25 under this section, appeal such determination to the

1 Tax Court (and the Tax Court shall have jurisdic-  
2 tion with respect to such matter).”.

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to determinations made after the  
5 date which is 60 days after the date of the enactment of  
6 this Act.

7 **SEC. 856. PROVISIONS FOR RECALL.**

8 (a) IN GENERAL.—Part I of subchapter C of chapter  
9 76 of the Internal Revenue Code of 1986 is amended by  
10 inserting after section 7443A the following new section:

11 **“SEC. 7443B. RECALL OF SPECIAL TRIAL JUDGES OF THE**  
12 **TAX COURT.**

13 “(a) RECALLING OF RETIRED SPECIAL TRIAL  
14 JUDGES.—Any individual who has retired pursuant to the  
15 applicable provisions of title 5, United States Code, upon  
16 reaching the age and service requirements established  
17 therein, may at or after retirement be called upon by the  
18 chief judge of the Tax Court to perform such judicial du-  
19 ties with the Tax Court as may be requested of such indi-  
20 vidual for any period or periods specified by the chief  
21 judge; except that in the case of any such individual—

22 “(1) the aggregate of such periods in any 1 cal-  
23 endar year shall not (without such individual’s con-  
24 sent) exceed 90 calendar days, and

1           “(2) such individual shall be relieved of per-  
2           forming such duties during any period in which ill-  
3           ness or disability precludes the performance of such  
4           duties.

5   Any act, or failure to act, by an individual performing ju-  
6   dicial duties pursuant to this subsection shall have the  
7   same force and effect as if it were the act (or failure to  
8   act) of a special trial judge of the Tax Court.

9           “(b) COMPENSATION.—For the year in which a pe-  
10   riod of recall occurs, the special trial judge shall receive,  
11   in addition to the annuity provided under the applicable  
12   provisions of title 5, United States Code, an amount equal  
13   to the difference between that annuity and the current sal-  
14   ary of the office to which the special trial judge is recalled.

15           “(c) RULEMAKING AUTHORITY.—The provisions of  
16   this section may be implemented under such rules as may  
17   be promulgated by the Tax Court.”

18           (b) CONFORMING AMENDMENT.—The table of sec-  
19   tions for part I of subchapter C of chapter 76 of such  
20   Code is amended by inserting after the item relating to  
21   section 7443A the following new item:

“Sec. 7443B. Recall of special trial judges of the Tax Court.”.

1   **SEC. 857. AUTHORITY FOR SPECIAL TRIAL JUDGES TO**  
2                   **HEAR AND DECIDE CERTAIN EMPLOYMENT**  
3                   **STATUS CASES.**

4           (a) IN GENERAL.—Section 7443A(b) of the Internal  
5 Revenue Code of 1986 (relating to proceedings which may  
6 be assigned to special trial judges) is amended by striking  
7 “and” at the end of paragraph (4), by redesignating para-  
8 graph (5) as paragraph (6), and by inserting after para-  
9 graph (4) the following new paragraph:

10                   “(5) any proceeding under section 7436(c),  
11           and”.

12           (b) CONFORMING AMENDMENT.—Section 7443A(c)  
13 of such Code is amended by striking “or (4)” and insert-  
14 ing “(4), or (5)”.

15           (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to any proceeding under section  
17 7436(c) of the Internal Revenue Code of 1986 with re-  
18 spect to which a decision has not become final (as deter-  
19 mined under section 7481 of such Code) before the date  
20 of the enactment of this Act.

21   **SEC. 858. CONFIRMATION OF AUTHORITY OF TAX COURT**  
22                   **TO APPLY DOCTRINE OF EQUITABLE**  
23                   **RECOUPMENT.**

24           (a) CONFIRMATION OF AUTHORITY OF TAX COURT  
25 TO APPLY DOCTRINE OF EQUITABLE RECOUPMENT.—  
26 Section 6214(b) of the Internal Revenue Code of 1986 (re-

1 lating to jurisdiction over other years and quarters) is  
2 amended by adding at the end the following new sentence:  
3 “Notwithstanding the preceding sentence, the Tax Court  
4 may apply the doctrine of equitable recoupment to the  
5 same extent that it is available in civil tax cases before  
6 the district courts of the United States and the United  
7 States Court of Federal Claims.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to any action or proceeding in the  
10 United States Tax Court with respect to which a decision  
11 has not become final (as determined under section 7481  
12 of the Internal Revenue Code of 1986) as of the date of  
13 the enactment of this Act.

14 **SEC. 859. TAX COURT FILING FEE IN ALL CASES COM-**  
15 **MENCED BY FILING PETITION.**

16 (a) IN GENERAL.—Section 7451 of the Internal Rev-  
17 enue Code of 1986 (relating to fee for filing a Tax Court  
18 petition) is amended by striking all that follows “petition”  
19 and inserting a period.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall take effect on the date of the enactment  
22 of this Act.

1   **SEC. 860. EXPANDED USE OF TAX COURT PRACTICE FEE**  
2                   **FOR PRO SE TAXPAYERS.**

3           (a) IN GENERAL.—Section 7475(b) of the Internal  
4   Revenue Code of 1986 (relating to use of fees) is amended  
5   by inserting before the period at the end “and to provide  
6   services to pro se taxpayers”.

7           (b) EFFECTIVE DATE.—The amendment made by  
8   this section shall take effect on the date of the enactment  
9   of this Act.

10           **Subtitle F—Other Provisions**

11   **SEC. 861. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
12                   **CURRENT MORATORIUM ON APPLICATION OF**  
13                   **CERTAIN NONDISCRIMINATION RULES APPLI-**  
14                   **CABLE TO STATE AND LOCAL PLANS.**

15           (a) IN GENERAL.—

16               (1) Subparagraph (G) of section 401(a)(5) and  
17               subparagraph (G) of section 401(a)(26) of the Inter-  
18               nal Revenue Code of 1986 are each amended by  
19               striking “section 414(d))” and all that follows and  
20               inserting “section 414(d)).”.

21               (2) Subparagraph (G) of section 401(k)(3) of  
22               such Code and paragraph (2) of section 1505(d) of  
23               the Taxpayer Relief Act of 1997 (Public Law 105–  
24               34; 111 Stat. 1063) are each amended by striking  
25               “maintained by a State or local government or polit-

1 ical subdivision thereof (or agency or instrumentality  
2 thereof)".

3 (b) CONFORMING AMENDMENTS.—

4 (1) The heading of subparagraph (G) of section  
5 401(a)(5) of the Internal Revenue Code of 1986 is  
6 amended by striking "STATE AND LOCAL GOVERN-  
7 MENTAL" and inserting "GOVERNMENTAL".

8 (2) The heading of subparagraph (G) of section  
9 401(a)(26) of such Code is amended by striking  
10 "EXCEPTION FOR STATE AND LOCAL" and inserting  
11 "EXCEPTION FOR".

12 (3) Section 401(k)(3)(G) of such Code is  
13 amended by inserting "GOVERNMENTAL PLAN.—"  
14 after "(G)".

15 (c) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to any year beginning after the  
17 date of the enactment of this Act.

18 **SEC. 862. ELIMINATION OF AGGREGATE LIMIT FOR USAGE**  
19 **OF EXCESS FUNDS FROM BLACK LUNG DIS-**  
20 **ABILITY TRUSTS.**

21 (a) IN GENERAL.—So much of section 501(c)(21)(C)  
22 of the Internal Revenue Code of 1986 (relating to black  
23 lung disability trusts) as precedes the last sentence is  
24 amended to read as follows:



1           “(C) Payments described in subparagraph  
2           (A)(i)(IV) may be made from such trust during  
3           a taxable year only to the extent that the aggregate  
4           amount of such payments during such taxable  
5           year does not exceed the excess (if any), as  
6           of the close of the preceding taxable year, of—

7                   “(i) the fair market value of the assets  
8                   of the trust, over

9                   “(ii) 110 percent of the present value  
10                  of the liability described in subparagraph  
11                  (A)(i)(I) of such person.”.

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

15       **SEC. 863. TREATMENT OF DEATH BENEFITS FROM COR-**  
16                   **PORATE-OWNED LIFE INSURANCE.**

17       (a) IN GENERAL.—Section 101 of the Internal Revenue  
18       Code of 1986 (relating to certain death benefits) is  
19       amended by adding at the end the following new sub-  
20       section:

21           “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED  
22       LIFE INSURANCE CONTRACTS.—

23                   “(1) GENERAL RULE.—In the case of an employer-  
24       owned life insurance contract, the amount excluded  
25       from gross income of an applicable policy-

1 holder by reason of paragraph (1) of subsection (a)  
2 shall not exceed an amount equal to the sum of the  
3 premiums and other amounts paid by the policy-  
4 holder for the contract.

5 “(2) EXCEPTIONS.—In the case of an employer-  
6 owned life insurance contract with respect to which  
7 the notice and consent requirements of paragraph  
8 (4) are met, paragraph (1) shall not apply to any of  
9 the following:

10 “(A) EXCEPTIONS BASED ON INSURED’S  
11 STATUS.—Any amount received by reason of  
12 the death of an insured who, with respect to an  
13 applicable policyholder—

14 “(i) was an employee at any time dur-  
15 ing the 12-month period before the in-  
16 sured’s death, or

17 “(ii) is, at the time the contract is  
18 issued—

19 “(I) a director,

20 “(II) a highly compensated em-  
21 ployee within the meaning of section  
22 414(q) (without regard to paragraph  
23 (1)(B)(ii) thereof), or

24 “(III) a highly compensated indi-  
25 vidual within the meaning of section

1                   105(h)(5), except that ‘35 percent’  
2                   shall be substituted for ‘25 percent’ in  
3                   subparagraph (C) thereof.

4                   “(B) EXCEPTION FOR AMOUNTS PAID TO  
5                   INSURED’S HEIRS.—Any amount received by  
6                   reason of the death of an insured to the ex-  
7                   tent—

8                   “(i) the amount is paid to a member  
9                   of the family (within the meaning of sec-  
10                  tion 267(c)(4)) of the insured, any indi-  
11                  vidual who is the designated beneficiary of  
12                  the insured under the contract (other than  
13                  the applicable policyholder), a trust estab-  
14                  lished for the benefit of any such member  
15                  of the family or designated beneficiary, or  
16                  the estate of the insured, or

17                  “(ii) the amount is used to purchase  
18                  an equity (or capital or profits) interest in  
19                  the applicable policyholder from any person  
20                  described in clause (i).

21                  “(3) EMPLOYER-OWNED LIFE INSURANCE CON-  
22                  TRACT.—

23                  “(A) IN GENERAL.—For purposes of this  
24                  subsection, the term ‘employer-owned life insur-

1           ance contract’ means a life insurance contract  
2           which—

3                   “(i) is owned by a person engaged in  
4                   a trade or business and under which such  
5                   person (or a related person described in  
6                   subparagraph (B)(ii)) is directly or indi-  
7                   rectly a beneficiary under the contract, and

8                   “(ii) covers the life of an insured who  
9                   is an employee with respect to the trade or  
10                  business of the applicable policyholder on  
11                  the date the contract is issued.

12           For purposes of the preceding sentence, if cov-  
13           erage for each insured under a master contract  
14           is treated as a separate contract for purposes of  
15           sections 817(h), 7702, and 7702A, coverage for  
16           each such insured shall be treated as a separate  
17           contract.

18                   “(B) APPLICABLE POLICYHOLDER.—For  
19           purposes of this subsection—

20                   “(i) IN GENERAL.—The term ‘applica-  
21                   ble policyholder’ means, with respect to  
22                   any employer-owned life insurance con-  
23                   tract, the person described in subpara-  
24                   graph (A)(i) which owns the contract.

1                   “(ii) RELATED PERSONS.—The term  
2                   ‘applicable policyholder’ includes any per-  
3                   son which—

4                   “(I) bears a relationship to the  
5                   person described in clause (i) which is  
6                   specified in section 267(b) or  
7                   707(b)(1), or

8                   “(II) is engaged in trades or  
9                   businesses with such person which are  
10                  under common control (within the  
11                  meaning of subsection (a) or (b) of  
12                  section 52).

13                  “(4) NOTICE AND CONSENT REQUIREMENTS.—  
14                  The notice and consent requirements of this para-  
15                  graph are met if, before the issuance of the contract,  
16                  the employee—

17                  “(A) is notified in writing that the applica-  
18                  ble policyholder intends to insure the employee’s  
19                  life and the maximum face amount for which  
20                  the employee could be insured at the time the  
21                  contract was issued,

22                  “(B) provides written consent to being in-  
23                  sured under the contract and that such cov-  
24                  erage may continue after the insured terminates  
25                  employment, and

1           “(C) is informed in writing that an appli-  
2           cable policyholder will be a beneficiary of any  
3           proceeds payable upon the death of the em-  
4           ployee.

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

7           “(A) EMPLOYEE.—The term ‘employee’ in-  
8           cludes an officer, director, and highly com-  
9           pensated employee (within the meaning of sec-  
10          tion 414(q)).

11          “(B) INSURED.—The term ‘insured’  
12          means, with respect to an employer-owned life  
13          insurance contract, an individual covered by the  
14          contract who is a United States citizen or resi-  
15          dent. In the case of a contract covering the  
16          joint lives of 2 individuals, references to an in-  
17          sured include both of the individuals.”.

18          (b) REPORTING REQUIREMENTS.—Subpart A of part  
19          III of subchapter A of chapter 61 of the Internal Revenue  
20          Code of 1986 (relating to information concerning persons  
21          subject to special provisions) is amended by inserting after  
22          section 6039H the following new section:

1   **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**  
2                   **EMPLOYER-OWNED LIFE INSURANCE CON-**  
3                   **TRACTS.**

4       “(a) IN GENERAL.—Every applicable policyholder  
5   owning 1 or more employer-owned life insurance contracts  
6   issued after the date of the enactment of this section shall  
7   file a return (at such time and in such manner as the  
8   Secretary shall by regulations prescribe) showing for each  
9   year such contracts are owned—

10           “(1) the number of employees of the applicable  
11   policyholder at the end of the year,

12           “(2) the number of such employees insured  
13   under such contracts at the end of the year,

14           “(3) the total amount of insurance in force at  
15   the end of the year under such contracts,

16           “(4) the name, address, and taxpayer identifica-  
17   tion number of the applicable policyholder and the  
18   type of business in which the policyholder is en-  
19   gaged, and

20           “(5) that the applicable policyholder has a valid  
21   consent for each insured employee (or, if all such  
22   consents are not obtained, the number of insured  
23   employees for whom such consent was not obtained).

24       “(b) RECORDKEEPING REQUIREMENT.—Each appli-  
25   cable policyholder owning 1 or more employer-owned life  
26   insurance contracts during any year shall keep such

1 records as may be necessary for purposes of determining  
2 whether the requirements of this section and section  
3 101(j) are met.

4 “(c) DEFINITIONS.—Any term used in this section  
5 which is used in section 101(j) shall have the same mean-  
6 ing given such term by section 101(j).”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Paragraph (1) of section 101(a) of the In-  
9 ternal Revenue Code of 1986 is amended by striking  
10 “and subsection (f)” and inserting “subsection (f),  
11 and subsection (j)”.

12 (2) The table of sections for subpart A of part  
13 III of subchapter A of chapter 61 of such Code is  
14 amended by inserting after the item relating to sec-  
15 tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-owned life insurance  
contracts.”.

16 (d) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to life insurance contracts issued  
18 after the date of the enactment of this Act, except for a  
19 contract issued after such date pursuant to an exchange  
20 described in section 1035 of the Internal Revenue Code  
21 of 1986 for a contract issued on or prior to that date.  
22 For purposes of the preceding sentence, any material in-  
23 crease in the death benefit or other material change shall  
24 cause the contract to be treated as a new contract except



1 that, in the case of a master contract (within the meaning  
2 of section 264(f)(4)(E) of such Code), the addition of cov-  
3 ered lives shall be treated as a new contract only with re-  
4 spect to such additional covered lives.

5 **SEC. 864. TREATMENT OF TEST ROOM SUPERVISORS AND**  
6 **PROCTORS WHO ASSIST IN THE ADMINISTRA-**  
7 **TION OF COLLEGE ENTRANCE AND PLACE-**  
8 **MENT EXAMS.**

9 (a) IN GENERAL.—Section 530 of the Revenue Rec-  
10 onciliation Act of 1978 is amended by adding at the end  
11 the following new subsection:

12 “(f) TREATMENT OF TEST ROOM SUPERVISORS AND  
13 PROCTORS WHO ASSIST IN THE ADMINISTRATION OF  
14 COLLEGE ENTRANCE AND PLACEMENT EXAMS.—

15 “(1) IN GENERAL.—In the case of an individual  
16 described in paragraph (2) who is providing services  
17 as a test proctor or room supervisor by assisting in  
18 the administration of college entrance or placement  
19 examinations, this section shall be applied to such  
20 services performed after December 31, 2006 (and  
21 remuneration paid for such services) without regard  
22 to subsection (a)(3) thereof.

23 “(2) APPLICABILITY.—An individual is de-  
24 scribed in this paragraph if the individual—

1           “(A) is providing the services described in  
2           subsection (a) to an organization described in  
3           section 501(c), and exempt from tax under sec-  
4           tion 501(a), of the Internal Revenue Code of  
5           1986, and

6           “(B) is not otherwise treated as an em-  
7           ployee of such organization for purposes of sub-  
8           title C of such Code (relating to employment  
9           taxes).”.

10       (b) EFFECTIVE DATE.—The amendment made by  
11       this section shall apply to remuneration for services per-  
12       formed after December 31, 2006.

13       **SEC. 865. GRANDFATHER RULE FOR CHURCH PLANS**  
14               **WHICH SELF-ANNUITIZE.**

15       (a) IN GENERAL.—In the case of any plan year end-  
16       ing after the date of the enactment of this Act, annuity  
17       payments provided with respect to any account maintained  
18       for a participant or beneficiary under a qualified church  
19       plan shall not fail to satisfy the requirements of section  
20       401(a)(9) of the Internal Revenue Code of 1986 merely  
21       because the payments are not made under an annuity con-  
22       tract purchased from an insurance company if such pay-  
23       ments would not fail such requirements if provided with  
24       respect to a retirement income account described in sec-  
25       tion 403(b)(9) of such Code.

1 (b) QUALIFIED CHURCH PLAN.—For purposes of  
2 this section, the term “qualified church plan” means any  
3 money purchase pension plan described in section 401(a)  
4 of such Code which—

5 (1) is a church plan (as defined in section  
6 414(e) of such Code) with respect to which the elec-  
7 tion provided by section 410(d) of such Code has not  
8 been made, and

9 (2) was in existence on April 17, 2002.

10 **SEC. 866. EXEMPTION FOR INCOME FROM LEVERAGED**  
11 **REAL ESTATE HELD BY CHURCH PLANS.**

12 (a) IN GENERAL.—Section 514(c)(9)(C) of the Inter-  
13 nal Revenue Code of 1986 is amended by striking “or”  
14 after clause (ii), by striking the period at the end of clause  
15 (iii) and inserting “; or”, and by inserting after clause (iii)  
16 the following:

17 “(iv) a retirement income account de-  
18 scribed in section 403(b)(9).”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 subsection (a) shall apply to taxable years beginning on  
21 or after the date of enactment of this Act.

22 **SEC. 867. CHURCH PLAN RULE.**

23 (a) IN GENERAL.—Paragraph (11) of section 415(b)  
24 of the Internal Revenue Code of 1986 is amended by add-  
25 ing at the end the following: “Subparagraph (B) of para-

1 graph (1) shall not apply to a plan maintained by an orga-  
2 nization described in section 3121(w)(3)(A) except with  
3 respect to highly compensated benefits. For purposes of  
4 this paragraph, the term ‘highly compensated benefits’  
5 means any benefits accrued for an employee in any year  
6 on or after the first year in which such employee is a high-  
7 ly compensated employee (as defined in section 414(q))  
8 of the organization described in section 3121(w)(3)(A).  
9 For purposes of applying paragraph (1)(B) to highly com-  
10 pensated benefits, all benefits of the employee otherwise  
11 taken into account (without regard to this paragraph)  
12 shall be taken into account.”.

13 (b) EFFECTIVE DATE.—The amendment made by  
14 this section shall apply to years beginning after December  
15 31, 2006.

16 **SEC. 868. GRATUITOUS TRANSFER FOR BENEFITS OF EM-**  
17 **PLOYEES.**

18 (a) IN GENERAL.—Subparagraph (E) of section  
19 664(g)(3) of the Internal Revenue Code of 1986 is amend-  
20 ed by inserting “(determined on the basis of fair market  
21 value of securities when allocated to participants)” after  
22 “paragraph (7)”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 this section shall take effect on the date of the enactment  
25 of this Act.

1 **TITLE IX—INCREASE IN PEN-**  
2 **SION PLAN DIVERSIFICATION**  
3 **AND PARTICIPATION AND**  
4 **OTHER PENSION PROVISIONS**

5 **SEC. 901. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
6 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**  
7 **VEST THEIR PLAN ASSETS.**

8 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

9 (1) QUALIFICATION REQUIREMENT.—Section  
10 401(a) of the Internal Revenue Code of 1986 (relat-  
11 ing to qualified pension, profit-sharing, and stock  
12 bonus plans) is amended by inserting after para-  
13 graph (34) the following new paragraph:

14 “(35) DIVERSIFICATION REQUIREMENTS FOR  
15 CERTAIN DEFINED CONTRIBUTION PLANS.—

16 “(A) IN GENERAL.—A trust which is part  
17 of an applicable defined contribution plan shall  
18 not be treated as a qualified trust unless the  
19 plan meets the diversification requirements of  
20 subparagraphs (B), (C), and (D).

21 “(B) EMPLOYEE CONTRIBUTIONS AND  
22 ELECTIVE DEFERRALS INVESTED IN EMPLOYER  
23 SECURITIES.—In the case of the portion of an  
24 applicable individual’s account attributable to  
25 employee contributions and elective deferrals

1 which is invested in employer securities, a plan  
2 meets the requirements of this subparagraph if  
3 the applicable individual may elect to direct the  
4 plan to divest any such securities and to rein-  
5 vest an equivalent amount in other investment  
6 options meeting the requirements of subpara-  
7 graph (D).

8 “(C) EMPLOYER CONTRIBUTIONS IN-  
9 VESTED IN EMPLOYER SECURITIES.—In the  
10 case of the portion of the account attributable  
11 to employer contributions other than elective  
12 deferrals which is invested in employer securi-  
13 ties, a plan meets the requirements of this sub-  
14 paragraph if each applicable individual who—

15 “(i) is a participant who has com-  
16 pleted at least 3 years of service, or

17 “(ii) is a beneficiary of a participant  
18 described in clause (i) or of a deceased  
19 participant,

20 may elect to direct the plan to divest any such  
21 securities and to reinvest an equivalent amount  
22 in other investment options meeting the re-  
23 quirements of subparagraph (D).

24 “(D) INVESTMENT OPTIONS.—

1 “(i) IN GENERAL.—The requirements  
2 of this subparagraph are met if the plan  
3 offers not less than 3 investment options,  
4 other than employer securities, to which an  
5 applicable individual may direct the pro-  
6 ceeds from the divestment of employer se-  
7 curities pursuant to this paragraph, each  
8 of which is diversified and has materially  
9 different risk and return characteristics.

10 “(ii) TREATMENT OF CERTAIN RE-  
11 STRICTIONS AND CONDITIONS.—

12 “(I) TIME FOR MAKING INVEST-  
13 MENT CHOICES.—A plan shall not be  
14 treated as failing to meet the require-  
15 ments of this subparagraph merely be-  
16 cause the plan limits the time for di-  
17 vestment and reinvestment to peri-  
18 odic, reasonable opportunities occur-  
19 ring no less frequently than quarterly.

20 “(II) CERTAIN RESTRICTIONS  
21 AND CONDITIONS NOT ALLOWED.—  
22 Except as provided in regulations, a  
23 plan shall not meet the requirements  
24 of this subparagraph if the plan im-  
25 poses restrictions or conditions with

1           respect to the investment of employer  
2           securities which are not imposed on  
3           the investment of other assets of the  
4           plan. This subclause shall not apply to  
5           any restrictions or conditions imposed  
6           by reason of the application of securi-  
7           ties laws.

8           “(E) APPLICABLE DEFINED CONTRIBU-  
9           TION PLAN.—For purposes of this paragraph—

10           “(i) IN GENERAL.—The term ‘applica-  
11           ble defined contribution plan’ means any  
12           defined contribution plan which holds any  
13           publicly traded employer securities.

14           “(ii) EXCEPTION FOR CERTAIN  
15           ESOPS.—Such term does not include an  
16           employee stock ownership plan if—

17           “(I) there are no contributions to  
18           such plan (or earnings thereunder)  
19           which are held within such plan and  
20           are subject to subsection (k) or (m),  
21           and

22           “(II) such plan is a separate plan  
23           for purposes of section 414(l) with re-  
24           spect to any other defined benefit plan  
25           or defined contribution plan main-



1                   tained by the same employer or em-  
2                   ployers.

3                   “(iii) EXCEPTION FOR ONE PARTICI-  
4                   PANT PLANS.—Such term does not include  
5                   a one-participant retirement plan.

6                   “(iv) ONE-PARTICIPANT RETIREMENT  
7                   PLAN.—For purposes of clause (iii), the  
8                   term ‘one-participant retirement plan’  
9                   means a retirement plan that—

10                   “(I) on the first day of the plan  
11                   year covered only one individual (or  
12                   the individual and the individual’s  
13                   spouse) and the individual owned 100  
14                   percent of the plan sponsor (whether  
15                   or not incorporated), or covered only  
16                   one or more partners (or partners and  
17                   their spouses) in the plan sponsor,

18                   “(II) meets the minimum cov-  
19                   erage requirements of section 410(b)  
20                   without being combined with any  
21                   other plan of the business that covers  
22                   the employees of the business,

23                   “(III) does not provide benefits  
24                   to anyone except the individual (and

1 the individual's spouse) or the part-  
2 ners (and their spouses),

3 “(IV) does not cover a business  
4 that is a member of an affiliated serv-  
5 ice group, a controlled group of cor-  
6 porations, or a group of businesses  
7 under common control, and

8 “(V) does not cover a business  
9 that uses the services of leased em-  
10 ployees (within the meaning of section  
11 414(n)).

12 For purposes of this clause, the term ‘part-  
13 ner’ includes a 2-percent shareholder (as  
14 defined in section 1372(b)) of an S cor-  
15 poration.

16 “(F) CERTAIN PLANS TREATED AS HOLD-  
17 ING PUBLICLY TRADED EMPLOYER SECURI-  
18 TIES.—

19 “(i) IN GENERAL.—Except as pro-  
20 vided in regulations or in clause (ii), a plan  
21 holding employer securities which are not  
22 publicly traded employer securities shall be  
23 treated as holding publicly traded employer  
24 securities if any employer corporation, or  
25 any member of a controlled group of cor-

1           porations which includes such employer  
2           corporation, has issued a class of stock  
3           which is a publicly traded employer secu-  
4           rity.

5           “(ii) EXCEPTION FOR CERTAIN CON-  
6           TROLLED GROUPS WITH PUBLICLY TRAD-  
7           ED SECURITIES.—Clause (i) shall not  
8           apply to a plan if—

9                   “(I) no employer corporation, or  
10                  parent corporation of an employer  
11                  corporation, has issued any publicly  
12                  traded employer security, and

13                  “(II) no employer corporation, or  
14                  parent corporation of an employer  
15                  corporation, has issued any special  
16                  class of stock which grants particular  
17                  rights to, or bears particular risks for,  
18                  the holder or issuer with respect to  
19                  any corporation described in clause (i)  
20                  which has issued any publicly traded  
21                  employer security.

22           “(iii) DEFINITIONS.—For purposes of  
23           this subparagraph, the term—

24                   “(I) ‘controlled group of corpora-  
25                  tions’ has the meaning given such

1 term by section 1563(a), except that  
2 ‘50 percent’ shall be substituted for  
3 ‘80 percent’ each place it appears,

4 “(II) ‘employer corporation’  
5 means a corporation which is an em-  
6 ployer maintaining the plan, and

7 “(III) ‘parent corporation’ has  
8 the meaning given such term by sec-  
9 tion 424(e).

10 “(G) OTHER DEFINITIONS.—For purposes  
11 of this paragraph—

12 “(i) APPLICABLE INDIVIDUAL.—The  
13 term ‘applicable individual’ means—

14 “(I) any participant in the plan,  
15 and

16 “(II) any beneficiary who has an  
17 account under the plan with respect to  
18 which the beneficiary is entitled to ex-  
19 ercise the rights of a participant.

20 “(ii) ELECTIVE DEFERRAL.—The  
21 term ‘elective deferral’ means an employer  
22 contribution described in section  
23 402(g)(3)(A).

24 “(iii) EMPLOYER SECURITY.—The  
25 term ‘employer security’ has the meaning

1 given such term by section 407(d)(1) of  
2 the Employee Retirement Income Security  
3 Act of 1974.

4 “(iv) EMPLOYEE STOCK OWNERSHIP  
5 PLAN.—The term ‘employee stock owner-  
6 ship plan’ has the meaning given such  
7 term by section 4975(e)(7).

8 “(v) PUBLICLY TRADED EMPLOYER  
9 SECURITIES.—The term ‘publicly traded  
10 employer securities’ means employer secu-  
11 rities which are readily tradable on an es-  
12 tablished securities market.

13 “(vi) YEAR OF SERVICE.—The term  
14 ‘year of service’ has the meaning given  
15 such term by section 411(a)(5).

16 “(H) TRANSITION RULE FOR SECURITIES  
17 ATTRIBUTABLE TO EMPLOYER CONTRIBU-  
18 TIONS.—

19 “(i) RULES PHASED IN OVER 3  
20 YEARS.—

21 “(I) IN GENERAL.—In the case  
22 of the portion of an account to which  
23 subparagraph (C) applies and which  
24 consists of employer securities ac-  
25 quired in a plan year beginning before

1 January 1, 2007, subparagraph (C)  
 2 shall only apply to the applicable per-  
 3 centage of such securities. This sub-  
 4 paragraph shall be applied separately  
 5 with respect to each class of securi-  
 6 ties.

7 “(II) EXCEPTION FOR CERTAIN  
 8 PARTICIPANTS AGED 55 OR OVER.—  
 9 Subclause (I) shall not apply to an  
 10 applicable individual who is a partici-  
 11 pant who has attained age 55 and  
 12 completed at least 3 years of service  
 13 before the first plan year beginning  
 14 after December 31, 2005.

15 “(ii) APPLICABLE PERCENTAGE.—For  
 16 purposes of clause (i), the applicable per-  
 17 centage shall be determined as follows:

<b>“Plan year to which subparagraph (C) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d and following .....	100.”.

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 401(a)(28)(B) of such Code  
 20 (relating to additional requirements relating to  
 21 employee stock ownership plans) is amended by  
 22 adding at the end the following new clause:

1                   “(v) EXCEPTION.—This subparagraph  
2                   shall not apply to an applicable defined  
3                   contribution plan (as defined in paragraph  
4                   (35)(E)).”

5                   (B) Section 409(h)(7) of such Code is  
6                   amended by inserting “or subparagraph (B) or  
7                   (C) of section 401(a)(35)” before the period at  
8                   the end.

9                   (C) Section 4980(c)(3)(A) of such Code is  
10                  amended by striking “if—” and all that follows  
11                  and inserting “if the requirements of subpara-  
12                  graphs (B), (C), and (D) are met.”

13               (b) AMENDMENTS OF ERISA.—

14               (1) IN GENERAL.—Section 204 of the Employee  
15               Retirement Income Security Act of 1974 (29 U.S.C.  
16               1054) is amended by redesignating subsection (j) as  
17               subsection (k) and by inserting after subsection (i)  
18               the following new subsection:

19               “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN  
20               INDIVIDUAL ACCOUNT PLANS.—

21               “(1) IN GENERAL.—An applicable individual ac-  
22               count plan shall meet the diversification require-  
23               ments of paragraphs (2), (3), and (4).

24               “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-  
25               TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-

1 TIES.—In the case of the portion of an applicable in-  
2 dividual’s account attributable to employee contribu-  
3 tions and elective deferrals which is invested in em-  
4 ployer securities, a plan meets the requirements of  
5 this paragraph if the applicable individual may elect  
6 to direct the plan to divest any such securities and  
7 to reinvest an equivalent amount in other investment  
8 options meeting the requirements of paragraph (4).

9 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN  
10 EMPLOYER SECURITIES.—In the case of the portion  
11 of the account attributable to employer contributions  
12 other than elective deferrals which is invested in em-  
13 ployer securities, a plan meets the requirements of  
14 this paragraph if each applicable individual who—

15 “(A) is a participant who has completed at  
16 least 3 years of service, or

17 “(B) is a beneficiary of a participant de-  
18 scribed in subparagraph (A) or of a deceased  
19 participant,

20 may elect to direct the plan to divest any such secu-  
21 rities and to reinvest an equivalent amount in other  
22 investment options meeting the requirements of  
23 paragraph (4).

24 “(4) INVESTMENT OPTIONS.—



1           “(A) IN GENERAL.—The requirements of  
2           this paragraph are met if the plan offers not  
3           less than 3 investment options, other than em-  
4           ployer securities, to which an applicable indi-  
5           vidual may direct the proceeds from the divest-  
6           ment of employer securities pursuant to this  
7           subsection, each of which is diversified and has  
8           materially different risk and return characteris-  
9           tics.

10           “(B) TREATMENT OF CERTAIN RESTRIC-  
11           TIONS AND CONDITIONS.—

12           “(i) TIME FOR MAKING INVESTMENT  
13           CHOICES.—A plan shall not be treated as  
14           failing to meet the requirements of this  
15           paragraph merely because the plan limits  
16           the time for divestment and reinvestment  
17           to periodic, reasonable opportunities occur-  
18           ring no less frequently than quarterly.

19           “(ii) CERTAIN RESTRICTIONS AND  
20           CONDITIONS NOT ALLOWED.—Except as  
21           provided in regulations, a plan shall not  
22           meet the requirements of this paragraph if  
23           the plan imposes restrictions or conditions  
24           with respect to the investment of employer  
25           securities which are not imposed on the in-

1 vestment of other assets of the plan. This  
2 subparagraph shall not apply to any re-  
3 strictions or conditions imposed by reason  
4 of the application of securities laws.

5 “(5) APPLICABLE INDIVIDUAL ACCOUNT  
6 PLAN.—For purposes of this subsection—

7 “(A) IN GENERAL.—The term ‘applicable  
8 individual account plan’ means any individual  
9 account plan (as defined in section 3(34)) which  
10 holds any publicly traded employer securities.

11 “(B) EXCEPTION FOR CERTAIN ESOPS.—  
12 Such term does not include an employee stock  
13 ownership plan if—

14 “(i) there are no contributions to such  
15 plan (or earnings thereunder) which are  
16 held within such plan and are subject to  
17 subsection (k) or (m) of section 401 of the  
18 Internal Revenue Code of 1986, and

19 “(ii) such plan is a separate plan (for  
20 purposes of section 414(l) of such Code)  
21 with respect to any other defined benefit  
22 plan or individual account plan maintained  
23 by the same employer or employers.

24 “(C) EXCEPTION FOR ONE PARTICIPANT  
25 PLANS.—Such term shall not include a one-par-

1            participant retirement plan (as defined in section  
2            101(i)(8)(B)).

3            “(D) CERTAIN PLANS TREATED AS HOLD-  
4            ING PUBLICLY TRADED EMPLOYER SECURI-  
5            TIES.—

6            “(i) IN GENERAL.—Except as pro-  
7            vided in regulations or in clause (ii), a plan  
8            holding employer securities which are not  
9            publicly traded employer securities shall be  
10          treated as holding publicly traded employer  
11          securities if any employer corporation, or  
12          any member of a controlled group of cor-  
13          porations which includes such employer  
14          corporation, has issued a class of stock  
15          which is a publicly traded employer secu-  
16          rity.

17          “(ii) EXCEPTION FOR CERTAIN CON-  
18          TROLLED GROUPS WITH PUBLICLY TRAD-  
19          ED SECURITIES.—Clause (i) shall not  
20          apply to a plan if—

21                “(I) no employer corporation, or  
22                parent corporation of an employer  
23                corporation, has issued any publicly  
24                traded employer security, and

1                   “(II) no employer corporation, or  
2                   parent corporation of an employer  
3                   corporation, has issued any special  
4                   class of stock which grants particular  
5                   rights to, or bears particular risks for,  
6                   the holder or issuer with respect to  
7                   any corporation described in clause (i)  
8                   which has issued any publicly traded  
9                   employer security.

10                  “(iii) DEFINITIONS.—For purposes of  
11                  this subparagraph, the term—

12                   “(I) ‘controlled group of corpora-  
13                   tions’ has the meaning given such  
14                   term by section 1563(a) of the Inter-  
15                   nal Revenue Code of 1986, except  
16                   that ‘50 percent’ shall be substituted  
17                   for ‘80 percent’ each place it appears,

18                   “(II) ‘employer corporation’  
19                   means a corporation which is an em-  
20                   ployer maintaining the plan, and

21                   “(III) ‘parent corporation’ has  
22                   the meaning given such term by sec-  
23                   tion 424(e) of such Code.

24                  “(6) OTHER DEFINITIONS.—For purposes of  
25                  this paragraph—

1           “(A) APPLICABLE INDIVIDUAL.—The term  
2           ‘applicable individual’ means—

3                   “(i) any participant in the plan, and

4                   “(ii) any beneficiary who has an ac-  
5           count under the plan with respect to which  
6           the beneficiary is entitled to exercise the  
7           rights of a participant.

8           “(B) ELECTIVE DEFERRAL.—The term  
9           ‘elective deferral’ means an employer contribu-  
10          tion described in section 402(g)(3)(A) of the In-  
11          ternal Revenue Code of 1986.

12          “(C) EMPLOYER SECURITY.—The term  
13          ‘employer security’ has the meaning given such  
14          term by section 407(d)(1).

15          “(D) EMPLOYEE STOCK OWNERSHIP  
16          PLAN.—The term ‘employee stock ownership  
17          plan’ has the meaning given such term by sec-  
18          tion 4975(e)(7) of such Code.

19          “(E) PUBLICLY TRADED EMPLOYER SECU-  
20          RITIES.—The term ‘publicly traded employer  
21          securities’ means employer securities which are  
22          readily tradable on an established securities  
23          market.

1           “(F) YEAR OF SERVICE.—The term ‘year  
2           of service’ has the meaning given such term by  
3           section 203(b)(2).

4           “(7) TRANSITION RULE FOR SECURITIES AT-  
5           TRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

6           “(A) RULES PHASED IN OVER 3 YEARS.—

7                   “(i) IN GENERAL.—In the case of the  
8                   portion of an account to which paragraph  
9                   (3) applies and which consists of employer  
10                  securities acquired in a plan year begin-  
11                  ning before January 1, 2007, paragraph  
12                  (3) shall only apply to the applicable per-  
13                  centage of such securities. This subpara-  
14                  graph shall be applied separately with re-  
15                  spect to each class of securities.

16                   “(ii) EXCEPTION FOR CERTAIN PAR-  
17                  TICIPANTS AGED 55 OR OVER.—Clause (i)  
18                  shall not apply to an applicable individual  
19                  who is a participant who has attained age  
20                  55 and completed at least 3 years of serv-  
21                  ice before the first plan year beginning  
22                  after December 31, 2005.

23           “(B) APPLICABLE PERCENTAGE.—For  
24           purposes of subparagraph (A), the applicable  
25           percentage shall be determined as follows:

<b>“Plan year to which paragraph (3) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d .....	100.”.

1           (2)     CONFORMING     AMENDMENT.—Section  
2     407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is  
3     amended by adding at the end the following:

4           “(D) For diversification requirements for quali-  
5     fying employer securities held in certain individual  
6     account plans, see section 204(j).”.

7     (c) EFFECTIVE DATES.—

8           (1) IN GENERAL.—Except as provided in para-  
9     graphs (2) and (3), the amendments made by this  
10    section shall apply to plan years beginning after De-  
11    cember 31, 2006.

12          (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
13    GAINED AGREEMENTS.—In the case of a plan main-  
14    tained pursuant to 1 or more collective bargaining  
15    agreements between employee representatives and 1  
16    or more employers ratified on or before the date of  
17    the enactment of this Act, paragraph (1) shall be  
18    applied to benefits pursuant to, and individuals cov-  
19    ered by, any such agreement by substituting for  
20    “December 31, 2006” the earlier of—

21           (A) the later of—

22                   (i) December 31, 2007, or

1 (ii) the date on which the last of such  
2 collective bargaining agreements termi-  
3 nates (determined without regard to any  
4 extension thereof after such date of enact-  
5 ment), or

6 (B) December 31, 2008.

7 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-  
8 CURITIES HELD IN AN ESOP.—

9 (A) IN GENERAL.—In the case of employer  
10 securities to which this paragraph applies, the  
11 amendments made by this section shall apply to  
12 plan years beginning after the earlier of—

13 (i) December 31, 2007, or

14 (ii) the first date on which the fair  
15 market value of such securities exceeds the  
16 guaranteed minimum value described in  
17 subparagraph (B)(ii).

18 (B) APPLICABLE SECURITIES.—This para-  
19 graph shall apply to employer securities which  
20 are attributable to employer contributions other  
21 than elective deferrals, and which, on Sep-  
22 tember 17, 2003—

23 (i) consist of preferred stock, and

24 (ii) are within an employee stock own-  
25 ership plan (as defined in section



1                   4975(e)(7) of the Internal Revenue Code  
2                   of 1986), the terms of which provide that  
3                   the value of the securities cannot be less  
4                   than the guaranteed minimum value speci-  
5                   fied by the plan on such date.

6                   (C) COORDINATION WITH TRANSITION  
7                   RULE.—In applying section 401(a)(35)(H) of  
8                   the Internal Revenue Code of 1986 and section  
9                   204(j)(7) of the Employee Retirement Income  
10                  Security Act of 1974 (as added by this section)  
11                  to employer securities to which this paragraph  
12                  applies, the applicable percentage shall be de-  
13                  termined without regard to this paragraph.

14 **SEC. 902. INCREASING PARTICIPATION THROUGH AUTO-**  
15 **MATIC CONTRIBUTION ARRANGEMENTS.**

16               (a) IN GENERAL.—Section 401(k) of the Internal  
17               Revenue Code of 1986 (relating to cash or deferred ar-  
18               rangement) is amended by adding at the end the following  
19               new paragraph:

20                   “(13) ALTERNATIVE METHOD FOR AUTOMATIC  
21                   CONTRIBUTION ARRANGEMENTS TO MEET NON-  
22                   DISCRIMINATION REQUIREMENTS.—

23                   “(A) IN GENERAL.—A qualified automatic  
24                   contribution arrangement shall be treated as

1 meeting the requirements of paragraph  
2 (3)(A)(ii).

3 “(B) QUALIFIED AUTOMATIC CONTRIBU-  
4 TION ARRANGEMENT.—For purposes of this  
5 paragraph, the term ‘qualified automatic con-  
6 tribution arrangement’ means any cash or de-  
7 ferred arrangement which meets the require-  
8 ments of subparagraphs (C) through (E).

9 “(C) AUTOMATIC DEFERRAL.—

10 “(i) IN GENERAL.—The requirements  
11 of this subparagraph are met if, under the  
12 arrangement, each employee eligible to  
13 participate in the arrangement is treated  
14 as having elected to have the employer  
15 make elective contributions in an amount  
16 equal to a qualified percentage of com-  
17 pensation.

18 “(ii) ELECTION OUT.—The election  
19 treated as having been made under clause  
20 (i) shall cease to apply with respect to any  
21 employee if such employee makes an af-  
22 firmative election—

23 “(I) to not have such contribu-  
24 tions made, or

1 “(II) to make elective contribu-  
2 tions at a level specified in such af-  
3 firmative election.

4 “(iii) QUALIFIED PERCENTAGE.—For  
5 purposes of this subparagraph, the term  
6 ‘qualified percentage’ means, with respect  
7 to any employee, any percentage deter-  
8 mined under the arrangement if such per-  
9 centage is applied uniformly, does not ex-  
10 ceed 10 percent, and is at least—

11 “(I) 3 percent during the period  
12 ending on the last day of the first  
13 plan year which begins after the date  
14 on which the first elective contribution  
15 described in clause (i) is made with  
16 respect to such employee,

17 “(II) 4 percent during the first  
18 plan year following the plan year de-  
19 scribed in subclause (I),

20 “(III) 5 percent during the sec-  
21 ond plan year following the plan year  
22 described in subclause (I), and

23 “(IV) 6 percent during any sub-  
24 sequent plan year.

1                   “(iv) AUTOMATIC DEFERRAL FOR  
2                   CURRENT EMPLOYEES NOT REQUIRED.—  
3                   Clause (i) may be applied without taking  
4                   into account any employee who—

5                   “(I) was eligible to participate in  
6                   the arrangement (or a predecessor ar-  
7                   rangement) immediately before the  
8                   date on which such arrangement be-  
9                   comes a qualified automatic contribu-  
10                  tion arrangement (determined after  
11                  application of this clause), and

12                  “(II) had an election in effect on  
13                  such date either to participate in the  
14                  arrangement or to not participate in  
15                  the arrangement.

16                  “(D) MATCHING OR NONELECTIVE CON-  
17                  TRIBUTIONS.—

18                  “(i) IN GENERAL.—The requirements  
19                  of this subparagraph are met if, under the  
20                  arrangement, the employer—

21                  “(I) makes matching contribu-  
22                  tions on behalf of each employee who  
23                  is not a highly compensated employee  
24                  in an amount equal to the sum of 100  
25                  percent of the elective contributions of

1 the employee to the extent that such  
2 contributions do not exceed 1 percent  
3 of compensation plus 50 percent of so  
4 much of such compensation as exceeds  
5 1 percent but does not exceed 6 per-  
6 cent of compensation, or

7 “(II) is required, without regard  
8 to whether the employee makes an  
9 elective contribution or employee con-  
10 tribution, to make a contribution to a  
11 defined contribution plan on behalf of  
12 each employee who is not a highly  
13 compensated employee and who is eli-  
14 gible to participate in the arrange-  
15 ment in an amount equal to at least  
16 3 percent of the employee’s compensa-  
17 tion.

18 “(ii) APPLICATION OF RULES FOR  
19 MATCHING CONTRIBUTIONS.—The rules of  
20 clauses (ii) and (iii) of paragraph (12)(B)  
21 shall apply for purposes of clause (i)(I).

22 “(iii) WITHDRAWAL AND VESTING RE-  
23 STRICTIONS.—An arrangement shall not be  
24 treated as meeting the requirements of  
25 clause (i) unless, with respect to employer

1 contributions (including matching con-  
2 tributions) taken into account in deter-  
3 mining whether the requirements of clause  
4 (i) are met—

5 “(I) any employee who has com-  
6 pleted at least 2 years of service  
7 (within the meaning of section  
8 411(a)) has a nonforfeitable right to  
9 100 percent of the employee’s accrued  
10 benefit derived from such employer  
11 contributions, and

12 “(II) the requirements of sub-  
13 paragraph (B) of paragraph (2) are  
14 met with respect to all such employer  
15 contributions.

16 “(iv) APPLICATION OF CERTAIN  
17 OTHER RULES.—The rules of subpara-  
18 graphs (E)(ii) and (F) of paragraph (12)  
19 shall apply for purposes of subclauses (I)  
20 and (II) of clause (i).

21 “(E) NOTICE REQUIREMENTS.—

22 “(i) IN GENERAL.—The requirements  
23 of this subparagraph are met if, within a  
24 reasonable period before each plan year,  
25 each employee eligible to participate in the

1 arrangement for such year receives written  
2 notice of the employee's rights and obliga-  
3 tions under the arrangement which—

4 “(I) is sufficiently accurate and  
5 comprehensive to apprise the employee  
6 of such rights and obligations, and

7 “(II) is written in a manner cal-  
8 culated to be understood by the aver-  
9 age employee to whom the arrange-  
10 ment applies.

11 “(ii) TIMING AND CONTENT REQUIRE-  
12 MENTS.—A notice shall not be treated as  
13 meeting the requirements of clause (i) with  
14 respect to an employee unless—

15 “(I) the notice explains the em-  
16 ployee's right under the arrangement  
17 to elect not to have elective contribu-  
18 tions made on the employee's behalf  
19 (or to elect to have such contributions  
20 made at a different percentage),

21 “(II) in the case of an arrange-  
22 ment under which the employee may  
23 elect among 2 or more investment op-  
24 tions, the notice explains how con-  
25 tributions made under the arrange-

1                   ment will be invested in the absence of  
2                   any investment election by the em-  
3                   ployee, and

4                   “(III) the employee has a reason-  
5                   able period of time after receipt of the  
6                   notice described in subclauses (I) and  
7                   (II) and before the first elective con-  
8                   tribution is made to make either such  
9                   election.”.

10           (b) MATCHING CONTRIBUTIONS.—Section 401(m) of  
11 such Code (relating to nondiscrimination test for matching  
12 contributions and employee contributions) is amended by  
13 redesignating paragraph (12) as paragraph (13) and by  
14 inserting after paragraph (11) the following new para-  
15 graph:

16                   “(12) ALTERNATIVE METHOD FOR AUTOMATIC  
17           CONTRIBUTION ARRANGEMENTS.—A defined con-  
18           tribution plan shall be treated as meeting the re-  
19           quirements of paragraph (2) with respect to match-  
20           ing contributions if the plan—

21                   “(A) is a qualified automatic contribution  
22                   arrangement (as defined in subsection (k)(13)),  
23                   and

24                   “(B) meets the requirements of paragraph  
25                   (11)(B).”.



1 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY  
2 PLANS.—

3 (1) ELECTIVE CONTRIBUTION RULE.—Clause  
4 (i) of section 416(g)(4)(H) of such Code is amended  
5 by inserting “or 401(k)(13)” after “section  
6 401(k)(12)”.

7 (2) MATCHING CONTRIBUTION RULE.—Clause  
8 (ii) of section 416(g)(4)(H) of such Code is amended  
9 by inserting “or 401(m)(12)” after “section  
10 401(m)(11)”.

11 (d) TREATMENT OF WITHDRAWALS OF CONTRIBU-  
12 TIONS DURING FIRST 90 DAYS.—

13 (1) IN GENERAL.—Section 414 of the Internal  
14 Revenue Code of 1986 is amended by adding at the  
15 end the following new subsection:

16 “(w) SPECIAL RULES FOR CERTAIN WITHDRAWALS  
17 FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGE-  
18 MENTS.—

19 “(1) IN GENERAL.—If an eligible automatic  
20 contribution arrangement allows an employee to  
21 elect to make permissible withdrawals—

22 “(A) the amount of any such withdrawal  
23 shall be includible in the gross income of the  
24 employee for the taxable year of the employee  
25 in which the distribution is made,

1 “(B) no tax shall be imposed under section  
2 72(t) with respect to the distribution, and

3 “(C) the arrangement shall not be treated  
4 as violating any restriction on distributions  
5 under this title solely by reason of allowing the  
6 withdrawal.

7 In the case of any distribution to an employee by  
8 reason of an election under this paragraph, employer  
9 matching contributions shall be forfeited or subject  
10 to such other treatment as the Secretary may pre-  
11 scribe.

12 “(2) PERMISSIBLE WITHDRAWAL.—For pur-  
13 poses of this subsection—

14 “(A) IN GENERAL.—The term ‘permissible  
15 withdrawal’ means any withdrawal from an eli-  
16 gible automatic contribution arrangement meet-  
17 ing the requirements of this paragraph which—

18 “(i) is made pursuant to an election  
19 by an employee, and

20 “(ii) consists of elective contributions  
21 described in paragraph (3)(B) (and earn-  
22 ings attributable thereto).

23 “(B) TIME FOR MAKING ELECTION.—Sub-  
24 paragraph (A) shall not apply to an election by  
25 an employee unless the election is made no later

1           than the date which is 90 days after the date  
2           of the first elective contribution with respect to  
3           the employee under the arrangement.

4           “(C) AMOUNT OF DISTRIBUTION.—Sub-  
5           paragraph (A) shall not apply to any election by  
6           an employee unless the amount of any distribu-  
7           tion by reason of the election is equal to the  
8           amount of elective contributions made with re-  
9           spect to the first payroll period to which the eli-  
10          gible automatic contribution arrangement ap-  
11          plies to the employee and any succeeding pay-  
12          roll period beginning before the effective date of  
13          the election (and earnings attributable thereto).

14          “(3) ELIGIBLE AUTOMATIC CONTRIBUTION AR-  
15          RANGEMENT.—For purposes of this subsection, the  
16          term ‘eligible automatic contribution arrangement’  
17          means an arrangement under an applicable employer  
18          plan—

19                 “(A) under which a participant may elect  
20                 to have the employer make payments as con-  
21                 tributions under the plan on behalf of the par-  
22                 ticipant, or to the participant directly in cash,

23                 “(B) under which the participant is treated  
24                 as having elected to have the employer make  
25                 such contributions in an amount equal to a uni-

1 form percentage of compensation provided  
2 under the plan until the participant specifically  
3 elects not to have such contributions made (or  
4 specifically elects to have such contributions  
5 made at a different percentage),

6 “(C) under which, in the absence of an in-  
7 vestment election by the participant, contribu-  
8 tions described in subparagraph (B) are in-  
9 vested in accordance with regulations prescribed  
10 by the Secretary of Labor under section  
11 404(c)(5) of the Employee Retirement Income  
12 Security Act of 1974, and

13 “(D) which meets the requirements of  
14 paragraph (4).

15 “(4) NOTICE REQUIREMENTS.—

16 “(A) IN GENERAL.—The administrator of  
17 a plan containing an arrangement described in  
18 paragraph (3) shall, within a reasonable period  
19 before each plan year, give to each employee to  
20 whom an arrangement described in paragraph  
21 (3) applies for such plan year notice of the em-  
22 ployee’s rights and obligations under the ar-  
23 rangement which—

1 “(i) is sufficiently accurate and com-  
2 prehensive to apprise the employee of such  
3 rights and obligations, and

4 “(ii) is written in a manner calculated  
5 to be understood by the average employee  
6 to whom the arrangement applies.

7 “(B) TIME AND FORM OF NOTICE.—A no-  
8 tice shall not be treated as meeting the require-  
9 ments of subparagraph (A) with respect to an  
10 employee unless—

11 “(i) the notice includes an explanation  
12 of the employee’s right under the arrange-  
13 ment to elect not to have elective contribu-  
14 tions made on the employee’s behalf (or to  
15 elect to have such contributions made at a  
16 different percentage),

17 “(ii) the employee has a reasonable  
18 period of time after receipt of the notice  
19 described in clause (i) and before the first  
20 elective contribution is made to make such  
21 election, and

22 “(iii) the notice explains how contribu-  
23 tions made under the arrangement will be  
24 invested in the absence of any investment  
25 election by the employee.

1           “(5) APPLICABLE EMPLOYER PLAN.—For pur-  
2       poses of this subsection, the term ‘applicable em-  
3       ployer plan’ means—

4           “(A) an employees’ trust described in sec-  
5       tion 401(a) which is exempt from tax under  
6       section 501(a),

7           “(B) a plan under which amounts are con-  
8       tributed by an individual’s employer for an an-  
9       nuity contract described in section 403(b), and

10          “(C) an eligible deferred compensation  
11       plan described in section 457(b) which is main-  
12       tained by an eligible employer described in sec-  
13       tion 457(e)(1)(A).

14          “(6) SPECIAL RULE.—A withdrawal described  
15       in paragraph (1) (subject to the limitation of para-  
16       graph (2)(C)) shall not be taken into account for  
17       purposes of section 401(k)(3).”.

18          (2) VESTING CONFORMING AMENDMENTS.—

19               (A) Section 411(a)(3)(G) of such Code is  
20       amended by inserting “an erroneous automatic  
21       contribution under section 414(w),” after  
22       “402(g)(2)(A),”.

23               (B) The heading of section 411(a)(3)(G) of  
24       such Code is amended by inserting “**OR ERRO-**

1           **NEOUS AUTOMATIC CONTRIBUTION**” before  
2           the period.

3           (C) Section 401(k)(8)(E) of such Code is  
4           amended by inserting “an erroneous automatic  
5           contribution under section 414(w),” after  
6           “402(g)(2)(A),”.

7           (D) The heading of section 401(k)(8)(E)  
8           of such Code is amended by inserting “**OR ER-**  
9           **RONEOUS AUTOMATIC CONTRIBUTION**” be-  
10          fore the period.

11          (E) Section 203(a)(3)(F) of the Employee  
12          Retirement Income Security Act of 1974 (29  
13          U.S.C. 1053(a)(3)(F)) is amended by inserting  
14          “an erroneous automatic contribution under  
15          section 414(w) of such Code,” after  
16          “402(g)(2)(A) of such Code,”.

17          (e) **EXCESS CONTRIBUTIONS.**—

18               (1) **EXPANSION OF CORRECTIVE DISTRIBUTION**  
19          **PERIOD FOR AUTOMATIC CONTRIBUTION ARRANGE-**  
20          **MENTS.**—Subsection (f) of section 4979 of the Inter-  
21          nal Revenue Code of 1986 is amended—

22               (A) by inserting “(6 months in the case of  
23               an excess contribution or excess aggregate con-  
24               tribution to an eligible automatic contribution  
25               arrangement (as defined in section

1           414(w)(3)))” after “2½ months” in paragraph  
2           (1), and

3           (B) by striking “2½ MONTHS OF” in the  
4           heading and inserting “SPECIFIED PERIOD  
5           AFTER”.

6           (2) YEAR OF INCLUSION.—Paragraph (2) of  
7           section 4979(f) of such Code is amended to read as  
8           follows:

9           “(2) YEAR OF INCLUSION.—Any amount dis-  
10          tributed as provided in paragraph (1) shall be treat-  
11          ed as earned and received by the recipient in the re-  
12          cipient’s taxable year in which such distributions  
13          were made.”.

14          (3) SIMPLIFICATION OF ALLOCABLE EARN-  
15          INGS.—

16                (A) SECTION 4979.—Paragraph (1) of sec-  
17                tion 4979(f) of such Code is amended by adding  
18                “through the end of the plan year for which the  
19                contribution was made” after “thereto”.

20                (B) SECTION 401(k) AND 401(M).—

21                   (i) Clause (i) of section 401(k)(8)(A)  
22                   of such Code is amended by adding  
23                   “through the end of such year” after  
24                   “such contributions”.



1 (ii) Subparagraph (A) of section  
2 401(m)(6) of such Code is amended by  
3 adding “through the end of such year”  
4 after “to such contributions”.

5 (f) PREEMPTION OF CONFLICTING STATE REGULA-  
6 TION.—

7 (1) IN GENERAL.—Section 514 of the Employee  
8 Retirement Income Security Act of 1974 (29 U.S.C.  
9 1144) is amended by adding at the end the following  
10 new subsection:

11 “(e)(1) Notwithstanding any other provision of this  
12 section, this title shall supersede any law of a State which  
13 would directly or indirectly prohibit or restrict the inclu-  
14 sion in any plan of an automatic contribution arrange-  
15 ment. The Secretary may prescribe regulations which  
16 would establish minimum standards that such an arrange-  
17 ment would be required to satisfy in order for this sub-  
18 section to apply in the case of such arrangement.

19 “(2) For purposes of this subsection, the term ‘auto-  
20 matic contribution arrangement’ means an arrange-  
21 ment—

22 “(A) under which a participant may elect to  
23 have the plan sponsor make payments as contribu-  
24 tions under the plan on behalf of the participant, or  
25 to the participant directly in cash,

1           “(B) under which a participant is treated as  
2           having elected to have the plan sponsor make such  
3           contributions in an amount equal to a uniform per-  
4           centage of compensation provided under the plan  
5           until the participant specifically elects not to have  
6           such contributions made (or specifically elects to  
7           have such contributions made at a different percent-  
8           age), and

9           “(C) under which such contributions are in-  
10          vested in accordance with regulations prescribed by  
11          the Secretary under section 404(c)(5).

12          “(3)(A) The plan administrator of an automatic con-  
13          tribution arrangement shall, within a reasonable period  
14          before such plan year, provide to each participant to whom  
15          the arrangement applies for such plan year notice of the  
16          participant’s rights and obligations under the arrange-  
17          ment which—

18               “(i) is sufficiently accurate and comprehensive  
19               to apprise the participant of such rights and obliga-  
20               tions, and

21               “(ii) is written in a manner calculated to be un-  
22               derstood by the average participant to whom the ar-  
23               rangement applies.

1 “(B) A notice shall not be treated as meeting the re-  
2 quirements of subparagraph (A) with respect to a partici-  
3 pant unless—

4 “(i) the notice includes an explanation of the  
5 participant’s right under the arrangement not to  
6 have elective contributions made on the participant’s  
7 behalf (or to elect to have such contributions made  
8 at a different percentage),

9 “(ii) the participant has a reasonable period of  
10 time, after receipt of the notice described in clause  
11 (i) and before the first elective contribution is made,  
12 to make such election, and

13 “(iii) the notice explains how contributions  
14 made under the arrangement will be invested in the  
15 absence of any investment election by the partici-  
16 pant.”.

17 (2) ENFORCEMENT.—Section 502(c)(4) of such  
18 Act (29 U.S.C. 1132(c)(4)) is amended by striking  
19 “or section 302(b)(7)(F)(vi)” inserting “, section  
20 302(b)(7)(F)(vi), or section 514(e)(3)”.

21 (g) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to plan years beginning after De-  
23 cember 31, 2007, except that the amendments made by  
24 subsection (f) shall take effect on the date of the enact-  
25 ment of this Act.

1 **SEC. 903. TREATMENT OF ELIGIBLE COMBINED DEFINED**  
2 **BENEFIT PLANS AND QUALIFIED CASH OR**  
3 **DEFERRED ARRANGEMENTS.**

4 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—  
5 Section 414 of the Internal Revenue Code of 1986, as  
6 amended by this Act, is amended by adding at the end  
7 the following new subsection:

8 “(x) SPECIAL RULES FOR ELIGIBLE COMBINED DE-  
9 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-  
10 FERRED ARRANGEMENTS.—

11 “(1) GENERAL RULE.—Except as provided in  
12 this subsection, the requirements of this title shall  
13 be applied to any defined benefit plan or applicable  
14 defined contribution plan which are part of an eligi-  
15 ble combined plan in the same manner as if each  
16 such plan were not a part of the eligible combined  
17 plan.

18 “(2) ELIGIBLE COMBINED PLAN.—For pur-  
19 poses of this subsection—

20 “(A) IN GENERAL.—The term ‘eligible  
21 combined plan’ means a plan—

22 “(i) which is maintained by an em-  
23 ployer which, at the time the plan is estab-  
24 lished, is a small employer,

1 “(ii) which consists of a defined ben-  
2 efit plan and an applicable defined con-  
3 tribution plan,

4 “(iii) the assets of which are held in  
5 a single trust forming part of the plan and  
6 are clearly identified and allocated to the  
7 defined benefit plan and the applicable de-  
8 fined contribution plan to the extent nec-  
9 essary for the separate application of this  
10 title under paragraph (1), and

11 “(iv) with respect to which the ben-  
12 efit, contribution, vesting, and non-  
13 discrimination requirements of subpara-  
14 graphs (B), (C), (D), (E), and (F) are  
15 met.

16 For purposes of this subparagraph, the term  
17 ‘small employer’ has the meaning given such  
18 term by section 4980D(d)(2), except that such  
19 section shall be applied by substituting ‘500’ for  
20 ‘50’ each place it appears.

21 “(B) BENEFIT REQUIREMENTS.—

22 “(i) IN GENERAL.—The benefit re-  
23 quirements of this subparagraph are met  
24 with respect to the defined benefit plan  
25 forming part of the eligible combined plan

1 if the accrued benefit of each participant  
2 derived from employer contributions, when  
3 expressed as an annual retirement benefit,  
4 is not less than the applicable percentage  
5 of the participant's final average pay. For  
6 purposes of this clause, final average pay  
7 shall be determined using the period of  
8 consecutive years (not exceeding 5) during  
9 which the participant had the greatest ag-  
10 gregate compensation from the employer.

11 “(ii) APPLICABLE PERCENTAGE.—For  
12 purposes of clause (i), the applicable per-  
13 centage is the lesser of—

14 “(I) 1 percent multiplied by the  
15 number of years of service with the  
16 employer, or

17 “(II) 20 percent.

18 “(iii) SPECIAL RULE FOR APPLICABLE  
19 DEFINED BENEFIT PLANS.—If the defined  
20 benefit plan under clause (i) is an applica-  
21 ble defined benefit plan as defined in sec-  
22 tion 411(a)(13)(B) which meets the inter-  
23 est credit requirements of section  
24 411(b)(5)(B)(i), the plan shall be treated  
25 as meeting the requirements of clause (i)

1 with respect to any plan year if each par-  
 2 ticipant receives a pay credit for the year  
 3 which is not less than the percentage of  
 4 compensation determined in accordance  
 5 with the following table:

<b>“If the participant’s age as of the beginning of the year is—</b>	<b>The percentage is—</b>
30 or less .....	2
Over 30 but less than 40 .....	4
40 or over but less than 50 .....	6
50 or over .....	8.

6 “(iv) YEARS OF SERVICE.—For pur-  
 7 poses of this subparagraph, years of serv-  
 8 ice shall be determined under the rules of  
 9 paragraphs (4), (5), and (6) of section  
 10 411(a), except that the plan may not dis-  
 11 regard any year of service because of a  
 12 participant making, or failing to make, any  
 13 elective deferral with respect to the quali-  
 14 fied cash or deferred arrangement to which  
 15 subparagraph (C) applies.

16 “(C) CONTRIBUTION REQUIREMENTS.—

17 “(i) IN GENERAL.—The contribution  
 18 requirements of this subparagraph with re-  
 19 spect to any applicable defined contribu-  
 20 tion plan forming part of an eligible com-  
 21 bined plan are met if—

22 “(I) the qualified cash or de-  
 23 ferred arrangement included in such

1 plan constitutes an automatic con-  
2 tribution arrangement, and

3 “(II) the employer is required to  
4 make matching contributions on be-  
5 half of each employee eligible to par-  
6 ticipate in the arrangement in an  
7 amount equal to 50 percent of the  
8 elective contributions of the employee  
9 to the extent such elective contribu-  
10 tions do not exceed 4 percent of com-  
11 pensation.

12 Rules similar to the rules of clauses (ii)  
13 and (iii) of section 401(k)(12)(B) shall  
14 apply for purposes of this clause.

15 “(ii) NONELECTIVE CONTRIBU-  
16 TIONS.—An applicable defined contribution  
17 plan shall not be treated as failing to meet  
18 the requirements of clause (i) because the  
19 employer makes nonelective contributions  
20 under the plan but such contributions shall  
21 not be taken into account in determining  
22 whether the requirements of clause (i)(II)  
23 are met.



1           “(D) VESTING REQUIREMENTS.—The vest-  
2           ing requirements of this subparagraph are met  
3           if—

4                   “(i) in the case of a defined benefit  
5                   plan forming part of an eligible combined  
6                   plan an employee who has completed at  
7                   least 3 years of service has a nonforfeitable  
8                   right to 100 percent of the employee’s ac-  
9                   crued benefit under the plan derived from  
10                  employer contributions, and

11                  “(ii) in the case of an applicable de-  
12                  fined contribution plan forming part of eli-  
13                  gible combined plan—

14                   “(I) an employee has a non-  
15                   forfeitable right to any matching con-  
16                   tribution made under the qualified  
17                   cash or deferred arrangement included  
18                   in such plan by an employer with re-  
19                   spect to any elective contribution, in-  
20                   cluding matching contributions in ex-  
21                   cess of the contributions required  
22                   under subparagraph (C)(i)(II), and

23                   “(II) an employee who has com-  
24                   pleted at least 3 years of service has  
25                   a nonforfeitable right to 100 percent

1 of the employee's accrued benefit de-  
2 rived under the arrangement from  
3 nonelective contributions of the em-  
4 ployer.

5 For purposes of this subparagraph, the  
6 rules of section 411 shall apply to the ex-  
7 tent not inconsistent with this subpara-  
8 graph.

9 “(E) UNIFORM PROVISION OF CONTRIBU-  
10 TIONS AND BENEFITS.—In the case of a defined  
11 benefit plan or applicable defined contribution  
12 plan forming part of an eligible combined plan,  
13 the requirements of this subparagraph are met  
14 if all contributions and benefits under each  
15 such plan, and all rights and features under  
16 each such plan, must be provided uniformly to  
17 all participants.

18 “(F) REQUIREMENTS MUST BE MET WITH-  
19 OUT TAKING INTO ACCOUNT SOCIAL SECURITY  
20 AND SIMILAR CONTRIBUTIONS AND BENEFITS  
21 OR OTHER PLANS.—

22 “(i) IN GENERAL.—The requirements  
23 of this subparagraph are met if the re-  
24 quirements of clauses (ii) and (iii) are met.

1 “(ii) SOCIAL SECURITY AND SIMILAR  
2 CONTRIBUTIONS.—The requirements of  
3 this clause are met if—

4 “(I) the requirements of subpara-  
5 graphs (B) and (C) are met without  
6 regard to section 401(l), and

7 “(II) the requirements of sections  
8 401(a)(4) and 410(b) are met with re-  
9 spect to both the applicable defined  
10 contribution plan and defined benefit  
11 plan forming part of an eligible com-  
12 bined plan without regard to section  
13 401(l).

14 “(iii) OTHER PLANS AND ARRANGE-  
15 MENTS.—The requirements of this clause  
16 are met if the applicable defined contribu-  
17 tion plan and defined benefit plan forming  
18 part of an eligible combined plan meet the  
19 requirements of sections 401(a)(4) and  
20 410(b) without being combined with any  
21 other plan.

22 “(3) NONDISCRIMINATION REQUIREMENTS FOR  
23 QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

24 “(A) IN GENERAL.—A qualified cash or  
25 deferred arrangement which is included in an

1 applicable defined contribution plan forming  
2 part of an eligible combined plan shall be treat-  
3 ed as meeting the requirements of section  
4 401(k)(3)(A)(ii) if the requirements of para-  
5 graph (2)(C) are met with respect to such ar-  
6 rangement.

7 “(B) MATCHING CONTRIBUTIONS.—In ap-  
8 plying section 401(m)(11) to any matching con-  
9 tribution with respect to a contribution to which  
10 paragraph (2)(C) applies, the contribution re-  
11 quirement of paragraph (2)(C) and the notice  
12 requirements of paragraph (5)(B) shall be sub-  
13 stituted for the requirements otherwise applica-  
14 ble under clauses (i) and (ii) of section  
15 401(m)(11)(A).

16 “(4) SATISFACTION OF TOP-HEAVY RULES.—A  
17 defined benefit plan and applicable defined contribu-  
18 tion plan forming part of an eligible combined plan  
19 for any plan year shall be treated as meeting the re-  
20 quirements of section 416 for the plan year.

21 “(5) AUTOMATIC CONTRIBUTION ARRANGE-  
22 MENT.—For purposes of this subsection—

23 “(A) IN GENERAL.—A qualified cash or  
24 deferred arrangement shall be treated as an

1 automatic contribution arrangement if the ar-  
2 rangement—

3 “(i) provides that each employee eligi-  
4 ble to participate in the arrangement is  
5 treated as having elected to have the em-  
6 ployer make elective contributions in an  
7 amount equal to 4 percent of the employ-  
8 ee’s compensation unless the employee spe-  
9 cifically elects not to have such contribu-  
10 tions made or to have such contributions  
11 made at a different rate, and

12 “(ii) meets the notice requirements  
13 under subparagraph (B).

14 “(B) NOTICE REQUIREMENTS.—

15 “(i) IN GENERAL.—The requirements  
16 of this subparagraph are met if the re-  
17 quirements of clauses (ii) and (iii) are met.

18 “(ii) REASONABLE PERIOD TO MAKE  
19 ELECTION.—The requirements of this  
20 clause are met if each employee to whom  
21 subparagraph (A)(i) applies—

22 “(I) receives a notice explaining  
23 the employee’s right under the ar-  
24 rangement to elect not to have elective  
25 contributions made on the employee’s

1                   behalf or to have the contributions  
2                   made at a different rate, and

3                   “(II) has a reasonable period of  
4                   time after receipt of such notice and  
5                   before the first elective contribution is  
6                   made to make such election.

7                   “(iii) ANNUAL NOTICE OF RIGHTS  
8                   AND OBLIGATIONS.—The requirements of  
9                   this clause are met if each employee eligi-  
10                  ble to participate in the arrangement is,  
11                  within a reasonable period before any year,  
12                  given notice of the employee’s rights and  
13                  obligations under the arrangement.

14                 The requirements of clauses (i) and (ii) of sec-  
15                 tion 401(k)(12)(D) shall be met with respect to  
16                 the notices described in clauses (ii) and (iii) of  
17                 this subparagraph.

18                 “(6) COORDINATION WITH OTHER REQUIRE-  
19                 MENTS.—

20                 “(A) TREATMENT OF SEPARATE PLANS.—  
21                 Section 414(k) shall not apply to an eligible  
22                 combined plan.

23                 “(B) REPORTING.—An eligible combined  
24                 plan shall be treated as a single plan for pur-  
25                 poses of sections 6058 and 6059.

1           “(7) APPLICABLE DEFINED CONTRIBUTION  
2 PLAN.—For purposes of this subsection—

3           “(A) IN GENERAL.—The term ‘applicable  
4 defined contribution plan’ means a defined con-  
5 tribution plan which includes a qualified cash or  
6 deferred arrangement.

7           “(B) QUALIFIED CASH OR DEFERRED AR-  
8 RANGEMENT.—The term ‘qualified cash or de-  
9 ferred arrangement’ has the meaning given  
10 such term by section 401(k)(2).”.

11       (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
12 INCOME SECURITY ACT OF 1974.—

13       (1) IN GENERAL.—Section 210 of the Employee  
14 Retirement Income Security Act of 1974 is amended  
15 by adding at the end the following new subsection:

16       “(e) SPECIAL RULES FOR ELIGIBLE COMBINED DE-  
17 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-  
18 FERRED ARRANGEMENTS.—

19       “(1) GENERAL RULE.—Except as provided in  
20 this subsection, this Act shall be applied to any de-  
21 fined benefit plan or applicable individual account  
22 plan which are part of an eligible combined plan in  
23 the same manner as if each such plan were not a  
24 part of the eligible combined plan.

1           “(2) ELIGIBLE COMBINED PLAN.—For pur-  
2       poses of this subsection—

3           “(A) IN GENERAL.—The term ‘eligible  
4       combined plan’ means a plan—

5           “(i) which is maintained by an em-  
6       ployer which, at the time the plan is estab-  
7       lished, is a small employer,

8           “(ii) which consists of a defined ben-  
9       efit plan and an applicable individual ac-  
10      count plan each of which qualifies under  
11      section 401(a) of the Internal Revenue  
12      Code of 1986,

13          “(iii) the assets of which are held in  
14      a single trust forming part of the plan and  
15      are clearly identified and allocated to the  
16      defined benefit plan and the applicable in-  
17      dividual account plan to the extent nec-  
18      essary for the separate application of this  
19      Act under paragraph (1), and

20          “(iv) with respect to which the ben-  
21      efit, contribution, vesting, and non-  
22      discrimination requirements of subpara-  
23      graphs (B), (C), (D), (E), and (F) are  
24      met.



1 For purposes of this subparagraph, the term  
2 ‘small employer’ has the meaning given such  
3 term by section 4980D(d)(2) of the Internal  
4 Revenue Code of 1986, except that such section  
5 shall be applied by substituting ‘500’ for ‘50’  
6 each place it appears.

7 “(B) BENEFIT REQUIREMENTS.—

8 “(i) IN GENERAL.—The benefit re-  
9 quirements of this subparagraph are met  
10 with respect to the defined benefit plan  
11 forming part of the eligible combined plan  
12 if the accrued benefit of each participant  
13 derived from employer contributions, when  
14 expressed as an annual retirement benefit,  
15 is not less than the applicable percentage  
16 of the participant’s final average pay. For  
17 purposes of this clause, final average pay  
18 shall be determined using the period of  
19 consecutive years (not exceeding 5) during  
20 which the participant had the greatest ag-  
21 gregate compensation from the employer.

22 “(ii) APPLICABLE PERCENTAGE.—For  
23 purposes of clause (i), the applicable per-  
24 centage is the lesser of—

1                   “(I) 1 percent multiplied by the  
2                   number of years of service with the  
3                   employer, or

4                   “(II) 20 percent.

5                   “(iii) SPECIAL RULE FOR APPLICABLE  
6                   DEFINED BENEFIT PLANS.—If the defined  
7                   benefit plan under clause (i) is an applica-  
8                   ble defined benefit plan as defined in sec-  
9                   tion 203(f)(3)(B) which meets the interest  
10                  credit requirements of section  
11                  204(b)(5)(B)(i), the plan shall be treated  
12                  as meeting the requirements of clause (i)  
13                  with respect to any plan year if each par-  
14                  ticipant receives pay credit for the year  
15                  which is not less than the percentage of  
16                  compensation determined in accordance  
17                  with the following table:

<b>“If the participant’s age as of the beginning of the year is—</b>	<b>The percentage is—</b>
30 or less .....	2
Over 30 but less than 40 .....	4
40 or over but less than 50 .....	6
50 or over .....	8.

18                  “(iv) YEARS OF SERVICE.—For pur-  
19                  poses of this subparagraph, years of serv-  
20                  ice shall be determined under the rules of  
21                  paragraphs (1), (2), and (3) of section  
22                  203(b), except that the plan may not dis-

1           regard any year of service because of a  
2           participant making, or failing to make, any  
3           elective deferral with respect to the quali-  
4           fied cash or deferred arrangement to which  
5           subparagraph (C) applies.

6           “(C) CONTRIBUTION REQUIREMENTS.—

7                 “(i) IN GENERAL.—The contribution  
8           requirements of this subparagraph with re-  
9           spect to any applicable individual account  
10          plan forming part of an eligible combined  
11          plan are met if—

12                 “(I) the qualified cash or de-  
13          ferred arrangement included in such  
14          plan constitutes an automatic con-  
15          tribution arrangement, and

16                 “(II) the employer is required to  
17          make matching contributions on be-  
18          half of each employee eligible to par-  
19          ticipate in the arrangement in an  
20          amount equal to 50 percent of the  
21          elective contributions of the employee  
22          to the extent such elective contribu-  
23          tions do not exceed 4 percent of com-  
24          pensation.

1 Rules similar to the rules of clauses (ii)  
2 and (iii) of section 401(k)(12)(B) of the  
3 Internal Revenue Code of 1986 shall apply  
4 for purposes of this clause.

5 “(ii) NONELECTIVE CONTRIBU-  
6 TIONS.—An applicable individual account  
7 plan shall not be treated as failing to meet  
8 the requirements of clause (i) because the  
9 employer makes nonelective contributions  
10 under the plan but such contributions shall  
11 not be taken into account in determining  
12 whether the requirements of clause (i)(II)  
13 are met.

14 “(D) VESTING REQUIREMENTS.—The vest-  
15 ing requirements of this subparagraph are met  
16 if—

17 “(i) in the case of a defined benefit  
18 plan forming part of an eligible combined  
19 plan an employee who has completed at  
20 least 3 years of service has a nonforfeitable  
21 right to 100 percent of the employee’s ac-  
22 crued benefit under the plan derived from  
23 employer contributions, and

1 “(ii) in the case of an applicable indi-  
2 vidual account plan forming part of eligible  
3 combined plan—

4 “(I) an employee has a non-  
5 forfeitable right to any matching con-  
6 tribution made under the qualified  
7 cash or deferred arrangement included  
8 in such plan by an employer with re-  
9 spect to any elective contribution, in-  
10 cluding matching contributions in ex-  
11 cess of the contributions required  
12 under subparagraph (C)(i)(II), and

13 “(II) an employee who has com-  
14 pleted at least 3 years of service has  
15 a nonforfeitable right to 100 percent  
16 of the employee’s accrued benefit de-  
17 rived under the arrangement from  
18 nonelective contributions of the em-  
19 ployer.

20 For purposes of this subparagraph, the  
21 rules of section 203 shall apply to the ex-  
22 tent not inconsistent with this subpara-  
23 graph.

24 “(E) UNIFORM PROVISION OF CONTRIBU-  
25 TIONS AND BENEFITS.—In the case of a defined

1 benefit plan or applicable individual account  
2 plan forming part of an eligible combined plan,  
3 the requirements of this subparagraph are met  
4 if all contributions and benefits under each  
5 such plan, and all rights and features under  
6 each such plan, must be provided uniformly to  
7 all participants.

8 “(F) REQUIREMENTS MUST BE MET WITH-  
9 OUT TAKING INTO ACCOUNT SOCIAL SECURITY  
10 AND SIMILAR CONTRIBUTIONS AND BENEFITS  
11 OR OTHER PLANS.—

12 “(i) IN GENERAL.—The requirements  
13 of this subparagraph are met if the re-  
14 quirements of clauses (ii) and (iii) are met.

15 “(ii) SOCIAL SECURITY AND SIMILAR  
16 CONTRIBUTIONS.—The requirements of  
17 this clause are met if—

18 “(I) the requirements of subpara-  
19 graphs (B) and (C) are met without  
20 regard to section 401(l) of the Inter-  
21 nal Revenue Code of 1986, and

22 “(II) the requirements of sections  
23 401(a)(4) and 410(b) of the Internal  
24 Revenue Code of 1986 are met with  
25 respect to both the applicable defined

1 contribution plan and defined benefit  
2 plan forming part of an eligible com-  
3 bined plan without regard to section  
4 401(l) of the Internal Revenue Code  
5 of 1986.

6 “(iii) OTHER PLANS AND ARRANGE-  
7 MENTS.—The requirements of this clause  
8 are met if the applicable defined contribu-  
9 tion plan and defined benefit plan forming  
10 part of an eligible combined plan meet the  
11 requirements of sections 401(a)(4) and  
12 410(b) of the Internal Revenue Code of  
13 1986 without being combined with any  
14 other plan.

15 “(3) NONDISCRIMINATION REQUIREMENTS FOR  
16 QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

17 “(A) IN GENERAL.—A qualified cash or  
18 deferred arrangement which is included in an  
19 applicable individual account plan forming part  
20 of an eligible combined plan shall be treated as  
21 meeting the requirements of section  
22 401(k)(3)(A)(ii) of the Internal Revenue Code  
23 of 1986 if the requirements of paragraph (2)  
24 are met with respect to such arrangement.

1           “(B) MATCHING CONTRIBUTIONS.—In ap-  
2           plying section 401(m)(11) of such Code to any  
3           matching contribution with respect to a con-  
4           tribution to which paragraph (2)(C) applies, the  
5           contribution requirement of paragraph (2)(C)  
6           and the notice requirements of paragraph  
7           (5)(B) shall be substituted for the requirements  
8           otherwise applicable under clauses (i) and (ii) of  
9           section 401(m)(11)(A) of such Code.

10          “(4) AUTOMATIC CONTRIBUTION ARRANGE-  
11          MENT.—For purposes of this subsection—

12               “(A) IN GENERAL.—A qualified cash or  
13               deferred arrangement shall be treated as an  
14               automatic contribution arrangement if the ar-  
15               rangement—

16                   “(i) provides that each employee eligi-  
17                   ble to participate in the arrangement is  
18                   treated as having elected to have the em-  
19                   ployer make elective contributions in an  
20                   amount equal to 4 percent of the employ-  
21                   ee’s compensation unless the employee spe-  
22                   cifically elects not to have such contribu-  
23                   tions made or to have such contributions  
24                   made at a different rate, and



1 “(ii) meets the notice requirements  
2 under subparagraph (B).

3 “(B) NOTICE REQUIREMENTS.—

4 “(i) IN GENERAL.—The requirements  
5 of this subparagraph are met if the re-  
6 quirements of clauses (ii) and (iii) are met.

7 “(ii) REASONABLE PERIOD TO MAKE  
8 ELECTION.—The requirements of this  
9 clause are met if each employee to whom  
10 subparagraph (A)(i) applies—

11 “(I) receives a notice explaining  
12 the employee’s right under the ar-  
13 rangement to elect not to have elective  
14 contributions made on the employee’s  
15 behalf or to have the contributions  
16 made at a different rate, and

17 “(II) has a reasonable period of  
18 time after receipt of such notice and  
19 before the first elective contribution is  
20 made to make such election.

21 “(iii) ANNUAL NOTICE OF RIGHTS  
22 AND OBLIGATIONS.—The requirements of  
23 this clause are met if each employee eligi-  
24 ble to participate in the arrangement is,  
25 within a reasonable period before any year,

1           given notice of the employee's rights and  
2           obligations under the arrangement.

3           The requirements of this subparagraph shall  
4           not be treated as met unless the requirements  
5           of clauses (i) and (ii) of section 401(k)(12)(D)  
6           of the Internal Revenue Code of 1986 are met  
7           with respect to the notices described in clauses  
8           (ii) and (iii) of this subparagraph.

9           “(5) COORDINATION WITH OTHER REQUIRE-  
10          MENTS.—

11           “(A) TREATMENT OF SEPARATE PLANS.—  
12           The except clause in section 3(35) shall not  
13           apply to an eligible combined plan.

14           “(B) REPORTING.—An eligible combined  
15           plan shall be treated as a single plan for pur-  
16           poses of section 103.

17           “(6) APPLICABLE INDIVIDUAL ACCOUNT  
18          PLAN.—For purposes of this subsection—

19           “(A) IN GENERAL.—The term ‘applicable  
20           individual account plan’ means an individual ac-  
21           count plan which includes a qualified cash or  
22           deferred arrangement.

23           “(B) QUALIFIED CASH OR DEFERRED AR-  
24           RANGEMENT.—The term ‘qualified cash or de-  
25           ferred arrangement’ has the meaning given

1 such term by section 401(k)(2) of the Internal  
2 Revenue Code of 1986.”.

3 (2) CONFORMING CHANGES.—

4 (A) The heading for section 210 of such  
5 Act is amended to read as follows:

6 **“SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPE-**  
7 **CIAL RULES.”.**

8 (B) The table of contents in section 1 of  
9 such Act is amended by striking the item relat-  
10 ing to section 210 and inserting the following  
11 new item:

“Sec. 210. Multiple employer plans and other special rules.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to plan years beginning after De-  
14 cember 31, 2009.

15 **SEC. 904. FASTER VESTING OF EMPLOYER NONELECTIVE**  
16 **CONTRIBUTIONS.**

17 (a) AMENDMENTS TO THE INTERNAL REVENUE  
18 CODE OF 1986.—

19 (1) IN GENERAL.—Paragraph (2) of section  
20 411(a) of the Internal Revenue Code of 1986 (relat-  
21 ing to employer contributions) is amended to read as  
22 follows:

23 **“(2) EMPLOYER CONTRIBUTIONS.—**

24 **“(A) DEFINED BENEFIT PLANS.—**

1 “(i) IN GENERAL.—In the case of a  
2 defined benefit plan, a plan satisfies the  
3 requirements of this paragraph if it satis-  
4 fies the requirements of clause (ii) or (iii).

5 “(ii) 5-YEAR VESTING.—A plan satis-  
6 fies the requirements of this clause if an  
7 employee who has completed at least 5  
8 years of service has a nonforfeitable right  
9 to 100 percent of the employee’s accrued  
10 benefit derived from employer contribu-  
11 tions.

12 “(iii) 3 TO 7 YEAR VESTING.—A plan  
13 satisfies the requirements of this clause if  
14 an employee has a nonforfeitable right to  
15 a percentage of the employee’s accrued  
16 benefit derived from employer contribu-  
17 tions determined under the following table:

<b>“ Years of service:</b>		<b>The nonforfeitable percentage is:</b>	
3	.....	20	
4	.....	40	
5	.....	60	
6	.....	80	
7 or more	.....	100.	

18 “(B) DEFINED CONTRIBUTION PLANS.—

19 “(i) IN GENERAL.—In the case of a  
20 defined contribution plan, a plan satisfies  
21 the requirements of this paragraph if it

1 satisfies the requirements of clause (ii) or  
 2 (iii).

3 “(ii) 3-YEAR VESTING.—A plan satis-  
 4 fies the requirements of this clause if an  
 5 employee who has completed at least 3  
 6 years of service has a nonforfeitable right  
 7 to 100 percent of the employee’s accrued  
 8 benefit derived from employer contribu-  
 9 tions.

10 “(iii) 2 TO 6 YEAR VESTING.—A plan  
 11 satisfies the requirements of this clause if  
 12 an employee has a nonforfeitable right to  
 13 a percentage of the employee’s accrued  
 14 benefit derived from employer contribu-  
 15 tions determined under the following table:

“ Years of service:	The nonforfeitable percentage is:
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

16 (2) CONFORMING AMENDMENT.—Section  
 17 411(a) of such Code (relating to general rule for  
 18 minimum vesting standards) is amended by striking  
 19 paragraph (12).

20 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
 21 INCOME SECURITY ACT OF 1974.—

1           (1) IN GENERAL.—Paragraph (2) of section  
 2           203(a) of the Employee Retirement Income Security  
 3           Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to  
 4           read as follows:

5           “(2)(A)(i) In the case of a defined benefit plan,  
 6           a plan satisfies the requirements of this paragraph  
 7           if it satisfies the requirements of clause (ii) or (iii).

8           “(ii) A plan satisfies the requirements of this  
 9           clause if an employee who has completed at least 5  
 10          years of service has a nonforfeitable right to 100  
 11          percent of the employee’s accrued benefit derived  
 12          from employer contributions.

13          “(iii) A plan satisfies the requirements of this  
 14          clause if an employee has a nonforfeitable right to  
 15          a percentage of the employee’s accrued benefit de-  
 16          rived from employer contributions determined under  
 17          the following table:

“ Years of service:	The nonforfeitable percentage is:
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

18          “(B)(i) In the case of an individual account  
 19          plan, a plan satisfies the requirements of this para-  
 20          graph if it satisfies the requirements of clause (ii) or  
 21          (iii).

1           “(ii) A plan satisfies the requirements of this  
 2           clause if an employee who has completed at least 3  
 3           years of service has a nonforfeitable right to 100  
 4           percent of the employee’s accrued benefit derived  
 5           from employer contributions.

6           “(iii) A plan satisfies the requirements of this  
 7           clause if an employee has a nonforfeitable right to  
 8           a percentage of the employee’s accrued benefit de-  
 9           rived from employer contributions determined under  
 10          the following table:

“ Years of service:	The nonforfeitable percentage is:
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

11           (2) CONFORMING AMENDMENT.—Section  
 12           203(a) of such Act is amended by striking para-  
 13           graph (4).

14           (c) EFFECTIVE DATES.—

15           (1) IN GENERAL.—Except as provided in para-  
 16           graphs (2) and (4), the amendments made by this  
 17           section shall apply to contributions for plan years  
 18           beginning after December 31, 2006.

19           (2) COLLECTIVE BARGAINING AGREEMENTS.—  
 20           In the case of a plan maintained pursuant to one or  
 21           more collective bargaining agreements between em-  
 22           ployee representatives and one or more employers

1 ratified before the date of the enactment of this Act,  
2 the amendments made by this section shall not apply  
3 to contributions on behalf of employees covered by  
4 any such agreement for plan years beginning before  
5 the earlier of—

6 (A) the later of—

7 (i) the date on which the last of such  
8 collective bargaining agreements termi-  
9 nates (determined without regard to any  
10 extension thereof on or after such date of  
11 the enactment); or

12 (ii) January 1, 2007; or

13 (B) January 1, 2009.

14 (3) SERVICE REQUIRED.—With respect to any  
15 plan, the amendments made by this section shall not  
16 apply to any employee before the date that such em-  
17 ployee has 1 hour of service under such plan in any  
18 plan year to which the amendments made by this  
19 section apply.

20 (4) SPECIAL RULE FOR STOCK OWNERSHIP  
21 PLANS.—Notwithstanding paragraph (1) or (2), in  
22 the case of an employee stock ownership plan (as de-  
23 fined in section 4975(e)(7) of the Internal Revenue  
24 Code of 1986) which had outstanding on September  
25 26, 2005, a loan incurred for the purpose of acquir-



1       ing qualifying employer securities (as defined in sec-  
2       tion 4975(e)(8) of such Code), the amendments  
3       made by this section shall not apply to any plan year  
4       beginning before the earlier of—

5               (A) the date on which the loan is fully re-  
6       paid, or

7               (B) the date on which the loan was, as of  
8       September 26, 2005, scheduled to be fully re-  
9       paid.

10 **SEC. 905. DISTRIBUTIONS DURING WORKING RETIREMENT.**

11       (a) AMENDMENT TO THE EMPLOYEE RETIREMENT  
12 INCOME SECURITY ACT OF 1974.—Subparagraph (A) of  
13 section 3(2) of the Employee Retirement Income Security  
14 Act of 1974 (29 U.S.C. 1002(2)) is amended by adding  
15 at the end the following new sentence: “A distribution  
16 from a plan, fund, or program shall not be treated as  
17 made in a form other than retirement income or as a dis-  
18 tribution prior to termination of covered employment sole-  
19 ly because such distribution is made to an employee who  
20 has attained age 62 and who is not separated from em-  
21 ployment at the time of such distribution.”.

22       (b) AMENDMENT TO THE INTERNAL REVENUE CODE  
23 OF 1986.—Subsection (a) of section 401 of the Internal  
24 Revenue Code of 1986 (as amended by this Act) is amend-

1 ed by inserting after paragraph (35) the following new  
2 paragraph:

3 “(36) DISTRIBUTIONS DURING WORKING RE-  
4 TIREMENT.—A trust forming part of a pension plan  
5 shall not be treated as failing to constitute a quali-  
6 fied trust under this section solely because the plan  
7 provides that a distribution may be made from such  
8 trust to an employee who has attained age 62 and  
9 who is not separated from employment at the time  
10 of such distribution.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to distributions in plan years be-  
13 ginning after December 31, 2006.

14 **SEC. 906. TREATMENT OF CERTAIN PENSION PLANS OF IN-**  
15 **DIAN TRIBAL GOVERNMENTS.**

16 (a) DEFINITION OF GOVERNMENT PLAN TO INCLUDE  
17 CERTAIN PENSION PLANS OF INDIAN TRIBAL GOVERN-  
18 MENTS.—

19 (1) AMENDMENT TO INTERNAL REVENUE CODE  
20 OF 1986.—Section 414(d) of the Internal Revenue  
21 Code of 1986 (defining governmental plan) is  
22 amended by adding at the end the following: “The  
23 term ‘governmental plan’ includes a plan which is  
24 established and maintained by an Indian tribal gov-  
25 ernment (as defined in section 7701(a)(40)), a sub-

1 division of an Indian tribal government (determined  
2 in accordance with section 7871(d)), or an agency or  
3 instrumentality of either, and all of the participants  
4 of which are employees of such entity substantially  
5 all of whose services as such an employee are in the  
6 performance of essential governmental functions but  
7 not in the performance of commercial activities  
8 (whether or not an essential government function).”.

9 (2) AMENDMENT TO EMPLOYEE RETIREMENT  
10 INCOME SECURITY ACT OF 1974.—

11 (A) Section 3(32) of the Employee Retirement  
12 Income Security Act of 1974 (29 U.S.C.  
13 1002(32)) is amended by adding at the end the  
14 following: “The term ‘governmental plan’ in-  
15 cludes a plan which is established and main-  
16 tained by an Indian tribal government (as de-  
17 fined in section 7701(a)(40) of the Internal  
18 Revenue Code of 1986), a subdivision of an In-  
19 dian tribal government (determined in accord-  
20 ance with section 7871(d) of such Code), or an  
21 agency or instrumentality of either, and all of  
22 the participants of which are employees of such  
23 entity substantially all of whose services as such  
24 an employee are in the performance of essential  
25 governmental functions but not in the perform-

1           ance of commercial activities (whether or not an  
2           essential government function)”).

3           (B) Section 4021(b)(2) of such Act is  
4           amended by adding at the end the following:  
5           “or which is described in the last sentence of  
6           section 3(32)”.

7           (b) CLARIFICATION THAT TRIBAL GOVERNMENTS  
8           ARE SUBJECT TO THE SAME PENSION PLAN RULES AND  
9           REGULATIONS APPLIED TO STATE AND OTHER LOCAL  
10          GOVERNMENTS AND THEIR POLICE AND FIRE-  
11          FIGHTERS.—

12          (1) AMENDMENTS TO INTERNAL REVENUE  
13          CODE OF 1986.—

14               (A) POLICE AND FIREFIGHTERS.—Sub-  
15               paragraph (H) section 415(b)(2) of the Internal  
16               Revenue Code of 1986 (defining participant) is  
17               amended—

18                     (i) in clause (i), by striking “State or  
19                     political subdivision” and inserting “State,  
20                     Indian tribal government (as defined in  
21                     section 7701(a)(40)), or any political sub-  
22                     division”; and

23                     (ii) in clause (ii)(I), by striking “State  
24                     or political subdivision” each place it ap-  
25                     pears and inserting “State, Indian tribal

1 government (as so defined), or any political  
2 subdivision”.

3 (B) STATE AND LOCAL GOVERNMENT  
4 PLANS.—

5 (i) IN GENERAL.—Subparagraph (A)  
6 of section 415(b)(10) of such Code (relat-  
7 ing to limitation to equal accrued benefit)  
8 is amended by inserting “or a govern-  
9 mental plan described in the last sentence  
10 of section 414(d) (relating to plans of In-  
11 dian tribal governments),” after “fore-  
12 going,”.

13 (ii) CONFORMING AMENDMENT.—The  
14 heading of paragraph (1) of section 415(b)  
15 of such Code is amended by striking “SPE-  
16 CIAL RULE FOR STATE AND” and inserting  
17 “SPECIAL RULE FOR STATE, INDIAN TRIB-  
18 AL, AND”.

19 (C) GOVERNMENT PICK UP CONTRIBU-  
20 TIONS.—Paragraph (2) of section 414(h) of  
21 such Code (relating to designation by units of  
22 government) is amended by inserting “or a gov-  
23 ernmental plan described in the last sentence of  
24 section 414(d) (relating to plans of Indian trib-  
25 al governments),” after “foregoing,”.

1           (2) AMENDMENTS TO EMPLOYEE RETIREMENT  
2 INCOME SECURITY ACT OF 1974.—Section 4021(b) of  
3 the Employee Retirement Income Security Act of  
4 1974 (29 U.S.C. 1321(b)) is amended—

5           (A) in paragraph (12), by striking “or” at  
6 the end;

7           (B) in paragraph (13), by striking “plan.”  
8 and inserting “plan; or”; and

9           (C) by adding at the end the following:

10           “(14) established and maintained by an Indian  
11 tribal government (as defined in section 7701(a)(40)  
12 of the Internal Revenue Code of 1986), a subdivision  
13 of an Indian tribal government (determined in ac-  
14 cordance with section 7871(d) of such Code), or an  
15 agency or instrumentality of either, and all of the  
16 participants of which are employees of such entity  
17 substantially all of whose services as such an em-  
18 ployee are in the performance of essential govern-  
19 mental functions but not in the performance of com-  
20 mercial activities (whether or not an essential gov-  
21 ernment function).”.

22           (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to any year beginning on or after  
24 the date of the enactment of this Act.

1 **TITLE X—PROVISIONS RELAT-**  
2 **ING TO SPOUSAL PENSION**  
3 **PROTECTION**

4 **SEC. 1001. REGULATIONS ON TIME AND ORDER OF**  
5 **ISSUANCE OF DOMESTIC RELATIONS OR-**  
6 **DERS.**

7 Not later than 1 year after the date of the enactment  
8 of this Act, the Secretary of Labor shall issue regulations  
9 under section 206(d)(3) of the Employee Retirement Secu-  
10 rity Act of 1974 and section 414(p) of the Internal Rev-  
11 enue Code of 1986 which clarify that—

12 (1) a domestic relations order otherwise meet-  
13 ing the requirements to be a qualified domestic rela-  
14 tions order, including the requirements of section  
15 206(d)(3)(D) of such Act and section 414(p)(3) of  
16 such Code, shall not fail to be treated as a qualified  
17 domestic relations order solely because—

18 (A) the order is issued after, or revises, an-  
19 other domestic relations order or qualified do-  
20 mestic relations order; or

21 (B) of the time at which it is issued; and

22 (2) any order described in paragraph (1) shall  
23 be subject to the same requirements and protections  
24 which apply to qualified domestic relations orders,

1 including the provisions of section 206(d)(3)(H) of  
2 such Act and section 414(p)(7) of such Code.

3 **SEC. 1002. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**  
4 **ROAD RETIREMENT ANNUITIES INDE-**  
5 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**  
6 **PLOYEE.**

7 (a) IN GENERAL.—Section 2 of the Railroad Retire-  
8 ment Act of 1974 (45 U.S.C. 231a) is amended—

9 (1) in subsection (c)(4)(i), by striking “(A) is  
10 entitled to an annuity under subsection (a)(1) and  
11 (B)”;

12 (2) in subsection (e)(5), by striking “or di-  
13 vorced wife” the second place it appears.

14 (b) EFFECTIVE DATE.—The amendments made by  
15 this section shall take effect 1 year after the date of the  
16 enactment of this Act.

17 **SEC. 1003. EXTENSION OF TIER II RAILROAD RETIREMENT**  
18 **BENEFITS TO SURVIVING FORMER SPOUSES**  
19 **PURSUANT TO DIVORCE AGREEMENTS.**

20 (a) IN GENERAL.—Section 5 of the Railroad Retire-  
21 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
22 at the end the following:

23 “(d) Notwithstanding any other provision of law, the  
24 payment of any portion of an annuity computed under sec-  
25 tion 3(b) to a surviving former spouse in accordance with



1 a court decree of divorce, annulment, or legal separation  
2 or the terms of any court-approved property settlement  
3 incident to any such court decree shall not be terminated  
4 upon the death of the individual who performed the service  
5 with respect to which such annuity is so computed unless  
6 such termination is otherwise required by the terms of  
7 such court decree.”

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall take effect 1 year after the date of the  
10 enactment of this Act.

11 **SEC. 1004. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**  
12 **NUITY OPTION.**

13 (a) AMENDMENTS TO INTERNAL REVENUE CODE.—

14 (1) ELECTION OF SURVIVOR ANNUITY.—Section  
15 417(a)(1)(A) of the Internal Revenue Code of 1986  
16 is amended—

17 (A) in clause (i), by striking “, and” and  
18 inserting a comma;

19 (B) by redesignating clause (ii) as clause  
20 (iii); and

21 (C) by inserting after clause (i) the fol-  
22 lowing:

23 “(ii) if the participant elects a waiver  
24 under clause (i), may elect the qualified op-

1           tional survivor annuity at any time during the  
2           applicable election period, and”.

3           (2) DEFINITION.—Section 417 of such Code is  
4           amended by adding at the end the following:

5           “(g) DEFINITION OF QUALIFIED OPTIONAL SUR-  
6           VIVOR ANNUITY.—

7           “(1) IN GENERAL.—For purposes of this sec-  
8           tion, the term ‘qualified optional survivor annuity’  
9           means an annuity—

10           “(A) for the life of the participant with a  
11           survivor annuity for the life of the spouse which  
12           is equal to the applicable percentage of the  
13           amount of the annuity which is payable during  
14           the joint lives of the participant and the spouse,  
15           and

16           “(B) which is the actuarial equivalent of a  
17           single annuity for the life of the participant.

18           Such term also includes any annuity in a form hav-  
19           ing the effect of an annuity described in the pre-  
20           ceding sentence.

21           “(2) APPLICABLE PERCENTAGE.—

22           “(A) IN GENERAL.—For purposes of para-  
23           graph (1), if the survivor annuity percentage—

24           “(i) is less than 75 percent, the appli-  
25           cable percentage is 75 percent, and

1 “(ii) is greater than or equal to 75  
2 percent, the applicable percentage is 50  
3 percent.

4 “(B) SURVIVOR ANNUITY PERCENTAGE.—  
5 For purposes of subparagraph (A), the term  
6 ‘survivor annuity percentage’ means the per-  
7 centage which the survivor annuity under the  
8 plan’s qualified joint and survivor annuity bears  
9 to the annuity payable during the joint lives of  
10 the participant and the spouse.”.

11 (3) NOTICE.—Section 417(a)(3)(A)(i) of such  
12 Code is amended by inserting “and of the qualified  
13 optional survivor annuity” after “annuity”.

14 (b) AMENDMENTS TO ERISA.—

15 (1) ELECTION OF SURVIVOR ANNUITY.—Section  
16 205(c)(1)(A) of the Employee Retirement Income  
17 Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is  
18 amended—

19 (A) in clause (i), by striking “, and” and  
20 inserting a comma;

21 (B) by redesignating clause (ii) as clause  
22 (iii); and

23 (C) by inserting after clause (i) the fol-  
24 lowing:

1           “(ii) if the participant elects a waiver  
2           under clause (i), may elect the qualified op-  
3           tional survivor annuity at any time during the  
4           applicable election period, and”.

5           (2) DEFINITION.—Section 205(d) of such Act  
6           (29 U.S.C. 1055(d)) is amended—

7                   (A) by inserting “(1)” after “(d)”;

8                   (B) by redesignating paragraphs (1) and  
9                   (2) as subparagraphs (A) and (B), respectively;  
10                  and

11                  (C) by adding at the end the following:

12           “(2)(A) For purposes of this section, the term ‘quali-  
13           fied optional survivor annuity’ means an annuity—

14                   “(i) for the life of the participant with a sur-  
15                   vivor annuity for the life of the spouse which is  
16                   equal to the applicable percentage of the amount of  
17                   the annuity which is payable during the joint lives  
18                   of the participant and the spouse, and

19                   “(ii) which is the actuarial equivalent of a sin-  
20                   gle annuity for the life of the participant.

21           Such term also includes any annuity in a form having the  
22           effect of an annuity described in the preceding sentence.

23           “(B)(i) For purposes of subparagraph (A), if the sur-  
24           vivor annuity percentage—

1           “(I) is less than 75 percent, the applicable per-  
2           centage is 75 percent, and

3           “(II) is greater than or equal to 75 percent, the  
4           applicable percentage is 50 percent.

5           “(ii) For purposes of clause (i), the term ‘survivor  
6           annuity percentage’ means the percentage which the sur-  
7           vivor annuity under the plan’s qualified joint and survivor  
8           annuity bears to the annuity payable during the joint lives  
9           of the participant and the spouse.”.

10           (3) NOTICE.—Section 205(c)(3)(A)(i) of such  
11           Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-  
12           serting “and of the qualified optional survivor annu-  
13           ity” after “annuity”.

14           (c) EFFECTIVE DATES.—

15           (1) IN GENERAL.—The amendments made by  
16           this section shall apply to plan years beginning after  
17           December 31, 2007.

18           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
19           GAINED PLANS.—In the case of a plan maintained  
20           pursuant to 1 or more collective bargaining agree-  
21           ments between employee representatives and 1 or  
22           more employers ratified on or before the date of the  
23           enactment of this Act, the amendments made by this  
24           section shall not apply to plan years beginning be-  
25           fore the earlier of—

- 1 (A) the later of—  
2 (i) January 1, 2008, or  
3 (ii) the date on which the last collec-  
4 tive bargaining agreement related to the  
5 plan terminates (determined without re-  
6 gard to any extension thereof after the  
7 date of enactment of this Act), or  
8 (B) January 1, 2009.

9 **TITLE XI—ADMINISTRATIVE**  
10 **PROVISIONS**

11 **SEC. 1101. EMPLOYEE PLANS COMPLIANCE RESOLUTION**  
12 **SYSTEM.**

13 (a) IN GENERAL.—The Secretary of the Treasury  
14 shall have full authority to establish and implement the  
15 Employee Plans Compliance Resolution System (or any  
16 successor program) and any other employee plans correc-  
17 tion policies, including the authority to waive income, ex-  
18 cise, or other taxes to ensure that any tax, penalty, or  
19 sanction is not excessive and bears a reasonable relation-  
20 ship to the nature, extent, and severity of the failure.

21 (b) IMPROVEMENTS.—The Secretary of the Treasury  
22 shall continue to update and improve the Employee Plans  
23 Compliance Resolution System (or any successor pro-  
24 gram), giving special attention to—

1           (1) increasing the awareness and knowledge of  
2           small employers concerning the availability and use  
3           of the program;

4           (2) taking into account special concerns and  
5           circumstances that small employers face with respect  
6           to compliance and correction of compliance failures;

7           (3) extending the duration of the self-correction  
8           period under the Self-Correction Program for signifi-  
9           cant compliance failures;

10          (4) expanding the availability to correct insig-  
11          nificant compliance failures under the Self-Correc-  
12          tion Program during audit; and

13          (5) assuring that any tax, penalty, or sanction  
14          that is imposed by reason of a compliance failure is  
15          not excessive and bears a reasonable relationship to  
16          the nature, extent, and severity of the failure.

17   **SEC. 1102. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
18                   **TRIBUTIONS.**

19          (a) EXPANSION OF PERIOD.—

20               (1) AMENDMENT OF INTERNAL REVENUE  
21               CODE.—

22                   (A) IN GENERAL.—Section 417(a)(6)(A) of  
23                   the Internal Revenue Code of 1986 is amended  
24                   by striking “90-day” and inserting “180-day”.

1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the  
3 regulations under sections 402(f), 411(a)(11),  
4 and 417 of the Internal Revenue Code of 1986  
5 by substituting “180 days” for “90 days” each  
6 place it appears in Treasury Regulations sec-  
7 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–  
8 1(b).

9 (2) AMENDMENT OF ERISA.—

10 (A) IN GENERAL.—Section 205(c)(7)(A) of  
11 the Employee Retirement Income Security Act  
12 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended  
13 by striking “90-day” and inserting “180-day”.

14 (B) MODIFICATION OF REGULATIONS.—

15 The Secretary of the Treasury shall modify the  
16 regulations under part 2 of subtitle B of title  
17 I of the Employee Retirement Income Security  
18 Act of 1974 relating to sections 203(e) and 205  
19 of such Act by substituting “180 days” for “90  
20 days” each place it appears.

21 (3) EFFECTIVE DATE.—The amendments and  
22 modifications made or required by this subsection  
23 shall apply to years beginning after December 31,  
24 2006.

25 (b) NOTIFICATION OF RIGHT TO DEFER.—



1           (1) IN GENERAL.—The Secretary of the Treas-  
2       ury shall modify the regulations under section  
3       411(a)(11) of the Internal Revenue Code of 1986  
4       and under section 205 of the Employee Retirement  
5       Income Security Act of 1974 to provide that the de-  
6       scription of a participant’s right, if any, to defer re-  
7       ceipt of a distribution shall also describe the con-  
8       sequences of failing to defer such receipt.

9           (2) EFFECTIVE DATE.—

10           (A) IN GENERAL.—The modifications re-  
11       quired by paragraph (1) shall apply to years be-  
12       ginning after December 31, 2006.

13           (B) REASONABLE NOTICE.—A plan shall  
14       not be treated as failing to meet the require-  
15       ments of section 411(a)(11) of such Code or  
16       section 205 of such Act with respect to any de-  
17       scription of consequences described in para-  
18       graph (1) made within 90 days after the Sec-  
19       retary of the Treasury issues the modifications  
20       required by paragraph (1) if the plan adminis-  
21       trator makes a reasonable attempt to comply  
22       with such requirements.

23   **SEC. 1103. REPORTING SIMPLIFICATION.**

24           (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
25       OWNERS AND THEIR SPOUSES.—

1           (1) IN GENERAL.—The Secretary of the Treas-  
2       ury shall modify the requirements for filing annual  
3       returns with respect to one-participant retirement  
4       plans to ensure that such plans with assets of  
5       \$250,000 or less as of the close of the plan year  
6       need not file a return for that year.

7           (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
8       FINED.—For purposes of this subsection, the term  
9       “one-participant retirement plan” means a retire-  
10      ment plan with respect to which the following re-  
11      quirements are met:

12           (A) on the first day of the plan year—

13               (i) the plan covered only one indi-  
14              vidual (or the individual and the individ-  
15              ual’s spouse) and the individual owned 100  
16              percent of the plan sponsor (whether or  
17              not incorporated), or

18               (ii) the plan covered only one or more  
19              partners (or partners and their spouses) in  
20              the plan sponsor;

21           (B) the plan meets the minimum coverage  
22      requirements of section 410(b) of the Internal  
23      Revenue Code of 1986 without being combined  
24      with any other plan of the business that covers  
25      the employees of the business;

1 (C) the plan does not provide benefits to  
2 anyone except the individual (and the individ-  
3 ual's spouse) or the partners (and their  
4 spouses);

5 (D) the plan does not cover a business that  
6 is a member of an affiliated service group, a  
7 controlled group of corporations, or a group of  
8 businesses under common control; and

9 (E) the plan does not cover a business that  
10 uses the services of leased employees (within  
11 the meaning of section 414(n) of such Code).

12 For purposes of this paragraph, the term "partner"  
13 includes a 2-percent shareholder (as defined in sec-  
14 tion 1372(b) of such Code) of an S corporation.

15 (3) OTHER DEFINITIONS.—Terms used in para-  
16 graph (2) which are also used in section 414 of the  
17 Internal Revenue Code of 1986 shall have the re-  
18 spective meanings given such terms by such section.

19 (4) EFFECTIVE DATE.—The provisions of this  
20 subsection shall apply to plan years beginning on or  
21 after January 1, 2007.

22 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
23 PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the  
24 case of plan years beginning after December 31, 2006, the  
25 Secretary of the Treasury and the Secretary of Labor shall

1 provide for the filing of a simplified annual return for any  
2 retirement plan which covers less than 25 participants on  
3 the first day of a plan year and which meets the require-  
4 ments described in subparagraphs (B), (D), and (E) of  
5 subsection (a)(2).

6 **SEC. 1104. VOLUNTARY EARLY RETIREMENT INCENTIVE**  
7 **AND EMPLOYMENT RETENTION PLANS MAIN-**  
8 **TAINED BY LOCAL EDUCATIONAL AGENCIES**  
9 **AND OTHER ENTITIES.**

10 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE  
11 PLANS.—

12 (1) TREATMENT AS PLAN PROVIDING SEVER-  
13 ANCE PAY.—Section 457(e)(11) of the Internal Rev-  
14 enue Code of 1986 (relating to certain plans ex-  
15 cluded) is amended by adding at the end the fol-  
16 lowing new subparagraph:

17 “(D) CERTAIN VOLUNTARY EARLY RETIRE-  
18 MENT INCENTIVE PLANS.—

19 “(i) IN GENERAL.—If an applicable  
20 voluntary early retirement incentive plan—

21 “(I) makes payments or supple-  
22 ments as an early retirement benefit,  
23 a retirement-type subsidy, or a benefit  
24 described in the last sentence of sec-  
25 tion 411(a)(9), and

1                   “(II) such payments or supple-  
2                   ments are made in coordination with  
3                   a defined benefit plan which is de-  
4                   scribed in section 401(a) and includes  
5                   a trust exempt from tax under section  
6                   501(a) and which is maintained by an  
7                   eligible employer described in para-  
8                   graph (1)(A) or by an education asso-  
9                   ciation described in clause (ii)(II),  
10                  such applicable plan shall be treated for  
11                  purposes of subparagraph (A)(i) as a bona  
12                  fide severance pay plan with respect to  
13                  such payments or supplements to the ex-  
14                  tent such payments or supplements could  
15                  otherwise have been provided under such  
16                  defined benefit plan (determined as if sec-  
17                  tion 411 applied to such defined benefit  
18                  plan).  
19                  “(ii) APPLICABLE VOLUNTARY EARLY  
20                  RETIREMENT INCENTIVE PLAN.—For pur-  
21                  poses of this subparagraph, the term ‘ap-  
22                  plicable voluntary early retirement incen-  
23                  tive plan’ means a voluntary early retire-  
24                  ment incentive plan maintained by—

1                   “(I) a local educational agency  
2                   (as defined in section 9101 of the Ele-  
3                   mentary and Secondary Education  
4                   Act of 1965 (20 U.S.C. 7801)), or

5                   “(II) an education association  
6                   which principally represents employees  
7                   of 1 or more agencies described in  
8                   subclause (I) and which is described  
9                   in section 501(c) (5) or (6) and ex-  
10                  empt from tax under section 501(a).”

11               (2) AGE DISCRIMINATION IN EMPLOYMENT  
12               ACT.—Section 4(l)(1) of the Age Discrimination in  
13               Employment Act of 1967 (29 U.S.C. 623(l)(1)) is  
14               amended—

15                   (A) by inserting “(A)” after “(1)”,

16                   (B) by redesignating subparagraphs (A)  
17                   and (B) as clauses (i) and (ii), respectively,

18                   (C) by redesignating clauses (i) and (ii) of  
19                   subparagraph (B) (as in effect before the  
20                   amendments made by subparagraph (B)) as  
21                   subclauses (I) and (II), respectively, and

22                   (D) by adding at the end the following:

23                   “(B) A voluntary early retirement incentive  
24                   plan that—

25                   “(i) is maintained by—

1 “(I) a local educational agency (as de-  
2 fined in section 9101 of the Elementary  
3 and Secondary Education Act of 1965 (20  
4 U.S.C. 7801), or

5 “(II) an education association which  
6 principally represents employees of 1 or  
7 more agencies described in subclause (I)  
8 and which is described in section 501(c)  
9 (5) or (6) of the Internal Revenue Code of  
10 1986 and exempt from taxation under sec-  
11 tion 501(a) of such Code, and

12 “(ii) makes payments or supplements de-  
13 scribed in subclauses (I) and (II) of subpara-  
14 graph (A)(ii) in coordination with a defined  
15 benefit plan (as so defined) maintained by an  
16 eligible employer described in section  
17 457(e)(1)(A) of such Code or by an education  
18 association described in clause (i)(II),

19 shall be treated solely for purposes of subparagraph  
20 (A)(ii) as if it were a part of the defined benefit plan  
21 with respect to such payments or supplements. Pay-  
22 ments or supplements under such a voluntary early  
23 retirement incentive plan shall not constitute sever-  
24 ance pay for purposes of paragraph (2).”.

25 (b) EMPLOYMENT RETENTION PLANS.—

1           (1) IN GENERAL.—Section 457(f)(2) of the In-  
2           ternal Revenue Code of 1986 (relating to exceptions)  
3           is amended by striking “and” at the end of subpara-  
4           graph (D), by striking the period at the end of sub-  
5           paragraph (E) and inserting “, and”, and by adding  
6           at the end the following:

7                     “(F) that portion of any applicable employ-  
8                     ment retention plan described in paragraph (4)  
9                     with respect to any participant.”

10           (2) DEFINITIONS AND RULES RELATING TO EM-  
11           PLOYMENT RETENTION PLANS.—Section 457(f) of  
12           such Code is amended by adding at the end the fol-  
13           lowing new paragraph:

14                     “(4) EMPLOYMENT RETENTION PLANS.—For  
15                     purposes of paragraph (2)(F)—

16                             “(A) IN GENERAL.—The portion of an ap-  
17                             plicable employment retention plan described in  
18                             this paragraph with respect to any participant  
19                             is that portion of the plan which provides bene-  
20                             fits payable to the participant not in excess of  
21                             twice the applicable dollar limit determined  
22                             under subsection (e)(15).

23                             “(B) OTHER RULES.—

24                                     “(i) LIMITATION.—Paragraph (2)(F)  
25                                     shall only apply to the portion of the plan



1 described in subparagraph (A) for years  
2 preceding the year in which such portion is  
3 paid or otherwise made available to the  
4 participant.

5 “(ii) TREATMENT.—A plan shall not  
6 be treated for purposes of this title as pro-  
7 viding for the deferral of compensation for  
8 any year with respect to the portion of the  
9 plan described in subparagraph (A).

10 “(C) APPLICABLE EMPLOYMENT RETEN-  
11 TION PLAN.—The term ‘applicable employment  
12 retention plan’ means an employment retention  
13 plan maintained by—

14 “(i) a local educational agency (as de-  
15 fined in section 9101 of the Elementary  
16 and Secondary Education Act of 1965 (20  
17 U.S.C. 7801), or

18 “(ii) an education association which  
19 principally represents employees of 1 or  
20 more agencies described in clause (i) and  
21 which is described in section 501(c) (5) or  
22 (6) and exempt from taxation under sec-  
23 tion 501(a).

24 “(D) EMPLOYMENT RETENTION PLAN.—  
25 The term ‘employment retention plan’ means a

1           plan to pay, upon termination of employment,  
2           compensation to an employee of a local edu-  
3           cational agency or education association de-  
4           scribed in subparagraph (C) for purposes of—

5                   “(i) retaining the services of the em-  
6                   ployee, or

7                   “(ii) rewarding such employee for the  
8                   employee’s service with 1 or more such  
9                   agencies or associations.”.

10       (c) COORDINATION WITH ERISA.—Section 3(2)(B)  
11 of the Employee Retirement Income Security Act of 1974  
12 (29 U.S.C. 1002(2)(B)) is amended by adding at the end  
13 the following: “An applicable voluntary early retirement  
14 incentive plan (as defined in section 457(e)(11)(D)(ii) of  
15 the Internal Revenue Code of 1986) making payments or  
16 supplements described in section 457(e)(11)(D)(i) of such  
17 Code, and an applicable employment retention plan (as de-  
18 fined in section 457(f)(4)(C) of such Code) making pay-  
19 ments of benefits described in section 457(f)(4)(A) of such  
20 Code, shall, for purposes of this title, be treated as a wel-  
21 fare plan (and not a pension plan) with respect to such  
22 payments and supplements.”

23       (d) EFFECTIVE DATES.—

1           (1) IN GENERAL.—The amendments made by  
2       this Act shall take effect on the date of the enact-  
3       ment of this Act.

4           (2) TAX AMENDMENTS.—The amendments  
5       made by subsections (a)(1) and (b) shall apply to  
6       taxable years ending after the date of the enactment  
7       of this Act.

8           (3) ERISA AMENDMENTS.—The amendment  
9       made by subsection (c) shall apply to plan years  
10      ending after the date of the enactment of this Act.

11          (4) CONSTRUCTION.—Nothing in the amend-  
12      ments made by this section shall alter or affect the  
13      construction of the Internal Revenue Code of 1986,  
14      the Employee Retirement Income Security Act of  
15      1974, or the Age Discrimination in Employment Act  
16      of 1967 as applied to any plan, arrangement, or con-  
17      duct to which such amendments do not apply.

18   **SEC. 1105. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**  
19                           **TION AS A RESULT OF PENSION ROLLOVERS.**

20          (a) IN GENERAL.—Section 3304(a) of the Internal  
21      Revenue Code of 1986 (relating to requirements for State  
22      unemployment laws) is amended by adding at the end the  
23      following new flush sentence:

24      “Compensation shall not be reduced under paragraph (15)  
25      for any pension, retirement or retired pay, annuity, or

1 similar payment which is not includible in gross income  
2 of the individual for the taxable year in which paid because  
3 it was part of a rollover distribution.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to weeks beginning on or after the  
6 date of the enactment of this Act.

7 **SEC. 1106. REVOCATION OF ELECTION RELATING TO**  
8 **TREATMENT AS MULTIEMPLOYER PLAN.**

9 (a) AMENDMENT TO ERISA.—Section 3(37) of the  
10 Employee Retirement Income Security Act of 1974 is  
11 amended by adding at the end the following new subpara-  
12 graph (G):

13 “(G)(i) Within 1 year after the enactment of  
14 the Pension Protection Act of 2006—

15 “(I) an election under subparagraph (E)  
16 may be revoked, pursuant to procedures pre-  
17 scribed by the Pension Benefit Guaranty Cor-  
18 poration, if, for each of the 3 plan years prior  
19 to the date of the enactment of that Act, the  
20 plan would have been a multiemployer plan but  
21 for the election under subparagraph (E), and

22 “(II) a plan that meets the criteria in  
23 clauses (i) and (ii) of subparagraph (A) of this  
24 paragraph or that is described in clause (vi)  
25 may, pursuant to procedures prescribed by the

1 Pension Benefit Guaranty Corporation, elect to  
2 be a multiemployer plan, if—

3 “(aa) for each of the 3 plan years im-  
4 mediately before the date of the enactment  
5 of the Pension Protection Act of 2006, the  
6 plan has met those criteria or is so de-  
7 scribed,

8 “(bb) substantially all of the plan’s  
9 employer contributions for each of those  
10 plan years were made or required to be  
11 made by organizations that were exempt  
12 from tax under section 501 of the Internal  
13 Revenue Code of 1986, and

14 “(cc) the plan was established prior to  
15 September 2, 1974.

16 “(ii) An election under this paragraph shall be  
17 effective for all purposes under this Act and under  
18 the Internal Revenue Code of 1986, starting with  
19 the first plan year ending after the date of the en-  
20 actment of the Pension Protection Act of 2006.

21 “(iii) Once made, an election under this para-  
22 graph shall be irrevocable, except that a plan de-  
23 scribed in subclause (i)(II) shall cease to be a multi-  
24 employer plan as of the plan year beginning imme-  
25 diately after the first plan year for which the major-

1       ity of its employer contributions were made or re-  
2       quired to be made by organizations that were not ex-  
3       empt from tax under section 501 of the Internal  
4       Revenue Code of 1986.

5           “(iv) The fact that a plan makes an election  
6       under clause (i)(II) does not imply that the plan was  
7       not a multiemployer plan prior to the date of the  
8       election or would not be a multiemployer plan with-  
9       out regard to the election.

10          “(v)(I) No later than 30 days before an election  
11       is made under this paragraph, the plan adminis-  
12       trator shall provide notice of the pending election to  
13       each plan participant and beneficiary, each labor or-  
14       ganization representing such participants or bene-  
15       ficiaries, and each employer that has an obligation  
16       to contribute to the plan, describing the principal  
17       differences between the guarantee programs under  
18       title IV and the benefit restrictions under this title  
19       for single employer and multiemployer plans, along  
20       with such other information as the plan adminis-  
21       trator chooses to include.

22          “(II) Within 180 days after the date of enact-  
23       ment of the Pension Protection Act of 2006, the  
24       Secretary shall prescribe a model notice under this  
25       subparagraph.

1           “(III) A plan administrator’s failure to provide  
2           the notice required under this subparagraph shall be  
3           treated for purposes of section 502(c)(2) as a failure  
4           or refusal by the plan administrator to file the an-  
5           nual report required to be filed with the Secretary  
6           under section 101(b)(4).

7           “(vi) A plan is described in this clause if it is  
8           a plan—

9                   “(I) that was established in Chicago, Illi-  
10                  nois, on August 12, 1881; and

11                  “(II) sponsored by an organization de-  
12                  scribed in section 501(c)(5) of the Internal Rev-  
13                  enue Code of 1986 and exempt from tax under  
14                  section 501(a) of such Code.”.

15           (b) AMENDMENT TO INTERNAL REVENUE CODE.—  
16           Subsection (f) of section 414 of the Internal Revenue Code  
17           of 1986 is amended by adding at the end the following  
18           new paragraph (6):

19                   “(6) ELECTION WITH REGARD TO MULTITEM-  
20                  PLOYER STATUS.—

21                   “(A) Within 1 year after the enactment of  
22                  the Pension Protection Act of 2006—

23                           “(i) An election under paragraph (5)  
24                           may be revoked, pursuant to procedures  
25                           prescribed by the Pension Benefit Guar-

1           anty Corporation, if, for each of the 3 plan  
2           years prior to the date of the enactment of  
3           that Act, the plan would have been a mul-  
4           tiemployer plan but for the election under  
5           paragraph (5), and

6           “(ii) a plan that meets the criteria in  
7           subparagraph (A) and (B) of paragraph  
8           (1) of this subsection or that is described  
9           in subparagraph (E) may, pursuant to pro-  
10          cedures prescribed by the Pension Benefit  
11          Guaranty Corporation, elect to be a multi-  
12          employer plan, if—

13                 “(I) for each of the 3 plan years  
14                 immediately before the date of enact-  
15                 ment of the Pension Protection Act of  
16                 2006, the plan has met those criteria  
17                 or is so described,

18                 “(II) substantially all of the  
19                 plan’s employer contributions for each  
20                 of those plan years were made or re-  
21                 quired to be made by organizations  
22                 that were exempt from tax under sec-  
23                 tion 501, and

24                 “(III) the plan was established  
25                 prior to September 2, 1974.



1           “(B) An election under this paragraph  
2 shall be effective for all purposes under this Act  
3 and under the Employee Retirement Income Se-  
4 curity Act of 1974, starting with the first plan  
5 year ending after the date of the enactment of  
6 the Pension Protection Act of 2006.

7           “(C) Once made, an election under this  
8 paragraph shall be irrevocable, except that a  
9 plan described in subparagraph (A)(ii) shall  
10 cease to be a multiemployer plan as of the plan  
11 year beginning immediately after the first plan  
12 year for which the majority of its employer con-  
13 tributions were made or required to be made by  
14 organizations that were not exempt from tax  
15 under section 501.

16           “(D) The fact that a plan makes an elec-  
17 tion under subparagraph (A)(ii) does not imply  
18 that the plan was not a multiemployer plan  
19 prior to the date of the election or would not be  
20 a multiemployer plan without regard to the  
21 election.

22           “(E) A plan is described in this subpara-  
23 graph if it is a plan—

24                   “(i) that was established in Chicago,  
25 Illinois, on August 12, 1881; and

1 “(ii) sponsored by an organization de-  
2 scribed in section 501(c)(5) and exempt  
3 from tax under section 501(a).”.

4 **SEC. 1107. PROVISIONS RELATING TO PLAN AMENDMENTS.**

5 (a) IN GENERAL.—If this section applies to any pen-  
6 sion plan or contract amendment—

7 (1) such pension plan or contract shall be treat-  
8 ed as being operated in accordance with the terms  
9 of the plan during the period described in subsection  
10 (b)(2)(A), and

11 (2) except as provided by the Secretary of the  
12 Treasury, such pension plan shall not fail to meet  
13 the requirements of section 411(d)(6) of the Internal  
14 Revenue Code of 1986 and section 204(g) of the  
15 Employee Retirement Income Security Act of 1974  
16 by reason of such amendment.

17 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

18 (1) IN GENERAL.—This section shall apply to  
19 any amendment to any pension plan or annuity con-  
20 tract which is made—

21 (A) pursuant to any amendment made by  
22 this Act or pursuant to any regulation issued by  
23 the Secretary of the Treasury or the Secretary  
24 of Labor under this Act, and

1 (B) on or before the last day of the first  
2 plan year beginning on or after January 1,  
3 2009.

4 In the case of a governmental plan (as defined in  
5 section 414(d) of the Internal Revenue Code of  
6 1986), this paragraph shall be applied by sub-  
7 stituting “2011” for “2009”.

8 (2) CONDITIONS.—This section shall not apply  
9 to any amendment unless—

10 (A) during the period—

11 (i) beginning on the date the legisla-  
12 tive or regulatory amendment described in  
13 paragraph (1)(A) takes effect (or in the  
14 case of a plan or contract amendment not  
15 required by such legislative or regulatory  
16 amendment, the effective date specified by  
17 the plan), and

18 (ii) ending on the date described in  
19 paragraph (1)(B) (or, if earlier, the date  
20 the plan or contract amendment is adopt-  
21 ed), the plan or contract is operated as if  
22 such plan or contract amendment were in  
23 effect; and

24 (B) such plan or contract amendment ap-  
25 plies retroactively for such period.

1 **TITLE XII—PROVISIONS RELAT-**  
2 **ING TO EXEMPT ORGANIZA-**  
3 **TIONS**

4 **Subtitle A—Charitable Giving**  
5 **Incentives**

6 **SEC. 1201. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL**  
7 **RETIREMENT PLANS FOR CHARITABLE PUR-**  
8 **POSES.**

9 (a) IN GENERAL.—Subsection (d) of section 408 (re-  
10 lating to individual retirement accounts) is amended by  
11 adding at the end the following new paragraph:

12 “(8) DISTRIBUTIONS FOR CHARITABLE PUR-  
13 POSES.—

14 “(A) IN GENERAL.—So much of the aggre-  
15 gate amount of qualified charitable distributions  
16 with respect to a taxpayer made during any  
17 taxable year which does not exceed \$100,000  
18 shall not be includible in gross income of such  
19 taxpayer for such taxable year.

20 “(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the  
21 term ‘qualified charitable distribution’ means  
22 any distribution from an individual retirement  
23 plan (other than a plan described in subsection  
24 (k) or (p))—  
25

1 “(i) which is made directly by the  
2 trustee to an organization described in sec-  
3 tion 170(b)(1)(A) (other than any organi-  
4 zation described in section 509(a)(3) or  
5 any fund or account described in section  
6 4966(d)(2)), and

7 “(ii) which is made on or after the  
8 date that the individual for whose benefit  
9 the plan is maintained has attained age  
10 70½.

11 A distribution shall be treated as a qualified  
12 charitable distribution only to the extent that  
13 the distribution would be includible in gross in-  
14 come without regard to subparagraph (A).

15 “(C) CONTRIBUTIONS MUST BE OTHER-  
16 WISE DEDUCTIBLE.—For purposes of this para-  
17 graph, a distribution to an organization de-  
18 scribed in subparagraph (B)(i) shall be treated  
19 as a qualified charitable distribution only if a  
20 deduction for the entire distribution would be  
21 allowable under section 170 (determined with-  
22 out regard to subsection (b) thereof and this  
23 paragraph).

24 “(D) APPLICATION OF SECTION 72.—Not-  
25 withstanding section 72, in determining the ex-

1           tent to which a distribution is a qualified chari-  
2           table distribution, the entire amount of the dis-  
3           tribution shall be treated as includible in gross  
4           income without regard to subparagraph (A) to  
5           the extent that such amount does not exceed  
6           the aggregate amount which would have been so  
7           includible if all amounts distributed from all in-  
8           dividual retirement plans were treated as 1 con-  
9           tract under paragraph (2)(A) for purposes of  
10          determining the inclusion of such distribution  
11          under section 72. Proper adjustments shall be  
12          made in applying section 72 to other distribu-  
13          tions in such taxable year and subsequent tax-  
14          able years.

15               “(E) DENIAL OF DEDUCTION.—Qualified  
16           charitable distributions which are not includible  
17           in gross income pursuant to subparagraph (A)  
18           shall not be taken into account in determining  
19           the deduction under section 170.

20               “(F) TERMINATION.—This paragraph shall  
21           not apply to distributions made in taxable years  
22           beginning after December 31, 2007.”.

23           (b) MODIFICATIONS RELATING TO INFORMATION RE-  
24          TURNS BY CERTAIN TRUSTS.—

1           (1) RETURNS.—Section 6034 (relating to re-  
2       turns by trusts described in section 4947(a)(2) or  
3       claiming charitable deductions under section 642(c))  
4       is amended to read as follows:

5   **“SEC. 6034. RETURNS BY CERTAIN TRUSTS.**

6       “(a) SPLIT-INTEREST TRUSTS.—Every trust de-  
7       scribed in section 4947(a)(2) shall furnish such informa-  
8       tion with respect to the taxable year as the Secretary may  
9       by forms or regulations require.

10      “(b) TRUSTS CLAIMING CERTAIN CHARITABLE DE-  
11     DUCTIONS.—

12           “(1) IN GENERAL.—Every trust not required to  
13       file a return under subsection (a) but claiming a de-  
14       duction under section 642(c) for the taxable year  
15       shall furnish such information with respect to such  
16       taxable year as the Secretary may by forms or regu-  
17       lations prescribe, including—

18           “(A) the amount of the deduction taken  
19       under section 642(c) within such year,

20           “(B) the amount paid out within such year  
21       which represents amounts for which deductions  
22       under section 642(c) have been taken in prior  
23       years,

1           “(C) the amount for which such deductions  
2           have been taken in prior years but which has  
3           not been paid out at the beginning of such year,

4           “(D) the amount paid out of principal in  
5           the current and prior years for the purposes de-  
6           scribed in section 642(c),

7           “(E) the total income of the trust within  
8           such year and the expenses attributable thereto,  
9           and

10           “(F) a balance sheet showing the assets, li-  
11           abilities, and net worth of the trust as of the  
12           beginning of such year.

13           “(2) EXCEPTIONS.—Paragraph (1) shall not  
14           apply to a trust for any taxable year if—

15           “(A) all the net income for such year, de-  
16           termined under the applicable principles of the  
17           law of trusts, is required to be distributed cur-  
18           rently to the beneficiaries, or

19           “(B) the trust is described in section  
20           4947(a)(1).”.

21           (2) INCREASE IN PENALTY RELATING TO FIL-  
22           ING OF INFORMATION RETURN BY SPLIT-INTEREST  
23           TRUSTS.—Paragraph (2) of section 6652(c) (relating  
24           to returns by exempt organizations and by certain



1 trusts) is amended by adding at the end the fol-  
2 lowing new subparagraph:

3 “(C) SPLIT-INTEREST TRUSTS.—In the  
4 case of a trust which is required to file a return  
5 under section 6034(a), subparagraphs (A) and  
6 (B) of this paragraph shall not apply and para-  
7 graph (1) shall apply in the same manner as if  
8 such return were required under section 6033,  
9 except that—

10 “(i) the 5 percent limitation in the  
11 second sentence of paragraph (1)(A) shall  
12 not apply,

13 “(ii) in the case of any trust with  
14 gross income in excess of \$250,000, the  
15 first sentence of paragraph (1)(A) shall be  
16 applied by substituting ‘\$100’ for ‘\$20’,  
17 and the second sentence thereof shall be  
18 applied by substituting ‘\$50,000’ for  
19 ‘\$10,000’, and

20 “(iii) the third sentence of paragraph  
21 (1)(A) shall be disregarded.

22 In addition to any penalty imposed on the trust  
23 pursuant to this subparagraph, if the person re-  
24 quired to file such return knowingly fails to file  
25 the return, such penalty shall also be imposed

1           on such person who shall be personally liable  
2           for such penalty.”.

3           (3) CONFIDENTIALITY OF NONCHARITABLE  
4 BENEFICIARIES.—Subsection (b) of section 6104  
5 (relating to inspection of annual information re-  
6 turns) is amended by adding at the end the fol-  
7 lowing new sentence: “In the case of a trust which  
8 is required to file a return under section 6034(a),  
9 this subsection shall not apply to information re-  
10 garding beneficiaries which are not organizations de-  
11 scribed in section 170(c).”.

12           (4) CLERICAL AMENDMENT.—The item in the  
13 table of sections for subpart A of part III of sub-  
14 chapter A of chapter 61 relating to section 6034 is  
15 amended to read as follows:

“Sec. 6034. Returns by certain trusts.”.

16           (c) EFFECTIVE DATES.—

17           (1) SUBSECTION (a).—The amendment made  
18 by subsection (a) shall apply to distributions made  
19 in taxable years beginning after December 31, 2005.

20           (2) SUBSECTION (b).—The amendments made  
21 by subsection (b) shall apply to returns for taxable  
22 years beginning after December 31, 2006.

1   **SEC. 1202. EXTENSION OF MODIFICATION OF CHARITABLE**  
2                   **DEDUCTION FOR CONTRIBUTIONS OF FOOD**  
3                   **INVENTORY.**

4       (a) IN GENERAL.—Section 170(e)(3)(C)(iv) (relating  
5 to termination) is amended by striking “2005” and insert-  
6 ing “2007”.

7       (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to contributions made after De-  
9 cember 31, 2005.

10   **SEC. 1203. BASIS ADJUSTMENT TO STOCK OF S CORPORA-**  
11                   **TION CONTRIBUTING PROPERTY.**

12       (a) IN GENERAL.—Paragraph (2) of section 1367(a)  
13 (relating to adjustments to basis of stock of shareholders,  
14 etc.) is amended by adding at the end the following new  
15 flush sentence:

16       “The decrease under subparagraph (B) by reason of  
17 a charitable contribution (as defined in section  
18 170(c)) of property shall be the amount equal to the  
19 shareholder’s pro rata share of the adjusted basis of  
20 such property. The preceding sentence shall not  
21 apply to contributions made in taxable years begin-  
22 ning after December 31, 2007.”.

23       (b) EFFECTIVE DATE.—The amendment made by  
24 this section shall apply to contributions made in taxable  
25 years beginning after December 31, 2005.

1 **SEC. 1204. EXTENSION OF MODIFICATION OF CHARITABLE**  
2 **DEDUCTION FOR CONTRIBUTIONS OF BOOK**  
3 **INVENTORY.**

4 (a) IN GENERAL.—Section 170(e)(3)(D)(iv) (relating  
5 to termination) is amended by striking “2005” and insert-  
6 ing “2007”.

7 (b) EFFECTIVE DATE.—The amendment made by  
8 this section shall apply to contributions made after De-  
9 cember 31, 2005.

10 **SEC. 1205. MODIFICATION OF TAX TREATMENT OF CERTAIN**  
11 **PAYMENTS TO CONTROLLING EXEMPT ORGA-**  
12 **NIZATIONS.**

13 (a) IN GENERAL.—Paragraph (13) of section 512(b)  
14 (relating to special rules for certain amounts received from  
15 controlled entities) is amended by redesignating subpara-  
16 graph (E) as subparagraph (F) and by inserting after sub-  
17 paragraph (D) the following new subparagraph:

18 “(E) PARAGRAPH TO APPLY ONLY TO CER-  
19 TAIN EXCESS PAYMENTS.—

20 “(i) IN GENERAL.—Subparagraph (A)  
21 shall apply only to the portion of a quali-  
22 fying specified payment received or accrued  
23 by the controlling organization that ex-  
24 ceeds the amount which would have been  
25 paid or accrued if such payment met the  
26 requirements prescribed under section 482.

1 “(ii) ADDITION TO TAX FOR VALU-  
2 ATION MISSTATEMENTS.—The tax imposed  
3 by this chapter on the controlling organiza-  
4 tion shall be increased by an amount equal  
5 to 20 percent of the larger of—

6 “(I) such excess determined with-  
7 out regard to any amendment or sup-  
8 plement to a return of tax, or

9 “(II) such excess determined  
10 with regard to all such amendments  
11 and supplements.

12 “(iii) QUALIFYING SPECIFIED PAY-  
13 MENT.—The term ‘qualifying specified  
14 payment’ means a specified payment which  
15 is made pursuant to—

16 “(I) a binding written contract in  
17 effect on the date of the enactment of  
18 this subparagraph, or

19 “(II) a contract which is a re-  
20 newal, under substantially similar  
21 terms, of a contract described in sub-  
22 clause (I).

23 “(iv) TERMINATION.—This subpara-  
24 graph shall not apply to payments received  
25 or accrued after December 31, 2007.”.

1 (b) REPORTING.—

2 (1) IN GENERAL.—Section 6033 (relating to re-  
3 turns by exempt organizations) is amended by redes-  
4 ignating subsection (h) as subsection (i) and by in-  
5 serting after subsection (g) the following new sub-  
6 section:

7 “(h) CONTROLLING ORGANIZATIONS.—Each control-  
8 ling organization (within the meaning of section  
9 512(b)(13)) which is subject to the requirements of sub-  
10 section (a) shall include on the return required under sub-  
11 section (a)—

12 “(1) any interest, annuities, royalties, or rents  
13 received from each controlled entity (within the  
14 meaning of section 512(b)(13)),

15 “(2) any loans made to each such controlled en-  
16 tity, and

17 “(3) any transfers of funds between such con-  
18 trolling organization and each such controlled enti-  
19 ty.”.

20 (2) REPORT TO CONGRESS.—Not later than  
21 January 1, 2009, the Secretary of the Treasury  
22 shall submit to the Committee on Finance of the  
23 Senate and the Committee on Ways and Means of  
24 the House of Representatives a report on the effec-  
25 tiveness of the Internal Revenue Service in admin-

1       istering the amendments made by subsection (a) and  
2       on the extent to which payments by controlled enti-  
3       ties (within the meaning of section 512(b)(13) of the  
4       Internal Revenue Code of 1986) to controlling orga-  
5       nizations (within the meaning of section 512(b)(13)  
6       of such Code) meet the requirements under section  
7       482 of such Code. Such report shall include the re-  
8       sults of any audit of any controlling organization or  
9       controlled entity and recommendations relating to  
10      the tax treatment of payments from controlled enti-  
11      ties to controlling organizations.

12      (c) EFFECTIVE DATE.—

13           (1) SUBSECTION (a).—The amendments made  
14      by subsection (a) shall apply to payments received or  
15      accrued after December 31, 2005.

16           (2) SUBSECTION (b).—The amendments made  
17      by subsection (b) shall apply to returns the due date  
18      (determined without regard to extensions) of which  
19      is after the date of the enactment of this Act.

20      **SEC. 1206. ENCOURAGEMENT OF CONTRIBUTIONS OF CAP-**  
21                           **ITAL GAIN REAL PROPERTY MADE FOR CON-**  
22                           **SERVATION PURPOSES.**

23      (a) IN GENERAL.—

24           (1) INDIVIDUALS.—Paragraph (1) of section  
25      170(b) (relating to percentage limitations) is amend-

1 ed by redesignating subparagraphs (E) and (F) as  
2 subparagraphs (F) and (G), respectively, and by in-  
3 serting after subparagraph (D) the following new  
4 subparagraph:

5 “(E) CONTRIBUTIONS OF QUALIFIED CON-  
6 SERVATION CONTRIBUTIONS.—

7 “(i) IN GENERAL.—Any qualified con-  
8 servation contribution (as defined in sub-  
9 section (h)(1)) shall be allowed to the ex-  
10 tent the aggregate of such contributions  
11 does not exceed the excess of 50 percent of  
12 the taxpayer’s contribution base over the  
13 amount of all other charitable contribu-  
14 tions allowable under this paragraph.

15 “(ii) CARRYOVER.—If the aggregate  
16 amount of contributions described in clause  
17 (i) exceeds the limitation of clause (i), such  
18 excess shall be treated (in a manner con-  
19 sistent with the rules of subsection (d)(1))  
20 as a charitable contribution to which clause  
21 (i) applies in each of the 15 succeeding  
22 years in order of time.

23 “(iii) COORDINATION WITH OTHER  
24 SUBPARAGRAPHS.—For purposes of apply-  
25 ing this subsection and subsection (d)(1),



1 contributions described in clause (i) shall  
2 not be treated as described in subpara-  
3 graph (A), (B), (C), or (D) and such sub-  
4 paragraphs shall apply without regard to  
5 such contributions.

6 “(iv) SPECIAL RULE FOR CONTRIBU-  
7 TION OF PROPERTY USED IN AGRICULTURE  
8 OR LIVESTOCK PRODUCTION.—

9 “(I) IN GENERAL.—If the indi-  
10 vidual is a qualified farmer or rancher  
11 for the taxable year for which the con-  
12 tribution is made, clause (i) shall be  
13 applied by substituting ‘100 percent’  
14 for ‘50 percent’.

15 “(II) EXCEPTION.—Subclause (I)  
16 shall not apply to any contribution of  
17 property made after the date of the  
18 enactment of this subparagraph which  
19 is used in agriculture or livestock pro-  
20 duction (or available for such produc-  
21 tion) unless such contribution is sub-  
22 ject to a restriction that such property  
23 remain available for such production.  
24 This subparagraph shall be applied  
25 separately with respect to property to

1 which subclause (I) does not apply by  
2 reason of the preceding sentence prior  
3 to its application to property to which  
4 subclause (I) does apply.

5 “(v) DEFINITION.—For purposes of  
6 clause (iv), the term ‘qualified farmer or  
7 rancher’ means a taxpayer whose gross in-  
8 come from the trade or business of farm-  
9 ing (within the meaning of section  
10 2032A(e)(5)) is greater than 50 percent of  
11 the taxpayer’s gross income for the taxable  
12 year.

13 “(vi) TERMINATION.—This subpara-  
14 graph shall not apply to any contribution  
15 made in taxable years beginning after De-  
16 cember 31, 2007.”.

17 (2) CORPORATIONS.—Paragraph (2) of section  
18 170(b) is amended to read as follows:

19 “(2) CORPORATIONS.—In the case of a corpora-  
20 tion—

21 “(A) IN GENERAL.—The total deductions  
22 under subsection (a) for any taxable year (other  
23 than for contributions to which subparagraph  
24 (B) applies) shall not exceed 10 percent of the  
25 taxpayer’s taxable income.

1                   “(B) QUALIFIED CONSERVATION CON-  
2                   TRIBUTIONS BY CERTAIN CORPORATE FARMERS  
3                   AND RANCHERS.—

4                   “(i) IN GENERAL.—Any qualified con-  
5                   servation contribution (as defined in sub-  
6                   section (h)(1))—

7                   “(I) which is made by a corpora-  
8                   tion which, for the taxable year during  
9                   which the contribution is made, is a  
10                  qualified farmer or rancher (as de-  
11                  fined in paragraph (1)(E)(v)) and the  
12                  stock of which is not readily tradable  
13                  on an established securities market at  
14                  any time during such year, and

15                  “(II) which, in the case of con-  
16                  tributions made after the date of the  
17                  enactment of this subparagraph, is a  
18                  contribution of property which is used  
19                  in agriculture or livestock production  
20                  (or available for such production) and  
21                  which is subject to a restriction that  
22                  such property remain available for  
23                  such production,

24                  shall be allowed to the extent the aggregate  
25                  of such contributions does not exceed the

1 excess of the taxpayer's taxable income  
2 over the amount of charitable contributions  
3 allowable under subparagraph (A).

4 “(ii) CARRYOVER.—If the aggregate  
5 amount of contributions described in clause  
6 (i) exceeds the limitation of clause (i), such  
7 excess shall be treated (in a manner con-  
8 sistent with the rules of subsection (d)(2))  
9 as a charitable contribution to which clause  
10 (i) applies in each of the 15 succeeding  
11 years in order of time.

12 “(iii) TERMINATION.—This subpara-  
13 graph shall not apply to any contribution  
14 made in taxable years beginning after De-  
15 cember 31, 2007.

16 “(C) TAXABLE INCOME.—For purposes of  
17 this paragraph, taxable income shall be com-  
18 puted without regard to—

19 “(i) this section,

20 “(ii) part VIII (except section 248),

21 “(iii) any net operating loss carryback  
22 to the taxable year under section 172,

23 “(iv) section 199, and

24 “(v) any capital loss carryback to the  
25 taxable year under section 1212(a)(1).”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (2) of section 170(d) is amended  
3 by striking “subsection (b)(2)” each place it appears  
4 and inserting “subsection (b)(2)(A)”.

5 (2) Section 545(b)(2) is amended by striking  
6 “and (D)” and inserting “(D), and (E)”.

7 (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to contributions made in taxable  
9 years beginning after December 31, 2005.

10 **SEC. 1207. EXCISE TAXES EXEMPTION FOR BLOOD COL-**  
11 **LECTOR ORGANIZATIONS.**

12 (a) EXEMPTION FROM IMPOSITION OF SPECIAL  
13 FUELS TAX.—Section 4041(g) (relating to other exemp-  
14 tions) is amended by striking “and” at the end of para-  
15 graph (3), by striking the period in paragraph (4) and  
16 inserting “; and”, and by inserting after paragraph (4)  
17 the following new paragraph:

18 “(5) with respect to the sale of any liquid to a  
19 qualified blood collector organization (as defined in  
20 section 7701(a)(49)) for such organization’s exclu-  
21 sive use in the collection, storage, or transportation  
22 of blood.”.

23 (b) EXEMPTION FROM MANUFACTURERS EXCISE  
24 TAX.—

1           (1) IN GENERAL.—Section 4221(a) (relating to  
2       certain tax-free sales) is amended by striking “or”  
3       at the end of paragraph (4), by adding “or” at the  
4       end of paragraph (5), and by inserting after para-  
5       graph (5) the following new paragraph:

6           “(6) to a qualified blood collector organization  
7       (as defined in section 7701(a)(49)) for such organi-  
8       zation’s exclusive use in the collection, storage, or  
9       transportation of blood.”.

10          (2) NO EXEMPTION WITH RESPECT TO VAC-  
11       CINES AND RECREATIONAL EQUIPMENT.—Section  
12       4221(a) is amended by adding at the end the fol-  
13       lowing new sentence: “In the case of taxes imposed  
14       by subchapter C or D, paragraph (6) shall not  
15       apply.”.

16          (3) CONFORMING AMENDMENTS.—

17               (A) The second sentence of section  
18       4221(a) is amended by striking “Paragraphs  
19       (4) and (5)” and inserting “Paragraphs (4),  
20       (5), and (6)”.

21               (B) Section 6421(c) is amended by strik-  
22       ing “or (5)” and inserting “(5), or (6)”.

23          (c) EXEMPTION FROM COMMUNICATION EXCISE  
24       TAX.—

1           (1) IN GENERAL.—Section 4253 (relating to ex-  
2       emptions) is amended by redesignating subsection  
3       (k) as subsection (l) and inserting after subsection  
4       (j) the following new subsection:

5       “(k) EXEMPTION FOR QUALIFIED BLOOD COL-  
6       LECTOR ORGANIZATIONS.—Under regulations provided by  
7       the Secretary, no tax shall be imposed under section 4251  
8       on any amount paid by a qualified blood collector organi-  
9       zation (as defined in section 7701(a)(49)) for services or  
10      facilities furnished to such organization.”.

11           (2) CONFORMING AMENDMENT.—Section  
12      4253(l), as redesignated by paragraph (1), is  
13      amended by striking “or (j)” and inserting “(j), or  
14      (k)”.

15           (d) EXEMPTION FROM TAX ON HEAVY VEHICLES.—  
16      Section 4483 is amended by redesignating subsection (h)  
17      as subsection (i) and by inserting after subsection (g) the  
18      following new subsection:

19      “(h) EXEMPTION FOR VEHICLES USED IN BLOOD  
20      COLLECTION.—

21           “(1) IN GENERAL.—No tax shall be imposed by  
22      section 4481 on the use of any qualified blood col-  
23      lector vehicle by a qualified blood collector organiza-  
24      tion.

1           “(2) QUALIFIED BLOOD COLLECTOR VEHI-  
2           CLE.—For purposes of this subsection, the term  
3           ‘qualified blood collector vehicle’ means a vehicle at  
4           least 80 percent of the use of which during the prior  
5           taxable period was by a qualified blood collector or-  
6           ganization in the collection, storage, or transpor-  
7           tation of blood.

8           “(3) SPECIAL RULE FOR VEHICLES FIRST  
9           PLACED IN SERVICE IN A TAXABLE PERIOD.—In the  
10          case of a vehicle first placed in service in a taxable  
11          period, a vehicle shall be treated as a qualified blood  
12          collector vehicle for such taxable period if such quali-  
13          fied blood collector organization certifies to the Sec-  
14          retary that the organization reasonably expects at  
15          least 80 percent of the use of such vehicle by the or-  
16          ganization during such taxable period will be in the  
17          collection, storage, or transportation of blood.

18          “(4) QUALIFIED BLOOD COLLECTOR ORGANIZA-  
19          TION.—The term ‘qualified blood collector organiza-  
20          tion’ has the meaning given such term by section  
21          7701(a)(49).”.

22          (e) CREDIT OR REFUND FOR CERTAIN TAXES ON  
23          SALES AND SERVICES.—

24                 (1) DEEMED OVERPAYMENT.—



1 (A) IN GENERAL.—Section 6416(b)(2) is  
2 amended by redesignating subparagraphs (E)  
3 and (F) as subparagraphs (F) and (G), respec-  
4 tively, and by inserting after subparagraph (D)  
5 the following new subparagraph:

6 “(E) sold to a qualified blood collector or-  
7 ganization (as defined in section 7701(a)(49))  
8 for such organization’s exclusive use in the col-  
9 lection, storage, or transportation of blood;”.

10 (B) NO CREDIT OR REFUND FOR VACCINES  
11 OR RECREATIONAL EQUIPMENT.—Section  
12 6416(b)(2) is amended by adding at the end the  
13 following new sentence: “In the case of taxes  
14 imposed by subchapter C or D of chapter 32,  
15 subparagraph (E) shall not apply.”.

16 (C) CONFORMING AMENDMENTS.—Section  
17 6416(b)(2) is amended—

18 (i) by striking “Subparagraphs (C)  
19 and (D)” in the second sentence and in-  
20 serting “Subparagraphs (C), (D), and  
21 (E)”.

22 (ii) by striking “(B), (C), and (D)”  
23 and inserting “(B), (C), (D), and (E)”.

24 (2) SALES OF TIRES.—Section 6416(b)(4)(B) is  
25 amended by striking “or” at the end of clause (i),

1 by striking the period at the end of clause (ii) and  
2 inserting “, or”, and by adding after clause (ii) the  
3 following:

4 “(iii) sold to a qualified blood collector  
5 organization for its exclusive use in con-  
6 nection with a vehicle the organization cer-  
7 tifies will be primarily used in the collec-  
8 tion, storage, or transportation of blood.”.

9 (f) DEFINITION OF QUALIFIED BLOOD COLLECTOR  
10 ORGANIZATION.—Section 7701(a) is amended by inserting  
11 at the end the following new paragraph:

12 “(49) QUALIFIED BLOOD COLLECTOR ORGANI-  
13 ZATION.—The term ‘qualified blood collector organi-  
14 zation’ means an organization which is—

15 “(A) described in section 501(c)(3) and ex-  
16 empt from tax under section 501(a),

17 “(B) primarily engaged in the activity of  
18 the collection of human blood,

19 “(C) registered with the Secretary for pur-  
20 poses of excise tax exemptions, and

21 “(D) registered by the Food and Drug Ad-  
22 ministration to collect blood.”.

23 (g) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by  
25 this section shall take effect on January 1, 2007.

1           (2) SUBSECTION (d).—The amendment made  
2       by subsection (d) shall apply to taxable periods be-  
3       ginning on or after July 1, 2007.

## 4       **Subtitle B—Reforming Exempt** 5       **Organizations**

### 6       **PART 1—GENERAL REFORMS**

7       **SEC. 1211. REPORTING ON CERTAIN ACQUISITIONS OF IN-**  
8               **TERESTS IN INSURANCE CONTRACTS IN**  
9               **WHICH CERTAIN EXEMPT ORGANIZATIONS**  
10              **HOLD AN INTEREST.**

11       (a) REPORTING REQUIREMENTS.—

12           (1) IN GENERAL.—Subpart B of part III of  
13       subchapter A of chapter 61 (relating to information  
14       concerning transactions with other persons), as  
15       amended by this Act, is amended by adding at the  
16       end the following new section:

17       **“SEC. 6050V. RETURNS RELATING TO APPLICABLE INSUR-**  
18               **ANCE CONTRACTS IN WHICH CERTAIN EX-**  
19               **EMPT ORGANIZATIONS HOLD INTERESTS.**

20       “(a) IN GENERAL.—Each applicable exempt organi-  
21       zation which makes a reportable acquisition shall make the  
22       return described in subsection (c).

23       “(b) TIME FOR MAKING RETURN.—Any applicable  
24       exempt organization required to make a return under sub-

1 section (a) shall file such return at such time as may be  
2 established by the Secretary.

3 “(c) FORM AND MANNER OF RETURNS.—A return  
4 is described in this subsection if such return—

5 “(1) is in such form as the Secretary pre-  
6 scribes,

7 “(2) contains the name, address, and taxpayer  
8 identification number of the applicable exempt orga-  
9 nization and the issuer of the applicable insurance  
10 contract, and

11 “(3) contains such other information as the  
12 Secretary may prescribe.

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

14 “(1) REPORTABLE ACQUISITION.—The term  
15 ‘reportable acquisition’ means the acquisition by an  
16 applicable exempt organization of a direct or indirect  
17 interest in any applicable insurance contract in any  
18 case in which such acquisition is a part of a struc-  
19 tured transaction involving a pool of such contracts.

20 “(2) APPLICABLE INSURANCE CONTRACT.—

21 “(A) IN GENERAL.—The term ‘applicable  
22 insurance contract’ means any life insurance,  
23 annuity, or endowment contract with respect to  
24 which both an applicable exempt organization  
25 and a person other than an applicable exempt

1 organization have directly or indirectly held an  
2 interest in the contract (whether or not at the  
3 same time).

4 “(B) EXCEPTIONS.—Such term shall not  
5 include a life insurance, annuity, or endowment  
6 contract if—

7 “(i) all persons directly or indirectly  
8 holding any interest in the contract (other  
9 than applicable exempt organizations) have  
10 an insurable interest in the insured under  
11 the contract independent of any interest of  
12 an applicable exempt organization in the  
13 contract,

14 “(ii) the sole interest in the contract  
15 of an applicable exempt organization or  
16 each person other than an applicable ex-  
17 empt organization is as a named bene-  
18 ficiary, or

19 “(iii) the sole interest in the contract  
20 of each person other than an applicable ex-  
21 empt organization is—

22 “(I) as a beneficiary of a trust  
23 holding an interest in the contract,  
24 but only if the person’s designation as  
25 such beneficiary was made without

1 consideration and solely on a purely  
2 gratuitous basis, or

3 “(II) as a trustee who holds an  
4 interest in the contract in a fiduciary  
5 capacity solely for the benefit of appli-  
6 cable exempt organizations or persons  
7 otherwise described in subclause (I) or  
8 clause (i) or (ii).

9 “(3) APPLICABLE EXEMPT ORGANIZATION.—

10 The term ‘applicable exempt organization’ means—

11 “(A) an organization described in section  
12 170(c),

13 “(B) an organization described in section  
14 168(h)(2)(A)(iv), or

15 “(C) an organization not described in  
16 paragraph (1) or (2) which is described in sec-  
17 tion 2055(a) or section 2522(a).

18 “(e) TERMINATION.—This section shall not apply to  
19 reportable acquisitions occurring after the date which is  
20 2 years after the date of the enactment of this section.”.

21 (2) CONFORMING AMENDMENT.—The table of  
22 sections for subpart B of part III of subchapter A  
23 of chapter 61 is amended by adding at the end the  
24 following new item:

“Sec. 6050V. Returns relating to applicable insurance contracts in which cer-  
tain exempt organizations hold interests.”.

1 (b) PENALTIES.—

2 (1) IN GENERAL.—Subparagraph (B) of section  
3 6724(d)(1), as amended by this Act, is amended by  
4 redesignating clauses (xiv) through (xix) as clauses  
5 (xv) through (xx) and by inserting after clause (xiii)  
6 the following new clause:

7 “(xiv) section 6050V (relating to re-  
8 turns relating to applicable insurance con-  
9 tracts in which certain exempt organiza-  
10 tions hold interests),”.

11 (2) INTENTIONAL DISREGARD.—Section  
12 6721(e)(2) is amended by striking “or” at the end  
13 of subparagraph (B), by striking “and” at the end  
14 of subparagraph (C) and inserting “or”, and by add-  
15 ing at the end the following new subparagraph:

16 “(D) in the case of a return required to be  
17 filed under section 6050V, 10 percent of the  
18 value of the benefit of any contract with respect  
19 to which information is required to be included  
20 on the return, and”.

21 (c) STUDY.—

22 (1) IN GENERAL.—The Secretary of the Treas-  
23 ury shall undertake a study on—

24 (A) the use by tax exempt organizations of  
25 applicable insurance contracts (as defined under

1 section 6050V(d)(2) of the Internal Revenue  
2 Code of 1986, as added by subsection (a)) for  
3 the purpose of sharing the benefits of the orga-  
4 nization's insurable interest in individuals in-  
5 sured under such contracts with investors, and

6 (B) whether such activities are consistent  
7 with the tax exempt status of such organiza-  
8 tions.

9 (2) REPORT.—Not later than 30 months after  
10 the date of the enactment of this Act, the Secretary  
11 of the Treasury shall report on the study conducted  
12 under paragraph (1) to the Committee on Finance  
13 of the Senate and the Committee on Ways and  
14 Means of the House of Representatives.

15 (d) EFFECTIVE DATE.—The amendments made by  
16 this section shall apply to acquisitions of contracts after  
17 the date of enactment of this Act.

18 **SEC. 1212. INCREASE IN PENALTY EXCISE TAXES RELATING**  
19 **TO PUBLIC CHARITIES, SOCIAL WELFARE OR-**  
20 **GANIZATIONS, AND PRIVATE FOUNDATIONS.**

21 (a) TAXES ON SELF-DEALING AND EXCESS BENEFIT  
22 TRANSACTIONS.—

23 (1) IN GENERAL.—Section 4941(a) (relating to  
24 initial taxes) is amended—



1 (A) in paragraph (1), by striking “5 per-  
2 cent” and inserting “10 percent”, and

3 (B) in paragraph (2), by striking “2½  
4 percent” and inserting “5 percent”.

5 (2) INCREASED LIMITATION FOR MANAGERS ON  
6 SELF-DEALING.—Section 4941(c)(2) is amended by  
7 striking “\$10,000” each place it appears in the text  
8 and heading thereof and inserting “\$20,000”.

9 (3) INCREASED LIMITATION FOR MANAGERS ON  
10 EXCESS BENEFIT TRANSACTIONS.—Section  
11 4958(d)(2) is amended by striking “\$10,000” and  
12 inserting “\$20,000”.

13 (b) TAXES ON FAILURE TO DISTRIBUTE INCOME.—  
14 Section 4942(a) (relating to initial tax) is amended by  
15 striking “15 percent” and inserting “30 percent”.

16 (c) TAXES ON EXCESS BUSINESS HOLDINGS.—Sec-  
17 tion 4943(a)(1) (relating to imposition) is amended by  
18 striking “5 percent” and inserting “10 percent”.

19 (d) TAXES ON INVESTMENTS WHICH JEOPARDIZE  
20 CHARITABLE PURPOSE.—

21 (1) IN GENERAL.—Section 4944(a) (relating to  
22 initial taxes) is amended by striking “5 percent”  
23 both places it appears and inserting “10 percent”.

24 (2) INCREASED LIMITATION FOR MANAGERS.—  
25 Section 4944(d)(2) is amended—

1 (A) by striking “\$5,000,” and inserting  
2 “\$10,000,” and

3 (B) by striking “\$10,000.” and inserting  
4 “\$20,000.”.

5 (e) TAXES ON TAXABLE EXPENDITURES.—

6 (1) IN GENERAL.—Section 4945(a) (relating to  
7 initial taxes) is amended—

8 (A) in paragraph (1), by striking “10 per-  
9 cent” and inserting “20 percent”, and

10 (B) in paragraph (2), by striking “2½  
11 percent” and inserting “5 percent”.

12 (2) INCREASED LIMITATION FOR MANAGERS.—

13 Section 4945(c)(2) is amended—

14 (A) by striking “\$5,000,” and inserting  
15 “\$10,000,” and

16 (B) by striking “\$10,000.” and inserting  
17 “\$20,000.”.

18 (f) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 the date of the enactment of this Act.

1 **SEC. 1213. REFORM OF CHARITABLE CONTRIBUTIONS OF**  
2 **CERTAIN EASEMENTS IN REGISTERED HIS-**  
3 **TORIC DISTRICTS AND REDUCED DEDUCTION**  
4 **FOR PORTION OF QUALIFIED CONSERVATION**  
5 **CONTRIBUTION ATTRIBUTABLE TO REHA-**  
6 **BILITATION CREDIT.**

7 (a) SPECIAL RULES WITH RESPECT TO BUILDINGS  
8 IN REGISTERED HISTORIC DISTRICTS.—

9 (1) IN GENERAL.—Paragraph (4) of section  
10 170(h) (relating to definition of conservation pur-  
11 pose) is amended by redesignating subparagraph (B)  
12 as subparagraph (C) and by inserting after subpara-  
13 graph (A) the following new subparagraph:

14 “(B) SPECIAL RULES WITH RESPECT TO  
15 BUILDINGS IN REGISTERED HISTORIC DIS-  
16 TRICTS.—In the case of any contribution of a  
17 qualified real property interest which is a re-  
18 striction with respect to the exterior of a build-  
19 ing described in subparagraph (C)(ii), such con-  
20 tribution shall not be considered to be exclu-  
21 sively for conservation purposes unless—

22 “(i) such interest—

23 “(I) includes a restriction which  
24 preserves the entire exterior of the  
25 building (including the front, sides,  
26 rear, and height of the building), and

1 “(II) prohibits any change in the  
2 exterior of the building which is incon-  
3 sistent with the historical character of  
4 such exterior,

5 “(ii) the donor and donee enter into a  
6 written agreement certifying, under pen-  
7 alty of perjury, that the donee—

8 “(I) is a qualified organization  
9 (as defined in paragraph (3)) with a  
10 purpose of environmental protection,  
11 land conservation, open space preser-  
12 vation, or historic preservation, and

13 “(II) has the resources to man-  
14 age and enforce the restriction and a  
15 commitment to do so, and

16 “(iii) in the case of any contribution  
17 made in a taxable year beginning after the  
18 date of the enactment of this subpara-  
19 graph, the taxpayer includes with the tax-  
20 payer’s return for the taxable year of the  
21 contribution—

22 “(I) a qualified appraisal (within  
23 the meaning of subsection (f)(11)(E))  
24 of the qualified property interest,

1 “(II) photographs of the entire  
2 exterior of the building, and

3 “(III) a description of all restric-  
4 tions on the development of the build-  
5 ing.”.

6 (b) DISALLOWANCE OF DEDUCTION FOR STRUC-  
7 TURES AND LAND IN REGISTERED HISTORIC DIS-  
8 TRICTS.—Subparagraph (C) of section 170(h)(4), as re-  
9 designated by subsection (a), is amended—

10 (1) by striking “any building, structure, or land  
11 area which”,

12 (2) by inserting “any building, structure, or  
13 land area which” before “is listed” in clause (i), and

14 (3) by inserting “any building which” before “is  
15 located” in clause (ii).

16 (c) FILING FEE FOR CERTAIN CONTRIBUTIONS.—  
17 Subsection (f) of section 170 (relating to disallowance of  
18 deduction in certain cases and special rules) is amended  
19 by adding at the end the following new paragraph:

20 “(13) CONTRIBUTIONS OF CERTAIN INTERESTS  
21 IN BUILDINGS LOCATED IN REGISTERED HISTORIC  
22 DISTRICTS.—

23 “(A) IN GENERAL.—No deduction shall be  
24 allowed with respect to any contribution de-  
25 scribed in subparagraph (B) unless the tax-

1 payer includes with the return for the taxable  
2 year of the contribution a \$500 filing fee.

3 “(B) CONTRIBUTION DESCRIBED.—A con-  
4 tribution is described in this subparagraph if  
5 such contribution is a qualified conservation  
6 contribution (as defined in subsection (h))  
7 which is a restriction with respect to the exte-  
8 rior of a building described in subsection  
9 (h)(4)(C)(ii) and for which a deduction is  
10 claimed in excess of \$10,000.

11 “(C) DEDICATION OF FEE.—Any fee col-  
12 lected under this paragraph shall be used for  
13 the enforcement of the provisions of subsection  
14 (h).”.

15 (d) REDUCED DEDUCTION FOR PORTION OF QUALI-  
16 FIED CONSERVATION CONTRIBUTION ATTRIBUTABLE TO  
17 THE REHABILITATION CREDIT.—Subsection (f) of section  
18 170, as amended by subsection (c), is amended by adding  
19 at the end the following new paragraph:

20 “(14) REDUCTION FOR AMOUNTS ATTRIB-  
21 UTABLE TO REHABILITATION CREDIT.—In the case  
22 of any qualified conservation contribution (as de-  
23 fined in subsection (h)), the amount of the deduction  
24 allowed under this section shall be reduced by an

1 amount which bears the same ratio to the fair mar-  
2 ket value of the contribution as—

3 “(A) the sum of the credits allowed to the  
4 taxpayer under section 47 for the 5 preceding  
5 taxable years with respect to any building which  
6 is a part of such contribution, bears to

7 “(B) the fair market value of the building  
8 on the date of the contribution.”.

9 (e) EFFECTIVE DATES.—

10 (1) SPECIAL RULES FOR BUILDINGS IN REG-  
11 ISTERED HISTORIC DISTRICTS.—The amendments  
12 made by subsection (a) shall apply to contributions  
13 made after July 25, 2006.

14 (2) DISALLOWANCE OF DEDUCTION FOR STRUC-  
15 TURES AND LAND; REDUCTION FOR REHABILITA-  
16 TION CREDIT.—The amendments made by sub-  
17 sections (b) and (d) shall apply to contributions  
18 made after the date of the enactment of this Act.

19 (3) FILING FEE.—The amendment made by  
20 subsection (c) shall apply to contributions made 180  
21 days after the date of the enactment of this Act.

22 **SEC. 1214. CHARITABLE CONTRIBUTIONS OF TAXIDERMY**  
23 **PROPERTY.**

24 (a) DENIAL OF LONG-TERM CAPITAL GAIN.—Sub-  
25 paragraph (B) of section 170(e)(1) is amended by striking

1 “or” at the end of clause (ii), by inserting “or” at the  
2 end of clause (iii), and by inserting after clause (iii) the  
3 following new clause:

4 “(iv) of any taxidermy property which  
5 is contributed by the person who prepared,  
6 stuffed, or mounted the property or by any  
7 person who paid or incurred the cost of  
8 such preparation, stuffing, or mounting.”.

9 (b) TREATMENT OF BASIS.—Subsection (f) of section  
10 170, as amended by this Act, is amended by adding at  
11 the end the following new paragraph:

12 “(15) SPECIAL RULE FOR TAXIDERMY PROP-  
13 ERTY.—

14 “(A) BASIS.—For purposes of this section  
15 and notwithstanding section 1012, in the case  
16 of a charitable contribution of taxidermy prop-  
17 erty which is made by the person who prepared,  
18 stuffed, or mounted the property or by any per-  
19 son who paid or incurred the cost of such prep-  
20 aration, stuffing, or mounting, only the cost of  
21 the preparing, stuffing, or mounting shall be in-  
22 cluded in the basis of such property.

23 “(B) TAXIDERMY PROPERTY.—For pur-  
24 poses of this section, the term ‘taxidermy prop-  
25 erty’ means any work of art which—



1 “(i) is the reproduction or preserva-  
2 tion of an animal, in whole or in part,

3 “(ii) is prepared, stuffed, or mounted  
4 for purposes of recreating one or more  
5 characteristics of such animal, and

6 “(iii) contains a part of the body of  
7 the dead animal.”.

8 (c) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to contributions made after July  
10 25, 2006.

11 **SEC. 1215. RECAPTURE OF TAX BENEFIT FOR CHARITABLE**  
12 **CONTRIBUTIONS OF EXEMPT USE PROPERTY**  
13 **NOT USED FOR AN EXEMPT USE.**

14 (a) RECAPTURE OF DEDUCTION ON CERTAIN SALES  
15 OF EXEMPT USE PROPERTY.—

16 (1) IN GENERAL.—Clause (i) of section  
17 170(e)(1)(B) (related to certain contributions of or-  
18 dinary income and capital gain property) is amended  
19 to read as follows:

20 “(i) of tangible personal property—  
21 “(I) if the use by the donee is  
22 unrelated to the purpose or function  
23 constituting the basis for its exemp-  
24 tion under section 501 (or, in the case  
25 of a governmental unit, to any pur-

1 pose or function described in sub-  
2 section (c)), or

3 “(II) which is applicable property  
4 (as defined in paragraph (7)(C))  
5 which is sold, exchanged, or otherwise  
6 disposed of by the donee before the  
7 last day of the taxable year in which  
8 the contribution was made and with  
9 respect to which the donee has not  
10 made a certification in accordance  
11 with paragraph (7)(D),”.

12 (2) DISPOSITIONS AFTER CLOSE OF TAXABLE  
13 YEAR.—Section 170(e) is amended by adding at the  
14 end the following new paragraph:

15 “(7) RECAPTURE OF DEDUCTION ON CERTAIN  
16 DISPOSITIONS OF EXEMPT USE PROPERTY.—

17 “(A) IN GENERAL.—In the case of an ap-  
18 plicable disposition of applicable property, there  
19 shall be included in the income of the donor of  
20 such property for the taxable year of such  
21 donor in which the applicable disposition occurs  
22 an amount equal to the excess (if any) of—

23 “(i) the amount of the deduction al-  
24 lowed to the donor under this section with  
25 respect to such property, over

1 “(ii) the donor’s basis in such prop-  
2 erty at the time such property was contrib-  
3 uted.

4 “(B) APPLICABLE DISPOSITION.—For pur-  
5 poses of this paragraph, the term ‘applicable  
6 disposition’ means any sale, exchange, or other  
7 disposition by the donee of applicable prop-  
8 erty—

9 “(i) after the last day of the taxable  
10 year of the donor in which such property  
11 was contributed, and

12 “(ii) before the last day of the 3-year  
13 period beginning on the date of the con-  
14 tribution of such property,

15 unless the donee makes a certification in ac-  
16 cordance with subparagraph (D).

17 “(C) APPLICABLE PROPERTY.—For pur-  
18 poses of this paragraph, the term ‘applicable  
19 property’ means charitable deduction property  
20 (as defined in section 6050L(a)(2)(A))—

21 “(i) which is tangible personal prop-  
22 erty the use of which is identified by the  
23 donee as related to the purpose or function  
24 constituting the basis of the donee’s ex-  
25 emption under section 501, and

1 “(ii) for which a deduction in excess  
2 of the donor’s basis is allowed.

3 “(D) CERTIFICATION.—A certification  
4 meets the requirements of this subparagraph if  
5 it is a written statement which is signed under  
6 penalty of perjury by an officer of the donee or-  
7 ganization and—

8 “(i) which—

9 “(I) certifies that the use of the  
10 property by the donee was related to  
11 the purpose or function constituting  
12 the basis for the donee’s exemption  
13 under section 501, and

14 “(II) describes how the property  
15 was used and how such use furthered  
16 such purpose or function, or

17 “(ii) which—

18 “(I) states the intended use of  
19 the property by the donee at the time  
20 of the contribution, and

21 “(II) certifies that such intended  
22 use has become impossible or infeas-  
23 ible to implement.”.

1 (b) REPORTING REQUIREMENTS.—Paragraph (1) of  
2 section 6050L(a) (relating to returns relating to certain  
3 dispositions of donated property) is amended—

4 (1) by striking “2 years” and inserting “3  
5 years”, and

6 (2) by striking “and” at the end of subpara-  
7 graph (D), by striking the period at the end of sub-  
8 paragraph (E) and inserting a comma, and by in-  
9 serting at the end the following:

10 “(F) a description of the donee’s use of the  
11 property, and

12 “(G) a statement indicating whether the  
13 use of the property was related to the purpose  
14 or function constituting the basis for the  
15 donee’s exemption under section 501.

16 In any case in which the donee indicates that the  
17 use of applicable property (as defined in section  
18 170(e)(7)(C)) was related to the purpose or function  
19 constituting the basis for the exemption of the donee  
20 under section 501 under subparagraph (G), the  
21 donee shall include with the return the certification  
22 described in section 170(e)(7)(D) if such certifi-  
23 cation is made under section 170(e)(7).”.

24 (c) PENALTY.—

1           (1) IN GENERAL.—Part I of subchapter B of  
2       chapter 68 (relating to assessable penalties) is  
3       amended by inserting after section 6720A the fol-  
4       lowing new section:

5       **“SEC. 6720B. FRAUDULENT IDENTIFICATION OF EXEMPT**  
6                           **USE PROPERTY.**

7       “In addition to any criminal penalty provided by law,  
8       any person who identifies applicable property (as defined  
9       in section 170(e)(7)(C)) as having a use which is related  
10      to a purpose or function constituting the basis for the  
11      donee’s exemption under section 501 and who knows that  
12      such property is not intended for such a use shall pay a  
13      penalty of \$10,000.”.

14           (2) CLERICAL AMENDMENT.—The table of sec-  
15      tions for part I of subchapter B of chapter 68 is  
16      amended by adding after the item relating to section  
17      6720A the following new item:

“Sec. 6720B. Fraudulent identification of exempt use property.”.

18           (d) EFFECTIVE DATE.—

19           (1) RECAPTURE.—The amendments made by  
20      subsection (a) shall apply to contributions after Sep-  
21      tember 1, 2006.

22           (2) REPORTING.—The amendments made by  
23      subsection (b) shall apply to returns filed after Sep-  
24      tember 1, 2006.

1           (3) PENALTY.—The amendments made by sub-  
2       section (c) shall apply to identifications made after  
3       the date of the enactment of this Act.

4   **SEC. 1216. LIMITATION OF DEDUCTION FOR CHARITABLE**  
5                   **CONTRIBUTIONS OF CLOTHING AND HOUSE-**  
6                   **HOLD ITEMS.**

7       (a) IN GENERAL.—Subsection (f) of section 170, as  
8       amended by this Act, is amended by adding at the end  
9       the following new paragraph:

10           “(16) CONTRIBUTIONS OF CLOTHING AND  
11       HOUSEHOLD ITEMS.—

12           “(A) IN GENERAL.—In the case of an indi-  
13       vidual, partnership, or corporation, no deduc-  
14       tion shall be allowed under subsection (a) for  
15       any contribution of clothing or a household item  
16       unless such clothing or household item is in  
17       good used condition or better.

18           “(B) ITEMS OF MINIMAL VALUE.—Not-  
19       withstanding subparagraph (A), the Secretary  
20       may by regulation deny a deduction under sub-  
21       section (a) for any contribution of clothing or a  
22       household item which has minimal monetary  
23       value.

24           “(C) EXCEPTION FOR CERTAIN PROP-  
25       ERTY.—Subparagraphs (A) and (B) shall not

1           apply to any contribution of a single item of  
2           clothing or a household item for which a deduc-  
3           tion of more than \$500 is claimed if the tax-  
4           payer includes with the taxpayer's return a  
5           qualified appraisal with respect to the property.

6           “(D) HOUSEHOLD ITEMS.—For purposes  
7           of this paragraph—

8                   “(i) IN GENERAL.—The term ‘house-  
9                   hold items’ includes furniture, furnishings,  
10                  electronics, appliances, linens, and other  
11                  similar items.

12                  “(ii) EXCLUDED ITEMS.—Such term  
13                  does not include—

14                           “(I) food,

15                           “(II) paintings, antiques, and  
16                           other objects of art,

17                           “(III) jewelry and gems, and

18                           “(IV) collections.

19           “(E) SPECIAL RULE FOR PASS-THRU ENTI-  
20           TIES.—In the case of a partnership or S cor-  
21           poration, this paragraph shall be applied at the  
22           entity level, except that the deduction shall be  
23           denied at the partner or shareholder level.”.



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

4 **SEC. 1217. MODIFICATION OF RECORDKEEPING REQUIRE-**  
5 **MENTS FOR CERTAIN CHARITABLE CON-**  
6 **TRIBUTIONS.**

7 (a) RECORDKEEPING REQUIREMENT.—Subsection  
8 (f) of section 170, as amended by this Act, is amended  
9 by adding at the end the following new paragraph:

10 “(17) RECORDKEEPING.—No deduction shall be  
11 allowed under subsection (a) for any contribution of  
12 a cash, check, or other monetary gift unless the  
13 donor maintains as a record of such contribution a  
14 bank record or a written communication from the  
15 donee showing the name of the donee organization,  
16 the date of the contribution, and the amount of the  
17 contribution.”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply to contributions made in taxable  
20 years beginning after the date of the enactment of this  
21 Act.

22 **SEC. 1218. CONTRIBUTIONS OF FRACTIONAL INTERESTS IN**  
23 **TANGIBLE PERSONAL PROPERTY.**

24 (a) INCOME TAX.—Section 170 (relating to chari-  
25 table, etc., contributions and gifts) is amended by redesign-

1 nating subsection (o) as subsection (p) and by inserting  
2 after subsection (n) the following new subsection:

3 “(o) SPECIAL RULES FOR FRACTIONAL GIFTS.—

4 “(1) DENIAL OF DEDUCTION IN CERTAIN  
5 CASES.—

6 “(A) IN GENERAL.—No deduction shall be  
7 allowed for a contribution of an undivided por-  
8 tion of a taxpayer’s entire interest in tangible  
9 personal property unless all interest in the  
10 property is held immediately before such con-  
11 tribution by—

12 “(i) the taxpayer, or

13 “(ii) the taxpayer and the donee.

14 “(B) EXCEPTIONS.—The Secretary may,  
15 by regulation, provide for exceptions to sub-  
16 paragraph (A) in cases where all persons who  
17 hold an interest in the property make propor-  
18 tional contributions of an undivided portion of  
19 the entire interest held by such persons.

20 “(2) VALUATION OF SUBSEQUENT GIFTS.—In  
21 the case of any additional contribution, the fair mar-  
22 ket value of such contribution shall be determined by  
23 using the lesser of—

1           “(A) the fair market value of the property  
2           at the time of the initial fractional contribution,  
3           or

4           “(B) the fair market value of the property  
5           at the time of the additional contribution.

6           “(3) RECAPTURE OF DEDUCTION IN CERTAIN  
7           CASES; ADDITION TO TAX.—

8           “(A) RECAPTURE.—The Secretary shall  
9           provide for the recapture of the amount of any  
10          deduction allowed under this section (plus inter-  
11          est) with respect to any contribution of an undi-  
12          vided portion of a taxpayer’s entire interest in  
13          tangible personal property—

14          “(i) in any case in which the donor  
15          does not contribute all of the remaining in-  
16          terest in such property to the donee (or, if  
17          such donee is no longer in existence, to any  
18          person described in section 170(c)) before  
19          the earlier of—

20                  “(I) the date that is 10 years  
21                  after the date of the initial fractional  
22                  contribution, or

23                  “(II) the date of the death of the  
24                  donor, and

1 “(ii) in any case in which the donee  
2 has not, during the period beginning on  
3 the date of the initial fractional contribu-  
4 tion and ending on the date described in  
5 clause (i)—

6 “(I) had substantial physical pos-  
7 session of the property, and

8 “(II) used the property in a use  
9 which is related to a purpose or func-  
10 tion constituting the basis for the or-  
11 ganizations’ exemption under section  
12 501.

13 “(B) ADDITION TO TAX.—The tax imposed  
14 under this chapter for any taxable year for  
15 which there is a recapture under subparagraph  
16 (A) shall be increased by 10 percent of the  
17 amount so recaptured.

18 “(4) DEFINITIONS.—For purposes of this sub-  
19 section—

20 “(A) ADDITIONAL CONTRIBUTION.—The  
21 term ‘additional contribution’ means any chari-  
22 table contribution by the taxpayer of any inter-  
23 est in property with respect to which the tax-  
24 payer has previously made an initial fractional  
25 contribution.

1           “(B) INITIAL FRACTIONAL CONTRIBU-  
2           TION.—The term ‘initial fractional contribution’  
3           means, with respect to any taxpayer, the first  
4           charitable contribution of an undivided portion  
5           of the taxpayer’s entire interest in any tangible  
6           personal property.”.

7           (b) ESTATE TAX.—Section 2055 (relating to trans-  
8           fers for public, charitable, and religious uses) is amended  
9           by redesignating subsection (g) as subsection (h) and by  
10          inserting after subsection (f) the following new subsection:

11          “(g) VALUATION OF SUBSEQUENT GIFTS.—

12               “(1) IN GENERAL.—In the case of any addi-  
13              tional contribution, the fair market value of such  
14              contribution shall be determined by using the lesser  
15              of—

16                   “(A) the fair market value of the property  
17                   at the time of the initial fractional contribution,  
18                   or

19                   “(B) the fair market value of the property  
20                   at the time of the additional contribution.

21               “(2) DEFINITIONS.—For purposes of this para-  
22          graph—

23                   “(A) ADDITIONAL CONTRIBUTION.—The  
24                   term ‘additional contribution’ means a bequest,  
25                   legacy, devise, or transfer described in sub-

1 section (a) of any interest in a property with re-  
2 spect to which the decedent had previously  
3 made an initial fractional contribution.

4 “(B) INITIAL FRACTIONAL CONTRIBU-  
5 TION.—The term ‘initial fractional contribution’  
6 means, with respect to any decedent, any chari-  
7 table contribution of an undivided portion of  
8 the decedent’s entire interest in any tangible  
9 personal property for which a deduction was al-  
10 lowed under section 170.”.

11 (c) GIFT TAX.—Section 2522 (relating to charitable  
12 and similar gifts) is amended by redesignating subsection  
13 (e) as subsection (f) and by inserting after subsection (d)  
14 the following new subsection:

15 “(e) SPECIAL RULES FOR FRACTIONAL GIFTS.—

16 “(1) DENIAL OF DEDUCTION IN CERTAIN  
17 CASES.—

18 “(A) IN GENERAL.—No deduction shall be  
19 allowed for a contribution of an undivided por-  
20 tion of a taxpayer’s entire interest in tangible  
21 personal property unless all interest in the  
22 property is held immediately before such con-  
23 tribution by—

24 “(i) the taxpayer, or

25 “(ii) the taxpayer and the donee.

1           “(B) EXCEPTIONS.—The Secretary may,  
2           by regulation, provide for exceptions to sub-  
3           paragraph (A) in cases where all persons who  
4           hold an interest in the property make propor-  
5           tional contributions of an undivided portion of  
6           the entire interest held by such persons.

7           “(2) VALUATION OF SUBSEQUENT GIFTS.—In  
8           the case of any additional contribution, the fair mar-  
9           ket value of such contribution shall be determined by  
10          using the lesser of—

11           “(A) the fair market value of the property  
12           at the time of the initial fractional contribution,  
13           or

14           “(B) the fair market value of the property  
15           at the time of the additional contribution.

16          “(3) RECAPTURE OF DEDUCTION IN CERTAIN  
17          CASES; ADDITION TO TAX.—

18           “(A) IN GENERAL.—The Secretary shall  
19           provide for the recapture of an amount equal to  
20           any deduction allowed under this section (plus  
21           interest) with respect to any contribution of an  
22           undivided portion of a taxpayer’s entire interest  
23           in tangible personal property—

24           “(i) in any case in which the donor  
25           does not contribute all of the remaining in-

1           terest in such property to the donee (or, if  
2           such donee is no longer in existence, to any  
3           person described in section 170(c)) before  
4           the earlier of—

5                   “(I) the date that is 10 years  
6                   after the date of the initial fractional  
7                   contribution, or

8                   “(II) the date of the death of the  
9                   donor, and

10                  “(ii) in any case in which the donee  
11                  has not, during the period beginning on  
12                  the date of the initial fractional contribu-  
13                  tion and ending on the date described in  
14                  clause (i)—

15                   “(I) had substantial physical pos-  
16                   session of the property, and

17                   “(II) used the property in a use  
18                   which is related to a purpose or func-  
19                   tion constituting the basis for the or-  
20                   ganizations’ exemption under section  
21                   501.

22                  “(B) ADDITION TO TAX.—The tax imposed  
23                  under this chapter for any taxable year for  
24                  which there is a recapture under subparagraph



1 (A) shall be increased by 10 percent of the  
2 amount so recaptured.

3 “(4) DEFINITIONS.—For purposes of this sub-  
4 section—

5 “(A) ADDITIONAL CONTRIBUTION.—The  
6 term ‘additional contribution’ means any gift  
7 for which a deduction is allowed under sub-  
8 section (a) or (b) of any interest in a property  
9 with respect to which the donor has previously  
10 made an initial fractional contribution.

11 “(B) INITIAL FRACTIONAL CONTRIBU-  
12 TION.—The term ‘initial fractional contribution’  
13 means, with respect to any donor, the first gift  
14 of an undivided portion of the donor’s entire in-  
15 terest in any tangible personal property for  
16 which a deduction is allowed under subsection  
17 (a) or (b).”.

18 (d) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to contributions, bequests, and  
20 gifts made after the date of the enactment of this Act.

21 **SEC. 1219. PROVISIONS RELATING TO SUBSTANTIAL AND**  
22 **GROSS OVERSTATEMENTS OF VALUATIONS.**

23 (a) MODIFICATION OF THRESHOLDS FOR SUBSTAN-  
24 TIAL AND GROSS VALUATION MISSTATEMENTS.—

1                   (1)                   SUBSTANTIAL                   VALUATION  
2                   MISSTATEMENT.—

3                   (A) INCOME TAXES.—Subparagraph (A) of  
4                   section 6662(e)(1) (relating to substantial valu-  
5                   ation misstatement under chapter 1) is amend-  
6                   ed by striking “200 percent” and inserting  
7                   “150 percent”.

8                   (B) ESTATE AND GIFT TAXES.—Paragraph  
9                   (1) of section 6662(g) is amended by striking  
10                  “50 percent” and inserting “65 percent”.

11                  (2) GROSS VALUATION MISSTATEMENT.—

12                  (A) INCOME TAXES.—Clauses (i) and (ii)  
13                  of section 6662(h)(2)(A) (relating to increase in  
14                  penalty in case of gross valuation  
15                  misstatements) are amended to read as follows:

16                         “(i) in paragraph (1)(A), ‘200 per-  
17                         cent’ for ‘150 percent’,

18                         “(ii) in paragraph (1)(B)(i)—

19                                 “(I) ‘400 percent’ for ‘200 per-  
20                                 cent’, and

21                                 “(II) ‘25 percent’ for ‘50 per-  
22                                 cent’, and”.

23                  (B) ESTATE AND GIFT TAXES.—Subpara-  
24                  graph (C) of section 6662(h)(2) is amended by

1 striking “‘25 percent’ for ‘50 percent’” and in-  
2 serting “‘40 percent’ for ‘65 percent’”.

3 (3) ELIMINATION OF REASONABLE CAUSE EX-  
4 CEPTION FOR GROSS MISSTATEMENTS.—Section  
5 6664(c)(2) (relating to reasonable cause exception  
6 for underpayments) is amended by striking “para-  
7 graph (1) shall not apply unless” and inserting  
8 “paragraph (1) shall not apply. The preceding sen-  
9 tence shall not apply to a substantial valuation over-  
10 statement under chapter 1 if”.

11 (b) PENALTY ON APPRAISERS WHOSE APPRAISALS  
12 RESULT IN SUBSTANTIAL OR GROSS VALUATION  
13 MISSTATEMENTS.—

14 (1) IN GENERAL.—Part I of subchapter B of  
15 chapter 68 (relating to assessable penalties) is  
16 amended by inserting after section 6695 the fol-  
17 lowing new section:

18 **“SEC. 6695A. SUBSTANTIAL AND GROSS VALUATION**  
19 **MISSTATEMENTS ATTRIBUTABLE TO INCOR-**  
20 **RECT APPRAISALS.**

21 **“(a) IMPOSITION OF PENALTY.—If—**

22 **“(1) a person prepares an appraisal of the**  
23 **value of property and such person knows, or reason-**  
24 **ably should have known, that the appraisal would be**

1       used in connection with a return or a claim for re-  
2       fund, and

3           “(2) the claimed value of the property on a re-  
4       turn or claim for refund which is based on such ap-  
5       praisal results in a substantial valuation  
6       misstatement under chapter 1 (within the meaning  
7       of section 6662(e)), or a gross valuation  
8       misstatement (within the meaning of section  
9       6662(h)), with respect to such property, then such  
10      person shall pay a penalty in the amount determined  
11      under subsection (b).

12      “(b) AMOUNT OF PENALTY.—The amount of the  
13      penalty imposed under subsection (a) on any person with  
14      respect to an appraisal shall be equal to the lesser of—

15           “(1) the greater of—

16           “(A) 10 percent of the amount of the un-  
17           derpayment (as defined in section 6664(a)) at-  
18           tributable to the misstatement described in sub-  
19           section (a)(2), or

20           “(B) \$1,000, or

21           “(2) 125 percent of the gross income received  
22       by the person described in subsection (a)(1) from  
23       the preparation of the appraisal.

24      “(c) EXCEPTION.—No penalty shall be imposed  
25      under subsection (a) if the person establishes to the satis-

1 faction of the Secretary that the value established in the  
2 appraisal was more likely than not the proper value.”.

3 (2) RULES APPLICABLE TO PENALTY.—Section  
4 6696 (relating to rules applicable with respect to  
5 sections 6694 and 6695) is amended—

6 (A) by striking “6694 and 6695” each  
7 place it appears in the text and heading thereof  
8 and inserting “6694, 6695, and 6695A”, and

9 (B) by striking “6694 or 6695” each place  
10 it appears in the text and inserting “6694,  
11 6695, or 6695A”.

12 (3) CONFORMING AMENDMENT.—The table of  
13 sections for part I of subchapter B of chapter 68 is  
14 amended by striking the item relating to section  
15 6696 and inserting the following new items:

“Sec. 6695A. Substantial and gross valuation misstatements attributable to incorrect appraisals.

“Sec. 6696. Rules applicable with respect to sections 6694, 6695, and 6695A.”.

16 (c) QUALIFIED APPRAISERS AND APPRAISALS.—

17 (1) IN GENERAL.—Subparagraph (E) of section  
18 170(f)(11) is amended to read as follows:

19 “(E) QUALIFIED APPRAISAL AND AP-  
20 PRAISER.—For purposes of this paragraph—

21 “(i) QUALIFIED APPRAISAL.—The  
22 term ‘qualified appraisal’ means, with re-  
23 spect to any property, an appraisal of such  
24 property which—

1 “(I) is treated for purposes of  
2 this paragraph as a qualified ap-  
3 praisal under regulations or other  
4 guidance prescribed by the Secretary,  
5 and

6 “(II) is conducted by a qualified  
7 appraiser in accordance with generally  
8 accepted appraisal standards and any  
9 regulations or other guidance pre-  
10 scribed under subclause (I).

11 “(ii) QUALIFIED APPRAISER.—Except  
12 as provided in clause (iii), the term ‘quali-  
13 fied appraiser’ means an individual who—

14 “(I) has earned an appraisal des-  
15 ignation from a recognized profes-  
16 sional appraiser organization or has  
17 otherwise met minimum education  
18 and experience requirements set forth  
19 in regulations prescribed by the Sec-  
20 retary,

21 “(II) regularly performs apprais-  
22 als for which the individual receives  
23 compensation, and

24 “(III) meets such other require-  
25 ments as may be prescribed by the

1 Secretary in regulations or other guid-  
2 ance.

3 “(iii) SPECIFIC APPRAISALS.—An in-  
4 dividual shall not be treated as a qualified  
5 appraiser with respect to any specific ap-  
6 praisal unless—

7 “(I) the individual demonstrates  
8 verifiable education and experience in  
9 valuing the type of property subject to  
10 the appraisal, and

11 “(II) the individual has not been  
12 prohibited from practicing before the  
13 Internal Revenue Service by the Sec-  
14 retary under section 330(c) of title  
15 31, United States Code, at any time  
16 during the 3-year period ending on  
17 the date of the appraisal.”.

18 (2) REASONABLE CAUSE EXCEPTION.—Sub-  
19 paragraphs (B) and (C) of section 6664(c)(3) are  
20 amended to read as follows:

21 “(B) QUALIFIED APPRAISAL.—The term  
22 ‘qualified appraisal’ has the meaning given such  
23 term by section 170(f)(11)(E)(i).

1                   “(C) QUALIFIED APPRAISER.—The term  
2                   ‘qualified appraiser’ has the meaning given such  
3                   term by section 170(f)(11)(E)(ii).”.

4           (d) DISCIPLINARY ACTIONS AGAINST APPRAISERS.—  
5   Section 330(c) of title 31, United States Code, is amended  
6   by striking “with respect to whom a penalty has been as-  
7   sessed under section 6701(a) of the Internal Revenue  
8   Code of 1986”.

9           (e) EFFECTIVE DATES.—

10           (1) MISSTATEMENT PENALTIES.—Except as  
11           provided in paragraph (3), the amendments made by  
12           subsection (a) shall apply to returns filed after the  
13           date of the enactment of this Act.

14           (2) APPRAISER PROVISIONS.—Except as pro-  
15           vided in paragraph (3), the amendments made by  
16           subsections (b), (c), and (d) shall apply to appraisals  
17           prepared with respect to returns or submissions filed  
18           after the date of the enactment of this Act.

19           (3) SPECIAL RULE FOR CERTAIN EASE-  
20           MENTS.—In the case of a contribution of a qualified  
21           real property interest which is a restriction with re-  
22           spect to the exterior of a building described in sec-  
23           tion 170(h)(4)(C)(ii) of the Internal Revenue Code  
24           of 1986, and an appraisal with respect to the con-  
25           tribution, the amendments made by subsections (a)



1 and (b) shall apply to returns filed after July 25,  
2 2006.

3 **SEC. 1220. ADDITIONAL STANDARDS FOR CREDIT COUN-**  
4 **SELING ORGANIZATIONS.**

5 (a) IN GENERAL.—Section 501 (relating to exemp-  
6 tion from tax on corporations, certain trusts, etc.) is  
7 amended by redesignating subsection (q) as subsection (r)  
8 and by inserting after subsection (p) the following new  
9 subsection:

10 “(q) SPECIAL RULES FOR CREDIT COUNSELING OR-  
11 GANIZATIONS.—

12 “(1) IN GENERAL.—An organization with re-  
13 spect to which the provision of credit counseling  
14 services is a substantial purpose shall not be exempt  
15 from tax under subsection (a) unless such organiza-  
16 tion is described in paragraph (3) or (4) of sub-  
17 section (c) and such organization is organized and  
18 operated in accordance with the following require-  
19 ments:

20 “(A) The organization—

21 “(i) provides credit counseling services  
22 tailored to the specific needs and cir-  
23 cumstances of consumers,

24 “(ii) makes no loans to debtors (other  
25 than loans with no fees or interest) and

1 does not negotiate the making of loans on  
2 behalf of debtors,

3 “(iii) provides services for the purpose  
4 of improving a consumer’s credit record,  
5 credit history, or credit rating only to the  
6 extent that such services are incidental to  
7 providing credit counseling services, and

8 “(iv) does not charge any separately  
9 stated fee for services for the purpose of  
10 improving any consumer’s credit record,  
11 credit history, or credit rating.

12 “(B) The organization does not refuse to  
13 provide credit counseling services to a consumer  
14 due to the inability of the consumer to pay, the  
15 ineligibility of the consumer for debt manage-  
16 ment plan enrollment, or the unwillingness of  
17 the consumer to enroll in a debt management  
18 plan.

19 “(C) The organization establishes and im-  
20 plements a fee policy which—

21 “(i) requires that any fees charged to  
22 a consumer for services are reasonable,

23 “(ii) allows for the waiver of fees if  
24 the consumer is unable to pay, and

1 “(iii) except to the extent allowed by  
2 State law, prohibits charging any fee based  
3 in whole or in part on a percentage of the  
4 consumer’s debt, the consumer’s payments  
5 to be made pursuant to a debt manage-  
6 ment plan, or the projected or actual sav-  
7 ings to the consumer resulting from enroll-  
8 ing in a debt management plan.

9 “(D) At all times the organization has a  
10 board of directors or other governing body—

11 “(i) which is controlled by persons  
12 who represent the broad interests of the  
13 public, such as public officials acting in  
14 their capacities as such, persons having  
15 special knowledge or expertise in credit or  
16 financial education, and community lead-  
17 ers,

18 “(ii) not more than 20 percent of the  
19 voting power of which is vested in persons  
20 who are employed by the organization or  
21 who will benefit financially, directly or in-  
22 directly, from the organization’s activities  
23 (other than through the receipt of reason-  
24 able directors’ fees or the repayment of  
25 consumer debt to creditors other than the

1 credit counseling organization or its affili-  
2 ates), and

3 “(iii) not more than 49 percent of the  
4 voting power of which is vested in persons  
5 who are employed by the organization or  
6 who will benefit financially, directly or in-  
7 directly, from the organization’s activities  
8 (other than through the receipt of reason-  
9 able directors’ fees).

10 “(E) The organization does not own more  
11 than 35 percent of—

12 “(i) the total combined voting power  
13 of any corporation (other than a corpora-  
14 tion which is an organization described in  
15 subsection (c)(3) and exempt from tax  
16 under subsection (a)) which is in the trade  
17 or business of lending money, repairing  
18 credit, or providing debt management plan  
19 services, payment processing, or similar  
20 services,

21 “(ii) the profits interest of any part-  
22 nership (other than a partnership which is  
23 an organization described in subsection  
24 (c)(3) and exempt from tax under sub-  
25 section (a)) which is in the trade or busi-

1           ness of lending money, repairing credit, or  
2           providing debt management plan services,  
3           payment processing, or similar services,  
4           and

5           “(iii) the beneficial interest of any  
6           trust or estate (other than a trust which is  
7           an organization described in subsection  
8           (c)(3) and exempt from tax under sub-  
9           section (a)) which is in the trade or busi-  
10          ness of lending money, repairing credit, or  
11          providing debt management plan services,  
12          payment processing, or similar services.

13          “(F) The organization receives no amount  
14          for providing referrals to others for debt man-  
15          agement plan services, and pays no amount to  
16          others for obtaining referrals of consumers.

17          “(2) ADDITIONAL REQUIREMENTS FOR ORGANI-  
18          ZATIONS DESCRIBED IN SUBSECTION (c)(3).—

19                 “(A) IN GENERAL.—In addition to the re-  
20                 quirements under paragraph (1), an organiza-  
21                 tion with respect to which the provision of cred-  
22                 it counseling services is a substantial purpose  
23                 and which is described in paragraph (3) of sub-  
24                 section (c) shall not be exempt from tax under  
25                 subsection (a) unless such organization is orga-

1 nized and operated in accordance with the fol-  
2 lowing requirements:

3 “(i) The organization does not solicit  
4 contributions from consumers during the  
5 initial counseling process or while the con-  
6 sumer is receiving services from the orga-  
7 nization.

8 “(ii) The aggregate revenues of the  
9 organization which are from payments of  
10 creditors of consumers of the organization  
11 and which are attributable to debt manage-  
12 ment plan services do not exceed the appli-  
13 cable percentage of the total revenues of  
14 the organization.

15 “(B) APPLICABLE PERCENTAGE.—

16 “(i) IN GENERAL.—For purposes of  
17 subparagraph (A)(ii), the applicable per-  
18 centage is 50 percent.

19 “(ii) TRANSITION RULE.—Notwith-  
20 standing clause (i), in the case of an orga-  
21 nization with respect to which the provi-  
22 sion of credit counseling services is a sub-  
23 stantial purpose and which is described in  
24 paragraph (3) of subsection (c) and ex-  
25 empt from tax under subsection (a) on the

1 date of the enactment of this subsection,  
2 the applicable percentage is—

3 “(I) 80 percent for the first tax-  
4 able year of such organization begin-  
5 ning after the date which is 1 year  
6 after the date of the enactment of this  
7 subsection, and

8 “(II) 70 percent for the second  
9 such taxable year beginning after such  
10 date, and

11 “(III) 60 percent for the third  
12 such taxable year beginning after such  
13 date.

14 “(3) ADDITIONAL REQUIREMENT FOR ORGANI-  
15 ZATIONS DESCRIBED IN SUBSECTION (c)(4).—In ad-  
16 dition to the requirements under paragraph (1), an  
17 organization with respect to which the provision of  
18 credit counseling services is a substantial purpose  
19 and which is described in paragraph (4) of sub-  
20 section (c) shall not be exempt from tax under sub-  
21 section (a) unless such organization notifies the Sec-  
22 retary, in such manner as the Secretary may by reg-  
23 ulations prescribe, that it is applying for recognition  
24 as a credit counseling organization.

1           “(4) CREDIT COUNSELING SERVICES; DEBT  
2           MANAGEMENT PLAN SERVICES.—For purposes of  
3           this subsection—

4           “(A) CREDIT COUNSELING SERVICES.—  
5           The term ‘credit counseling services’ means—

6                   “(i) the providing of educational infor-  
7                   mation to the general public on budgeting,  
8                   personal finance, financial literacy, saving  
9                   and spending practices, and the sound use  
10                  of consumer credit,

11                  “(ii) the assisting of individuals and  
12                  families with financial problems by pro-  
13                  viding them with counseling, or

14                  “(iii) a combination of the activities  
15                  described in clauses (i) and (ii).

16           “(B) DEBT MANAGEMENT PLAN SERV-  
17           ICES.—The term ‘debt management plan serv-  
18           ices’ means services related to the repayment,  
19           consolidation, or restructuring of a consumer’s  
20           debt, and includes the negotiation with creditors  
21           of lower interest rates, the waiver or reduction  
22           of fees, and the marketing and processing of  
23           debt management plans.”.

24           (b) DEBT MANAGEMENT PLAN SERVICES TREATED  
25           AS AN UNRELATED BUSINESS.—Section 513 (relating to



1 unrelated trade or business) is amended by adding at the  
2 end the following:

3 “(j) DEBT MANAGEMENT PLAN SERVICES.—The  
4 term ‘unrelated trade or business’ includes the provision  
5 of debt management plan services (as defined in section  
6 501(q)(4)(B)) by any organization other than an organiza-  
7 tion which meets the requirements of section 501(q).”.

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-  
10 graph (2), the amendments made by this section  
11 shall apply to taxable years beginning after the date  
12 of the enactment of this Act.

13 (2) TRANSITION RULE FOR EXISTING ORGANI-  
14 ZATIONS.—In the case of any organization described  
15 in paragraph (3) or (4) section 501(c) of the Inter-  
16 nal Revenue Code of 1986 and with respect to which  
17 the provision of credit counseling services is a sub-  
18 stantial purpose on the date of the enactment of this  
19 Act, the amendments made by this section shall  
20 apply to taxable years beginning after the date  
21 which is 1 year after the date of the enactment of  
22 this Act.

23 **SEC. 1221. EXPANSION OF THE BASE OF TAX ON PRIVATE**  
24 **FOUNDATION NET INVESTMENT INCOME.**

25 (a) GROSS INVESTMENT INCOME.—

1           (1) IN GENERAL.—Paragraph (2) of section  
2           4940(c) (relating to gross investment income) is  
3           amended by adding at the end the following new  
4           sentence: “Such term shall also include income from  
5           sources similar to those in the preceding sentence.”.

6           (2) CONFORMING AMENDMENT.—Subsection (e)  
7           of section 509 (relating to gross investment income)  
8           is amended by adding at the end the following new  
9           sentence: “Such term shall also include income from  
10          sources similar to those in the preceding sentence.”.

11          (b) CAPITAL GAIN NET INCOME.—Paragraph (4) of  
12          section 4940(c) (relating to capital gains and losses) is  
13          amended—

14               (1) in subparagraph (A), by striking “used for  
15               the production of interest, dividends, rents, and roy-  
16               alties” and inserting “used for the production of  
17               gross investment income (as defined in paragraph  
18               (2))”,

19               (2) in subparagraph (C), by inserting “or  
20               carrybacks” after “carryovers”, and

21               (3) by adding at the end the following new sub-  
22          paragraph:

23                       “(D) Except to the extent provided by reg-  
24                       ulation, under rules similar to the rules of sec-  
25                       tion 1031 (including the exception under sub-

1           section (a)(2) thereof), no gain or loss shall be  
2           taken into account with respect to any portion  
3           of property used for a period of not less than  
4           1 year for a purpose or function constituting  
5           the basis of the private foundation's exemption  
6           if the entire property is exchanged immediately  
7           following such period solely for property of like  
8           kind which is to be used primarily for a purpose  
9           or function constituting the basis for such foun-  
10          dation's exemption.".

11          (c) EFFECTIVE DATE.—The amendments made by  
12          this section shall apply to taxable years beginning after  
13          the date of the enactment of this Act.

14          **SEC. 1222. DEFINITION OF CONVENTION OR ASSOCIATION**  
15                                   **OF CHURCHES.**

16          Section 7701 (relating to definitions) is amended by  
17          redesignating subsection (o) as subsection (p) and by in-  
18          serting after subsection (n) the following new subsection:

19               “(o) CONVENTION OR ASSOCIATION OF CHURCH-  
20          ES.—For purposes of this title, any organization which is  
21          otherwise a convention or association of churches shall not  
22          fail to so qualify merely because the membership of such  
23          organization includes individuals as well as churches or be-  
24          cause individuals have voting rights in such organiza-  
25          tion.”.

1 **SEC. 1223. NOTIFICATION REQUIREMENT FOR ENTITIES**  
2 **NOT CURRENTLY REQUIRED TO FILE.**

3 (a) IN GENERAL.—Section 6033 (relating to returns  
4 by exempt organizations), as amended by this Act, is  
5 amended by redesignating subsection (i) as subsection (j)  
6 and by inserting after subsection (h) the following new  
7 subsection:

8 “(i) ADDITIONAL NOTIFICATION REQUIREMENTS.—  
9 Any organization the gross receipts of which in any tax-  
10 able year result in such organization being referred to in  
11 subsection (a)(3)(A)(ii) or (a)(3)(B)—

12 “(1) shall furnish annually, in electronic form,  
13 and at such time and in such manner as the Sec-  
14 retary may by regulations prescribe, information set-  
15 ting forth—

16 “(A) the legal name of the organization,

17 “(B) any name under which such organiza-  
18 tion operates or does business,

19 “(C) the organization’s mailing address  
20 and Internet web site address (if any),

21 “(D) the organization’s taxpayer identifica-  
22 tion number,

23 “(E) the name and address of a principal  
24 officer, and

1           “(F) evidence of the continuing basis for  
2           the organization’s exemption from the filing re-  
3           quirements under subsection (a)(1), and  
4           “(2) upon the termination of the existence of  
5           the organization, shall furnish notice of such termi-  
6           nation.”.

7           (b) LOSS OF EXEMPT STATUS FOR FAILURE TO FILE  
8           RETURN OR NOTICE.—Section 6033 (relating to returns  
9           by exempt organizations), as amended by subsection (a),  
10          is amended by redesignating subsection (j) as subsection  
11          (k) and by inserting after subsection (i) the following new  
12          subsection:

13          “(j) LOSS OF EXEMPT STATUS FOR FAILURE TO  
14          FILE RETURN OR NOTICE.—

15               “(1) IN GENERAL.—If an organization de-  
16               scribed in subsection (a)(1) or (i) fails to file an an-  
17               nual return or notice required under either sub-  
18               section for 3 consecutive years, such organization’s  
19               status as an organization exempt from tax under  
20               section 501(a) shall be considered revoked on and  
21               after the date set by the Secretary for the filing of  
22               the third annual return or notice. The Secretary  
23               shall publish and maintain a list of any organization  
24               the status of which is so revoked.

1           “(2) APPLICATION NECESSARY FOR REINSTATE-  
2           MENT.—Any organization the tax-exempt status of  
3           which is revoked under paragraph (1) must apply in  
4           order to obtain reinstatement of such status regard-  
5           less of whether such organization was originally re-  
6           quired to make such an application.

7           “(3) RETROACTIVE REINSTATEMENT IF REA-  
8           SONABLE CAUSE SHOWN FOR FAILURE.—If, upon  
9           application for reinstatement of status as an organi-  
10          zation exempt from tax under section 501(a), an or-  
11          ganization described in paragraph (1) can show to  
12          the satisfaction of the Secretary evidence of reason-  
13          able cause for the failure described in such para-  
14          graph, the organization’s exempt status may, in the  
15          discretion of the Secretary, be reinstated effective  
16          from the date of the revocation under such para-  
17          graph.”.

18          (c) NO DECLARATORY JUDGMENT RELIEF.—Section  
19          7428(b) (relating to limitations) is amended by adding at  
20          the end the following new paragraph:

21               “(4) NONAPPLICATION FOR CERTAIN REVOCATIONS.—No action may be brought under this sec-  
22               tion with respect to any revocation of status de-  
23               scribed in section 6033(j)(1).”.

1 (d) NO MONETARY PENALTY FOR FAILURE TO NO-  
2 TIFY.—Section 6652(c)(1) (relating to annual returns  
3 under section 6033 or 6012(a)(6)) is amended by adding  
4 at the end the following new subparagraph:

5 “(E) NO PENALTY FOR CERTAIN ANNUAL  
6 NOTICES.—This paragraph shall not apply with  
7 respect to any notice required under section  
8 6033(i).”.

9 (e) SECRETARIAL OUTREACH REQUIREMENTS.—  
10 (1) NOTICE REQUIREMENT.—The Secretary of  
11 the Treasury shall notify in a timely manner every  
12 organization described in section 6033(i) of the In-  
13 ternal Revenue Code of 1986 (as added by this sec-  
14 tion) of the requirement under such section 6033(i)  
15 and of the penalty established under section 6033(j)  
16 of such Code—

17 (A) by mail, in the case of any organiza-  
18 tion the identity and address of which is in-  
19 cluded in the list of exempt organizations main-  
20 tained by the Secretary, and

21 (B) by Internet or other means of out-  
22 reach, in the case of any other organization.

23 (2) LOSS OF STATUS PENALTY FOR FAILURE TO  
24 FILE RETURN.—The Secretary of the Treasury shall  
25 publicize, in a timely manner in appropriate forms

1 and instructions and through other appropriate  
2 means, the penalty established under section 6033(j)  
3 of such Code for the failure to file a return under  
4 subsection (a)(1) or (i) of section 6033 of such  
5 Code.

6 (f) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to notices and returns with respect  
8 to annual periods beginning after 2006.

9 **SEC. 1224. DISCLOSURE TO STATE OFFICIALS RELATING TO**  
10 **EXEMPT ORGANIZATIONS.**

11 (a) IN GENERAL.—Subsection (c) of section 6104 is  
12 amended by striking paragraph (2) and inserting the fol-  
13 lowing new paragraphs:

14 “(2) DISCLOSURE OF PROPOSED ACTIONS RE-  
15 LATED TO CHARITABLE ORGANIZATIONS.—

16 “(A) SPECIFIC NOTIFICATIONS.—In the  
17 case of an organization to which paragraph (1)  
18 applies, the Secretary may disclose to the ap-  
19 propriate State officer—

20 “(i) a notice of proposed refusal to  
21 recognize such organization as an organi-  
22 zation described in section 501(c)(3) or a  
23 notice of proposed revocation of such orga-  
24 nization’s recognition as an organization  
25 exempt from taxation,



1 “(ii) the issuance of a letter of pro-  
2 posed deficiency of tax imposed under sec-  
3 tion 507 or chapter 41 or 42, and

4 “(iii) the names, addresses, and tax-  
5 payer identification numbers of organiza-  
6 tions which have applied for recognition as  
7 organizations described in section  
8 501(c)(3).

9 “(B) ADDITIONAL DISCLOSURES.—Returns  
10 and return information of organizations with  
11 respect to which information is disclosed under  
12 subparagraph (A) may be made available for in-  
13 spection by or disclosed to an appropriate State  
14 officer.

15 “(C) PROCEDURES FOR DISCLOSURE.—In-  
16 formation may be inspected or disclosed under  
17 subparagraph (A) or (B) only—

18 “(i) upon written request by an ap-  
19 propriate State officer, and

20 “(ii) for the purpose of, and only to  
21 the extent necessary in, the administration  
22 of State laws regulating such organiza-  
23 tions.

24 Such information may only be inspected by or  
25 disclosed to a person other than the appropriate

1 State officer if such person is an officer or em-  
2 ployee of the State and is designated by the ap-  
3 propriate State officer to receive the returns or  
4 return information under this paragraph on be-  
5 half of the appropriate State officer.

6 “(D) DISCLOSURES OTHER THAN BY RE-  
7 QUEST.—The Secretary may make available for  
8 inspection or disclose returns and return infor-  
9 mation of an organization to which paragraph  
10 (1) applies to an appropriate State officer of  
11 any State if the Secretary determines that such  
12 returns or return information may constitute  
13 evidence of noncompliance under the laws with-  
14 in the jurisdiction of the appropriate State offi-  
15 cer.

16 “(3) DISCLOSURE WITH RESPECT TO CERTAIN  
17 OTHER EXEMPT ORGANIZATIONS.—Upon written re-  
18 quest by an appropriate State officer, the Secretary  
19 may make available for inspection or disclosure re-  
20 turns and return information of any organization de-  
21 scribed in section 501(c) (other than organizations  
22 described in paragraph (1) or (3) thereof) for the  
23 purpose of, and only to the extent necessary in, the  
24 administration of State laws regulating the sollicita-  
25 tion or administration of the charitable funds or

1 charitable assets of such organizations. Such infor-  
2 mation may only be inspected by or disclosed to a  
3 person other than the appropriate State officer if  
4 such person is an officer or employee of the State  
5 and is designated by the appropriate State officer to  
6 receive the returns or return information under this  
7 paragraph on behalf of the appropriate State officer.

8 “(4) USE IN CIVIL JUDICIAL AND ADMINISTRA-  
9 TIVE PROCEEDINGS.—Returns and return informa-  
10 tion disclosed pursuant to this subsection may be  
11 disclosed in civil administrative and civil judicial pro-  
12 ceedings pertaining to the enforcement of State laws  
13 regulating such organizations in a manner pre-  
14 scribed by the Secretary similar to that for tax ad-  
15 ministration proceedings under section 6103(h)(4).

16 “(5) NO DISCLOSURE IF IMPAIRMENT.—Re-  
17 turns and return information shall not be disclosed  
18 under this subsection, or in any proceeding described  
19 in paragraph (4), to the extent that the Secretary  
20 determines that such disclosure would seriously im-  
21 pair Federal tax administration.

22 “(6) DEFINITIONS.—For purposes of this sub-  
23 section—

24 “(A) RETURN AND RETURN INFORMA-  
25 TION.—The terms ‘return’ and ‘return informa-

1           tion’ have the respective meanings given to such  
2           terms by section 6103(b).

3           “(B) APPROPRIATE STATE OFFICER.—The  
4           term ‘appropriate State officer’ means—

5                   “(i) the State attorney general,

6                   “(ii) the State tax officer,

7                   “(iii) in the case of an organization to  
8           which paragraph (1) applies, any other  
9           State official charged with overseeing orga-  
10          nizations of the type described in section  
11          501(c)(3), and

12                   “(iv) in the case of an organization to  
13          which paragraph (3) applies, the head of  
14          an agency designated by the State attorney  
15          general as having primary responsibility  
16          for overseeing the solicitation of funds for  
17          charitable purposes.”.

18          (b) CONFORMING AMENDMENTS.—

19               (1) Paragraph (2) of section 6103(a) is amend-  
20          ed by inserting “or section 6104(c)” after “this sec-  
21          tion”.

22               (2) Subparagraph (A) of section 6103(p)(3) is  
23          amended by inserting “and section 6104(c)” after  
24          “section” in the first sentence.

1           (3) Paragraph (4) of section 6103(p) is amend-  
2       ed—

3           (A) in the matter preceding subparagraph  
4       (A), by inserting “, any appropriate State offi-  
5       cer (as defined in section 6104(c)),” before “or  
6       any other person”,

7           (B) in subparagraph (F)(i), by inserting  
8       “any appropriate State officer (as defined in  
9       section 6104(c)),” before “or any other per-  
10      son”, and

11          (C) in the matter following subparagraph  
12      (F), by inserting “, an appropriate State officer  
13      (as defined in section 6104(c)),” after “includ-  
14      ing an agency” each place it appears.

15          (4) The heading for paragraph (1) of section  
16      6104(c) is amended by inserting “FOR CHARITABLE  
17      ORGANIZATIONS” after “RULE”.

18          (5) Paragraph (2) of section 7213(a) is amend-  
19      ed by inserting “or under section 6104(c)” after  
20      “6103”.

21          (6) Paragraph (2) of section 7213A(a) is  
22      amended by inserting “or under section 6104(c)”  
23      after “7213(a)(2)”.

1           (7) Paragraph (2) of section 7431(a) is amend-  
2       ed by inserting “ or in violation of section 6104(c)”  
3       after “6103”.

4       (c) EFFECTIVE DATE.—The amendments made by  
5       this section shall take effect on the date of the enactment  
6       of this Act but shall not apply to requests made before  
7       such date.

8       **SEC. 1225. PUBLIC DISCLOSURE OF INFORMATION RELAT-**  
9                               **ING TO UNRELATED BUSINESS INCOME TAX**  
10                              **RETURNS.**

11       (a) IN GENERAL.—Subparagraph (A) of section  
12       6104(d)(1) is amended by redesignating clauses (ii) and  
13       (iii) as clauses (iii) and (iv), respectively, and by inserting  
14       after clause (i) the following new clause:

15                           “(ii) any annual return filed under  
16                           section 6011 which relates to any tax im-  
17                           posed by section 511 (relating to imposi-  
18                           tion of tax on unrelated business income of  
19                           charitable, etc., organizations) by such or-  
20                           ganization, but only if such organization is  
21                           described in section 501(c)(3),”.

22       (b) EFFECTIVE DATE.—The amendments made by  
23       this section shall apply to returns filed after the date of  
24       the enactment of this Act.

1 **SEC. 1226. STUDY ON DONOR ADVISED FUNDS AND SUP-**  
2 **PORTING ORGANIZATIONS.**

3 (a) STUDY.—The Secretary of the Treasury shall un-  
4 dertake a study on the organization and operation of  
5 donor advised funds (as defined in section 4966(d)(2) of  
6 the Internal Revenue Code of 1986, as added by this Act)  
7 and of organizations described in section 509(a)(3) of such  
8 Code. The study shall specifically consider—

9 (1) whether the deductions allowed for the in-  
10 come, gift, or estate taxes for charitable contribu-  
11 tions to sponsoring organizations (as defined in sec-  
12 tion 4966(d)(1) of such Code, as added by this Act)  
13 of donor advised funds or to organizations described  
14 in section 509(a)(3) of such Code are appropriate in  
15 consideration of—

16 (A) the use of contributed assets (including  
17 the type, extent, and timing of such use), or

18 (B) the use of the assets of such organiza-  
19 tions for the benefit of the person making the  
20 charitable contribution (or a person related to  
21 such person),

22 (2) whether donor advised funds should be re-  
23 quired to distribute for charitable purposes a speci-  
24 fied amount (whether based on the income or assets  
25 of the fund) in order to ensure that the sponsoring  
26 organization with respect to such donor advised fund

1 is operating consistent with the purposes or func-  
2 tions constituting the basis for its exemption under  
3 section 501, or its status as an organization de-  
4 scribed in section 509(a), of such Code,

5 (3) whether the retention by donors to organi-  
6 zations described in paragraph (1) of rights or privi-  
7 leges with respect to amounts transferred to such or-  
8 ganizations (including advisory rights or privileges  
9 with respect to the making of grants or the invest-  
10 ment of assets) is consistent with the treatment of  
11 such transfers as completed gifts that qualify for a  
12 deduction for income, gift, or estate taxes, and

13 (4) whether the issues raised by paragraphs  
14 (1), (2), and (3) are also issues with respect to other  
15 forms of charities or charitable donations.

16 (b) REPORT.—Not later than 1 year after the date  
17 of the enactment of this Act, the Secretary of the Treasury  
18 shall submit to the Committee on Finance of the Senate  
19 and the Committee on Ways and Means of the House of  
20 Representatives a report on the study conducted under  
21 subsection (a) and make such recommendations as the  
22 Secretary of the Treasury considers appropriate.



1 **PART 2—IMPROVED ACCOUNTABILITY OF DONOR**

2 **ADVISED FUNDS**

3 **SEC. 1231. EXCISE TAXES RELATING TO DONOR ADVISED**

4 **FUNDS.**

5 (a) IN GENERAL.—Chapter 42 (relating to private  
6 foundations and certain other tax-exempt organizations),  
7 as amended by the Tax Increase Prevention and Reconcili-  
8 ation Act of 2005, is amended by adding at the end the  
9 following new subchapter:

10 **“Subchapter G—Donor Advised Funds**

“Sec. 4966. Taxes on taxable distributions.

“Sec. 4967. Taxes on prohibited benefits.

11 **“SEC. 4966. TAXES ON TAXABLE DISTRIBUTIONS.**

12 **“(a) IMPOSITION OF TAXES.—**

13 **“(1) ON THE SPONSORING ORGANIZATION.—**

14 There is hereby imposed on each taxable distribution  
15 a tax equal to 20 percent of the amount thereof. The  
16 tax imposed by this paragraph shall be paid by the  
17 sponsoring organization with respect to the donor  
18 advised fund.

19 **“(2) ON THE FUND MANAGEMENT.—**There is  
20 hereby imposed on the agreement of any fund man-  
21 ager to the making of a distribution, knowing that  
22 it is a taxable distribution, a tax equal to 5 percent  
23 of the amount thereof. The tax imposed by this

1 paragraph shall be paid by any fund manager who  
2 agreed to the making of the distribution.

3 “(b) SPECIAL RULES.—For purposes of subsection  
4 (a)—

5 “(1) JOINT AND SEVERAL LIABILITY.—If more  
6 than one person is liable under subsection (a)(2)  
7 with respect to the making of a taxable distribution,  
8 all such persons shall be jointly and severally liable  
9 under such paragraph with respect to such distribu-  
10 tion.

11 “(2) LIMIT FOR MANAGEMENT.—With respect  
12 to any one taxable distribution, the maximum  
13 amount of the tax imposed by subsection (a)(2) shall  
14 not exceed \$10,000.

15 “(c) TAXABLE DISTRIBUTION.—For purposes of this  
16 section—

17 “(1) IN GENERAL.—The term ‘taxable distribu-  
18 tion’ means any distribution from a donor advised  
19 fund—

20 “(A) to any natural person, or

21 “(B) to any other person if—

22 “(i) such distribution is for any pur-  
23 pose other than one specified in section  
24 170(c)(2)(B), or

1 “(ii) the sponsoring organization does  
2 not exercise expenditure responsibility with  
3 respect to such distribution in accordance  
4 with section 4945(h).

5 “(2) EXCEPTIONS.—Such term shall not in-  
6 clude any distribution from a donor advised fund—

7 “(A) to any organization described in sec-  
8 tion 170(b)(1)(A) (other than a disqualified  
9 supporting organization),

10 “(B) to the sponsoring organization of  
11 such donor advised fund, or

12 “(C) to any other donor advised fund.

13 “(d) DEFINITIONS.—For purposes of this sub-  
14 chapter—

15 “(1) SPONSORING ORGANIZATION.—The term  
16 ‘sponsoring organization’ means any organization  
17 which—

18 “(A) is described in section 170(c) (other  
19 than in paragraph (1) thereof, and without re-  
20 gard to paragraph (2)(A) thereof),

21 “(B) is not a private foundation (as de-  
22 fined in section 509(a)), and

23 “(C) maintains 1 or more donor advised  
24 funds.

25 “(2) DONOR ADVISED FUND.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B) or (C), the term ‘donor ad-  
3           vised fund’ means a fund or account—

4                   “(i) which is separately identified by  
5                   reference to contributions of a donor or do-  
6                   nors,

7                   “(ii) which is owned and controlled by  
8                   a sponsoring organization, and

9                   “(iii) with respect to which a donor  
10                  (or any person appointed or designated by  
11                  such donor) has, or reasonably expects to  
12                  have, advisory privileges with respect to  
13                  the distribution or investment of amounts  
14                  held in such fund or account by reason of  
15                  the donor’s status as a donor.

16           “(B) EXCEPTIONS.—The term ‘donor ad-  
17           vised fund’ shall not include any fund or ac-  
18           count—

19                   “(i) which makes distributions only to  
20                   a single identified organization or govern-  
21                   mental entity, or

22                   “(ii) with respect to which a person  
23                  described in subparagraph (A)(iii) advises  
24                  as to which individuals receive grants for

1 travel, study, or other similar purposes,  
2 if—

3 “(I) such person’s advisory privi-  
4 leges are performed exclusively by  
5 such person in the person’s capacity  
6 as a member of a committee all of the  
7 members of which are appointed by  
8 the sponsoring organization,

9 “(II) no combination of persons  
10 described in subparagraph (A)(iii) (or  
11 persons related to such persons) con-  
12 trol, directly or indirectly, such com-  
13 mittee, and

14 “(III) all grants from such fund  
15 or account are awarded on an objec-  
16 tive and nondiscriminatory basis pur-  
17 suant to a procedure approved in ad-  
18 vance by the board of directors of the  
19 sponsoring organization, and such  
20 procedure is designed to ensure that  
21 all such grants meet the requirements  
22 of paragraphs (1), (2), or (3) of sec-  
23 tion 4945(g).

24 “(C) SECRETARIAL AUTHORITY.—The Sec-  
25 retary may exempt a fund or account not de-

1           scribed in subparagraph (B) from treatment as  
2           a donor advised fund—

3                   “(i) if such fund or account is advised  
4                   by a committee not directly or indirectly  
5                   controlled by the donor or any person ap-  
6                   pointed or designated by the donor for the  
7                   purpose of advising with respect to dis-  
8                   tributions from such fund (and any related  
9                   parties), or

10                   “(ii) if such fund benefits a single  
11                   identified charitable purpose.

12           “(3) FUND MANAGER.—The term ‘fund man-  
13           ager’ means, with respect to any sponsoring organi-  
14           zation—

15                   “(A) an officer, director, or trustee of such  
16                   sponsoring organization (or an individual hav-  
17                   ing powers or responsibilities similar to those of  
18                   officers, directors, or trustees of the sponsoring  
19                   organization), and

20                   “(B) with respect to any act (or failure to  
21                   act), the employees of the sponsoring organiza-  
22                   tion having authority or responsibility with re-  
23                   spect to such act (or failure to act).

24           “(4) DISQUALIFIED SUPPORTING ORGANIZA-  
25           TION.—

1           “(A) IN GENERAL.—The term ‘disqualified  
2           supporting organization’ means, with respect to  
3           any distribution—

4                   “(i) any type III supporting organiza-  
5                   tion (as defined in section 4943(f)(5)(A))  
6                   which is not a functionally integrated type  
7                   III supporting organization (as defined in  
8                   section 4943(f)(5)(B)), and

9                   “(ii) any organization which is de-  
10                  scribed in subparagraph (B) or (C) if—

11                           “(I) the donor or any person des-  
12                           ignated by the donor for the purpose  
13                           of advising with respect to distribu-  
14                           tions from a donor advised fund (and  
15                           any related parties) directly or indi-  
16                           rectly controls a supported organiza-  
17                           tion (as defined in section 509(f)(3))  
18                           of such organization, or

19                           “(II) the Secretary determines by  
20                           regulations that a distribution to such  
21                           organization otherwise is inappro-  
22                           priate.

23           “(B) TYPE I AND TYPE II SUPPORTING OR-  
24           GANIZATIONS.—An organization is described in  
25           this subparagraph if the organization meets the

1 requirements of subparagraphs (A) and (C) of  
2 section 509(a)(3) and is—

3 “(i) operated, supervised, or controlled  
4 by one or more organizations described in  
5 paragraph (1) or (2) of section 509(a), or

6 “(ii) supervised or controlled in con-  
7 nection with one or more such organiza-  
8 tions.

9 “(C) FUNCTIONALLY INTEGRATED TYPE  
10 III SUPPORTING ORGANIZATIONS.—An organiza-  
11 tion is described in this subparagraph if the or-  
12 ganization is a functionally integrated type III  
13 supporting organization (as defined under sec-  
14 tion 4943(f)(5)(B)).

15 **“SEC. 4967. TAXES ON PROHIBITED BENEFITS.**

16 “(a) IMPOSITION OF TAXES.—

17 “(1) ON THE DONOR, DONOR ADVISOR, OR RE-  
18 LATED PERSON.—There is hereby imposed on the  
19 advice of any person described in subsection (d) to  
20 have a sponsoring organization make a distribution  
21 from a donor advised fund which results in such per-  
22 son or any other person described in subsection (d)  
23 receiving, directly or indirectly, a more than inci-  
24 dental benefit as a result of such distribution, a tax  
25 equal to 125 percent of such benefit. The tax im-



1 posed by this paragraph shall be paid by any person  
2 described in subsection (d) who advises as to the dis-  
3 tribution or who receives such a benefit as a result  
4 of the distribution.

5 “(2) ON THE FUND MANAGEMENT.—There is  
6 hereby imposed on the agreement of any fund man-  
7 ager to the making of a distribution, knowing that  
8 such distribution would confer a benefit described in  
9 paragraph (1), a tax equal to 10 percent of the  
10 amount of such benefit. The tax imposed by this  
11 paragraph shall be paid by any fund manager who  
12 agreed to the making of the distribution.

13 “(b) EXCEPTION.—No tax shall be imposed under  
14 this section with respect to any distribution if a tax has  
15 been imposed with respect to such distribution under sec-  
16 tion 4958.

17 “(c) SPECIAL RULES.—For purposes of subsection  
18 (a)—

19 “(1) JOINT AND SEVERAL LIABILITY.—If more  
20 than one person is liable under paragraph (1) or (2)  
21 of subsection (a) with respect to a distribution de-  
22 scribed in subsection (a), all such persons shall be  
23 jointly and severally liable under such paragraph  
24 with respect to such distribution.

1           “(2) LIMIT FOR MANAGEMENT.—With respect  
2           to any one distribution described in subsection (a),  
3           the maximum amount of the tax imposed by sub-  
4           section (a)(2) shall not exceed \$10,000.

5           “(d) PERSON DESCRIBED.—A person is described in  
6           this subsection if such person is described in section  
7           4958(f)(7) with respect to a donor advised fund.”.

8           (b) CONFORMING AMENDMENTS.—

9           (1) Section 4963 is amended by inserting  
10          “4966, 4967,” after “4958,” each place it appears  
11          in subsections (a) and (c).

12          (2) The table of subchapters for chapter 42 is  
13          amended by adding at the end the following new  
14          item:

                  “SUBCHAPTER G. DONOR ADVISED FUNDS”.

15          (c) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to taxable years beginning after  
17          the date of the enactment of this Act.

18       **SEC. 1232. EXCESS BENEFIT TRANSACTIONS INVOLVING**  
19                       **DONOR ADVISED FUNDS AND SPONSORING**  
20                       **ORGANIZATIONS.**

21          (a) DISQUALIFIED PERSONS.—

22          (1) IN GENERAL.—Paragraph (1) of section  
23          4958(f) is amended by striking “and” at the end of  
24          subparagraph (B), by striking the period at the end  
25          of subparagraph (C) and inserting a comma, and by

1 adding after subparagraph (C) the following new  
2 subparagraphs:

3 “(D) which involves a donor advised fund  
4 (as defined in section 4966(d)(2)), any person  
5 who is described in paragraph (7) with respect  
6 to such donor advised fund (as so defined), and

7 “(E) which involves a sponsoring organiza-  
8 tion (as defined in section 4966(d)(1)), any per-  
9 son who is described in paragraph (8) with re-  
10 spect to such sponsoring organization (as so de-  
11 fined).”.

12 (2) DONORS, DONOR ADVISORS, AND INVEST-  
13 MENT ADVISORS TREATED AS DISQUALIFIED PER-  
14 SONS.—Section 4958(f) is amended by adding at the  
15 end the following new paragraphs:

16 “(7) DONORS AND DONOR ADVISORS.—For pur-  
17 poses of paragraph (1)(E), a person is described in  
18 this paragraph if such person—

19 “(A) is described in section  
20 4966(d)(2)(A)(iii),

21 “(B) is a member of the family of an indi-  
22 vidual described in subparagraph (A), or

23 “(C) is a 35-percent controlled entity (as  
24 defined in paragraph (3) by substituting ‘per-  
25 sons described in subparagraph (A) or (B) of

1 paragraph (7)’ for ‘persons described in sub-  
2 paragraph (A) or (B) of paragraph (1)’ in sub-  
3 paragraph (A)(i) thereof).

4 “(8) INVESTMENT ADVISORS.—For purposes of  
5 paragraph (1)(F)—

6 “(A) IN GENERAL.—A person is described  
7 in this paragraph if such person—

8 “(i) is an investment advisor,

9 “(ii) is a member of the family of an  
10 individual described in clause (i), or

11 “(iii) is a 35-percent controlled entity  
12 (as defined in paragraph (3) by sub-  
13 stituting ‘persons described in clause (i) or  
14 (ii) of paragraph (8)(A)’ for ‘persons de-  
15 scribed in subparagraph (A) or (B) of  
16 paragraph (1)’ in subparagraph (A)(i)  
17 thereof).

18 “(B) INVESTMENT ADVISOR DEFINED.—

19 For purposes of subparagraph (A), the term  
20 ‘investment advisor’ means, with respect to any  
21 sponsoring organization (as defined in section  
22 4966(d)(1)), any person (other than an em-  
23 ployee of such organization) compensated by  
24 such organization for managing the investment  
25 of, or providing investment advice with respect

1 to, assets maintained in donor advised funds  
2 (as defined in section 4966(d)(2)) owned by  
3 such organization.”.

4 (b) CERTAIN TRANSACTIONS TREATED AS EXCESS  
5 BENEFIT TRANSACTIONS.—

6 (1) IN GENERAL.—Section 4958(c) is amended  
7 by redesignating paragraph (2) as paragraph (3)  
8 and by inserting after paragraph (1) the following  
9 new paragraph:

10 “(2) SPECIAL RULES FOR DONOR ADVISED  
11 FUNDS.—In the case of any donor advised fund (as  
12 defined in section 4966(d)(2))—

13 “(A) the term ‘excess benefit transaction’  
14 includes any grant, loan, compensation, or other  
15 similar payment from such fund to a person de-  
16 scribed in subsection (f)(7) with respect to such  
17 fund, and

18 “(B) the term ‘excess benefit’ includes,  
19 with respect to any transaction described in  
20 subparagraph (A), the amount of any such  
21 grant, loan, compensation, or other similar pay-  
22 ment.”.

23 (2) SPECIAL RULE FOR CORRECTION OF TRANS-  
24 ACTION.—Section 4958(f)(6) is amended by insert-  
25 ing “, except that in the case of any correction of

1 an excess benefit transaction described in subsection  
2 (c)(2), no amount repaid in a manner prescribed by  
3 the Secretary may be held in any donor advised  
4 fund” after “standards”.

5 (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall apply to transactions occurring after the  
7 date of the enactment of this Act.

8 **SEC. 1233. EXCESS BUSINESS HOLDINGS OF DONOR AD-**  
9 **ADVISED FUNDS.**

10 (a) IN GENERAL.—Section 4943 is amended by add-  
11 ing at the end the following new subsection:

12 “(e) APPLICATION OF TAX TO DONOR ADVISED  
13 FUNDS.—

14 “(1) IN GENERAL.—For purposes of this sec-  
15 tion, a donor advised fund (as defined in section  
16 4966(d)(2)) shall be treated as a private foundation.

17 “(2) DISQUALIFIED PERSON.—In applying this  
18 section to any donor advised fund (as so defined),  
19 the term ‘disqualified person’ means, with respect to  
20 the donor advised fund, any person who is—

21 “(A) described in section  
22 4966(d)(2)(A)(iii),

23 “(B) a member of the family of an indi-  
24 vidual described in subparagraph (A), or

1 “(C) a 35-percent controlled entity (as de-  
2 fined in section 4958(f)(3) by substituting ‘per-  
3 sons described in subparagraph (A) or (B) of  
4 section 4943(e)(2)’ for ‘persons described in  
5 subparagraph (A) or (B) of paragraph (1)’ in  
6 subparagraph (A)(i) thereof).

7 “(3) PRESENT HOLDINGS.—For purposes of  
8 this subsection, rules similar to the rules of para-  
9 graphs (4), (5), and (6) of subsection (c) shall apply  
10 to donor advised funds (as so defined), except that—

11 “(A) ‘the date of the enactment of this  
12 subsection’ shall be substituted for ‘May 26,  
13 1969’ each place it appears in paragraphs (4),  
14 (5), and (6), and

15 “(B) ‘January 1, 2007’ shall be sub-  
16 stituted for ‘January 1, 1970’ in paragraph  
17 (4)(E).”.

18 (b) EFFECTIVE DATE.—The amendment made by  
19 this section shall apply to taxable years beginning after  
20 the date of the enactment of this Act.

21 **SEC. 1234. TREATMENT OF CHARITABLE CONTRIBUTION**  
22 **DEDUCTIONS TO DONOR ADVISED FUNDS.**

23 (a) INCOME.—Section 170(f) (relating to disallow-  
24 ance of deduction in certain cases and special rules), as

1 amended by this Act, is amended by adding at the end  
2 the following new paragraph:

3 “(18) CONTRIBUTIONS TO DONOR ADVISED  
4 FUNDS.—A deduction otherwise allowed under sub-  
5 section (a) for any contribution to a donor advised  
6 fund (as defined in section 4966(d)(2)) shall only be  
7 allowed if—

8 “(A) the sponsoring organization (as de-  
9 fined in section 4966(d)(1)) with respect to  
10 such donor advised fund is not—

11 “(i) described in paragraph (3), (4),  
12 or (5) of subsection (c), or

13 “(ii) a type III supporting organiza-  
14 tion (as defined in section 4943(f)(5)(A))  
15 which is not a functionally integrated type  
16 III supporting organization (as defined in  
17 section 4943(f)(5)(B)), and

18 “(B) the taxpayer obtains a contempora-  
19 neous written acknowledgment (determined  
20 under rules similar to the rules of paragraph  
21 (8)(C)) from the sponsoring organization (as so  
22 defined) of such donor advised fund that such  
23 organization has exclusive legal control over the  
24 assets contributed.”.



1       (b) ESTATE.—Section 2055(e) is amended by adding  
2 at the end the following new paragraph:

3           “(5) CONTRIBUTIONS TO DONOR ADVISED  
4 FUNDS.—A deduction otherwise allowed under sub-  
5 section (a) for any contribution to a donor advised  
6 fund (as defined in section 4966(d)(2)) shall only be  
7 allowed if—

8           “(A) the sponsoring organization (as de-  
9 fined in section 4966(d)(1)) with respect to  
10 such donor advised fund is not—

11           “(i) described in paragraph (3) or (4)  
12 of subsection (a), or

13           “(ii) a type III supporting organiza-  
14 tion (as defined in section 4943(f)(5)(A))  
15 which is not a functionally integrated type  
16 III supporting organization (as defined in  
17 section 4943(f)(5)(B)), and

18           “(B) the taxpayer obtains a contempora-  
19 neous written acknowledgment (determined  
20 under rules similar to the rules of section  
21 170(f)(8)(C)) from the sponsoring organization  
22 (as so defined) of such donor advised fund that  
23 such organization has exclusive legal control  
24 over the assets contributed.”.

1       (c) GIFT.—Section 2522(c) is amended by adding at  
2 the end the following new paragraph:

3           “(5) CONTRIBUTIONS TO DONOR ADVISED  
4 FUNDS.—A deduction otherwise allowed under sub-  
5 section (a) for any contribution to a donor advised  
6 fund (as defined in section 4966(d)(2)) shall only be  
7 allowed if—

8           “(A) the sponsoring organization (as de-  
9 fined in section 4966(d)(1)) with respect to  
10 such donor advised fund is not—

11           “(i) described in paragraph (3) or (4)  
12 of subsection (a), or

13           “(ii) a type III supporting organiza-  
14 tion (as defined in section 4943(f)(5)(A))  
15 which is not a functionally integrated type  
16 III supporting organization (as defined in  
17 section 4943(f)(5)(B)), and

18           “(B) the taxpayer obtains a contempora-  
19 neous written acknowledgment (determined  
20 under rules similar to the rules of section  
21 170(f)(8)(C)) from the sponsoring organization  
22 (as so defined) of such donor advised fund that  
23 such organization has exclusive legal control  
24 over the assets contributed.”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to contributions made after the  
3 date which is 180 days after the date of the enactment  
4 of this Act.

5 **SEC. 1235. RETURNS OF, AND APPLICATIONS FOR RECOGNITION BY, SPONSORING ORGANIZATIONS.**

7 (a) MATTERS INCLUDED ON RETURNS.—

8 (1) IN GENERAL.—Section 6033, as amended  
9 by this Act, is amended by redesignating subsection  
10 (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

12 “(k) ADDITIONAL PROVISIONS RELATING TO SPONSORING ORGANIZATIONS.—Every organization described  
13 in section 4966(d)(1) shall, on the return required under  
14 subsection (a) for the taxable year—

16 “(1) list the total number of donor advised  
17 funds (as defined in section 4966(d)(2)) it owns at  
18 the end of such taxable year,

19 “(2) indicate the aggregate value of assets held  
20 in such funds at the end of such taxable year, and

21 “(3) indicate the aggregate contributions to and  
22 grants made from such funds during such taxable  
23 year.”.

24 (2) EFFECTIVE DATE.—The amendments made  
25 by this subsection shall apply to returns filed for

1 taxable years ending after the date of the enactment  
2 of this Act.

3 (b) MATTERS INCLUDED ON EXEMPT STATUS APPLI-  
4 CATION.—

5 (1) IN GENERAL.—Section 508 is amended by  
6 adding at the end the following new subsection:

7 “(f) ADDITIONAL PROVISIONS RELATING TO SPON-  
8 SORING ORGANIZATIONS.—A sponsoring organization (as  
9 defined in section 4966(d)(1)) shall give notice to the Sec-  
10 retary (in such manner as the Secretary may provide)  
11 whether such organization maintains or intends to main-  
12 tain donor advised funds (as defined in section  
13 4966(d)(2)) and the manner in which such organization  
14 plans to operate such funds.”.

15 (2) EFFECTIVE DATE.—The amendment made  
16 by this subsection shall apply to organizations apply-  
17 ing for tax-exempt status after the date of the enact-  
18 ment of this Act.

19 **PART 3—IMPROVED ACCOUNTABILITY OF**  
20 **SUPPORTING ORGANIZATIONS**

21 **SEC. 1241. REQUIREMENTS FOR SUPPORTING ORGANIZA-**  
22 **TIONS.**

23 (a) TYPES OF SUPPORTING ORGANIZATIONS.—Sub-  
24 paragraph (B) of section 509(a)(3) is amended to read  
25 as follows:

1 “(B) is—

2 “(i) operated, supervised, or controlled  
3 by one or more organizations described in  
4 paragraph (1) or (2),

5 “(ii) supervised or controlled in con-  
6 nection with one or more such organiza-  
7 tions, or

8 “(iii) operated in connection with one  
9 or more such organizations, and”.

10 (b) REQUIREMENTS FOR SUPPORTING ORGANIZA-  
11 TIONS.—Section 509 (relating to private foundation de-  
12 fined) is amended by adding at the end the following new  
13 subsection:

14 “(f) REQUIREMENTS FOR SUPPORTING ORGANIZA-  
15 TIONS.—

16 “(1) TYPE III SUPPORTING ORGANIZATIONS.—  
17 For purposes of subsection (a)(3)(B)(iii), an organi-  
18 zation shall not be considered to be operated in con-  
19 nection with any organization described in para-  
20 graph (1) or (2) of subsection (a) unless such orga-  
21 nization meets the following requirements:

22 “(A) RESPONSIVENESS.—For each taxable  
23 year beginning after the date of the enactment  
24 of this subsection, the organization provides to  
25 each supported organization such information

1 as the Secretary may require to ensure that  
2 such organization is responsive to the needs or  
3 demands of the supported organization.

4 “(B) FOREIGN SUPPORTED ORGANIZA-  
5 TIONS.—

6 “(i) IN GENERAL.—The organization  
7 is not operated in connection with any sup-  
8 ported organization that is not organized  
9 in the United States.

10 “(ii) TRANSITION RULE FOR EXISTING  
11 ORGANIZATIONS.—If the organization is  
12 operated in connection with an organiza-  
13 tion that is not organized in the United  
14 States on the date of the enactment of this  
15 subsection, clause (i) shall not apply until  
16 the first day of the third taxable year of  
17 the organization beginning after the date  
18 of the enactment of this subsection.

19 “(2) ORGANIZATIONS CONTROLLED BY DO-  
20 NORS.—

21 “(A) IN GENERAL.—For purposes of sub-  
22 section (a)(3)(B), an organization shall not be  
23 considered to be—

1 “(i) operated, supervised, or controlled  
2 by any organization described in paragraph  
3 (1) or (2) of subsection (a), or

4 “(ii) operated in connection with any  
5 organization described in paragraph (1) or  
6 (2) of subsection (a),

7 if such organization accepts any gift or con-  
8 tribution from any person described in subpara-  
9 graph (B).

10 “(B) PERSON DESCRIBED.—A person is  
11 described in this subparagraph if, with respect  
12 to a supported organization of an organization  
13 described in subparagraph (A), such person  
14 is—

15 “(i) a person (other than an organiza-  
16 tion described in paragraph (1), (2), or (4)  
17 of section 509(a)) who directly or indi-  
18 rectly controls, either alone or together  
19 with persons described in clauses (ii) and  
20 (iii), the governing body of such supported  
21 organization,

22 “(ii) a member of the family (deter-  
23 mined under section 4958(f)(4)) of an in-  
24 dividual described in clause (i), or

1 “(iii) a 35-percent controlled entity  
2 (as defined in section 4958(f)(3) by sub-  
3 stituting ‘persons described in clause (i) or  
4 (ii) of section 509(f)(2)(B)’ for ‘persons  
5 described in subparagraph (A) or (B) of  
6 paragraph (1)’ in subparagraph (A)(i)  
7 thereof).

8 “(3) SUPPORTED ORGANIZATION.—For pur-  
9 poses of this subsection, the term ‘supported organi-  
10 zation’ means, with respect to an organization de-  
11 scribed in subsection (a)(3), an organization de-  
12 scribed in paragraph (1) or (2) of subsection (a)—

13 “(A) for whose benefit the organization de-  
14 scribed in subsection (a)(3) is organized and  
15 operated, or

16 “(B) with respect to which the organiza-  
17 tion performs the functions of, or carries out  
18 the purposes of.”.

19 (c) CHARITABLE TRUSTS WHICH ARE TYPE III SUP-  
20 PORTING ORGANIZATIONS.—For purposes of section  
21 509(a)(3)(B)(iii) of the Internal Revenue Code of 1986,  
22 an organization which is a trust shall not be considered  
23 to be operated in connection with any organization de-  
24 scribed in paragraph (1) or (2) of section 509(a) of such  
25 Code solely because—



1 (1) it is a charitable trust under State law,

2 (2) the supported organization (as defined in  
3 section 509(f)(3) of such Code) is a beneficiary of  
4 such trust, and

5 (3) the supported organization (as so defined)  
6 has the power to enforce the trust and compel an ac-  
7 counting.

8 (d) PAYOUT REQUIREMENTS FOR TYPE III SUP-  
9 PORTING ORGANIZATIONS.—

10 (1) IN GENERAL.—The Secretary of the Treas-  
11 ury shall promulgate new regulations under section  
12 509 of the Internal Revenue Code of 1986 on pay-  
13 ments required by type III supporting organizations  
14 which are not functionally integrated type III sup-  
15 porting organizations. Such regulations shall require  
16 such organizations to make distributions of a per-  
17 centage of either income or assets to supported orga-  
18 nizations (as defined in section 509(f)(3) of such  
19 Code) in order to ensure that a significant amount  
20 is paid to such organizations.

21 (2) TYPE III SUPPORTING ORGANIZATION;  
22 FUNCTIONALLY INTEGRATED TYPE III SUPPORTING  
23 ORGANIZATION.—For purposes of paragraph (1), the  
24 terms “type III supporting organization” and “func-  
25 tionally integrated type III supporting organization”

1 have the meanings given such terms under subpara-  
2 graphs (A) and (B) section 4943(f)(5) of the Inter-  
3 nal Revenue Code of 1986 (as added by this Act),  
4 respectively.

5 (e) EFFECTIVE DATES.—

6 (1) IN GENERAL.—The amendments made by  
7 subsections (a) and (b) shall take effect on the date  
8 of the enactment of this Act.

9 (2) CHARITABLE TRUSTS WHICH ARE TYPE III  
10 SUPPORTING ORGANIZATIONS.—Subsection (c) shall  
11 take effect—

12 (A) in the case of trusts operated in con-  
13 nection with an organization described in para-  
14 graph (1) or (2) of section 509(a) of the Inter-  
15 nal Revenue Code of 1986 on the date of the  
16 enactment of this Act, on the date that is one  
17 year after the date of the enactment of this Act,  
18 and

19 (B) in the case of any other trust, on the  
20 date of the enactment of this Act.

21 **SEC. 1242. EXCESS BENEFIT TRANSACTIONS INVOLVING**  
22 **SUPPORTING ORGANIZATIONS.**

23 (a) DISQUALIFIED PERSONS.—Paragraph (1) of sec-  
24 tion 4958(f), as amended by this Act, is amended by re-  
25 designating subparagraphs (D) and (E) as subparagraphs

1 (E) and (F), respectively, and by adding after subpara-  
2 graph (C) the following new subparagraph:

3 “(D) any person who is described in sub-  
4 paragraph (A), (B), or (C) with respect to an  
5 organization described in section 509(a)(3) and  
6 organized and operated exclusively for the ben-  
7 efit of, to perform the functions of, or to carry  
8 out the purposes of the applicable tax-exempt  
9 organization.”.

10 (b) CERTAIN TRANSACTIONS TREATED AS EXCESS  
11 BENEFIT TRANSACTIONS.—Section 4958(c), as amended  
12 by this Act, is amended by redesignating paragraph (3)  
13 as paragraph (4) and by inserting after paragraph (2) the  
14 following new paragraph:

15 “(3) SPECIAL RULES FOR SUPPORTING ORGANI-  
16 ZATIONS.—

17 “(A) IN GENERAL.—In the case of any or-  
18 ganization described in section 509(a)(3)—

19 “(i) the term ‘excess benefit trans-  
20 action’ includes—

21 “(I) any grant, loan, compensa-  
22 tion, or other similar payment pro-  
23 vided by such organization to a person  
24 described in subparagraph (B), and

1 “(II) any loan provided by such  
2 organization to a disqualified person  
3 (other than an organization described  
4 in paragraph (1), (2), or (4) of section  
5 509(a)), and

6 “(ii) the term ‘excess benefit’ includes,  
7 with respect to any transaction described  
8 in clause (i), the amount of any such  
9 grant, loan, compensation, or other similar  
10 payment.

11 “(B) PERSON DESCRIBED.—A person is  
12 described in this subparagraph if such person  
13 is—

14 “(i) a substantial contributor to such  
15 organization,

16 “(ii) a member of the family (deter-  
17 mined under section 4958(f)(4)) of an in-  
18 dividual described in clause (i), or

19 “(iii) a 35-percent controlled entity  
20 (as defined in section 4958(f)(3) by sub-  
21 stituting ‘persons described in clause (i) or  
22 (ii) of section 4958(c)(3)(B)’ for ‘persons  
23 described in subparagraph (A) or (B) of  
24 paragraph (1)’ in subparagraph (A)(i)  
25 thereof).

1                   “(C) SUBSTANTIAL CONTRIBUTOR.—For  
2                   purposes of this paragraph—

3                   “(i) IN GENERAL.—The term ‘sub-  
4                   stantial contributor’ means any person who  
5                   contributed or bequeathed an aggregate  
6                   amount of more than \$5,000 to the organi-  
7                   zation, if such amount is more than 2 per-  
8                   cent of the total contributions and be-  
9                   quests received by the organization before  
10                  the close of the taxable year of the organi-  
11                  zation in which the contribution or bequest  
12                  is received by the organization from such  
13                  person. In the case of a trust, such term  
14                  also means the creator of the trust. Rules  
15                  similar to the rules of subparagraphs (B)  
16                  and (C) of section 507(d)(2) shall apply  
17                  for purposes of this subparagraph.

18                  “(ii) EXCEPTION.—Such term shall  
19                  not include any organization described in  
20                  paragraph (1), (2), or (4) of section  
21                  509(a).”.

22                  (c) EFFECTIVE DATES.—

23                  (1) SUBSECTION (a).—The amendments made  
24                  by subsection (a) shall apply to transactions occur-  
25                  ring after the date of the enactment of this Act.

1           (2) SUBSECTION (b).—The amendments made  
2       by subsection (a) shall apply to transactions occur-  
3       ring after July 25, 2006.

4   **SEC. 1243. EXCESS BUSINESS HOLDINGS OF SUPPORTING**  
5                   **ORGANIZATIONS.**

6       (a) IN GENERAL.—Section 4943, as amended by this  
7   Act, is amended by adding at the end the following new  
8   subsection:

9       “(f) APPLICATION OF TAX TO SUPPORTING ORGANI-  
10   ZATIONS.—

11           “(1) IN GENERAL.—For purposes of this sec-  
12   tion, an organization which is described in para-  
13   graph (3) shall be treated as a private foundation.

14           “(2) EXCEPTION.—The Secretary may exempt  
15   the excess business holdings of any organization  
16   from the application of this subsection if the Sec-  
17   retary determines that such holdings are consistent  
18   with the purpose or function constituting the basis  
19   for its exemption under section 501.

20           “(3) ORGANIZATIONS DESCRIBED.—An organi-  
21   zation is described in this paragraph if such organi-  
22   zation is—

23           “(A) a type III supporting organization  
24       (other than a functionally integrated type III  
25       supporting organization), or

1 “(B) an organization which meets the re-  
2 quirements of subparagraphs (A) and (C) of  
3 section 509(a)(3) and which is supervised or  
4 controlled in connection with or one or more or-  
5 ganizations described in paragraph (1) or (2) of  
6 section 509(a), but only if such organization ac-  
7 cepts any gift or contribution from any person  
8 described in section 509(f)(2)(B).

9 “(4) DISQUALIFIED PERSON.—

10 “(A) IN GENERAL.—In applying this sec-  
11 tion to any organization described in paragraph  
12 (3), the term ‘disqualified person’ means, with  
13 respect to the organization—

14 “(i) any person who was, at any time  
15 during the 5-year period ending on the  
16 date described in subsection (a)(2)(A), in a  
17 position to exercise substantial influence  
18 over the affairs of the organization,

19 “(ii) any member of the family (deter-  
20 mined under section 4958(f)(4)) of an in-  
21 dividual described in clause (i),

22 “(iii) any 35-percent controlled entity  
23 (as defined in section 4958(f)(3) by sub-  
24 stituting ‘persons described in clause (i) or  
25 (ii) of section 4943(f)(4)(A)’ for ‘persons

1 described in subparagraph (A) or (B) of  
2 paragraph (1)’ in subparagraph (A)(i)  
3 thereof),

4 “(iv) any person described in section  
5 4958(c)(3)(B), and

6 “(v) any organization—

7 “(I) which is effectively con-  
8 trolled (directly or indirectly) by the  
9 same person or persons who control  
10 the organization in question, or

11 “(II) substantially all of the con-  
12 tributions to which were made (di-  
13 rectly or indirectly) by the same per-  
14 son or persons described in subpara-  
15 graph (B) or a member of the family  
16 (within the meaning of section  
17 4946(d)) of such a person.

18 “(B) PERSONS DESCRIBED.—A person is  
19 described in this subparagraph if such person  
20 is—

21 “(i) a substantial contributor to the  
22 organization (as defined in section  
23 4958(c)(3)(C)),

24 “(ii) an officer, director, or trustee of  
25 the organization (or an individual having



1 powers or responsibilities similar to those  
2 of the officers, directors, or trustees of the  
3 organization), or

4 “(iii) an owner of more than 20 per-  
5 cent of—

6 “(I) the total combined voting  
7 power of a corporation,

8 “(II) the profits interest of a  
9 partnership, or

10 “(III) the beneficial interest of a  
11 trust or unincorporated enterprise,  
12 which is a substantial contributor (as so  
13 defined) to the organization.

14 “(5) TYPE III SUPPORTING ORGANIZATION;  
15 FUNCTIONALLY INTEGRATED TYPE III SUPPORTING  
16 ORGANIZATION.—For purposes of this subsection—

17 “(A) TYPE III SUPPORTING ORGANIZA-  
18 TION.—The term ‘type III supporting organiza-  
19 tion’ means an organization which meets the re-  
20 quirements of subparagraphs (A) and (C) of  
21 section 509(a)(3) and which is operated in con-  
22 nection with one or more organizations de-  
23 scribed in paragraph (1) or (2) of section  
24 509(a).

1                   “(B) FUNCTIONALLY INTEGRATED TYPE  
2                   III SUPPORTING ORGANIZATION.—The term  
3                   ‘functionally integrated type III supporting or-  
4                   ganization’ means a type III supporting organi-  
5                   zation which is not required under regulations  
6                   established by the Secretary to make payments  
7                   to supported organizations (as defined under  
8                   section 509(f)(3)) due to the activities of the  
9                   organization related to performing the functions  
10                  of, or carrying out the purposes of, such sup-  
11                  ported organizations.

12                  “(6) SPECIAL RULE FOR CERTAIN HOLDINGS  
13                  OF TYPE III SUPPORTING ORGANIZATIONS.—For  
14                  purposes of this subsection, the term ‘excess busi-  
15                  ness holdings’ shall not include any holdings of a  
16                  type III supporting organization in any business en-  
17                  terprise if, as of November 18, 2005, the holdings  
18                  were held (and at all times thereafter, are held) for  
19                  the benefit of the community pursuant to the direc-  
20                  tion of a State attorney general or a State official  
21                  with jurisdiction over such organization.

22                  “(7) PRESENT HOLDINGS.—For purposes of  
23                  this subsection, rules similar to the rules of para-  
24                  graphs (4), (5), and (6) of subsection (c) shall apply

1 to organizations described in section 509(a)(3), ex-  
2 cept that—

3 “(A) ‘the date of the enactment of this  
4 subsection’ shall be substituted for ‘May 26,  
5 1969’ each place it appears in paragraphs (4),  
6 (5), and (6), and

7 “(B) ‘January 1, 2007’ shall be sub-  
8 stituted for ‘January 1, 1970’ in paragraph  
9 (4)(E).”.

10 (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to taxable years beginning after  
12 the date of the enactment of this Act.

13 **SEC. 1244. TREATMENT OF AMOUNTS PAID TO SUPPORTING**  
14 **ORGANIZATIONS BY PRIVATE FOUNDATIONS.**

15 (a) QUALIFYING DISTRIBUTIONS.—Paragraph (4) of  
16 section 4942(g) is amended to read as follows:

17 “(4) LIMITATION ON DISTRIBUTIONS BY NON-  
18 OPERATING PRIVATE FOUNDATIONS TO SUPPORTING  
19 ORGANIZATIONS.—

20 “(A) IN GENERAL.—For purposes of this  
21 section, the term ‘qualifying distribution’ shall  
22 not include any amount paid by a private foun-  
23 dation which is not an operating foundation  
24 to—

1 “(i) any type III supporting organiza-  
2 tion (as defined in section 4943(f)(5)(A))  
3 which is not a functionally integrated type  
4 III supporting organization (as defined in  
5 section 4943(f)(5)(B)), and

6 “(ii) any organization which is de-  
7 scribed in subparagraph (B) or (C) if—

8 “(I) a disqualified person of the  
9 private foundation directly or indi-  
10 rectly controls such organization or a  
11 supported organization (as defined in  
12 section 509(f)(3)) of such organiza-  
13 tion, or

14 “(II) the Secretary determines by  
15 regulations that a distribution to such  
16 organization otherwise is inappro-  
17 priate.

18 “(B) TYPE I AND TYPE II SUPPORTING OR-  
19 GANIZATIONS.—An organization is described in  
20 this subparagraph if the organization meets the  
21 requirements of subparagraphs (A) and (C) of  
22 section 509(a)(3) and is—

23 “(i) operated, supervised, or controlled  
24 by one or more organizations described in  
25 paragraph (1) or (2) of section 509(a), or

1 “(ii) supervised or controlled in con-  
2 nection with one or more such organiza-  
3 tions.

4 “(C) FUNCTIONALLY INTEGRATED TYPE  
5 III SUPPORTING ORGANIZATIONS.—An organiza-  
6 tion is described in this subparagraph if the or-  
7 ganization is a functionally integrated type III  
8 supporting organization (as defined under sec-  
9 tion 4943(f)(5)(B)).”.

10 (b) TAXABLE EXPENDITURES.—Subparagraph (A)  
11 of section 4945(d)(4) is amended to read as follows:

12 “(A) such organization—

13 “(i) is described in paragraph (1) or  
14 (2) of section 509(a),

15 “(ii) is an organization described in  
16 section 509(a)(3) (other than an organiza-  
17 tion described in clause (i) or (ii) of section  
18 4942(g)(4)(A)), or

19 “(iii) is an exempt operating founda-  
20 tion (as defined in section 4940(d)(2)),  
21 or”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to distributions and expenditures  
24 after the date of the enactment of this Act.

1 **SEC. 1245. RETURNS OF SUPPORTING ORGANIZATIONS.**

2 (a) REQUIREMENT TO FILE RETURN.—Subpara-  
3 graph (B) of section 6033(a)(3) is amended by inserting  
4 “(other than an organization described in section  
5 509(a)(3))” after “paragraph (1)”.

6 (b) MATTERS INCLUDED ON RETURNS.—Section  
7 6033, as amended by this Act, is amended by redesignig-  
8 nating subsection (l) as subsection (m) and by inserting  
9 after subsection (k) the following new subsection:

10 “(l) ADDITIONAL PROVISIONS RELATING TO SUP-  
11 PORTING ORGANIZATIONS.—Every organization described  
12 in section 509(a)(3) shall, on the return required under  
13 subsection (a)—

14 “(1) list the supported organizations (as de-  
15 fined in section 509(f)(3)) with respect to which  
16 such organization provides support,

17 “(2) indicate whether the organization meets  
18 the requirements of clause (i), (ii), or (iii) of section  
19 509(a)(3)(B), and

20 “(3) certify that the organization meets the re-  
21 quirements of section 509(a)(3)(C).”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to returns filed for taxable years  
24 ending after the date of the enactment of this Act.

# 1 **TITLE XIII—OTHER PROVISIONS**

## 2 **SEC. 1301. TECHNICAL CORRECTIONS RELATING TO MINE** 3 **SAFETY.**

4 Section 110 of the Federal Mine Safety and Health  
5 Act of 1977 (30 U.S.C. 820), as amended by the Mine  
6 Improvement and New Emergency Response Act of 2006  
7 (Public Law 109-236), is amended—

8 (1) by striking subsection (d); and

9 (2) in subsection (a)—

10 (A) by striking “(1)(1) The operator” and  
11 inserting “(1) The operator”;

12 (B) in the paragraph (2) added by section  
13 8(a)(1)(B) of the Mine Improvement and New  
14 Emergency Response Act of 2006 (Public Law  
15 109-236)—

16 (i) by striking “paragraph (1)” and  
17 inserting “subsection (a)(1)”; and

18 (ii) by redesignating such paragraph  
19 as subsection (d) and transferring such  
20 subsection so as to appear after subsection  
21 (c); and

22 (3) in subsection (b)—

23 (A) by striking “Any operator” and insert-  
24 ing “(1) Any operator”; and

1 (B) in the second sentence, as added by  
2 section 8(a)(2) of the Mine Improvement and  
3 New Emergency Response Act of 2006 (Public  
4 Law 109-236), by striking “Violations” and in-  
5 serting the following:

6 “(2) Violations”.

7 **SEC. 1302. GOING-TO-THE-SUN ROAD.**

8 (a) IN GENERAL.—Section 1940 of the Safe, Ac-  
9 countable, Flexible, Efficient Transportation Equity Act:  
10 A Legacy for Users (119 Stat. 1511) is amended—

11 (1) in subsection (a)—

12 (A) by striking paragraphs (1) and (2);

13 (B) by redesignating paragraphs (3)  
14 through (5) as paragraphs (1) through (3), re-  
15 spectively; and

16 (C) by striking “\$10,000,000” each place  
17 that it appears and inserting “\$16,666,666”;  
18 and

19 (2) by adding at the end the following:

20 “(c) CONTRACT AUTHORITY.—Except as otherwise  
21 provided in this section, funds authorized to be appro-  
22 priated under this section shall be available for obligation  
23 in the same manner as if the funds were apportioned  
24 under chapter 1 of title 23, United States Code.”.



1 (b) RESCISSION.—Section 10212 of the Safe, Ac-  
2 countable, Flexible, Efficient Transportation Equity Act:  
3 A Legacy for Users (119 Stat. 1937) is amended by strik-  
4 ing “\$8,543,000,000” each place it appears and inserting  
5 “\$8,593,000,000”.

6 **SEC. 1303. EXCEPTION TO THE LOCAL FURNISHING RE-**  
7 **QUIREMENT OF THE TAX-EXEMPT BOND**  
8 **RULES.**

9 (a) SNETTISHAM HYDROELECTRIC FACILITY.—For  
10 purposes of determining whether any private activity bond  
11 issued before May 31, 2006, and used to finance the ac-  
12 quisition of the Snettisham hydroelectric facility is a quali-  
13 fied bond for purposes of section 142(a)(8) of the Internal  
14 Revenue Code of 1986, the electricity furnished by such  
15 facility to the City of Hoonah, Alaska, shall not be taken  
16 into account for purposes of section 142(f)(1) of such  
17 Code.

18 (b) LAKE DOROTHY HYDROELECTRIC FACILITY.—  
19 For purposes of determining whether any private activity  
20 bond issued before May 31, 2006, and used to finance the  
21 Lake Dorothy hydroelectric facility is a qualified bond for  
22 purposes of section 142(a)(8) of the Internal Revenue  
23 Code of 1986, the electricity furnished by such facility to  
24 the City of Hoonah, Alaska, shall not be taken into ac-

1 count for purposes of paragraphs (1) and (3) of section  
2 142(f) of such Code.

3 (c) DEFINITIONS.—For purposes of this section—

4 (1) LAKE DOROTHY HYDROELECTRIC FACIL-  
5 ITY.—The term “Lake Dorothy hydroelectric facil-  
6 ity” means the hydroelectric facility located approxi-  
7 mately 10 miles south of Juneau, Alaska, and com-  
8 monly referred to as the “Lake Dorothy project”.

9 (2) SNETTISHAM HYDROELECTRIC FACILITY.—  
10 The term “Snettisham hydroelectric facility” means  
11 the hydroelectric project described in section 1804 of  
12 the Small Business Job Protection Act of 1996.

13 **SEC. 1304. QUALIFIED TUITION PROGRAMS.**

14 (a) PERMANENT EXTENSION OF MODIFICATIONS.—  
15 Section 901 of the Economic Growth and Tax Relief Rec-  
16 onciliation Act of 2001 (relating to sunset provisions) shall  
17 not apply to section 402 of such Act (relating to modifica-  
18 tions to qualified tuition programs).

19 (b) REGULATORY AUTHORITY TO PREVENT  
20 ABUSE.—Section 529 (relating to qualified tuition pro-  
21 grams) is amended by adding at the end the following new  
22 subsection:

23 “(f) REGULATIONS.—Notwithstanding any other pro-  
24 vision of this section, the Secretary shall prescribe such  
25 regulations as may be necessary or appropriate to carry

1 out the purposes of this section and to prevent abuse of  
2 such purposes, including regulations under chapters 11,  
3 12, and 13 of this title.”.